Clear for More Takeoffs: Now is the Time to Have Your Voice Heard on New Satellite and Launch Regulations

Tuesday, March 19, 2019

On March 8, the U.S. government signaled regulatory changes that may create new opportunities for international collaboration on satellite development, global sales of satellite and launch equipment, and even sharing launch technology.

... and the Government wants you to weigh in.

What Was The Announcement?

The U.S. Departments of State and Commerce have released an Advanced Notice of Proposed Rulemaking (ANPRM) that requests comments and opinions from the public on what changes those departments might make to satellite export controls. Specifically, the Departments are focused on Categories IV (Launch Vehicles) and XV (Spacecraft) of the United States Munitions List (USML), which place those items under control of the International Traffic in Arms Regulations (ITAR).

The stated objectives of reviewing and revising the USML and CCL are: (1) to ensure that USML categories do not inadvertently control items in normal commercial use; (2) account for developments in technology; and (3) to properly implement U.S. national security and foreign policy objectives.

Based on the government’s review of the USML and CCL in light of the comments it receives, the government may remove certain Launch Vehicles, Spacecraft, or related Technical Data from ITAR control and placed under the less restrictive commercial controls of the Export Administration Regulations. In the past few years, the U.S. government has periodically reviewed controls related to satellites, most notably during Export Control Reform in 2014 and 2017, as we discussed here and here. That reform placed many satellites and related technologies under less restrictive controls.

What Does It Mean?

This means that you have the chance to make your case for reduced controls on items that are critical to your business. If you are in the satellite manufacturing, design, service, sales, or launch industries, you have an opportunity to open up your markets and resources by making a case to the regulators that certain items and technology should be allowed to move more freely around the world.

What we have increasingly seen in the satellite industry, particularly as satellite technologies develop in this new era, is many technologies that should likely have lesser controls because the technology is commercial in nature but that are captured under the USML because of current definitions. If you are in the emerging satellite tech industry, this rulemaking should be of high interest. You might be developing technology that will not come to fruition for a few years, but if currently captured under ITAR controls, your ability to develop that technology with non-U.S. persons or in collaboration with smart minds abroad is hindered because of U.S. export controls.

What Can I Do?

Before April 22, 2019, respond to the request to comment. The window to put in your opinion early and clearly is...
limited to a few weeks. So check with counsel or advisors on how to submit the most effective comments and get them in to the regulators to engage in this important conversation.

**Focus on the Key Questions.** The ANPRM asks nine questions, any or all of which may play a part in your response. However, Questions 2, 3 and 9 will be of particular interest to those who would like to reduce the regulatory burden of their work in the satellite industry.

**Q2** – *Are there specific defense articles described in the referenced categories that have entered into normal commercial use since the most recent revision of that category? If so, please include documentation to support this claim.*

**Q3** – *Are there specific defense articles described in the referenced categories for which commercial use is proposed, intended, or anticipated in the next five years? If so, please provide any documentation.*

**Q9** – *What are the cost savings to private entities from shifting control of a suggested specific item from USML to the CCL?*

If these proposed rules may impact your business, consider providing your valuable input to the government and, as appropriate, consult with an advisor on how to draft and position your comment to be most effective.

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