

Government Contracts Blog

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Administration to Expedite Encryption Reviews and Amend ITAR Citizenship Definition

In comments released on March 12, 2010, the Administration announced that it will be shifting the current encryption review request process under 15 C.F.R. section 740.17 to an on-line system, with the objective of reducing review times from 30-60 days to 30 minutes. While industry will welcome the shortening of the review waiting period, the current regulations already allow many encryption exports to our largest trading partners, those listed in Part 740, Supplement 3, as well as exports to other countries of items described in section 740.17(b)(1)(ii), to occur during the waiting period. There is no indication that the change would add countries like China or India to Supplement 3. As described, it also would not alter the technical definition of encryption products requiring review or result in any expansion of the existing exception for "ancillary cryptography." Without more fundamental changes along these lines, the ultimate impact of the review request change will probably be minimal.

In the case of the ITAR, exporters have long struggled with the difficulty of licensing exports to citizens of friendly countries who were born in other countries. The Directorate of Defense Trade Controls currently looks at both current and prior citizenship. The difficulty of determining prior citizenship has been compounded by anti-discrimination laws of many of our allies that prohibit inquiry into the country of birth of their citizens. It has been reported that the ITAR will be changed to follow the policy of the Commerce Department's Bureau of Industry and Security, which looks only at the most recent country of citizenship. The Administration has not yet officially confirmed this change on the White House website, but it described an imminent ITAR change in terms that can only be interpreted as referring to this citizenship rule, and unnamed Administration sources have confirmed to the press that this is the rule that will be changed. Criticism of the change on national security grounds has already begun to surface. Assuming this change is implemented, it will make some new ITAR exports possible and will ease the burden of exporters in making citizenship determinations, but it will not result in any major ITAR reform. The U.S. commercial space industry, for example, will continue to face ITAR licensing for virtually all space-qualified components.

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