Overhaul of Space Export Controls Announced by US Commerce Department

October 25, 2024

In October 2024 the the Commerce Department's Bureau of Industry and Security (BIS) proposed amendments to the Export Administration Regulations (EAR) aimed at updating and streamlining controls on spacecraft and related items. Simultaneously, the Department of State is proposing revisions to the International Traffic in Arms Regulations (ITAR) concerning U.S. Munitions List (USML) Categories IV and XV. These developments are poised to reshape the regulatory landscape for commercial space activities, defense contractors, and international collaborations.

At Wasel & Wasel, we understand the complexities these regulatory shifts introduce. Our global presence and expertise in international disputes and geopolicy position us to provide strategic guidance to entities navigating this new environment.

Understanding the Regulatory Announcements

The BIS's proposed rule, titled **"Export Administration Regulations: Revisions to Space-Related Export Controls, Including Addition of License Exception Commercial Space Activities (CSA),"** introduces several critical changes:

1. **Alignment with ITAR Revisions**: The proposed EAR amendments aim to harmonize with the Department of State's suggested changes to the ITAR. This alignment is crucial for companies that must comply with both sets of

regulations, reducing the risk of inadvertent non-compliance.

2. **Introduction of License Exception CSA**: A significant addition is the new **License Exception for certain Commercial Space Activities (CSA)** under § 740.26. This exception is designed to facilitate exports, reexports, and transfers (in-country) of specific items for **official space agency programs** and **space tourism and research activities**.
3. **Revisions to ECCNs**: The proposed changes affect several Export Control Classification Numbers (ECCNs), particularly:
    - **ECCN 9A515**: Revisions include expanding control parameters to cover additional spacecraft and components, removing unnecessary language for clarity, and explicitly excluding certain items like planetary rovers and in-space habitats.
    - **Addition of ECCN 9C515**: A new ECCN controlling **materials, coatings, and treatments designed to reduce in-orbit signatures** (e.g., radar, optical, ultraviolet, and infrared) of spacecraft.
    - **Amendments to ECCNs 9D515 and 9E515**: These control software and technology related to the newly added items in ECCN 9A515, ensuring comprehensive regulatory coverage.

Practical Implications for Businesses

The proposed revisions carry several practical implications:

1. **Easier International Collaboration**: By streamlining and clarifying regulations, the changes aim to make it easier for U.S. companies to collaborate with international partners. For instance, the new License Exception CSA could reduce licensing burdens for companies participating in programs like NASA’s Lunar Gateway.
2. **Regulatory Clarity and Compliance**: The alignment of EAR

and ITAR controls reduces compliance complexities. Companies can more confidently navigate export controls without fearing regulatory overlap or conflict.

3. **Enhanced Competitiveness**: By updating control parameters and removing outdated restrictions, U.S. companies may find themselves on a more level playing field with international competitors.
4. **Impact on Licensing Requirements**: BIS estimates an increase of 90 license applications annually due to items moving from the USML to the CCL and a decrease of 100 applications because of the new License Exception CSA. Companies need to reassess their licensing strategies in light of these changes.

Detailed Analysis of Affected Items

To fully grasp the impact, it is essential to understand the specific items affected by the Final Rule, Interim Final Rule, and Proposed Rule.

Final Rule and Interim Final Rule Highlights

- **Remote Sensing and Space-Based Logistics**: Adjustments have been made to controls on items related to remote sensing and space logistics. This facilitates collaboration with allies like Australia, Canada, and the United Kingdom, expanding market opportunities.
- **Spacecraft Components**: Certain components previously under stringent controls may now have revised licensing requirements. This includes parts and technologies that are no longer considered critical to national security under the updated guidelines.

Proposed Rule Specifics

1. **ECCN 9A515 Revisions**:
    - **Expanded Control Parameters**: The control parameters now include spacecraft performing **remote proximity operations**, **life-sustaining**

functions, or **debris removal**. Companies in these sectors must assess how these changes affect their products.

- **Exclusions Clarified**: Items such as **planetary rovers** and **in-space habitats** are explicitly excluded from ECCN 9A515. This clarification helps companies correctly classify their items and determine the appropriate licensing requirements.

2. **Addition of ECCN 9C515**:
   - **Control of Signature Reduction Materials**: Materials, coatings, and treatments designed to reduce in-orbit signatures are now controlled under this new ECCN. Companies producing these materials need to adjust their compliance programs accordingly.
3. **Amendments to ECCNs 9D515 and 9E515**:
   - **Software and Technology Controls**: The amendments ensure that software and technology associated with the new items are adequately controlled. This includes **Space Situational Awareness (SSA) software** used for modeling and simulation.
4. **License Exception CSA Details**:
   - **Eligible Programs**: The exception applies to specific programs, including **NASA's Lunar Gateway**, **Mars Sample Return**, **Nancy Grace Roman Telescope**, **The Orion spacecraft**, **Commercial Low Earth Orbit Development program**, and **Habitable Worlds Observatory**.
   - **Conditions for Space Tourism and Research**: The exception allows exports of manned spacecraft and related components for **suborbital flights** for **tourism or fundamental research**, with stringent conditions to prevent misuse.

Strategic Considerations for Businesses

Companies must take proactive steps to adapt to these

regulatory changes:

1. **Review Product Classifications**: Re-examine your products to determine if their ECCN classifications have changed. Misclassification can lead to compliance violations and penalties.
2. **Update Compliance Programs**: Revise internal export control compliance programs to reflect the new rules. This includes training staff on the changes and updating procedures.
3. **Assess Licensing Needs**: Determine if the new License Exception CSA can be utilized for your activities. This may streamline processes and reduce the need for individual licenses.
4. **Monitor International Collaborations**: With the emphasis on facilitating collaboration with allies, explore opportunities in countries like Australia, Canada, and the United Kingdom, where regulatory hurdles may be reduced.
5. **Stay Informed on ITAR Changes**: Since the EAR revisions align with ITAR changes, ensure you are also up to date on the Department of State's proposed amendments to avoid gaps in compliance.

How Wasel & Wasel Can Assist

Navigating these changes requires expertise and strategic insight. Wasel & Wasel offers:

- Our team is well-versed in international export controls and can provide detailed advice tailored to your specific circumstances.
- We assist in creating or updating compliance programs to ensure they meet the latest regulatory requirements.
- We conduct thorough assessments to identify potential compliance risks and develop strategies to mitigate them.
- In cases where regulatory changes lead to disputes, our

seasoned experts can effectively represent your interests.
- With our experience advising governments on critical geopolicy matters, we can offer insights into how regulatory changes align with broader geopolitical trends.

Case Studies and Practical Examples

Consider a U.S. company involved in developing components for the Nancy Grace Roman Telescope. Under the new License Exception CSA, exports of certain components to international partners may no longer require individual licenses, provided the conditions are met. This reduces administrative burdens and accelerates project timelines.

Another example is a company specializing in materials that reduce spacecraft radar signatures. With the introduction of ECCN 9C515, these materials now have specific controls. The company must adjust its export strategies and ensure that any international sales comply with the new regulations.

Conclusion

The proposed revisions to the EAR and ITAR represent a significant shift in space export controls. While they offer opportunities for increased international collaboration and reduced regulatory burdens, they also require careful navigation to ensure compliance.

Wasel & Wasel is committed to guiding clients through this evolving landscape. Our global expertise and dedication to excellence make us the ideal partner for businesses seeking to capitalize on these changes while safeguarding their operations.

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