Not the Time to "Space Out": Changes to Space-Related U.S. Export Controls

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New Rules Revising Space-Related Export Controls

- On October 23, 2024, four new rules were published to amend certain parts of the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR):
    1. *Export Administration Regulations: Removal of License Requirements for Certain Spacecraft and Related Items for Australia, Canada, and the United Kingdom* (the "**EAR Final Rule**")
    2. *Export Administration Regulations: Revisions to Space-Related Export Controls* (the "**EAR Interim Final Rule**")
    3. *International Traffic in Arms Regulations (ITAR): U.S. Munitions List ("USML") Categories IV and XV* (the "**ITAR Proposed Rule**")
    4. *Revisions to space-related export controls, including additions of license exception commercial space activities* (the "**EAR Proposed Rule**")

- The EAR Final Rule and the EAR Interim Final Rule became effective upon publication on October 23, 2024. Comments can be submitted on the EAR Interim Final Rule until November 22, 2024.
- The ITAR Proposed Rule and EAR Proposed Rule are currently seeking public comments until November 22, 2024.

Overview of Key Changes

- The **EAR Final Rule** eliminates license requirements for certain spacecraft and related items exported, reexported, and transferred (in-country) to or within Australia, Canada, and the United Kingdom.
  - This exemption seeks to enhance the U.S. space industry's competitiveness by easing trade restrictions with trusted allies.
  - Examples of items affected:
    - Items involved in remote sensing
    - Items involved in space-based logistics, assembly, and servicing other spacecraft.

- The **EAR Interim Final Rule** removes license requirements for over 30 allies for certain spacecraft parts and components, and related software and technology, and reduces controls for certain low-sensitivity items, among other things.
  - Reclassifying certain low-risk items
  - Introducing exemptions for standards-related activities
  - Expanding license exceptions
  - Providing clear guidance for exports to international waters

Overview of Key Changes

- The **ITAR Proposed Rule** suggests revisions to the United States Munitions List (USML) with four license exemptions to support civil space activity:
  - Official Space Agency Exemption
  - Space Activity Exemption
  - Space Tourism and Research Exemption
  - EAR Incorporated Defense Articles
- The **EAR Proposed Rule** seeks to align EAR controls with proposed ITAR revisions.
  - The rule proposes a new license exception for commercial space activities, allowing specific civil space initiatives while retaining security measures on sensitive components.

EAR Final Rule

- The EAR Final Rule created a new exemption for the export of certain spacecraft items to Australia, Canada, and the United Kingdom.
- The U.S. Department of Commerce Bureau of Industry and Security (BIS) anticipates approximately 90 fewer license applications annually.
- These exemptions are reflected in revisions to the License Requirement Notes for ECCNs **9A515** (spacecraft and related commodities) and **9E515** (technology required for the development, production, operation, installation, repair, overhaul, or refurbishing of spacecraft and related commodities) on the Commerce Control List.
  - The License Requirement Note to ECCNs 9A515 and 9E515 directs exporters and reexporters to see § 742.6(a)(9), which specifies that such commodities are subject to a worldwide license requirement.
  - This final rule revises the second sentence of each License Requirement Note to add the phrase “except to Australia, Canada, and the United Kingdom.”

EAR Final Rule

- Subcategories influenced by the EAR Final Rule are:
  - ECCN 9A515 – “Spacecraft” and Related Commodities
    - **9A515.a.1**: Spacecraft with electro-optical remote sensing capabilities, clear aperture between 0.35 and 0.50 meters.
    - **9A515.a.2**: Spacecraft with remote sensing capabilities beyond Near Infrared (NIR) into Short-Wave Infrared (SWIR), Mid-Wave Infrared (MWIR), or Long-Wave Infrared (LWIR).
    - **9A515.a.3**: Spacecraft with radar remote sensing capabilities (e.g., AESA, SAR, or ISAR) in specific frequency ranges.
    - **9A515.a.4**: Spacecraft for space-based logistics, assembly, or servicing.
    - **9A515.g**: Remote sensing components specifically designed for spacecraft in the above categories.
  - ECCN 9E515 – “Technology” for Spacecraft
    - **9E515.f**: Technology required for the development and maintenance of the spacecraft classified in 9A515.a.1, a.2, a.3, a.4, and g.

EAR Interim Final Rule - General

- Overall impact:
  - Reduces license requirements for certain less-sensitive spacecraft items to enable closer collaboration with certain U.S. allies
  - Clarifications to existing controls
- Reduced License Requirements:
  - **Lower security controls** for less sensitive spacecraft parts: Items under ECCN 9A515.x are now subject to NS2 (National Security) and RS2 (Regional Stability) controls, reflecting a lower level of restriction.
  - **Reclassification** of low-risk spacecraft items: Specific items previously controlled under 9A515.x and 9A004 are now listed under new paragraphs 9A515.y and 9A004.y, respectively, allowing for less restrictive export licensing.
  - **Exemptions for standards development activities**: Technology and software used in creating international standards for spacecraft safety under ECCNs 9D515 and 9E515 no longer require a license.

EAR Interim Final Rule – Lower Controls

- This provides an example of the control changes:
  - NS1 to NS2
  - RS1 to RS2
- Below example - license no longer needed for Czech Republic or Denmark

Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Cyprus[2 3 4]	X					X	X	X	X	X		X		X		
Czech Republic[3]	X					X		X	X							
Denmark[3]	X					X		X	X							
Djibouti	X	X		X		X	X	X	X	X		X		X		

EAR Interim Final Rule – Addition of .y

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry, except .e, .x, and .y	NS Column 1.
RS applies to entire entry, except .e, .x, and .y	RS Column 1.
MT applies to microcircuits in 9A515.d and 9A515.e.2 when "usable in" "missiles" for protecting "missiles" against nuclear effects (*e.g.*, Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects). MT also applies to 9A515.h when the total impulse capacity is equal to or greater than 8.41×10^5 newton seconds	MT Column 1.
NS applies to 9A515.x	NS Column 2.
RS applies to 9A515.e and .x	RS Column 2.
RS applies to 9A515.y	China, Russia or Venezuela (see § 742.6(a)(7)).
AT applies to entire entry	AT Column 1.

9A515 "Spacecraft" and related commodities

y. Items that would otherwise be within the scope of ECCN 9A515.x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A515.y.

y.1. Discrete electronic components not specified in 9A515.e;

y.2. Thermistors for spacecraft applications;

y.3. RF microwave bandpass ceramic filters (*e.g.*, Dielectric Resonator Bandpass Filters);

y.4. Hall effect sensors for spacecraft applications;

EAR Interim Final Rule

- The EAR Interim Final rule provides clarifications and refinements of existing controls
  - **Expanded export permissions for government space projects**: Space Act Agreements involving NASA meet criteria under License Exception GOV (§ 740.11) authorizing export without a license.
  - **Guidance on exports to offshore launch platforms**: Shipments or transmissions to offshore launch platfoms in international waters are considered exports or reexports to the country that owns, controls, or operates the platform.
  - **Special permission for Russian launches to the ISS**: An update to License Exception GOV allows for exports to Russia of certain 9A004 items for launches to the ISS on short notice, provided they meet EAR requirements.

ITAR Proposed Rule

- The ITAR Proposed Rule includes four new licensing exemptions:
  - **Official Space Agency Exemption** would permit certain transfers of defense articles and services within the scope of certain official U.S. government agency space programs. While the exemption covers several NASA spacecrafts, it does not extend to the space launch vehicle for these spacecrafts.
  - **Space Activity Exemption** would authorize:
    - Certain transfers of defense articles and services supporting space launches
    - Services related to space launch vehicle telemetry (exemption limited to space launch vehicles)
    - Services for collaboration with foreign persons when on-orbit defense articles are used in support of fundamental research as defined under ITAR
    - Services related to radio frequency transmissions using on-orbit defense articles
  - **Space Tourism and Research Exemption** would authorize certain transfers of manned spacecraft for space tourism or in support of fundamental research.

ITAR Proposed Rule

- **Special Licensing Provision for Defense Articles Incorporated into Spacecraft Subject to the EAR.** The ITAR Proposed Rule would authorize certain transfers of defense articles while they are incorporated into a spacecraft subject to the EAR.
  - This would be consistent with the notes to USML Category XV:

The ITAR Proposed Rule draws from the Note to XV(e) and the Note to XV(e)(17) to create a special licensing provision for defense articles incorporated into spacecraft subject to the EAR. This provision authorizes the transfer of certain defense articles controlled by Category XV—anything listed in subsections (c), (d) or (e)—via a license from BIS, rather than DDTC, so long as the article is incorporated into a spacecraft subject to the EAR. This exemption requires that the article be an "integral part of" the EAR-regulated spacecraft, and the article must remain incorporated into the craft to remain eligible for the exemption.

ITAR Proposed Rule

- The ITAR Proposed Rule also updates USML Categories IV and XV by adding new space-related defense articles and removing other space-related items "that no longer warrant designation on the USML" and are more appropriately governed by the EAR as dual-use items.
- Revisions to **USML Category IV**
  - Definitions of "launch vehicles," "guided missiles," "ballistic missiles," "rockets," "torpedoes," "bombs," and "mines" have been updated to include specific criteria for control (e.g., payload capacity and propulsion types).
  - Descriptions for rockets and torpedoes have been expanded to incorporate new propulsion and guidance technologies to ensure precise control over these items.
  - New inclusions cover advanced propulsion systems and modern guidance and control systems that use artificial intelligence and machine learning.
  - Obsolete technologies and redundant entries have been removed.

ITAR Proposed Rule

- Revisions to **USML Category XV**
  - Several significant changes. First, the coverage of Category XV is expanded to include new types of spacecraft and related technologies. Coverage encompasses spacecraft capable of: non-cooperative grappling or docking, moving; in-orbit construction of other defense article; and deploying multiple other spacecraft into different orbits, as well as star trackers, and payloads funded by the Department of Defense and specially designed parts and components therefor.
  - The revisions provide clarification as to what constitutes “controlled items” within Categroy XV to avoid ambiguity and ensure compliance.
  - Revisions consider technological updates to space technology, including updates to spacecraft components and subsystems and new power systems.
  - The ITAR Proposed Rule adds definitions for a variety of space-related terms, including “spacecraft,” “excluded NASA spacecraft,” “spacecraft housekeeping data and output,” and “amateur rocket,” among others.

EAR Proposed Rule – General and 9A515

- The EAR Proposed Rule seeks to align U.S. space-related export controls with proposed ITAR changes to Categories IV and XV of the USML. (It should reduce license applications.)
- Changes in Reference to USML Categories IV and XV:
  - Expanded the scope of **ECCN 9A515** to encompass:
    - Spacecraft that provide space-based logistics, assembly, or servicing of another spacecraft
    - Certain electric (plasma/ion) thrusters and their associated power control systems
    - Control moment gyroscopes “specially designed” for certain spacecraft
    - Certain hold-down or satellite release mechanisms.

EAR Proposed Rule – 9X515

- Changes in Reference to USML Categories IV and XV (continued):
  - Adding **ECCN 9C515** to control materials, coatings, treatments for reducing in-orbit signatures
    - Blankets, films, tapes, and paints with certain characteristics
  - Adding **ECCN 9D515.c** to control Space Situational Awareness analysis software
  - Adding **ECCNs 9E515.g, 9E515.h, and 9E515.i** to control technology required for commodities controlled by the new provisions in ECCN 9A515.

EAR Proposed Rule

- New License Exception to the EAR for Certain Commercial Space Activies (CSA):
  - The EAR Proposed Rule outlines license exceptions that permit the export or reexport of items subject to the EAR that would otherwise require a license.
  - The license exception would cover official space agency programs, space tourism, and research initiatives
  - The proposed license exception is structured into three parts:
    1. **Scope** (the range of activities and items eligible under the CSA exception)
    2. **Exclusions** (the circumstances and entities excluded from the CSA exception such as high-risk destinations or specific hardware)
    3. **Authorizations** (granting permission for qualified activities under defined conditions)

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Conclusion and Implications

- These regulatory updates reflect a coordinated effort to support the U.S. space industry's international competitiveness while maintaining strong national security standards by:

1. **Reducing licensing burdens**: By exempting certain spacecraft and related items, as well as related software and technology, from licensing requirements when exported to certain U.S. allies, the revision reduces the number of license applications that companies need to submit.
2. **Enhancing collaboration with allies**: By easing export restrictions to trusted allies, companies can more easily collaborate on international space projects.
3. **Simplifying licensing requirements**: By reclassifying lower-sensitivity components and providing new exemptions for international standards development activities, the revisions both support U.S. leadership in space standards and reduces the complexity of compliance for companies, allowing them to focus on innovation rather than regulatory hurdles.

Conclusion and Implications

- These regulatory updates reflect a coordinated effort to support the U.S. space industry's international competitiveness while maintaining strong national security standards by:

4. **Supporting commercial space activities:** The proposed new license exception for Commercial Space Activities (CSA) can foster growth and innovation in civil space sectors by making it easier for companies to engage in these activities without extensive licensing requirements.

5. **Streamlining compliance for civil space activities:** New licensing exemptions and updates to the USML make it easier for companies to comply with regulations while participating in space tourism, research, and international collaboration.

Questions?

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