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

Subject: UTAS Comments to the Federal Register Notice 27418 dated May 13, 2014

Reference: RIN 0694–AF87

UTAS respectfully provides comments to the Federal Register Notice 27418 dated May 13, 2014 for the interim final rule as it relates to ECCN 9A004.

Comment 1 pertains to the treatment of equipment for the International Space Station (ISS) technology and what we believe is an unintended ITAR jurisdiction for ISS equipment development and production technology remaining after the ECR IV final rule is effective on November 10, 2014. The following is provided to explain the issue.

Current Wording in the CCL as of August 4, 2014:

The Commerce Control List Supplement No. 1 to Part 774 Category 9—page 42 of the Export Administration Regulation dated August 4, 2014, provides:

> ***9E001 "Technology" according to the General Technology Note for the "development" of equipment or "software", controlled by 9A001.b, 9A004 (except for items in 9A004 that are "subject to the ITAR," see 22 CFR part 121); and,***
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> ***9E002 "Technology" according to the General Technology Note for the "production" of "equipment" controlled by ECCN 9A001.b, 9A004 (except for items in 9A004 that are "subject to the ITAR," see 22 CFR part 121)***

Therefore, what this means is that, under the current regulation, development and production technology related to ISS equipment is subject to the ITAR.

Current Wording in the Federal Register Notice 27418 dated May 13, 2014.

UTAS notes that the ECR IV interim final rule Federal Register Notice 27418 dated May 13, 2014 and comment 84 (page 27431) discuss the related controls for 9A004 as follows:

"The technology controls for 9A004 are 9E001 for development technology and 9E002 for production technology." (last sentence in the "Response to Comment 84", (FRN 27418, page 27431); and, in *FRN 27418, page 27439* for ECCN 9A004, *ITAR* is still mentioned in the List of Items Controlled Related Controls as follows:

> ***9A004 Space launch vehicles and "spacecraft," as follows (see List of Items Controlled).***
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> * * * * *
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> ***List of Items Controlled Related Controls: (1) See also 9A104, 9A515, and 9B515. (2) See ECCNs 9E001 ("development") and 9E002 ("production") for technology for items controlled by this entry. 3) See USML Categories IV and XV for the space launch vehicles and other spacecraft that are "subject to the ITAR" (see 22 CFR parts 120 through 130).***
>
> ***Related Definitions: N/A***
> ***Items:***
> ***a. The International Space Station being developed, launched, and operated under the supervision of the U.S. National Aeronautics and Space Administration.***
> ***b. through w. [RESERVED]***
> ***x. "Parts," "components," "accessories" and "attachments" that are "specially designed" for the International Space Station.***

In the interim final rule, there is no mention of 9E001 and 9E002 technology and; in which, only 9E515 technology is mentioned. 9E001 and 9E002 are omitted in the list of items in the interim final rule . **Thus, in order to determine the classification for ISS development and production technology the reader must go back to the current regulation to see how such technology should be treated.**

Note that the current language in the CCL as of August 4, 2014 states ITAR as stated above in the parenthetical "9A004 (except for items in 9A004 that are "subject to the ITAR," see 22 CFR part 121)". UTAS believe this is an inadvertent error in the interim final rule and provides the following recommendation:

Recommendation: In the final rule release, add the actual categories of 9E001 and 9E002 with written EAR controls for the technology controls for 9A004 as 9E001 for development technology and 9E002 for production technology and delete the parenthetical "***(except for items in 9A004 that are "subject to the ITAR," see 22 CFR part 121.***

Comment 2 relates to a conflict in the treatment of telemetry/housekeeping data as described in Federal Notice 27418 and Federal Notice 27188.

Current Wording:
USML Federal Register Notice 27188 note to XV(f) specifically states that the telemetry/housekeeping data is EAR99.

> *Note 3 to paragraph (f): Neither paragraph (f) nor ECCN 9E515 controls the data transmitted to or from a satellite or spacecraft, whether real or simulated, when limited to information about the health, operational status, or function of, or measurements or raw sensor output from, the spacecraft, spacecraft payload(s), or their associated subsystems or components.* ***Such data or technology is subject to the EAR and is designated EAR99.*** *Examples of such data and technology, which are commonly referred to as ''housekeeping data,'' include (a) system, hardware, component configuration, and operation status information pertaining to temperatures, pressures, power, currents, voltages, and battery charges; (b) spacecraft or payload orientation or position information, such as state vector or ephemeris information; (c) payload raw mission or science output, such as images, spectra, particle measurements, or field measurements; (d) command responses; (e) accurate timing information; and (f) link budget data.*

EAR Federal Register Notice 27418 states that the telemetry/housekeeping data is not controlled.

> *Note 3 to 9E515: Neither USML Category XV(f) nor ECCN 9E515 control the data transmitted to or from a satellite or ''spacecraft,'' whether real or simulated, when limited to information about the health, operational status, or measurements or function of, or raw sensor output from, the ''spacecraft,'' ''spacecraft'' payload(s), or its associated subsystems or components.* ***Such information is not within the scope of information captured within the definition of ''technology'' in the EAR.*** *Examples of such information, which are commonly referred to as ''housekeeping data,'' include (i) system, hardware, component configuration, and operation status information pertaining to temperatures, pressures, power, currents, voltages, and battery charges; (ii) ''spacecraft'' or payload orientation or position information, such as state vector or ephemeris information; (iii) payload raw mission or science output, such as images, spectra, particle measurements, or field measurements; (iv) command responses; (v) accurate timing information; and (vi) link budget data.*

UTAS notes that there appears to be a discrepancy between the treatment of telementry/housekeeping data per the notes of the ITAR and EAR for 9E515 ("Note 3 to paragraph (f)" in the ITAR, and "Note 3 to 9E515 in the EAR)";

Accordingly, UTAS requests that the final rule be updated to clarify whether the treatment of certain 9E515 housekeeping/telemetry information/data is:

- *'designated EAR99'*, as indicated in Note 3 to subcategory XV(f) of the State Department USML portion of FRN dated 5/13/14; **or**
- *'not within the scope of information of captured within the definition of "technology" in the EAR,* as stated in the Commerce Dept. CCL portion of the FRN dated 5/13/14.

Recommendation:

- Revise the USML XV(f) statement to indicate this type of information is subject to the EAR and the "general technology" definition contained therein **OR** revise the CCL note 3 to use the same language in the USML Note 3.

Comment 3

Also pertaining to housekeeping/telemetry information, we recommend language be added to the final rule to clarify how International Space Station 9A004.a and 9A004.x housekeeping/telemetry data be controlled. The USML note applies to USML XV paragraph (f) and the ECCN 9E515 and the EAR note applies to 9E515. UTAS requests clarification for the housekeeping/telemetry data as it may apply to 9A004.a and 9A004.x.

Recommendation:

Add language to both the USML and the CCL to address how International Space Station 9A004.a, 9A004.x housekeeping/telemetry information is to be controlled.

Please contact Nancy L. Broyan, UTAS, Houston, TX office, @ 281-333-8704 (nancy.broyan@utas.utc.com) or the undersigned @ 202-336-7476 (Leila.Golesorkhi@utc.com) for additional information on these comments..

Regards,

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