



FD ASSOCIATES, INC.

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## EXPORT CONTROLS UPDATE November-December 2008

*This newsletter is a summary of changes to US export control regulations or other regulatory matters of interest for the months of November and December 2008.*

### REGULATORY UPDATES

#### Department of Commerce – Bureau of the Census

Dec. 3, 2008: The Census Bureau issued Foreign Trade Regulations Letter No. 3 to clarify the requirements for filing electronic export information through the Automated Export System (AES) for shipments to International Waters. The Letter adds the new Export Information Code (EIC) “IW” for exports whose final destination is International Waters.

#### Department of Commerce – Bureau of Industry and Security

Oct. 31, 2008: The Bureau of Industry and Security (BIS) issued an advisory opinion clarifying that body armor that provides protection against non-ballistic threats such as stabbing weapons is controlled under Export Control Classification Number (ECCN) 1A005 (“Body armor, and specially designed components therefor, not manufactured to military standards or specifications, nor to their equivalents in performance”).

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Oct. 31, 2008 – *73 Fed. Reg. 65120*: BIS published regulations implementing the provisions of the Additional Protocol to the Safeguards Agreement between the U.S. and the International Atomic Energy Agency (IAEA). These regulations affect companies engaged in the following activities:

- Uranium mining;
- Certain nuclear-related equipment manufacturing;
- Exports and imports of nuclear-related equipment and non-nuclear material; and
- Research and development activities related to the civil nuclear fuel cycle, but not involving nuclear material.

BIS has created a new web site, [www.ap.gov](http://www.ap.gov), to assist industry in complying with the new regulations.

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Nov. 18, 2008 – *73 Fed. Reg. 68321* (corrected Dec. 8, 2008 – *73 Fed. Reg. 74348*): BIS issued a final rule clarifying that if a party is in the process of making an export, reexport, or in-country transfer when it is informed by BIS that the shipment requires an export license, the party may not proceed with the shipment without obtaining the newly-required export license. The rule, which also revises the definition of the term “transfer,” enhances BIS’ ability to implement “catch-all” controls on items that are not on the Commerce Control List (CCL), but may be used for proliferation of weapons of mass destruction (WMD). This final rule is identical to the proposed rule that was issued April 18, 2008. (*See April 2008 Update.*)

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Dec. 3, 2008 – 73 Fed. Reg. 73547: BIS amended EAR Section 770.2(i) (“Interpretation 9: Civil aircraft and Civil aircraft equipment (including parts, accessories, attachments, components, and related training equipment”) and ECCN 9A991 to clarify the implementation in the EAR of Section 17(c) of the Export Administration Act of 1979 (EAA), which provides that any product that (1) is standard equipment, certified by the Federal Aviation Administration (FAA) in civil aircraft and is an integral part of such aircraft, and (2) is to be exported to a country other than a controlled country, will be controlled exclusively under the EAA. This amendment to the EAR complements a rule issued by the Department of State Directorate of Defense Trade Controls on August 14, 2008 that amended Category VIII(h) of the U.S. Military List (USML) to clarify the implementation of EAA Sec. 17(c) in the International Traffic in Arms Regulations (ITAR). (See August 2008 Update.)

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Dec. 4, 2008 – 73 Fed. Reg. 73999: BIS added to the Entity List (EAR Part 744, Supplement No. 4) 16 persons who had been determined to be acting contrary to the national security or foreign policy interests of the U.S.:

Iran:

- (1) Amir Hosein Atabaki, 5 Yaas St, Unit 4, Tehran, Iran;
- (2) H. Farahani, Ground Floor--No. 31, Alborz Alley, EnghelabSt, Tehran, Iran;
- (3) Mahdi Electronics, Ground Floor--No. 31 Alborz Alley, EnghelabSt, Tehran, Iran;
- (4) Naser Golshekan, Ground Floor--No. 31, Alborz Alley, EnghelabSt, Tehran, Iran;
- (5) Pakgostar Company, Appt 501 & 502, Borje Sefid Bldg, Pasadaran Avenue, Tehran 1946963651,

Iran;

- (6) Raht Aseman, No. 1.2, Mosque Alley, Mohammadi St, North Bahar Ave, Tehran, Iran;
- (7) Reza Zahedipour, 5 Yaas St, Unit 4, Tehran, Iran;
- (8) Safir Electronics, Ground Floor--No. 31 Alborz Alley, EnghelabSt. Tehran, Iran; and
- (9) Sahab Phase, 5 Yaas St, Unit 4 Tehran, Iran.

Singapore:

- (10) Brian Douglas Woodford, 1 Scotts Road, Suite 25-06 Shaw Centre, Singapore 228208 (See alternate listing under the United Kingdom);
- (11) Gryphon Aerospace, 36 Lorong N Telok Kurau Unit 03-03, Singapore 425160;
- (12) Monarch Aviation, 1 Scotts Road, Suite 25-06 Shaw Centre, Singapore 228208; and
- (13) Yip Kum Kuan, 36 Lorong N Telok Kurau, Unit 03-03, Singapore 425160.

United Kingdom:

- (14) Brian Douglas Woodford, (See alternate address under Singapore);
- (15) Farshid Gillardian, a.k.a., Isaac Gill, Isaac Gillardian, London, United Kingdom; and
- (16) MCES, London, United Kingdom.

### **Department of State**

November and December, 2008: DDTC posted notices about the following changes in name, corporate ownership, etc.:

- Nov. 26, 2008: SAAB Space AB to RUAG Aerospace Sweden AB and Austrian Aerospace GmbH to RUAG Aerospace Austria GmbH
- Nov. 28, 2008: XM Satellite Radio Inc. to Sirius XM Radio Inc.
- Dec. 3, 2008: ABX Logistics (USA) Inc. and Saima Avandero USA to operate as DSV Air & Sea Inc.
- Dec. 15, 2008: EADS-Deutschland's Augsburg Facility to Premium AEROTEC GmbH and Transfer to EADS N.V.
- Dec. 16, 2008: BAX Global to export under Schenker Inc effective March 1, 2009 and effective immediately must reflect their common parent, The Stinnes Corporation

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- Dec. 18, 2008: Westland Transmission Limited to Westland Helicopters Limited
- Dec. 19, 2008: Goodrich Control Systems Limited to Goodrich Control Systems
- Dec. 30, 2008: Goodrich Control Systems to Rolls-Royce Goodrich Engine Control Systems Ltd.

Details of these notices vary. In most cases, existing and pending licenses will not need to be amended to include the new name, but new applications using the old name may be returned without action for correction to the new name. Currently approved agreements generally require amendments, which DDTC will treat as minor amendments. For specific requirements for any name change, check the website at <http://www.pmdtcc.state.gov/archives.html> or call us at 703-847-5801.

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Dec. 10, 2008: The DDTC Office of Defense Trade Control Licensing (DTCL) announced that it has revised its standard Agreement and Amendment Approval Letter to omit most provisos that restate provisions of the agreement and/or remind the applicant of responsibilities imposed by the ITAR and other regulations. The reduction of informative and acknowledgement provisos in Agreement and Amendment Approval Letters does not relieve applicants of the duty to meet all AECA and ITAR requirements.

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Dec. 11, 2008: The DTCL revised Section 3.2.c (3) of the Guidelines for Preparing Agreements by removing restrictions pertaining to the identification of U.S. persons as potential sub-licensees to a foreign party. The revised guideline is at [www.pmdtcc.state.gov/documents/WebNotice\\_USSublicensing.doc](http://www.pmdtcc.state.gov/documents/WebNotice_USSublicensing.doc).

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.Dec. 18, 2008 – 73 *Fed. Reg.* 77099: DDTC announced a general policy of denial regarding ITAR-regulated activities of EP Investments, LLC (a/k/a Blackwater). The policy however, is subject to several exceptions. The most important exception is that the presumption of denial will not apply to applications for export authorizations under a direct contract with the U.S. Government, provided that Blackwater's Export Compliance Committee (1) certifies the accuracy of the information in the submission and that the training and internal controls necessary to implement the authorization are in place, and (2) provides reports to the DDTC Office of Defense Trade Controls Compliance (DTCC) 30 and 60 days after export activities have commenced certifying that all provisos of the approval have been complied with, all training necessary to implement the authorization was done, and appropriate internal controls are in place. In addition, Blackwater will be ineligible to use ITAR exemptions without obtaining authorization on a case-by-case basis.

**Department of the Treasury**

Nov. 8, 2008: The Office of Foreign Assets Control (OFAC) updated its guidelines for submitting applications for licenses to export agricultural commodities, medicine, and medical devices to Iran and Sudan. These guidelines are at <http://www.treas.gov/offices/enforcement/ofac/programs/common/tsraapp.pdf>.

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Dec. 31, 2008 – 73 *Fed. Reg.* 80513: The Office of the Secretary of the Treasury Department published a list of countries that participate in the Arab League boycott of Israel, namely: Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, and the United Arab Emirates. The status of Iraq remains under review by the Treasury Department.

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Dec. 31, 2008: OFAC published a “2008 Civil Penalties Information Chart” with links to detailed information about penalties assessed in 2008. The chart is on the OFAC web site at [www.treas.gov/offices/enforcement/ofac/civpen/](http://www.treas.gov/offices/enforcement/ofac/civpen/).

**SANCTIONS**

**Department of Commerce**

Dec. 11, 2008 – *73 Fed. Reg. 753836*: BIS renewed the Temporary Denial Order against Galaxy Aviation Trade Company Ltd. for a further six months and extended it to related persons Hooshang Seddigh, Hamid Shake Hendi, Hossein Jahan Peyma, Iran Air, and Ankair.

**Department of State**

Nov. 19, 2008 – *73 Fed. Reg. 69714*: DDTC terminated the statutory debarment of Interaero, Inc., which had resulted from Interaero’s 2004 conviction for violating the Arms Export Control Act (AECA). However, Interaero will remain under a policy of denial because as a condition of reinstatement, it promised not to be involved with export or trade in items on the United States Munitions List (USML).

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Nov. 19, 2008 – *73 Fed. Reg. 69715*: DDTC terminated the statutory debarment of Quality Aviation, Inc., which had resulted from QA’s 2001 conviction for violating the AECA.

**Department of the Treasury**

Dec. 10, 2008: OFAC updated several items on the Iran Sanctions pages of its website. See the updated items at [www.treas.gov/offices/enforcement/ofac/programs/iran/iran.shtml](http://www.treas.gov/offices/enforcement/ofac/programs/iran/iran.shtml).

**FINES & PENALTIES**

Oct. 28, 2008: Behra “Ben” Meghazehe was sentenced in U.S. District Court in Manhattan to 5 years of probation, a \$2,000 criminal fine, six months of home confinement, and a \$100 special assessment after pleading guilty to one count of False Statements in connection with an illegal export of radiographic equipment to Iran.

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Nov. 7, 2008: Cabela’s Incorporated of Sidney, NE agreed to pay \$680,000 and conduct an internal export audit to settle charges by BIS of 76 unlicensed exports between 2004 and 2005 of optical sighting devices for firearms – rifle scopes – to at least 14 foreign countries. The charges also included failure to file shipper’s export declarations (SEDs) for the unlicensed exports. In 2005, Cabela’s – which claims to be “The World’s Foremost Outfitter” – had paid \$265,000 to settle similar charges by BIS involving 685 unlicensed exports of rifle scopes.

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Nov. 17, 2008: Shu Quan-Sheng of Newport News, VA pleaded guilty in federal court for the Eastern District of Virginia to two violations of the AECA: providing an unlicensed defense service to China by assisting in the design and development of a cryogenic fueling system to be used in space launch vehicles at a Chinese heavy payload launch facility and exporting a document containing controlled technical data to China. Shu was also charged with violating the Foreign Corrupt Practices Act by offering to pay

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money to Chinese officials in order to obtain a contract. Shu, a physicist, was born in China and is a naturalized U.S. citizen .

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Dec. 12, 2008: Beuhler Limited of Lake Bluff, IL agreed to pay a civil penalty of \$200,000 to settle 81 charges by BIS involving unauthorized exports of a chemical mixture that was classified under ECCN 1C350c.9 and contained at least 30% by weight of a Schedule 3 chemical precursor. The unauthorized exports were sent to Taiwan, Israel, Thailand, and other countries. Unauthorized re-exports of the same chemical mixture were sent from Germany to Iran.

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Dec. 15, 2008: Gunnar Petzel Medizintechnik of Tangstedt, Germany agreed to pay a civil penalty of \$50,000 to settle charges by BIS of unauthorized transshipments of EAR99 items from the U.S. to Cuba via Germany.

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Dec. 15, 2008: Engineering Physics Software, Inc. of Houston, TX agreed to pay a civil penalty of \$160,000 to settle 22 charges by BIS involving unauthorized exports of software programs to Iran via the United Arab Emirates (UAE) and unlicensed exports of software programs to end users in India and Pakistan that were on the Entity List.

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Dec. 18, 2008: Interpoint Corporation of Redmond, WA agreed to pay a civil penalty of \$200,000 to settle 39 charges by BIS involving unauthorized exports of EAR99 items to China. Two of the exports were destined for a Chinese institute that is listed on the BIS Entity List. The remaining exports required authorizations from BIS because Interpoint had been informed that the items would be used in the PRC's Long March rocket program or other commercial rocket programs.

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Dec. 18, 2008: Electronics for Imaging, Inc., of Foster City, CA agreed to pay a civil fine of \$32,000 to settle 4 charges by BIS involving unlicensed exports of printer parts and components to Syria.

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Dec. 18, 2008: PC Universe, Inc., of Boca Raton, FL agreed to pay a civil penalty of \$37,500 to settle charges by BIS involving sales of EAR99 digital audio tape drives to Iran with knowledge of the embargo on Iran and with knowledge that the export had not been authorized by the U.S. Government.

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Dec. 24, 2008: Syrvet, Inc. of Waukee, IA agreed to pay a civil penalty of \$250,000 to settle charges by BIS involving 16 unlicensed exports of electric cattle prods – items listed on the CCL for crime control reasons -- to Mexico, Chile, South Africa, the Dominican Republic, Colombia, and El Salvador. \$150,000 of the fine will be suspended provided that no additional violations occur and that Syrvet pays the remaining \$100,000 in accordance with an agreed payment schedule.