

Civil Automotive and UAS Radars Are Removed from the USML

September 4, 2019

Key Points

- On August 30, DDTC published a final rule that removes many of the radars used in civil automotive and unpiloted aerial vehicles from the USML.
- This continues the targeted removal of civil items from the military electronics controls of the ITAR, which began with the decontrol of MMICs for 5G telecommunications and other civil applications last October.
- The rule also extends the temporary modification of USML XI(b) for another two years and removes a the control for radars with multiple elevation beams or 3D height-finding.

Background

On August 30, 2019, the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) issued changes to the United States Munitions List (USML) within the International Traffic in Arms Regulations (ITAR). The changes were effective upon publication.

The rule introduces a decontrol note to USML Category XI for transmit/receive (T/R) modules or monolithic microwave integrated circuits (MMICs) fabricated exclusively with homojunction complementary metal–oxide–semiconductor (CMOS) silicon-based circuits on silicon substrates. These T/R modules are no longer controlled on the USML, even if they meet the T/R module and MMIC controls in USML Category XI(c)(4) or would be captured by a specially designed catch-all in USML Category XI.

The decontrol note also releases radars and radar antennas that are specially designed to use only the decontrolled T/R modules or MMICs. The radars and antenna are no longer controlled on the USML, even if they meet the criteria of any of the radar controls in USML Category XI(a)(3).

The decontrol note only applies to USML Category XI, so a T/R module or MMIC, radar or antenna that is controlled as a specially design part or component of a USML platform or system with specially designed parts and component control would still be on the USML. For example, a radar specially designed for a fire control system

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controlled in USML Category XII(a)(1) or an aircraft identified in USML Category VIII(h)(1) will remain controlled in USML Category XII(e)(1) and VIII(h)(1), respectively.

The rule also removed and reserves USML Category XI(a)(3)(ix). This control was “[a]ir surveillance radar with multiple elevation beams, phase or amplitude monopulse estimation, or 3D height-finding.” This control introduced confusion, particularly for radars on aircraft, and specifically for detect and avoid radars for unpiloted aerial vehicles, as it was unclear if the government considers these onboard sensors to be air surveillance radar. With the removal of the control, this no longer a significant concern.

Finally, the rule extends the temporary modification of USML Category XI(b) for two more years, to August 30, 2021. The temporary modification remains the same, adding the phrase “or analyze and produce information from” to the list of activities that fall under the ITAR when performed on the electromagnetic spectrum by an item that is specially designed for intelligence purposes, and adding software to the list of items that are within the scope of the control. The *Federal Register* notice states that this is to ensure continued control over certain intelligence-analytics software. However, neither the regulations nor DDTC’s explanation of the control identify which intelligence-analytics software is controlled or provide any criteria to allow exporters to self-assess their products.

Conclusion

The radar decontrol and the removal of USML Category XI(a)(3)(ix) reduce the risk that civil transportation industry applications could be subject to ITAR controls. In the Export Administration Regulations, dual-use controls over many such items, however, remain and must be analyzed to ensure compliance. The August 30 change, combined with the 5G-related amendments made last fall, show that the administration is willing and able to amend the ITAR regularly to ensure that it does not apply to items that are in normal commercial use.

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