

US Government imposes stricter export restrictions on Russia and Yemen

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Executive summary

On 24 February 2020, the United States (US) Department of Commerce's Bureau of Industry and Security (BIS) issued a final rule removing Russia and Yemen from more favorable treatment for purposes of export licensing into a list of more restrictive country "groups."

BIS determined that Russia has not been cooperative with allowing BIS to perform pre-license checks or post-shipment verifications of US-origin items and that Yemen has been a high risk for diversion and proliferation.¹

Specifically, this rule removes Russia from Country Group A and moves it to Country Groups D:2 and D:4. Additionally, BIS removed Yemen from more favorable treatment under Country Group B and added it to Country Group D:1.

The realignment from Groups A and B to Group D will result in some exports, reexports, and transfers becoming more restrictive and ineligible for license exceptions towards Russia and Yemen.

Detailed discussion

BIS is conducting a comprehensive review of all the “Country Groups” in the Export Administration Regulations (EAR) to ensure that they appropriately reflect current US national security and foreign policy interests.² As part of this review, BIS determined that both Russia and Yemen should be removed from more “favorable” treatment to more restrictive export license conditions.

The EAR Country Groups³ are organized in a way to protect US national security and economic interests. There are four country groups (A, B, D and E) based on particular reasons for control. For example, Country Group A is the least restrictive group and includes key US allies and members of NATO, among others, while Country Group E is the most restrictive and includes countries subject to comprehensive embargoes.

Russia

BIS removed Russia from Country Group A:2 and A:4 to Country Groups D:2 and D:4, which includes countries of nuclear and missile technology concern to the United States, respectively. The shift to Group D:2 means that a license will be required for the export or reexport of items to Russia which are subject to nuclear nonproliferation controls.⁴ BIS will review the export license applications for these items with a presumption of denial.

The addition to Group D:4 indicates that general prohibitions on all items “subject to the EAR” intended for end-uses related to certain rocket systems⁵ and unmanned aerial vehicles will be applicable if the exporter, reexporter, or transferor has knowledge that the transaction involves one of those prohibited end-uses in or by Russia.⁶ There will also be restrictions on certain activities of US persons if the US person exports, reexports, or transfers (in-country) with knowledge of a prohibited end use in or by Russia or engages in one of those prohibited activities with knowledge that it will directly assist such an end use.⁷

Yemen

Due to the continuing internal conflict in Yemen, BIS shifted Yemen from Country Group B to Country Group D:1. Specifically, this change is intended to help ensure that US-origin items in Yemen will not be diverted for unauthorized purposes or prohibited end-uses and end-users. Certain license exceptions are no longer available or are more restricted,⁸ and that BIS shall determine license applications on a case-by-case basis for items intended for civilian use or would not make a contribution to Yemen’s military purposes or prove to be a detriment to US national security.

Additionally, the realignment to Country Group D:1 results in the restriction on the export, reexport, and transfer of certain microprocessors, vessels, and aircraft to military end-uses and end-users in Yemen.⁹

Implications

This rule increases the scope of BIS licensing constraints for Russia and Yemen to include all items that are controlled for nuclear, missile proliferation, or national security reasons. Companies exporting to Russia and Yemen need to determine whether these exports will require licenses and understand that some of the license applications will likely be denied.

These changes also limit the accessibility of many of the EAR’s license exceptions for Russia and Yemen and enlarges the frequency with which companies may need to apply for specific licenses from BIS for their customary trade and technology transfers.

Companies impacted by these new licensing requirements should certify that their export controls compliance programs reflect these changes, including the impact on any re-exports of US-origin products and technologies.

Endnotes

1. https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-02941.pdf?utm_medium=email&utm_campaign=pi+subscription+mailing+list&utm_source=federalregister.gov.
2. id.
3. 15 C.F.R. pt. 740.
4. These controls will be identified in the applicable Export Control Classification Number (ECCN) description for the product or technology.
5. Includes ballistic missiles, space launch vehicles and sounding rockets.
6. See general prohibitions in paragraphs (a)(1) and (3) of Section 744.3.
7. See general prohibition in paragraph (a)(1)(i)(A)-(B) and (a)(2)(i) of Section 744.6.
8. Following license exceptions are no longer available: Section 740.3, Shipments of limited value (LVS); Section 740.4, Shipments to Country Group B countries (GBS); Section 740.6, Technology and software under restriction (TSR); Section 740.9, Temporary imports, exports, reexports, and transfers (in-country) (TMP); Section 740.10, Servicing and replacement of parts and equipment (RPL); § 740.12, Gift parcels and humanitarian donations (GFT); Section 740.14, Baggage (BAG); Section 740.15, Aircraft and vessels (AVS); Section 740.16, Additional permissive reexports (APR); and Section 740.17, Encryption, commodities, software, and technology (ENC).
9. See Sections 744.17 and 744.7. Also note that pursuant to Section 736.2(b)(3), the development of this rule increases the licensing requirements for reexports of foreign-produced direct product of US-origin technology and software to Yemen.

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