

ALERT

Commerce and State Modernize U.S. Space-Related Export Controls

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The United States Department of Commerce, Bureau of Industry and Security (BIS) recently published three new regulatory actions easing administrative burdens under the Export Administration Regulations (EAR) associated with exports, reexports, and transfers (in-country) of various commercial space items.

Concurrently, the United States Department of State, Directorate of Defense Trade Controls (DDTC) published a corresponding proposed rule to reflect changes to United States Munitions List (USML) Categories IV and XV and to clarify certain regulatory text under the International Traffic in Arms Regulations (ITAR). DDTC's proposed rule also adds three new licensing exemptions and codifies a fourth licensing exemption currently provided as guidance in the USML. These regulatory actions follow a review by the National Space Council, commenced in December 2023, concerning U.S. leadership in space. Specifically, the U.S. Departments of State and Commerce were tasked with "conduct{ing} a review of space export controls to enable a globally competitive U.S. space industrial base while protecting {U.S.} national security and foreign policy interests." They also build upon prior regulatory changes, including those made as part of the Export Control Reform Initiative, which eased export restrictions on many commercial satellite and space items.

This alert provides of an overview of the BIS and DDTC proposed and final rules.

BIS Final Rule on Removal of License Requirements for Certain Spacecraft and Related Items

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The BIS final rule authorizes license-free trade for certain spacecraft and related items for export and reexport to Australia, Canada, and the United Kingdom. Citing the three allied countries' close relations and space-related collaboration with the United States as well as fellow inclusion in the National Technology and Industrial Base (NTIB), BIS is removing Australia, Canada, and the United Kingdom from the worldwide licensing requirements for certain spacecraft and related items involving remote sensing or space-based logistics, assembly, or servicing (*i.e.*, Export Control Classification Number, or ECCN, 9A515.a.1, a.2, a.3, a.4, .g, and ECCN 9E515.f). This final rule, which follows an interim final rule published this past April that removed many license requirements for Australia and the United Kingdom and more closely aligned their treatment with that of Canada, is effective **October 23, 2024**.

BIS Interim Final Rule on Revisions to Space-Related Export Controls

BIS's interim final rule (IFR) reduces export control requirements on certain "less sensitive" space-related items when destined for U.S. allies and partners, including, but not limited to, most EU and NATO countries, as well as South Korea, New Zealand, Japan, Argentina, and Mexico, among others, by removing them from "RS1" and "NS1" controls. Specifically, the IFR excludes certain entries from the scope of the licensing requirements (*i.e.*, 9A515.x, a catch-all control that captures many space-related parts, components, and accessories), downgrades certain items from a "specially designated" control status to reflect their less sensitive nature (*i.e.*, ECCN 9A515 and ECCN 9A004), and adds certain "software" (under ECCN 9D515 other than 9D515.d or e) and "technology" (under ECCN 9E515.a, .b, or .f, limited to technology for 9A515.a.4) to the exclusion from license requirements when release of those items is for "standards-related activity." The IFR creates a new paragraph 9A515.w to serve as a placeholder for commodities that BIS subsequently determines warrant retaining NS1 and RS1 controls.

The IFR refines existing space-related export controls under ECCNs 9A004, 9A515, and 9A604. It also clarifies the scope of License Exception GOV for certain agreements involving the National Aeronautics and Space Administration (NASA) as well as the application of controls to launch platforms located in international waters, such that shipments to such platforms will be treated as exports/reexports to the country or countries the platform or facility is owned by, controlled by, or being operated on behalf of. The IFR is effective **October 23, 2024**, and BIS is accepting comments submitted by **November 22, 2024** – both on the changes outlined in this interim final rule as well as suggested additional changes to EAR's space-related export controls.

BIS Proposed Rule on Revisions to Space-Related Export Controls, Including Addition of License Exception Commercial Space Activities

The BIS proposed rule seeks to amend the EAR to reflect changes to the ITAR and USML Categories IV and XV (discussed in the DDTC proposed rule below) and to add a license exception for Commercial Space Activities (CSA). Specifically, the proposed rule outlines the U.S. government's plan to transfer control of certain space-related defense articles from USML Categories IV and XV to the EAR's Commerce Control List (CCL), including refueling spacecraft and spacecraft capable of autonomous collision avoidance (affecting ECCN 9A515, 9C515, 9D515, and 9E515). Under the proposed rule, Commerce would also amend the EAR to add a new license exception under section 740.26 for authorized "official space agency programs" and certain space

tourism and research activities. Comments on the proposed rule are due **November 22, 2024**.

DDTC Proposed Rule Revising USML Categories IV and XV

The DDTC proposed rule seeks to amend the ITAR by making changes to USML Categories IV and XV (discussed above), clarifying regulatory text in the ITAR and the USML to improve usability and clarity, and adding items to the USML that warrant designation and removing items that do not. The proposed rule also adds three new license exemptions (for certain activities involving U.S. space agencies; certain services for space launch and telemetry, support for on-orbit fundamental research, and radiofrequency transmission; and space tourism and research) and codifies another license exemption for transfers of defense articles while incorporated in spacecraft subject to the EAR.

Additionally, the proposed rule suggests to add certain loitering munitions, hypersonic glide vehicles, and spacecraft capable of non-cooperative grappling or docking, in-orbit construction of other defense articles, and spacecraft deployment, among other items, to the USML. DDTC is accepting comments on this proposed rule until **November 22, 2024**.

Wiley's National Security Practice has unparalleled experience and expertise representing a wide range of U.S. and multinational clients in complex export control, sanctions, and other cross-border national security matters. Should you have any questions about this alert; the evolving scope of U.S. export controls and sanctions; or any other national security-related issues, please do not hesitate to contact one of the attorneys listed on this alert.