UNITED STATES DEPARTMENT OF COMMERCE
Assistant Secretary for Export Administration
Washington, D.C. 20230

January 4, 2013

[redacted]

Re: Advisory Opinion regarding Application of ECCNs 9A001.a and 9A003.a to Aero Auxiliary Power Units (APUs) -- Revised and clarified on February 21, 2013.

Dear [redacted]:

This is in response to your November 16, 2012 request for an advisory opinion regarding the applicability of Export Control Classification Number (ECCN) 9A001.a to Aero Auxiliary Power Units (or APUs) and ECCN 9A003.a to assemblies and components specially designed for APUs. *See* 15 C.F.R. § 748.3 and pt. 774, Supp. No. 1 (2013). This Advisory Opinion does not apply to APUs or other items that are subject to the jurisdiction of the International Traffic in Arms Regulations at 22 C.F.R. pts. 120-130 (2013).

I. 9A001.a and APUs

ECCN 9A001.a controls "[a]ero gas turbine engines" "[i]ncorporating any of the technologies controlled by 9E003.a, 9E003.h, or 9E003.i." An aero gas turbine engine is an engine that has an upstream rotating compressor coupled to a downstream turbine with a combustion chamber in between the two and that is used in an aircraft. As noted in your request, there are two types of such engines – those that are used to propel aircraft and those that are used for non-propulsion tasks, such as starting an aircraft's main engines or running an aircraft's accessories while the main engines are shut down, i.e., engines for APUs. The ECCN does not distinguish between the two types of aero gas turbine engines. Thus, if an APU aero gas turbine engine "incorporates" -- i.e., is developed or produced from – technologies controlled by ECCNs 9E003.a, 9E003.h, or 9E003.i, then it is controlled by ECCN 9A001.a unless the ECCN's "note" is applicable to the APU.

The note states that "9A001.a. does not control aero gas turbine engines" that are:

> "a. Certified by the civil aviation authority in a country listed in Supplement No. 1 to Part 743; and
>
> b. Intended to power non-military manned aircraft for which any of the following has been issued by a Participating State listed in Supplement No. 1 to Part 743 for the aircraft with this specific engine type:
>
> b.1. A civil type certificate; or
>
> b.2. An equivalent document recognized by the International Civil Aviation Organization (ICAO)."

Aero gas turbine engines that are not controlled by ECCN 9A001.a are controlled by ECCN 9A991.c or .d, depending upon the nature of the aircraft to which they are destined.

A. Paragraph a to 9A001.a Note

As noted in your request, APUs, unlike propulsion gas turbine engines, are not separately "certified" by the referenced civil aviation authorities such as the Federal Aviation Administration (FAA). *See* 14 C.F.R. Part 33 (2013). APUs designed to operate on FAA-certified civil aircraft are instead designed to a Technical Standard Order and subsequently called out as a component of an aircraft in that FAA-certified civil aircraft's Type Certificate or Supplemental Type Certificate. *See*, e.g., TSO-C77b (2000). The distinctions in civil aviation regulatory parlance between individually "certified" gas turbine propulsion engines under, for example, FAR Part 33 and APUs that meet the minimum performance standards for APUs identified in TSOs or their International Civil Aviation Organization (ICAO) equivalents are not relevant for the export control purposes of 9A001.a. The export control policy purpose of the exclusion is met if either standard applies to an aero gas turbine engine. Thus, paragraph a to the 9A001.a note applies to aero gas turbine engines used in APUs once the APU meets the minimum performance standards identified in and otherwise satisfies the marking, reporting, and other requirements of a TSO or its ICAO equivalent.

B. Paragraph b to 9A001.a Note

You ask, in effect, whether the reference in paragraph b to aero gas turbine engines "intended to *power* non-military manned aircraft" means that the note applies only to engines to propel aircraft or whether it applies to engines that provide any type of power to an aircraft, which would include engines for APUs. BIS confirms that the scope of paragraph b in the 9A001.a note is limited to aero gas turbine engines that are separately "certified" by a civil aviation authority in a country listed in Supplement No. 1 to Part 743. Thus, paragraph b to the 9A001.a note is not relevant to a determination of whether an aero gas turbine engine for an APU is excluded from the scope of 9A001.a by virtue of the note. BIS intends to work to amend this ECCN to clarify this position.

II. 9A003 and Specially Designed Assemblies and Components for APUs

ECCN 9A003 controls "specially designed assemblies and components, incorporating [i.e., designed or produced from] any of the "technologies" controlled by 9E003.a, 9E003.h or 9E003.i, for . . . gas turbine engine propulsion systems" "controlled by ECCN 9A001" or "whose design or production origins are either countries in Country Group D:1 or unknown to the manufacturer." You have, in essence, asked BIS to confirm whether assemblies and components specially designed for APU engines are *per se* excluded from the scope of 9A003 because APU engines are, by definition, not "propulsion systems."

BIS confirms your understanding that 9A003 does not apply to assemblies and components specially designed for APUs because APUs are not "propulsion systems." Assemblies and components specially designed for APUs are thus controlled by 9A991.c or .d, depending upon the nature of the aircraft to which they are destined.

If you have any other questions, please do not hesitate to contact me or Dennis Krepp at 202-482-1309.

Sincerely,

Kevin Wolf
Assistant Secretary of Commerce
for Export Administration