U.S.-CREST Group

Arlington July 03, 2013

EAR Amendment – Control of spacecraft and related items (500 series)

Reference: RIN 0694 – AF 87

Comments on proposed rules

Specific comments:

1. Section 9A515 (a); in order to be consistent with the new law on communication satellites, it would be beneficial to turn this section more into a positive list and provide a list of characteristics of communication satellites that are elected to move from category XV to commerce control lists.

General comments:

1. Clarification of the key definition of "space qualified" to categorize US manufactured items among the different regimes:

The current definition reads: "…an article is "space qualified" if it is designed, manufactured, **or** qualified through successful testing, for operation at altitudes greater than…".

Under this definition an item, which is not designed or manufactured for operations at altitude greater than 100 Km and used for other applications could be considered "space-qualified" as long as it is successfully tested.

Therefore it is suggested to change "or" by "and" in the above definition. The modified definition would read: "…an article is "space qualified" if it is designed, manufactured, **and** qualified through successful testing, for operation at altitudes greater than…"

2. Transfer from today CCL-EAR 99 or ECCN to 500 or 600 series

We understand that space related products that are currently designated with a specific ECCN or are EAR-99 controlled, will not be moved to either the USML or 500/600 CCL series.

If this were the case, it would be helpful if the final rule would include a specific statement to that effect.

If this were not the case, it would be helpful if the final rule would include a grandfathering clause for such items already in inventory.

3. Dealing with inventory

It is clear than an exporter can ask to retire an ITAR license for a product that is moved to the 515 series, and request an EAR license in its stead.

1400 Key Boulevard, Suite 420 | Arlington, VA 22209 | tel 703-243-6908 | fax 703-243-7175

It is less clear what a foreign company should do if it has similar products in inventory that were imported with an ITAR license. The original exporter may not be interested in making the necessary changes in licensing, or may not even be in business any longer.

Consequently, it would be helpful if the final rule would lay out a procedure for importers to shift such items to EAR control. Guidance is also needed on what record keeping would be required if items are shifted from ITAR to EAR control. For example, can the importer exercise self-determination and transfer such items under a STA regime among authorized countries?

4. Guidance / Directives

Once the final rules on Category XV/515 are published, further issues will undoubtedly arise as the rules are implemented. Furthermore guidance will be needed in order for industry to determine the classification of their products.

Will the administration likely amend the final rules in the future, and will proposed rules and associated guidance first be issued for public comment?

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