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BIGELOW AEROSPACE'S COMMODITY JURISDICTION REQUEST UNDER ITAR AND ITS
IMPACT ON THE FUTURE OF PRIVATE SPACEFLIGHT

Abstract

On April 22, 2009, Bigelow Aerospace announced that the United States Directorate of Defense Trade Controls (DDTC) had approved Bigelow's commodity jurisdiction request to remove the regulation of the presence of foreign nationals on its space stations from the jurisdiction of the Department of State under the International Traffic in Arms Regulations (ITAR). Prior to this decision by the DDTC, the presence of foreign nationals on a Bigelow space station would have been treated as a "deemed export" of space technology under ITAR – thus requiring a license from the DDTC (as well as imposing other regulatory hurdles including potential government monitoring of the foreign nationals). The continuation of this policy would have placed an extraordinary burden on Bigelow due to the expensive and time-consuming process of acquiring a separate license from the DDTC for each foreign national present on a Bigelow space station. Bigelow's successful commodity jurisdiction request has removed this obstacle and, as a result, has breathed new life into the private spaceflight industry. Although the presence of foreign nationals on the space stations may still constitute a "deemed export," jurisdiction over the matter has been passed by the DDTC to the Department of Commerce, which regulates the export of dual-use technology under the far less strict Export Administration Regulations. The DDTC's decision is likely to extend to the participation of foreign nationals in any private spaceflight – and has therefore been heralded by spaceflight companies as a major breakthrough that promises to significantly ease the regulatory burden on their operations. From a broader perspective, Bigelow's successful commodity jurisdiction request may signal a paradigm shift in the application of ITAR – or at least provides an encouraging indication of the DDTC's sensitivity to the needs of the commercial spaceflight industry, which could result in the continued relaxation of export controls over space technology.