

11. Commercial Communications Satellites and Hot Section Technology (Section 742.14)

Export Control Program Description and Licensing Policy

On March 18, 1999, with an effective date of March 15, the Commerce Department published a final rule in the *Federal Register* removing commercial communications satellites from the Commerce Control List (CCL) and retransferring these items to the Department of State, under the United States Munitions List (USML). On March 22, 1999, the State Department published a corresponding amendment to the International Traffic in Arms Regulations (ITAR) accepting jurisdiction and designating commercial communications satellites on the USML.

Some companies in the U.S. satellite industry have indicated that the retransfer of jurisdiction to the Department of State has adversely affected their viability as a result of increased license application processing times. In addition, European and other allied companies and governments have indicated that the slow pace of licensing after jurisdictional transfer hinders international cooperation in the commercial space industry and created a bias against U.S. suppliers.

Licensing policy is as follows:

A. The United States requires a license for exports and reexports to all destinations, except Canada, for hot section technology and for satellites. Effective March 15, 1999, the licensing jurisdiction for commercial communication satellites was retransferred to the USML. These items are controlled for national security and foreign policy reasons.

B. The United States reviews all license applications for the above items, on a case-by-case basis, to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests.

Analysis of Control as Required by Section 6(f) of the Act

A. The Purpose of the Control

This control provides a mechanism for the United States to monitor the export of these items in order to prevent their use in instances that would adversely effect our weapons of mass destruction nonproliferation goals or the military balance within a region.

B. Considerations and/or Determinations of the Secretary of Commerce

1. *Probability of Achieving the Intended Foreign Policy Purpose* The Secretary of Commerce has determined that the control is likely to achieve the intended purpose of denying exports when the export would be contrary to U.S. national security or foreign policy interests.

2. *Compatibility with Foreign Policy Objectives* The Secretary has also determined that the controls are compatible with the foreign policy objectives of the United States. The control is consistent with U.S. foreign policy goals to promote peace and stability and to prevent U.S. exports when they would contribute to inappropriate military capabilities abroad.

3. *Reaction of Other Countries* The Secretary has determined that the reaction of other countries to this control is not likely to render the control ineffective in achieving its intended foreign policy purpose or to be counterproductive to U.S. foreign policy interests. Other allied countries control commercial communications satellites and hot section technology for commercial jet engines as dual-use commodities. These countries also recognize the desirability of restricting goods that could compromise shared security and foreign policy interests.

4. *Economic Impact* The Secretary determined that the transfer of commercial communication satellites and commercial hot section technology from the USML to the CCL benefitted industry. In Fiscal Year 1999 (before the retransfer of jurisdiction to the Department of State), the U.S. approved 112 licenses for commercial communication satellites worth \$7.6 billion, denied 2 licenses worth \$22,842 and returned without action 27 licenses worth \$546.8 million. The United States approved 78 licenses for commercial hot-section technology and worth \$1 million, denied 1 license (listed as without value) and returned 8 licenses valued at \$10,008 without action.

5. *Enforcement of Control* The Secretary has determined that the United States has the ability to enforce these controls effectively.

C. Consultation with Industry

Commerce is working with its Transportation Technical Advisory Committee, although no major changes are envisioned to controls remaining on the Commerce Control List.

D. Consultation with Other Countries

The United States has taken the lead in international efforts to stem the proliferation of sensitive items, urging other supplier nations to adopt and apply export controls comparable to those of the United States. The major industrial partners of the United States maintain export controls on this equipment and technology and control them as dual-use commodities. Pursuant to their agreement to establish a new regime for the control of conventional arms and sensitive dual-use goods and technologies, the 33 participants in The Wassenaar Arrangement have agreed to

control these items on a global basis and to ensure that transfers of such items are carried out responsibly and in furtherance of international peace and security.

E. Alternative Means

The United States has undertaken a wide range of diplomatic means, both bilateral and multilateral, to encourage the proper control over these items. The United States has specifically encouraged efforts to prevent the unauthorized use or diversion to activities contrary to U.S. security and foreign policy concerns.

F. Foreign Availability

Although the United States has been the world's leader, other countries produce commercial communications satellites and hot-section technology. Most producers of commercial communications satellites and hot-section technology are members of The Wassenaar Arrangement and are controlling these items as dual-use items (albeit with varying licensing policies).