

LEGAL UPDATES

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Now and After the Shutdown: Key Issues for Shipping Industry Stakeholders

While it appears that the government shutdown may be in its final phases, there are some items that require attention from importers, exporters, ocean transportation intermediaries, ocean carriers and Port Authorities – even now.

NVOCC registration renewals – Federal Maritime Commission.

Foreign domiciled nonvessel operating common carriers (NVOCCs) are required by new regulations to renew their registration every two years or lose their Federal Maritime Commission (FMC) status. If this status is lost, these companies are not permitted to participate in the U.S. trade lanes. Their initial registration is due Thursday, October 17, 2013. One of the processes provided by the regulations is an electronic filing of Form 65. The FMC website has been closed since October 1, 2013, so no registrations have been permitted since the shutdown. NVOCCs have developed into vital pricing mechanisms for small and medium sized importers and exporters since some of the larger NVOCCs have substantial ocean transportation buying power from ocean carriers, which they in turn package to the small, mid-sized exporters and importers. Large shippers also utilize the services of these entities. Our recommendation to these foreign domiciled NVOCCs would be to submit the Form 65 application by certified mail to the FMC at Federal Maritime Commission, 800 North Capitol Street N.W., Washington, D.C. 20573, with the subject heading “NEW RULE AFFECTING UNLICENSED FOREIGN-BASED NVOCCS.” This

was actually suggested by the agency itself.

Port improvement projects – Water Resources Development Act (WRDA). The WRDA passed the Senate, and a House bill is expected to pass as well once the shutdown is officially over. However, the extent to which this program and others may be impacted by the shutdown will depend on the negotiations currently taking place to end the government shutdown and the debt ceiling crisis. What is at stake is port improvement projects, which if not undertaken will result in distinct commercial disadvantages to certain ports, mainly on the East and Gulf Coasts, relating to capabilities to handle post-Panamax vessels with larger slot capacities. These increased slot capacities significantly lower the “per slot” costs for ocean carriers which will translate into lower costs for shippers. The post-Panamax vessels are mainly on order or in place already in anticipation of the renovations to the Panama Canal projected for completions in 2015. The ports that are ready to accept these vessels will definitely have a competitive advantage over those that are not ready to service post-Panamax vessels. The WRDA provides funding primarily for harbor deepening to levels acceptable to post-Panamax vessels. This process will require special attention now and as the shutdown ends, especially for ports that are in dire need of these improvements.

Export control reform – Department of Commerce. The first wave of export control reforms took effect Tuesday, October 15. Licensing responsibilities of certain aircraft and other exports will transfer from the U.S. Department of State to the Department of Commerce. Under most circumstances this would be a positive change since this reform would make it easier to export these items. However, the Bureau of Industry and Security’s (BIS) website is currently down and cannot accept license applications or process ones in progress, except for emergency requests related to national security items. On the other hand, the Directorate of Defense Trade Controls (DDTC) at the Department of State, which processes and issues defense article licenses, has never missed a beat during the shutdown. The following items previously included in the International Traffic in Arms Regulations (ITAR) now require BIS licensing:

Aircraft and related materials. Parts, components, accessories and attachments “specially designed” for the following U.S.-origin aircraft that have low observable features or characteristics will remain under ITAR control: B-1B, B-2, F-15SE, F/A18E/F/G, F-22, F-35 (and variants thereof), F-117, or U.S. government technology demonstrators. All other parts, components, accessories and attachments “specially designed” for a military aircraft and other articles now subject to U.S. Munitions List (USML) category eight would become subject to the new 600 series controls in category nine of the Commerce Control List (CCL) to be published separately by the Department of Commerce. There are also revisions to the jurisdictional status of certain militarily less significant end items that do not warrant USML control, but the primary impact of this change will be with respect to current USML controls on parts, components, accessories, and attachments that no longer warrant USML control.

Gas turbine engines. Category nine at DDTC was created to house gas turbine engines and components for aircraft, missiles and surface vehicles and vessels previously covered by various other categories. A new export control classification number series has been created in the commerce control list (600 series) for items formerly controlled by category eight and now will be controlled by Export Administration Regulations (EAR). Exports of these items to China will still fall under ITAR status (policy of denial). The new 600 classification will be eligible for some EAR license exceptions – low value shipments (LVS), temporary exports (TMP), repair/replacement (RPL), shipments to/for certain foreign governments (GOV), and release of certain technical data and source code (TSU). Notwithstanding that the shutdown may be near an end, there may also be delays going forward as BIS employees return to implement new regulations and the administration works to finalize other revisions to the export control system.

What This Means to You

Although the government shutdown is likely grinding to a halt, importers, exporters, ocean transportation intermediaries, ocean carriers and port authorities should keep their eyes and ears open concerning several relevant issues.

Contact Information

For more information on this issue and other import and export matters, contact your Husch Blackwell attorney or an attorney in our Customs & Trade group.