

Insights

EXPORTING UNDER THE EAR?

BEWARE BIS CHANGES TO MILITARY END-USE/MILITARY END-USER RESTRICTIONS AND LICENSE EXCEPTIONS

Apr 30, 2020

In a burst of activity, the US Department of Commerce, Bureau of Industry and Security (BIS) issued two final rules and one proposed rule. These rules, published in the *Federal Register* on April 28, 2020, made a series of changes affecting exports or reexports to China, Russia and Venezuela, as well as license exceptions CIV and APR.

In one of the [final rules](#), BIS made a number of changes specifically targeting exports, re-exports and in-country transfers to China, Russia, and Venezuela. These changes will become effective on June 29, 2020:

Broadened military end-use and military end-user restrictions in section 744.21 of the EAR, consisting of:

- The addition of a number of ECCNs and expansion of the range of items under certain ECCNs to which the restrictions apply. The rule adds ECCNs 2A290, 2A291, 2B999, 2D290, 3A991, 3A992, 3A999, 3B991, 3B992, 3C992, 3D991, 5B991, 5A992, 5D992, 6A991, 6A996, and 9B990 to the scope of the restrictions and, importantly, expands the scope of the restrictions to cover all items classified under ECCNs 3A992, 8A992, and 9A991, rather than only select specified items covered by those ECCNs. The restrictions apply to exports and re-exports to, and transfers within, China, Russia, and Venezuela of items described under these additional and expanded ECCNs.
- The expansion of the definition of military end-use. The definition will include, in addition to incorporation into items described on the US Munitions List or items classified under ECCNs ending in "0A18" or 600 series ECCNs, any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of military items.
- The addition of military end-users to the restrictions that apply with respect to China. The definition of military end-user remains unchanged. Previously, the restrictions only applied to military end-uses in China. Those engaging in exports or re-exports to China or in-country

transfers within China of items covered by the restrictions in § 744.21 will be expected to conduct increased diligence with respect to end-users in China, which may be difficult in light of China's civil-military integration.

- Creation of a new regional stability reason for control for any item described in the .y paragraph of 9x515 or 600 series ECCNs. A license is required for the export or re-export to China, Russia, or Venezuela of any item described in a .y paragraph of those ECCNs, except for exports or re-exports to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS.
- Requirement that Electronic Export Information (EEI) be filed for all exports of items on the Commerce Control List (CCL) to China, Russia, or Venezuela, regardless of value, unless the shipment is eligible for license exception GOV. EEI filings for exports to China, Russia, or Venezuela must also include the correct ECCN for all items being exported, even if no license is required for the export and the only reason for control is anti-terrorism.

BIS also announced in a [final rule](#) the elimination of license exception CIV, which in § 740.5 of the EAR previously allowed the export of certain items controlled for National Security (NS) reasons that were destined to civil end-users in Country Group D:1 for civil end-uses. Unless a different license exception authorizes the particular export, a license from BIS will be required as of June 29, 2020, for all such exports.

The [proposed rule](#), for which comments are due by June 29, 2020, would revise license exception APR to remove from the scope of the license exception in 740.16 for additional permissive reexports, the re-export of commodities controlled for NS reasons from countries in Country Group A:1 (Wassenaar participating countries) or Hong Kong SAR to countries in Country Group D:1. Separate BIS authorization would be required under the proposed rule for re-exports of such items; this would be in addition to any export authorization required by the country from which the items are being re-exported.

Companies should take steps now to ensure that their compliance programs are updated and their personnel are trained about the changes, so the new requirements can be properly implemented by the June 29, 2020, effective date.

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