

ITAR Current Issues

Committee on Achieving Science Goals with CubeSats
Space Studies Board

October 30, 2015

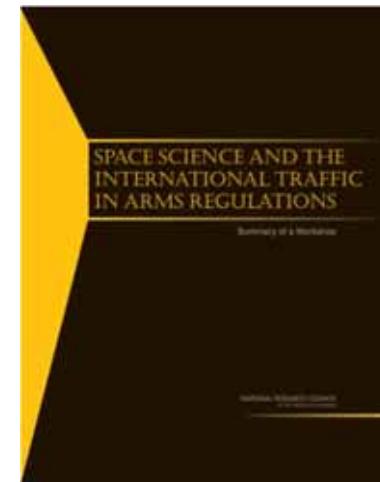
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ITAR Category XV and Space Research and Education at Universities: “The Perfect Storm”

The Three Elements of the Storm

- Cox Committee Report—Congress’s mandate casting a broad net that “satellites and related items” be transferred from the Department of Commerce to the State Department and be covered as defense articles under ITAR
- Concept of deemed exports—An export can be “deemed” to have taken place when information is conveyed to a foreign national, including through conversation or classroom teaching.
- Significant presence of foreign nationals on university campuses—In space research, university scientists work in teams with colleagues and students, who may be foreign nationals



ITAR Category XV and Space Research and Education at Universities: “The Perfect Storm”

The Storm Damage—a chilling effect on space-related research and education at U.S. universities

- Professors forced to choose between excluding non-U.S. students from their courses and research projects, or “dumbing down” the curriculum for all students, so that the risk of being accused of transferring technological information is reduced
- Students and able young faculty members avoiding space-related fields, where the uncertainties and burdens of ITAR compliance and the ITAR approval process are acute
- Universities weighing the costs and risks of conducting research and teaching students in disciplines associated with space science and technology, versus opting out and placing investments in non-space related fields

The Advocacy Effort: Reverse the Cox Mandate

The University Message to Congress

- The impact of ITAR Category XV on university research and education is exacerbating the growing problem of the U.S. having the space workforce needed to design and deploy the space systems of the future
 - Current regulations are harming U.S. national security
- Provide authority to the President to remove satellites and related components from the USML, including scientific research and experimental (SRE) satellites—Reforming current law will allow sensible consideration of what space-related technology must be controlled, as opposed to the current blanket restriction
 - Restore to our universities the ability to teach our students space technology and to conduct research in space in a way that will enable the U.S. to remain a leader in the future

The Advocacy Effort: Reverse the Cox Mandate

USRA, the American Association of Universities (AAU), and industry associations worked together, as single united coalition

- Advocated for broad reform, not limited to commercial satellites
- Undertook joint congressional visits
 - Foreign Relations and Foreign Affairs
 - Armed Services
- Testified before Congress
- Communication with White House agencies:
 - National Security Council
 - National Economic Council
 - Office of Science and Technology Policy



Space-Related ITAR Reform

New Law Passed

- Space-related export control reform was signed into law on January 2, 2013, as part of the NDAA
- Reform not limited to commercial satellites—new law restores to the President authority for “Removal of Satellites and Related Items from the United States Munitions List (USML)”

Subtitle E—Satellites and Related Items

SEC. 1261. REMOVAL OF SATELLITES AND RELATED ITEMS FROM THE UNITED STATES MUNITIONS LIST.

(a) REPEAL.—

(1) IN GENERAL.—Section 1513 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2174; 22 U.S.C. 2778 note) is amended by striking subsection (a).

(2) CONFORMING AMENDMENT.—Subsection (c) of such section is amended by striking “(1) Subsection (a)” and all that follows through “(2) The amendments” and inserting “The amendments”.

(b) ADDITIONAL DETERMINATION AND REPORT.—Accompanying but separate from the submission to Congress of the first notification after the date of the enactment of this Act under section 38(f) of the Arms Export Control Act (22 U.S.C. 2778(f)) relating to the removal of satellites and related items from the United States Munitions List, the President shall also submit to Congress—

(1) a determination by the President that the removal of such satellites and items from the United States Munitions List is in the national security interests of the United States; and (2) a report identifying and analyzing any differences between—

(A) the recommendations and draft regulations for controlling the export, re-export, and transfer of such satellites and related items that were submitted in the report to Congress required by section 1248 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2546); and

(B) the final regulations under which the export, reexport, and transfer of such satellites

Space-Related ITAR Reform

Regulatory Implementation

- Department of State sought comment on proposed regulations in May 24, 2013 announcement in the Federal Register
 - USRA provided comments on July 8, 2013
 - USRA obtained support of industry associations to include USRA comments within their own comments
- Final regulations published May 13, 2014
 - Regulations became effective November 10, 2014—a 180-day waiting period, after publication, before they could take effect



Space-Related ITAR Reform

Helping Universities Implement New Regulations on Space-Related Export Control

- USRA currently surveying U.S. universities with CubeSat programs to assess to what extent the new regulations are providing relief
- USRA has had discussions with OSTP on a CubeSat “Policy Symposium,” possibly for Fall 2016
- USRA considering a web-based forum that would allow universities to share information on CubeSat programs, including regulatory requirements

Questions?