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October 15, 2013

Rolling Out a New Export Control Regime During a Government Shutdown

Venable's **International Trade and Customs Practice Group** is publishing a five-part series of Client Alerts to highlight the changes surrounding the ECR (Export Control Reform). Below is Part IV of the series.

Part I: **State Department Publishes Long-Awaited Interim Final Rule Amending ITAR Brokering Provisions**

Part II: **October 15th Export Control Reform Changes Are Around the Corner: Take Time Now to Understand the Impact on Your Existing Licenses & Authorizations**

Part III: **License Exception Strategic Trade Authorization: Understanding How It May Work for You**

The first of the President's Export Control Reform (ECR) initiatives takes effect today, October 15, 2013. As noted in **Part II of this series**, the Final Rules taking effect today are the first to transfer jurisdiction of certain less-sensitive military items – specifically aircraft and related materials and gas turbine engines – which are currently controlled on the U.S. Munitions List and governed by the State Department's International Traffic in Arms Regulations (ITAR), to the Commerce Control List under the Commerce Department's Export Administration Regulations (EAR). Today also marks the third week of the Federal Government shutdown. The Final Rules will still be effective as of today; however, because of the shutdown, it is unclear how the significant number of new licenses for "600 Series" items under the jurisdiction of the Department of Commerce Bureau of Industry and Security (BIS) will be handled.

BIS Remains Dark

BIS has only retained 40 percent of its personnel during the shutdown. Accordingly, BIS has reported that it will only process emergency export licenses "essential to national security," but will not accept new export license applications, classification requests, encryption reviews or registrations, or advisory opinion requests until the federal government reopens. BIS' online application portal, SNAP-R, which exporters can normally use to submit such license applications, has been closed. BIS reports that it will not be available again until the shutdown ends. In addition, BIS will not issue final determinations on pending applications; these will be held without action. Applicants may request emergency processing of export license applications for national security reasons by submitting email requests to the Deputy Assistant Secretary for Export Administration.

As part of BIS's outreach efforts in connection with the ECR, the agency developed several webinars, teleconferences, and interactive tools to assist exports in transitioning compliance to the new regime. Access to most of these online tools has been temporarily suspended for the duration of the government shutdown as well.

Meanwhile at DDTC...

On the other hand, the Department of State's Directorate of Defense Trade Controls (DDTC) appears to be operating normally and processing requests for registrations and registration renewals will continue as normal "until further notice." Likewise, the Defense Technology Security Administration has returned to normal operating status, and processing of new licenses has resumed. Applicants should expect delays stemming from the shutdown at DDTC too, considering there was a backlog of license adjudications put on hold during the first week of the shutdown.

Importantly, various bureaus and divisions involved in interagency reviews of license applications and related agreement and classification reviews are operating on a limited basis given their reduced staff, and are only handling licenses directly in support of ongoing combat or contingency operations. Thus,

DDTC's capacity to accept and review Commodity Jurisdiction determinations, for example, has been effectively diminished.

All Quiet at Census

We also note that the shutdown has affected Bureau of Census operations on which exporters are dependent. All Census sites and services are unavailable until further notice. Nonetheless, an alternative **Schedule B search engine is temporarily available** to assist exporters in classifying merchandise for their Electronic Export Information (EEI) filings. Moreover, while the U.S. Export Assistance Center is closed until further notice, the AESDirect system for filing EEI is still operational.

With export-related agency operations currently crippled by Congress's failure to pass a Continuing Resolution to the federal budget, exporters face significant challenges as many new ECR changes kick in. As they say, the central ingredient to politics is timing. For the ECR, these politics are bad timing.

*Venable is well positioned to guide your company through the rule changes as well as any other aspects of the Export Control Reform. Please contact any attorneys in our **International Trade and Customs Group** for assistance.*