



ALERTS

U.S. Tightens Export Controls On China, Russia And Venezuela

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Highlights

The U.S.'s expanded rules on military end users and end uses require increased diligence when exporting certain controlled items and technology to China, Russia and Venezuela

Changes are intended to address rise of "civil-military integration" in countries of national security concern

The proposed rule would remove an exception that currently permits certain countries posing national security concerns to receive reexports of controlled items without a license

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) has published two final rules and one proposed rule amending the Export Administration Regulations (EAR).

These rules are intended to align the agency's U.S. export controls with the current administration's national security strategy and address specific concerns regarding civil-military integration in countries like Russia, Venezuela and, in particular, China.

The final rules – regarding [expansion of existing rules restricting the](#)

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[export, reexport and transfer of items](#) for military end uses and military end users (MEUs) and [elimination of a license exception](#) for civil end users – will be effective June 29, 2020.

The agency is seeking and [accepting comments](#) on the proposed EAR rule for modifying the license exception on additional permissive reexports until June 29.

More Restrictions on Military End Uses and Military End Users

The EAR currently requires a license for export, reexport or in-country transfer of certain items intended for military end use in China, Russia and Venezuela. The current rules define the term “military end use” to mean the “development,” “production” or “use” of, or incorporation into, military items, such as weapons and their parts.

Under the new rule, the EAR’s definition of military end use has been expanded to include any item that “supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, ‘development,’ or ‘production,’ of military items.” The new and expanded definition suggests that even exports to entities with an indirect nexus to military end users or uses may be affected. According to BIS, any one of the new definitional elements, standing alone, is sufficient to trigger the licensing requirement, which carries a policy of presumption of denial.

The new rule will also require a license for export to China of certain items to military end users, a requirement that currently only applies to Russia and Venezuela. The new constraints will apply to China, Russia and Venezuela’s national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support military end uses.

As the agency explains, this broader rule will “require increased diligence with respect to the evaluation of end users in China, particularly in view of China’s widespread civil-military integration.”

The rule also expands the range of three Export Control Classification Numbers (ECCNs) and adds 17 ECCNs – in the categories of materials processing, electronics, telecommunications, information security, sensors and lasers, and propulsion – to the list of controlled items subject to the military end use and end user rules. Additionally, it will require exporters to file Electronic Export Information (EEI), including the applicable ECCN, generally for all shipments to China, Russia and Venezuela regardless of value, whereas current rules require EEI filings only for shipments valued over \$2,500.

Due to these changes, exporters to Russia, Venezuela and, especially China, should consider not only reviewing the export classification of its items to determine if any fall within the expanded range of ECCNs, but should also reassess if their internal policies and procedures (including, but not limited to, “know your customer” (KYC) and diligence guidelines) are adequate to ensure compliance with the new rule.

Removal of Exception for Civil End Users

Under this final rule, BIS is removing the license exception called Civil End Users (CIV), which currently permits exports without a license of certain items under national security controls to a list of countries referred to as “Country Group D:1,” which includes China, Russia and Venezuela. Those countries are designated as posing national security concerns.

BIS states that one reason for removing the license exception CIV now is “due to the increasing integration of civilian and military technology development in these countries of concern.” BIS also explains the new rule is a result of previous U.S. government enforcement actions that have uncovered that items of U.S. origin items are being diverted to military end users by purported civil end users in these countries of concern. This signaled that current diligence measures by exporters may have been insufficient in identifying military end uses and users.

Proposed Rule: Modification to License Exception Additional Permissive Reexports

Although not yet final, BIS has published a proposed rule that would modify the license exception for additional permissive reexports (APR). The exception currently permits certain national security-controlled items to be reexported from the EAR’s Country Group A:1 (primarily the Wassenaar participating states) to certain other countries without a license.

The proposed rule change would remove the countries posing national security concerns (i.e., Country Group D:1) from the list of destinations to which these national-security controlled items could be reexported without a license.

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