

## International Trade Alert

March 2013

### Fewer Military Controls and Streamlined Licensing for Exporters Are Expected: Are You in Compliance?

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On Friday, March 8, 2013, the White House announced two important steps by the Administration to further its export control reform effort, which are expected to simplify licensing requirements for less sensitive items and establish stronger protections for items with higher national security implications.

The first step was the issuance of Executive Order (“E.O.” or “Order”) 13637 (March 8, 2013), which reorganizes and reallocates licensing and notification responsibilities among federal agencies and delegates certain authorities to carry out these responsibilities. The purpose of the E.O. is to improve efficiency and efficacy of the registration, licensing, and enforcement of U.S. export control laws.

Second, the Administration announced that it notified Congress on March 7, 2013 of proposed changes to the United States Munitions List (“USML”) that would simplify certain export controls associated with military aircraft (currently controlled in USML Category VIII) and certain gas turbine engines (currently controlled within USML Categories VI, VII and VIII). The Arms Export Control Act at section 38(f) requires the President to notify both houses of Congress at least 30 days prior to the removal of items from the USML. The delisting of items from the USML is one of several such steps to be undertaken this year.

These changes are anticipated to allow companies exporting certain defense articles and dual-use items an opportunity to more easily export less-sensitive items to countries allied with the United States. Nonetheless, companies will need to review and reassess their existing compliance procedures and ensure that all registrations and licenses are obtained in accordance with the new streamlined procedures. As other changes are expected, companies should continue to monitor the movement of items from the USML to the Commerce Control List (“CCL”), in order to gain full advantage of the reforms.

#### Changes Stemming from the Executive Order

The recent E.O. makes several key changes in how U.S. export control laws and regulations are administered and enforced.

First, the Order directs the Department of Commerce (“Commerce”) to establish procedures for notifying Congress of the permanent export of “major defense equipment” that is controlled under Commerce’s jurisdiction. Under the International Traffic in Arms Regulations (“ITAR”) codified at 22 C.F.R. Part 120 *et seq.*, “Major defense equipment” is defined as significant military equipment “having a nonrecurring research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000.” 22 C.F.R. § 120.8. Under the Order, Commerce is now also directed to notify Congress of the export of firearms subject to the Export Administration Regulations (“EAR”).

Second, the E.O. consolidates responsibility for administering the registration and licensing of “brokers,” or agents who negotiate and arrange contracts, purchases, sales, or transfers of defense articles or services. This is intended to provide “better clarity for the defense trade community and make it easier for industry to comply and for the U.S. Government to enforce.” The consolidation of responsibility at the State Department confirms that Commerce will not have to start registering and licensing brokers for items moved to the CCL.

Third, the Order ensures that companies exporting ITAR-controlled items containing spare parts, accessories and attachments, which have been moved to the CCL, will not have to obtain licenses from *both* Commerce and State. Under the Order, the State Department is authorized to license or approve the export of EAR-controlled parts and accessories, so that exporters will not be required to seek separate approval from Commerce. Notwithstanding State’s licensing role, the items remain subject to the jurisdiction of the Department of Commerce. Given the intended breadth of items sought to be moved from the USML to the CCL, this provision should be particularly helpful for exporters.

Finally, the Order updates previous Executive Orders in order to reflect structural changes, such as the shifting of the Bureau of Alcohol, Firearms and Tobacco from the Treasury Department to the Department of Justice. Other changes update the authorities provided for administering the export control laws.

#### **Notification to Congress Begins the Clock**

The Administration's March 7 notification to Congress of forthcoming changes to the USML was the first in an anticipated series of such changes, consistent with Section 38(f) of the Arms Export Control Act (22 U.S.C. § 2778(f)). These first changes involve transferring certain parts and components of military aircraft and certain gas turbine engines currently controlled under USML Category VIII, and Categories VI, VII and VIII, respectively, to the CCL. Upon the expiration of the 30-day congressional review period, the changes will be published and become effective 180 days thereafter.

#### **What Does This Mean for Exporters of ITAR-Controlled Items?**

These transfers from the USML to the CCL of the affected items should allow for broader and more flexible exporting options overseas. For example, some of the items transferred to the EAR could now be eligible for the new license exception Strategic Trade Authorization, which authorizes exports, reexports and in-country transfers to 36 countries closely allied with the United States. 15 C.F.R. § 740.20. This exception and other License Exceptions in the EAR should provide exporters new sales opportunities not previously available under the ITAR.

In order to take full advantage of the export control reform initiatives, you are urged to conduct a thorough review of your export control activities to see how these new changes may benefit your overseas sales and business opportunities. You should also review your current policies and procedures to ensure that they will be compliant with these new rules. Venable's International Trade attorneys are ready to guide you through this analysis and help you identify new export opportunities due to these legal and regulatory changes.