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Export Control Reform Will Take All Year

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It will take another year for export-control reforms aimed at easing the path for the U.S. satellite industry to take effect, time enough for manufacturers and others affected by more than a decade of onerous International Traffic in Arms Regulations (ITAR) to push for additional changes.

Among issues the satellite industry is likely to address is the status of military hosted payloads, which will continue to be treated as munitions under the proposed rule to be published by the end of April. Industry will be able to enter comments on the proposed rule that will shift oversight of most satellite and satellite-component exports from the U.S. Munitions List controlled by the State Department back to the Commerce Department, where it once resided.

"If the satellite is DOD funded, it would be retained on the U.S. Munitions List," says Patricia Cooper, president of the Satellite Industry Association (SIA). "That's an area where I expect SIA to file a request for reconsideration."

U.S. satellite manufacturers have been pushing hosted payloads riding piggyback on commercial communications platforms as a less expensive way for the Pentagon to field its communications relays and mapping sensors than building dedicated satellites. Removing them from the munitions list could simplify adoption of the approach, a process that many see as lagging (AW&ST March 18, p. 51).

Satellites were placed on the munitions list in 1999 in a congressional reaction against U.S. companies helping the China Great Wall Industry Corp. review the causes of two Long March launch vehicle failures that destroyed their spacecraft. Since then, the U.S. industry has pushed for a return to the Commerce Control List, which was less burdensome.

U.S. satellite manufacturers say their exports have suffered as a result of the ITAR oversight, which requires additional licenses for resale of spacecraft components to third parties and has proved slower than the Commerce oversight at times. In an attempt to gain an advantage over U.S. companies, Europe's Thales Alenia Space developed an "ITAR-free" spacecraft that could be launched on Chinese rockets, such as the March 31, 2012, flight of a Long March 3B carrying the company's Apstar VII satcom for APT Satellite Holdings of Hong Kong (photo).

A panel at the Satellite 2013 conference here outlined the difficult process of repealing the 1999 satellite-export legislation, followed by the lengthy task of preparing the proposed rule that will shift commercial satellites back to Commerce's purview.

Basically, the new law will allow communications satellites, remote-sensing satellites that fall short of specified capabilities, and parts and components from those spacecraft to be exported through the Commerce system, which does not require licenses for exports to 36 friendly nations.

Satellites with purely military and intelligence functions will remain on the munitions list, according to the White House, as will high-resolution Earth remote-sensing satellites and the parts and components of those spacecraft. Launch-service support for all U.S. satellites will continue to be controlled by the State Department, and exports to China, North Korea, Iran and other sanctioned countries will be forbidden.

"It was simply an outright prohibition—thou shalt not export anything to China in this regard," says David Fite, a Democratic staffer on the House Foreign Affairs Committee who was a key player in the congressional negotiations. "That was very important, because that spoke to everyone in both parties who was concerned about the national security implications, especially to China."

Within the executive branch, figuring out just what technology to shift proved to be a time-consuming task because of its complexity, according to Anthony M. Dearth, chief of special projects in the Office of Defense Trade Controls Licensing at the State Department. A single military satellite has more than 700,000 components, all of them on the munitions list under the old law and in need of sorting out line by line by officials from State and Commerce.

The result was a report issued last year that includes a list of satellite technologies that will be transferred to the Commercial Control List. Known as the Section 1248 Report, it is expected to form the basis for the proposed rule that will be issued soon.

Panelists at the Satellite 2013 conference urged satellite manufacturers and lawyers who specialize in export licensing to comment on the proposed rule, and to be thoughtful and restrained in their business activities in the meantime lest they reactivate congressional opposition to the ITAR reform.

"It's very important to push back against any misperception, particularly among small firms, that ITAR is over, and that we don't have to worry about it," says Mike Gold of Bigelow Aerospace, a lawyer who has helped shepherd the reform legislation through Congress. "Because the last thing we need during this implementation process is some sort of giant mistake or blunder or violation, particularly when it comes to China, that will get the China hawks in Congress reengaged. China is the third rail of export control reform."

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