
State Dept. Begins Transition to Electronic Submission of ITAR Licensing Agreements

by Joshua D. Fitzhugh

The State Department last week began accepting export licensing agreements for review through its D-Trade 2 electronic system. Exporters can still submit such agreements in paper form, but electronic submission will become mandatory in late 2010. Companies currently filing paper license agreements will need to adjust their application process for electronic submissions prior to the shift.

Under the Arms Export Control Act and the International Traffic in Arms Regulations (ITAR), a State Department license must be obtained before defense-related technical data may be exported from the United States or used in foreign manufacturing. These licenses are known as Technical Assistance Agreements (TAAs) for export of technical data, Manufacturing License Agreements (MLAs) for export of manufacturing data, and Warehouse and Distribution Agreements (WDAs) for foreign storage and distribution of U.S.-origin defense equipment. TAAs, MLAs and WDAs are signed by the exporter and foreign recipients, but must be approved by the State Department before they can be used as a license to export technical data or store defense equipment abroad.

While the use of D-Trade may speed up the agreement review process by automating the transfer of application documents between reviewers in different agencies, applicants who do not already use D-Trade will need to make significant changes before they can use the electronic system for their agreements. These changes include the following:

- Applicants must sign up for D-Trade, obtain digital signature certificates from a third party vendor, and assign D-Trade responsibilities to company personnel before they can submit applications electronically. This preliminary process can take some time to complete.
- While any number of people, including outside counsel, can assist in preparing electronic agreements, the actual submission process must be centralized to specific company officials.
- Due to limitations in the D-Trade system, TAAs, MLAs and WDAs must be submitted as attachments to DSP-5 license applications. DSP-5s are usually used to license permanent exports of defense hard-

ware, but in this case are used as a vehicle for processing TAA, MLA and WDA submissions. The DSP-5 vehicle must be completed in addition to the agreement.

- Each amendment to a previously approved TAA, MLA or WDA must contain the entire agreement text as amended, and must be submitted under a new DSP-5 vehicle.

TAAAs, MLAs and WDAs previously approved in paper form cannot be amended using the D-Trade system. Instead, they must be replaced with a new agreement. Because electronic filing will be required for all agreements starting in late 2010, all existing paper TAAAs, MLAs and WDAs requiring amendment after 2010 will need to be replaced.

The availability of electronic licensing for export agreements promises faster and more reliable State Department review. To realize these benefits, however, applicants must modify how they prepare and submit their TAAAs, MLAs and WDAs. Companies affected by this change will need to decide what works best for them: switching to electronic licensing now, or waiting until it becomes mandatory late next year.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work or any of the attorneys below.

Joshua D. Fitzhugh [\(bio\)](#)
Washington, DC
+1.202.663.8416
joshua.fitzhugh@pillsburylaw.com

Nancy A. Fischer [\(bio\)](#)
Washington, DC
+1.202.663.8965
nancy.fischer@pillsburylaw.com

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2009 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.