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Satellite Industry Seeks Additional Clarity on Export Regulations

July 12, 2013 | Satellite Today | Steve Schuster



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[Satellite TODAY 07-12-13] Recently, the **Satellite Industry Association (SIA)** filed comments with the **U.S. Department of State** and **U.S. Bureau of Industry and Security**, a division of the **U.S. Department of Commerce** that deals with national security interests pertaining to export controls. SIA's and various industry firm's comments take issue with several newly proposed regulations that would change how the U.S. government regulates satellite export controls.

The satellite industry has recently submitted comments regarding proposed legislation regulating export controls of satellites.

Image credit: Steve Schuster

The newly proposed regulations by both Commerce and State departments were released in May 2013 and welcomed written public commentary through July 8, 2013. According to Patricia Cooper, president of SIA, together both agencies (State and Commerce) received comments from more

than 100 entities, including SIA, outlining their concerns over the proposed changes.

While some of SIA's comments focused on clarity of regulatory compliance, other comments pertained to specific areas such as remote sensing and hosted payloads, noting that critical changes are necessary to the proposed regulations.

"The recommendations on hosted payloads and remote sensing reflect areas of technological innovation that we believe ought to be regulated differently than proposed," Cooper said during an interview with SatelliteTODAY.com on Friday.

In its written commentary to the Department of State, SIA took issue with uncertainty regarding the department's proposal for hosted payloads. Among the concerns, SIA noted that the "U.S. Department of Defense is currently considering the provision of funds to a foreign space agency to support the procurement of two civil payloads, for which U.S. companies may submit proposals. If ... implemented, Department of Defense funding would have the effect of subjecting these two payloads to ITAR control for the purposes of this single transaction only, which would be extremely problematic from a compliance management standpoint," the comments state.

In January 2013, President Obama signed into law the Fiscal Year 2013 National Defense Authorization Act, containing provisions significantly modifying the United States' satellite export control policy.

"Since 1998, all items in the satellite category have been required to be regulated as munitions – the only category of items with a blanket statutory requirement of this type. There has been no authority to differentiate between items of the highest national security interest and those that are of less concern that would merit control as 'dual use' items," a written statement from SIA said.

In other words, the January 2013 law overturns a 1999 law which mandated that satellites be regulated as munitions, requiring a much more stringent review process. This means that "Congress has removed the unusual requirement that all satellites be treated as sensitive," Cooper said.

Ultimately, the law that took effect in 2013 restores power to President Obama's administration and future executive branch administrations to determine which satellite components are sensitive and should be regulated by the State Department or moved to the less stringently regulated Commerce Control List (CCL) reviewed by the Commerce Department.

Cooper said overall, SIA is pleased with the newly proposed regulations released in May, as evidenced by the initial comments to the Commerce Department. "SIA strongly supports

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and welcomes the proposals made by the Department of Commerce to reform the export control system for satellites and related items. The proposed rules represent a substantial improvement over the existing export control system for satellites and related items," the comments said.

But, additional clarity is not only necessary, as outlined in SIA's further comments, according to Cooper, it is a chief concern. "I think the recommendation on clarity is the most critical because we want to make sure companies can more easily follow these rules and not face inadvertent compliance problems," Cooper said.

In SIA's comments to the Commerce Department, the association advocated for its members, which include companies such as **Boeing, Hughes, Lockheed Martin, Intelsat** and **SES**. Intelsat declined to comment as to what specific concerns they had with the proposed regulations and said that SIA speaks for the industry as a whole.

SES, however, did file **comments directly with the Commerce Department** also seeking additional clarity in the proposed regulations, according to official documents from the department obtained by *SatelliteTODAY.com*.

"SES also recommends that BIS (Bureau of Industry Security) clarify that certain types of data required for establishing compatibility and connectivity between satellite-based communications transponders and ground-based communications antennae are not controlled," under the proposed regulation, according to SES's comments to the Commerce Department. Additionally, SES asked for clarification as far as whether the department will continue to apply the limitations that are now often included in Trade Adjustment Assistance (TAA) provisions on its export licenses.

EchoStar also filed **comments** directly with the Commerce Department on its behalf and that of its subsidiary Hughes Network Systems, noting that it too supports the majority of the legislative reform but also seeks further clarity. "Specifically, EchoStar requests that telemetry data, in and of itself, from an operational commercial comsat should be deemed not to fall within the scope," of a provision of the proposed regulation, EchoStar's written comments state. "The telemetry data does not constitute technology required for the development, production, or operation, installation, maintenance, repair, overhaul or refurbishing of commercial comsats controlled by the proposed regulation."

Meanwhile, SIA's comments urge the Commerce Department "to ensure that the revised export control system for satellites and related items does not establish a double licensing requirement for certain items." And, SIA's advocacy efforts to improve the U.S. export licensing and policy framework for satellites, components, technical data, and ground equipment have not gone unnoticed.

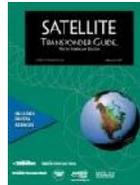
"I think SIA has a good finger on the pulse of the issues. They are really representative of the satellite community, which I think is always helpful not only to the industry, but also to key decision makers. At its core, SIA represents several companies and has weight because it's the collective consensus of these companies. That's always the best way to work," said Jay Gullish director space and telecommunications with **Futron Corporation**, a space and satellite consulting firm, during an interview with *SatelliteTODAY.com* on Friday.

Overall, Gullish agreed the new legislative changes are step in the right direction but noted that it will take time to see the results. "While this is positive change, the impact will be fairly incremental and very long term," he said.

Cooper said the U.S. government anticipates having final regulations in place by fall of 2013, which would then take effect six months later. Officials at both the departments of Commerce and State could not be reached for comment prior to publication.

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