July 8, 2013

Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
Room 2099B
14th St. and Pennsylvania Ave. N.W.
Washington, DC 20230

RE: RIN 0694-AF87 (Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the USML)

To Whom It May Concern,

I am writing on behalf of the Association of University Export Control Officers (AUECO), a group of 28 senior export practitioners with experience at accredited institutions of higher learning in the United States (U.S.). AUECO members monitor proposed changes in laws and regulations affecting academic activities and advocate for policies and procedures that advance effective university compliance with applicable U.S. export controls and trade sanction regulations.

AUECO is interested in contributing to the export reform effort in order to ensure that the resulting regulations do not have an adverse impact on academic pursuits. As a result, AUECO is providing the following in response to the U.S. Department of Commerce Bureau of Industry and Security (BIS)'s request for public comments on its proposed revision of the Export Administration Regulations (EAR) to include control of spacecraft systems and related items that will no longer be controlled under the International Traffic in Arms Regulations (ITAR)'s U.S. Munitions List (USML) in the new ECCN 9X515. We appreciate the consideration that spacecraft and related items that are commercial items with no military or intelligence applications are ill suited to the "600 series" ECCNs that have been designated for other items being moved from the USML to the Commerce Control List (CCL), and thus the creation of the 9X515 series ECCNs. We disagree that separating out those items with no military or intelligence applications (e.g. commercial communications satellites) from those that do would be unnecessarily complicated and confusing in the context of the resulting higher levels of control than would otherwise be required for the purely commercial items. We are disappointed that this consideration has resulted in a lack of flexibility in licensing requirements and are concerned about the implications to the performance of fundamental academic research and teaching related to spacecraft and related articles at U.S. universities.

AUECO notes specifically that, as in the case with the establishment of the "600 series" for other items moving from the USML to the CCL, ECCNs 9D515 (software) and 9E515 (technology) include sweeping catchalls of "'development,' 'production,' operation, installation, maintenance, repair,

overhaul, ***or*** refurbishing of 'spacecraft' and related commodities" (emphasis added). This is in contrast to "use" as defined in EAR Part 772.1, which is defined as "operation, installation…., maintenance…, repair, overhaul ***and*** refurbishing" (emphasis added). On university campuses, equipment subject to the EAR and enumerated on the CCL is operated by a wide variety of individuals, including foreign national students and trainees, in a variety of classroom and research settings without information related to the additional elements of "use" being conveyed. As a result, these activities result in a low licensing burden to both the universities and to BIS. AUECO is concerned that the proposed definitions in 9D515 and 9E515 will impose a large administrative burden on the university community due to the need to obtain deemed export licenses for foreign national students, technicians, visitors, faculty, and research staff to simply have access to items in the conduct of fundamental research or teaching activities on our campuses. We are further concerned that such requirements might result in a reduction in teaching related to spacecraft systems and related items, should the conduct of related courses become too difficult to administer in an open academic environment.

AUECO recommends that BIS revisit the burden of separating spacecraft systems and related items that do have military or intelligence applications from those that do not in an effort to minimize the licensing burden associated with purely commercial applications. We also suggest that BIS specifically address the rationale for the decision to deviate from the well understood concept of "use" for those items in the "600 series" and especially for those items in the "500 series" with purely commercial applications.

As previously noted in our comments in response to proposed changes to Part 740 of the EAR[1], AUECO appreciates BIS's continued assertion that the transfer of items and technologies from the USML to the CCL should not create a more restrictive regulatory burden for exporters. However, we believe it is necessary to once again emphasize that there are multiple provisions in the ITAR that are essential to university-based research that are not present in the EAR. Specifically, the full scope of the license exemptions found in ITAR §§ 123.16, 125.4(b)(7), and 125.4 (b)(9) are not currently available under the EAR. Without reciprocal provisions in the EAR, the transfer of items into 9X515 represents a significantly increased regulatory burden.

AUECO also notes that these reciprocal provisions could still be curtailed by other provisions in the EAR, namely the limitation on use of License Exceptions in Part 740.2. In relevant part, Part 740.2(a) states that "You may not use *any* License Exception if. . . the item is controlled for missile technology [MT] reasons[2]". As a result, any transfer of items from the USML to the CCL that are subject to MT controls will create a situation where exports that would have been exempt from licensing requirements under the ITAR would now require a license under the EAR. This possibility is even more concerning due to the acknowledgement that the 9X515 ECCNs may be subject to MT controls[3].

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[1] http://aueco.org/sitebuildercontent/sitebuilderfiles/commentlicenseexceptions.pdf.

[2] There are some limited exceptions to this provision. See 15 C.F.R. 740.2(a)(5)

[3] See https://federalregister.gov/a/2013-11986. "All items in the 9X515 ECCNs, as proposed in this rule, would be subject to national security (NS Column 1) and regional stability (RS Column 1) controls, as well as antiterrorism (AT Column 1) controls. **Some of the items would be subject to missile technology (MT) controls** in some cases. [Emphasis ours].

We understand that certain definitions that are critical to the interpretation and implementation of the EAR and ITAR by universities are currently under review. The comments provided here are based on the current definitions available in the EAR and ITAR, any changes to those definitions may significantly alter our interpretation of the impact of the proposed rule changes. AUECO encourages BIS to release any proposed changes to definitions as soon as possible to ensure that the full impact of export control reform on the university community can be adequately assessed.

AUECO appreciates the opportunity to provide comments on these proposed changes.

Sincerely,

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