Yale University

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July 8, 2013

Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
Room 2099B
14th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20230

Re: RIN 0694-AF87

Dear Madam or Sir:

I write on behalf of Yale University to comment on the U.S. Department of Commerce Bureau of Industry and Security's proposed changes regarding the transfer of spacecraft systems and related items from the U.S. Munitions List to the Commerce Control List. Although we support the transfer from the export control jurisdiction of the International Traffic in Arms Regulations (ITAR) to the Department's Export Administration Regulations (EAR), we are deeply concerned that the proposed rule fundamentally modifies the definition of "use" technology. If implemented in its current form, we believe many universities would be forced either to segregate the covered technology in quasi-classified areas or to ban the technology completely, significantly constraining the opportunity and ability of those universities to conduct fundamental research.

The Council on Government Relations (COGR) and the Association of American Universities (AAU) have submitted detailed comments on the proposed change. In addition to the comments below, we join COGR and AAU in support of their recommendations.

The key to technological preeminence in the U.S. is open and collaborative basic research, and we appreciate the efforts of this Administration to review and update the export control policies that affect fundamental research. As part of that effort, we support the transfer of less militarily sensitive spacecraft and related items from ITAR to EAR, which would restore the ability of universities and faculty to conduct space science research and education. Although the proposed rule carries out this transfer in important ways, it creates a troubling new definition of "use" for purposes of the 500 and 600 series

Export Control Classification Numbers for spacecraft and related items on the Commerce Control List.

With respect to technology, "use" is currently defined in EAR Part 772.1 as "operation, installation..., maintenance..., repair, overhaul **and** refurbishing." Most universities are able to maintain an open academic environment because international students, faculty and visitors rarely acquire information as to operating, installing, maintaining, repairing, overhauling **and** refurbishing dual use equipment. Instead, most receive information pertaining primarily to operating and maintaining such equipment. These cases do not rise to the level of "use" that would require an individualized export control analysis and possibly a license.

Several of the new proposed 500 and 600 series of technology are defined as those specifically designed or required "for the development, production, operation, installation, maintenance, repair, overhaul **or** refurbishing of spacecraft and related commodities...." For those technologies moving from ITAR to EAR, the definition of use will change from "and" to "or", making it a deemed export simply to convey operating instructions for some technologies to international students and researchers. The result will be a new and growing class of dual use items (500 and 600 series items) that will be subject to incompatible with typical academic environments.

Yale, like most institutions, takes its compliance responsibilities seriously. We educate the university community on EAR and ITAR to ensure that researchers and administrators understand their obligations under these regulations and adhere to them. Having competing definitions of "use" that vary by piece of equipment will present nearly insurmountable challenges in explaining these already complex regulations to researchers and administrators, creating greater confusion and compliance risks.

COGR and AAU argue that the access to technology under this new definition of "use" would raise the potential for a greatly increased need for deemed export licenses. We agree and are concerned that the consequences of this change would reach even farther. Once it becomes a deemed export to convey operating instructions for some dual use technologies, even where no other information concerning the installation, maintenance, repair, overhaul and refurbishing is so conveyed, universities conducting fundamental research involving spacecraft and related items would be required to establish a campus-wide compliance program to screen every situation in which a foreign national might learn to operate dual use equipment. Then universities would have to evaluate the equipment and the foreign national combination to determine the need for deemed export licenses, should foreign students, faculty, visitors, technicians or other research staff wish to work on particular research projects involving that equipment.

Given the burden associated with monitoring and licensing this controlled equipment, and the difficulty of excluding certain members of the university community from research involving the 500 and 600 series technologies, this new, expansive definition of "use" will likely cause universities to ban or to severely limit the use of this technology in fundamental research, significantly eroding the benefit associated with the transfer of the technology from ITAR to EAR.

To avoid undermining research and education at universities, we urge you to reconsider the proposed definition of "use" technology for 500 series items. We also urge you to revisit the 600 series to ensure that the definition of "use" technology is consistent with the current EAR definition.

Thank you for this opportunity to provide written comments.

Sincerely,

Dorothy K. Robinson