

CLIENT ALERT

BIS Broadens U.S. Government Visibility into Exports to Chinese and Russian Military End Users and End Uses

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On April 28, 2020, the Department of Commerce's Bureau of Industry and Security (BIS) published two new final rules and a proposed rule amending the Export Administration Regulations (EAR) to: (1) impose export license requirements on an expanded scope of items when destined for "military end use" or to "military end users" in China, Russia, and Venezuela; (2) remove license exception Civil End Users (CIV) and impose a license requirement for national security-controlled items on the Commerce Control List (CCL) to countries of national security concern; and (3) propose a modification of license exception Additional Permissive Reexports (APR) to remove provisions which currently authorize reexports of certain national security-controlled items. Collectively, the changes reflect increased U.S. concerns about civil and military integration in China, Russia, Venezuela, and elsewhere, and oblige companies dealing with U.S.-origin items to perform "increased diligence with respect to the evaluation of end users in China."

Highlights of the changes in the three rules follow.

Expansion of License Requirements on the Export, Reexport, and Transfer (In-Country) of Items Intended for Military End Use or End Users in China, Russia, and Venezuela

- This rule broadens the requirements under EAR Part 744.21 to require an export license for exports, reexports, or transfers of items listed in EAR Part 744, Supplement No. 2 to "military end users" in China, in addition to exports, reexports, or transfers for "military end use."
- As previously defined, "military end use" refers to both direct use (for parts, components or subsystems of weapons and other defense articles) and indirect use (weapon design and development, testing, repair and maintenance). The new rule broadens the definition of "military end use" to include any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production, of military items.
- These changes adopt a license review policy of presumption of denial and any single element of this new definition of "use," standing alone, is now sufficient for license denial.
- In addition, a number of new Export Control Classification Numbers (ECCN) have been added to the list of items in EAR Part 744, Supplement No. 2, which require a license subject to the requirements in § 744.21. The new ECCNs include:
 - 2A290, 2A291, 2B999, 2D290, 3A991, 3A992, 3A999, 3B991, 3B992, 3C992, 3D991, 5B991, 5A992, 5D992, 6A991, 6A996, and 9B990.
 - Additionally, this rule expands the range of items under ECCNs 3A992, 8A992, and 9A991.
- The rule also revises EAR § 758.1 to require filing of Electronic Export Information for all exports of items on the CCL to China, Russia, or Venezuela, regardless of the value of the shipment, unless the shipment is eligible for Export License Government (GOV).
- This final rule will become effective June 29, 2020.

Removal of License Exception Civil End Users

- License exception Civil End Users (CIV) currently authorizes the export, reexport or transfer (in-country) of certain national security-controlled items, without prior review by BIS, to most civil end users for civil end uses in Country Group D:1.
- BIS is removing this exception due to the increasing integration of civilian and military technology development in these countries.
- As a result, national security-controlled items now require BIS review prior to export, reexport, or transfer (in-country) for civil end uses and to civil end users in Country Group D:1.
- This final rule will become effective June 29, 2020.

Modification of License Exception Additional Permissive Reexports (APR)

- Currently, License Exception APR authorizes the reexport of certain items from countries in Country Group A:1 or Hong Kong to certain destinations, provided that the reexport is consistent with an export authorization from the country of reexport, and that the item is not subject to controls contained in § 740.16(a)(2), which includes missile technology and nuclear nonproliferation controls.
- This proposed rule will remove countries in Country Group D:1 from the list of eligible destinations for national security-controlled items and require a license for reexport to these destinations.
- BIS is requesting comments on the volume of transactions affected by this proposed change, how it would affect the amount of time necessary to complete such transactions in the future, and how it would otherwise affect current business.
- Comments must be received by BIS no later than June 29, 2020.

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