

To: Our Clients and Friends

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Next Steps in Export Control Reform: State and Commerce Departments Issue Proposed Rules Related to Jurisdiction of Ground Vehicles, Aircraft, and Gas Turbine Engines

On November 7, 2011, and December 6, 2011, the Department of State, Directorate of Defense Trade Controls (“DDTC”) issued proposed rules to amend the International Traffic in Arms Regulations (“ITAR”) by amending Categories VII and VIII and creating Category XIX of the United States Munitions List (“USML”). 76 Fed. Reg. 68694, 76097, 76100. Concurrently, the Department of Commerce, Bureau of Industry and Security (“BIS”) published proposed rules regarding how items removed from the USML will be classified under the Commerce Control List (“CCL”). 76 Fed. Reg. 68675, 76072, 76085. Part of the Administration’s Export Control Reform effort, these proposed rules are a step toward a positive listing of items controlled under the USML and the movement of certain items to the CCL.

The proposed rules create a new Category XIX for gas turbine engines previously covered by Categories VI, VII, and VIII and set forth a mostly positive listing of the ground vehicles, aircraft, gas turbine engines, and parts and components of each, covered by Categories VII, VIII, and XIX, respectively. These modified lists are intended to narrow the scope of items covered under each of the categories by moving items no longer warranting control under the USML to the CCL. Additionally, parts, components, accessories and attachments which are “specially designed” for items enumerated in each of the categories but not listed in the categories will be moved to the CCL and controlled under the newly created 600 series ECCNs.

The proposed rules also use “specially designed” to capture a range of items in each category that will continue to be covered under the USML. Such language is used in the definition of ground vehicles in Category VII, and to describe certain parts and components of ground vehicles that will continue to remain on the USML. Proposed Category VIII uses the term “specially designed” to capture parts and components for stealth aircraft, and the proposed Category XIX also uses the term. Yet, despite its use in each of these proposed modified categories, the definition of “specially designed” is still being worked out by the State and Commerce Departments. Recommendations regarding the definition are welcomed by both agencies.

BIS’s proposed rules address how the items moved from the USML will be controlled under the CCL. Items proposed to be removed from USML Category VII (other than gas turbine engines currently controlled under that Category) would be classified under 0X606, while items proposed for removal from USML Category VIII (other than gas turbine engines currently controlled under that Category) would be classified under 9X610. Engine related items would be controlled under 9X619. BIS’s rule also proposes to move certain items currently controlled under 9X018 to other ECCNs in the 600 series to better group like items.

The proposed rules are intended to reduce the burden associated with the current export control regime through elimination of some license requirements, application of the EAR *de minimis* rules, increased availability of license exceptions, simpler license application procedures, and reduced or eliminated registration fees. However, in order for such goals to be fully realized, it is important for

industry to review the proposed rules to determine the specific impact of the changes on their day-to-day business operations and to provide comments to DDTC and BIS regarding any perceived gaps in the rules, including instances where an exemption would have been available under the ITAR but a license would be required under the EAR. DDTC and BIS will be accepting comments on the proposed rules related to Category VIII items until December 22, 2011; comments on Categories VII and XIX will be accepted until January 20, 2012.

Additionally, because the movement of these items from the ITAR to the EAR requires notification to Congress, industry may wish to reach out to individual members of Congress to discuss the benefits of these changes to the USML (while still preserving national security) and to encourage Congressional support for this removal effort.

Bryan Cave continues to monitor the progress of the Administration's Export Control Reform initiative and will provide updates as efforts proceed. For more information, or to discuss the specific impact that the proposed rules may have on your day-to-day business operations, please contact a member of the Bryan Cave International Trade Client Service Group.

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