

State Department Proposes Amendment to ITAR, Aiming to Bolster AUKUS Partnership

On May 1, 2024, the U.S. State Department published a proposed rule to reduce International Traffic and Arms Regulations (ITAR) licensing requirements for the transfer of defense articles or services between the United States, Australia, and the United Kingdom (together, AUKUS). The proposed rule allows certain transfers to bypass the State Department's Directorate of Defense Trade Controls (DDTC) licensing process, which will substantially cut down on the administrative burden otherwise associated with the transfer of military goods.

The proposed rule states that these alterations will further support the goals of the AUKUS partnership. AUKUS was formed in 2021 to further deepen ties among the participating nations, primarily in response to China's growing geopolitical and military influence. AUKUS's diplomatic cooperation focuses on enhancing two pillars of cooperation:

1. the transfer of nuclear submarines from the U.S. to Australia and the U.K.'s development of a new submarine class using U.S. submarine technologies, and
2. increasing cooperation in the creation of emerging technologies (*i.e.*, electronic warfare, hypersonic capabilities). DDTC's proposed rule represents another step forward to executing the pillars of AUKUS by creating licensing exemptions that will foster expedited defense trade and cooperation between the AUKUS partner nations.

The proposed rule discussed further below, builds upon legislative directives and regulatory developments in the last few months, all of which aim to lessen licensing requirements and administrative burdens between the AUKUS partnership nations:

- **December 22, 2023:** President Biden signs the 2024 National Defense Authorization Act (NDAA) into law. The NDAA included a provision requiring the President to determine, within 120 days of signing, whether Australia and the U.K. should qualify for exemptions from the ITAR.
- **April 19, 2024:** The U.S. Department of Commerce's Bureau of Industry and Security (BIS) publishes an interim final rule that strips down the licensing requirements for certain defense-related technology products from Australia and the U.K., effectively matching the U.S. Export Administration Regulations (EAR) lessened licensing requirements for Canada. In a press statement following the publishing of the interim rule, BIS stated that it anticipated such action would impact 1,800 licenses annually with a valuation of \$7.5 billion.
- **May 1, 2024:** DDTC publishes a proposed rule to amend the ITAR to include an exemption from licensing requirements for exports or transfers between or among authorized users in AUKUS partner nations. This exemption will apply to all authorized users, which will be listed on DDTC's website following an enrollment process. However, certain licensing requirements will remain for defense articles and services listed in a new Supplement No. 2 of Part 126 (within the ITAR). These items and services, which are not exempted due to their importance to national security and foreign policy interests of the U.S., remain eligible for expedited processing.

DDTC's proposed rule represents the culmination of the NDAA's goal to further solidify and enhance the partnership within AUKUS nations. The proposed rule, in coordination with similar lessening of EAR licensing requirements through BIS, demonstrates the continuation of the U.S. seeking to strengthen its existing partnerships as well as the ability for the U.S. to provide its closest allies with the most advantageous regulatory regime possible for transfer of export-controlled items and services.

Parties that engage in trade of export-controlled goods or services, particularly with AUKUS



Robert K. Magovern

**Co-Vice Chair,
Transportation
& Trade**

rmagovern@cozen.com
Phone: (202) 463-2539
Fax: (202) 912-4830



Matthew J. Howell

Associate

mhowell@cozen.com
Phone: (202) 912-4879
Fax: (202) 499-2451



Rachel Schwartz

Associate

rschwartz@cozen.com
Phone: (202) 280-6507
Fax: (202) 742-2539

Related Practice Areas

- Customs, Imports & Trade Remedies
- International
- Trade Regulation, Export Controls & Sanctions
- Transportation & Trade

nations, should review the proposed rules to ensure continued alignment and compliance with all requirements of the EAR and the ITAR. Interested parties may submit comments to the proposed rule on or before May 31, 2024.

Cozen O'Connor's Trade Regulation, Export Controls, & Sanctions team will continue monitoring these developments, and we are prepared to assist our clients as they continue to navigate this complex regulatory landscape.