The 500 series: U.S. government eases exports of satellites

By Grayson Yeargin and Alexandra López-Casero

Companies should soon find it easier to export most commercial and scientific communications satellites and related parts and components. On May 13, 2014, the U.S. government effectively changed the rules governing the export of many satellite and spacecraft related items, moving these items from the U.S. Munitions List (“USML”) to the Commerce Control List (“CCL”). This shift means that these exports will now be governed by the less restrictive Export Administration Regulations (“EAR”), which is generally used for “dual-use” items, as opposed to the International Traffic in Arms Regulations (“ITAR”), which is generally used for military exports. Manufacturers and exporters in the satellite and aerospace industry must quickly update their practices and procedures not only to ensure compliance, but also to take advantage of the new opportunities these reforms create.

Items affected by this change include commercial communications satellites (absent classified components); certain remote sensing satellites; spacecraft parts, components, accessories, and equipment that are not specifically identified in revised USML Category XV (“Spacecraft and Related Articles”); and all radiation-hardened microelectronic microcircuits. Other items include ground control systems and training simulators “specially designed” for telemetry, tracking and control of spacecraft; planetary rovers; and planetary and interplanetary probes. The International Space Station and parts and components specially designed for the station have also been moved. Items with space-related military functions, sophisticated sensors, certain satellite integration and launch services and most types of manned spacecraft, however, remain on the USML.

This latest transition is a key component of the U.S. government’s larger Export Control Reform efforts. The intent behind these changes is to make it easier to export items that do not warrant the strict controls imposed by the USML and to streamline the export control system. This alert is the eighth in a series of alerts exploring the details of Export Control Reform. The new changes discussed in this alert are reflected in the interim rule that the U.S. Department of Commerce, Bureau of Industry and Security (BIS) issued on May 13, 2014, and the companion rule that the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) issued on the same day.

As a result of these changes, licensing and enforcement for these items will now be handled by BIS (Commerce). Satellite and spacecraft items will now reside in a newly created series in the CCL known as the “500 series” (these will bear Export Control Classification Numbers (“ECCN”) of 9x515). The restrictions applicable to the “500 series” are similar to those that apply to the new “600 series” of the CCL that was recently created to house items moving from the USML to the CCL. Most “500 series” items will require a license for export to anywhere except Canada. In addition, there is no de minimis exclusion for U.S. components in foreign-made “500 series” items that are being sold to countries subject to a U.S. arms embargo, such as China. For example, if a foreign-
made satellite contains even one U.S.-origin component that is classified as ECCN 9A515 (such as a microelectronic circuit that is listed in ECCN 9A515), it cannot be exported or re-exported to China.

Providing the promised easing of restrictions, many “500 series” items will be eligible for more license exceptions than were previously available under the ITAR. The available exceptions are similar to those that are available for “600 series” items. They include limited value shipments, temporary exports, repair and replacement, government exports (including U.S. government, cooperating government, and support contractor provisions), and unrestricted software and technology. Further, “500 series” items are eligible for the Strategic Trade Authorization (“STA”) exception, and are subject to fewer STA conditions than “600 series” items.

The new rules contain two effective dates: June 27, 2014, for most radiation-hardened microelectronic circuits and November 10, 2014, for all other satellite and spacecraft items. This staggered implementation reflects the U.S. government’s recognition that development of the next generation of purely commercial microelectronic circuit development would fall under the USML unless it acted quickly. BIS agreed that a faster transition for these items would prevent commercial manufacturers from registering with DDTC and developing policies and procedures under ITAR only to have to switch to EAR compliance in the near future.

Because the jurisdictional and licensing changes effected by the new rules are so significant, DDTC and BIS have indicated that they anticipate additional changes in the months ahead and that they welcome formal comments, feedback and questions submitted through the advisory opinion and licensing processes of each agency.

As the U.S. government has indicated, the intent of these reforms is to increase the competitive capabilities of the U.S. satellite industry abroad. Companies face the immediate reality, however, of needing to adapt to these new rules. Further, many in the industry have noted that, as opposed to simplifying the export controls process, exporters must now master a completely new set of rules. Regardless, export control reform is now a reality and companies will need to continue to master the reform process and be vigilant to potential liabilities as BIS and DDTC administer the new regulations.

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For more information, please contact your Nixon Peabody attorney or:
- Grayson Yeargin at gyeargin@nixonpeabody.com or 202-585-8273