

US Bureau of Industry and Security tightens export controls on China, Russia and Venezuela with new rules on military end users and removal of a civilian license exception

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Executive summary

On 28 April 2020, the United States (US) Department of Commerce, Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) by: 1) expanding the license requirements on exports, re-exports, and transfers (in-country) of items intended for military end use or military end users in China, Russia, and Venezuela; and 2) removing License Exception Civil End Users (CIV) for national security-controlled items on the Commerce Control List (CCL).

Both changes significantly tighten US export controls on the military and intelligence sectors of China, Russia and Venezuela, and will require heightened end use and end user due diligence for companies exporting goods, software and technology subject to the EAR to these countries.

Companies should note the effective date for both rules is 29 June 2020.

Detailed discussion

Currently, BIS imposes export licensing requirements for military "end use" (i.e., **how** the product ultimately will be used) on China and for military "end users" (i.e., **who** will ultimately use the product) in Russia and Venezuela.¹ The new rule further expands these license requirements and will have a particular

effect on China, which BIS considers as having “widespread civil-military integration.”² The rule brings the license requirements under part 744.21 of the EAR for China in line with those for Russia and Venezuela by requiring diligent evaluation not only on end use, but also of end users in China.

The number of US-origin products currently requiring a license to export to military end uses or end users is quite small but will expand significantly under the new rule. First, the rule substantially adds to the list of items subject to the military end use and end user license requirements to now include items within the categories of materials processing, electronics, telecommunications, information security, sensors and lasers and propulsion.³ Second, this 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 described on the United States Munitions List.⁴ Finally, this rule increases the EEI filing requirements for exports to China, Russia and Venezuela.⁵

In addition to the expansion of licensing restrictions on military end use and end users, BIS also removed License Exception CIV. This means that a license now will be required for national-security (NS) controlled items on the CCL to countries of national security concern.⁶ Currently, exporters in the US can send items subject to NS controls without a license (provided certain conditions are met) to civil end users in countries listed in Country Group D:1⁷ that includes,

but are not limited to, China, Russia and Venezuela (plus others). The new rule will require an export license for all exports, re-exports or in-country transfer to these countries for items subject to NS controls, regardless of the product’s civilian end use.

Actions for businesses

Any company involved in the export, re-export or in-country transfer of items subject to the EAR, intended for military end use under the revised definition or military end users in China, Russia, or Venezuela, is encouraged to identify the potential impact of these changes to avoid potential violations. Export license applications for military end use or end users in these countries will be subject to a presumption of denial by BIS. Accordingly, companies should closely analyze the end use and end users in these countries to determine what licensing requirements there will be on transactions.

Additionally, companies involved in any exports of items controlled for NS purposes are encouraged to identify the potential impact of the removal of a License Exception CIV from these transactions.

Finally, it is prudent to recognize the broad and extraterritorial reach of US export controls and consider developing or enhancing an export compliance program to properly monitor export control and sanctions compliance requirements, as well as be able to respond to rapid changes in the regulations.

Endnotes

1. License requirements on military end use to China date back to 2007, and for military end users in Russia and Venezuela to 2014. Examples of prohibited end uses include nuclear, weapons of mass destruction and use of microprocessors for military use. The EAR's current definition of military end users includes the army, navy, marines and coast guard, as well as the police, national guard and government intelligence organizations. See 85 FR 23459.
2. 85 FR 23459.
3. Id. Specifically, this rule adds the following Export Control Classification Numbers (ECCNs): 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 included in Supplement No. 2 to part 744.
4. Id. The United States Munitions List can be found at 22 CFR 126.1. To support compliance of these increased licensing requirements, this rule relocates the current license requirement for items described in a ".y" paragraph of a "600 series" or 9x515 ECCN from part 744.21 to the License Requirements sections of the relevant ECCNs on the CCL. This relocation will retain the intended license requirement for 600 series and 9x515 items to China, Russia and Venezuela and assign the regional stability (RS) reason for control.
5. Current filing provisions exempt exporters from filing an EEI for shipments valued under US\$2,500 (unless an export license is required) and from entering the ECCN in the EEI when the reason for control is only anti-terrorism (AT). This rule revises these provisions and requires an EEI filing for all items destined for China, Russia and Venezuela regardless of value, unless the shipment is eligible for License Exception GOV. Additionally, even if a license is not required for shipments to these destinations, the EEI filing must include the ECCN.85 FR 23459.
6. 85 FR 23470.
7. The Commerce Country Groups are found at Supplement 1 to Part 740 of the Export Administration Regulations.

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