

ALERT

Key ITAR Changes Announced at DTAG Meeting

May 11, 2018

The Defense Trade Advisory Group (DTAG), a committee comprised of private sector defense trade representatives that advises the Department of State, Directorate of Defense Trade Controls (DDTC) on defense trade issues, held an open session meeting yesterday. Acting Deputy Assistant Secretary Mike Miller kicked off the meeting by covering recent leadership changes, including the selection of Tony Dearth as DDTC Chief of Staff, Sarah Heidema as Director of Policy, Catherine Hamilton as Director of Licensing, and Jae Shin as the new Chief of the Compliance and Civil Enforcement Team. He also highlighted a few upcoming revisions to the International Traffic in Arms Regulations (ITAR). Among other things, DDTC expects to issue a rule relatively soon clarifying the Section 126.4(a) licensing exemption and expanding it to cover permanent exports by or for the U.S. government. This exemption has been the subject of considerable controversy over the years, and the new rule appears to be a much-welcomed change for government contractors.

The DTAG working groups then covered the following three agenda items:

- **Defense Services Definition:** Like the Section 126.4(a) exemption, a revised definition of “defense services” has been a long time coming. DTAG’s latest recommended refinement to the definition includes a “catch” and “release” concept. For assistance or training related to defense articles and provided to foreign persons to be “caught” by the new proposed definition, the person providing such assistance or training generally must do so using “traceable” U.S.-origin ITAR-controlled technical data. In other words, use of public domain data or the mere fact that an engineer may have worked on

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U.S. government/ITAR-controlled projects in the past would not be enough to capture the assistance or training as a defense service.

- **IT/One Form:** The IT working group also briefed its findings on streamlining the export licensing process, including through the potential use of a single licensing form. One change from DDTC practice under consideration is to permit outside counsel and third-party consultants to submit license applications and other submissions on behalf of companies. If implemented, this change would be aligned with the Department of Commerce's electronic licensing process, which permits third parties to file applications on behalf of companies.
- **Personal Protective Equipment (PPE):** The final DTAG working group provided recommendations to improve the ITAR's PPE licensing exemption. After identifying some concerns—such as the rigid hand-carry requirement and the fact that certain U.S. government-required equipment falls outside of the scope of the exemption (*e.g.*, detection paper, decontamination kit)—the working group offered several suggestions for improving the exemption. These recommendations ranged from creating a stand-alone PPE exemption in the regulations to identifying U.S. Munitions List categories of items covered by the exemption and permitting freight forwarders to handle the PPE shipments.

Please feel free to contact us if you have questions or if you would like further detail on any of the topics covered at yesterday's DTAG meeting.