

Bureau of Industry and Security Imposes Significant Additional Restrictions on Exports to China, Russia, and Venezuela

May 1, 2020

On April 28, 2020, the Department of Commerce's Bureau of Industry Security ("BIS") published three separate rules which, in response to the Administration's conclusion that "civil-military integration" in China is increasing, impose significant additional restrictions on the export of dual-use items to strategic rivals including China, Russia, and Venezuela. These rules, when implemented, will have an especially acute effect on transactions with China. Specifically, consistent with the Administration's conclusion that these countries present national security and other foreign policy concerns, BIS restricted exports, re-exports, and in-country transfers to these destinations by: 1) issuing a [final rule](#) expanding end-use and end-user restrictions related to China by expanding the scope of prohibitions to include "military end-users" in China and expanding the definition of "military end use", among other changes; 2) issuing a [final rule](#) removing a license exception that allows the export of some items to certain countries that present national security concerns, including China and Russia, provided that the end-use was civilian (license exception CIV); and 3) issuing a [proposed rule](#) narrowing the scope of a license exception that allows the re-export of some items that present national security concerns (license exception APR).

These changes, which are largely effective on June 29, 2020, will create additional hurdles in transactions with China, Russia, and Venezuela. Many transactions that were previously authorized under a general license will now require a specific license from BIS. Even transactions that may still be completed without a specific authorization may require significant additional due diligence steps, particularly to ascertain end-users and end-use in China. If your company is currently doing business in these markets, it is important to determine whether these rule changes affect your business and, if so, how to comply with the new regulations.

Final rule increasing restrictions on transactions involving products for military end-use and end-users in China, Russia, and Venezuela

The most important change will have significant effects on the export and re-export of EAR-subject items, including technology, to China by expanding the restrictions related to military end-uses and end-users. The current end-use and end-user controls restrict transactions involving certain enumerated products (i.e., those listed in Supplement 2 to 15 C.F.R. Part 744) that are for a "military end-use" in China, Russia, or Venezuela, or are for a "military end-user" in Russia or Venezuela.[\[1\]](#) End-user and end-use restrictions apply regardless of whether the item would typically require an authorization prior to export based on the item's classification on the Commerce Control List ("CCL"). BIS expanded these restrictions in several ways. First, the final rule adds a "military end-user" restriction to transactions with China. This will likely significantly increase due diligence burdens on

transactions with China, because parties may have to be able to ascertain that the end-user is not involved in the support of restricted “military end-uses.”

Second, the final rule expands the scope of the military end-use restriction, which will apply to all three of China, Russia, and Venezuela. Currently, end-use restrictions apply to transactions in which the item is for the use, development, or production of military items. The final rule expands the scope of this restriction to include an item that “supports or contributes to the operation, maintenance, repair, overhaul, refurbishing, development, or production” of military items. This is designed to capture items that may have a relatively limited supporting role for a military item, where the current restriction can be interpreted to require a more robust relationship between the item involved in a transaction and a military item.

Last, this final rule adds nearly twenty additional Export Control Classification Numbers (“ECCNs”) to Supplement 2, and expands the coverage related to some ECCNs already covered, which currently includes approximate 30 ECCNs, adding ECCNs covering materials processing, telecommunications, and information security, among others.[\[2\]](#)

This rule becomes effective on June 29, 2020.

Final Rule Removing License Exception CIV

License Exception CIV currently authorizes the export, re-export, and transfer of items subject to “NS” controls for civil end-uses and end-users in Country Group D:1,[\[3\]](#) such as China and Russia. The final rule deletes License Exception CIV and will now require individual BIS review of each transaction prior to export of these items in accordance with U.S. export licensing policy.[\[4\]](#)

BIS stated in the final rule that additional guidance regarding the rule is forthcoming. This rule also becomes effective on June 29, 2020.

Proposed Rule Modifying License Exception APR

License Exception APR currently authorizes reexports between and among certain countries, including the re-export of EAR-subject items from most U.S. allies[\[5\]](#) to countries in Country Group D:1 if the item is subject to “NS” controls. This proposed rule would remove that portion of License Exception APR and instead require BIS review and approval of re-exports of NS items to countries such as China and Russia.

BIS requests comments regarding how the proposed rule would potentially impact companies and other stakeholders who currently use or plan to use the License Exception APR. BIS is particularly interested in the volume of transactions and time necessary to complete future transactions affected by the proposed change, as well as other potential business impact. Comments must be submitted to BIS by June 29, 2020.

These significant new restrictions are primarily aimed at and will especially impact trade with China.[\[6\]](#) At a minimum, these new rules will significantly increase due diligence burdens on transactions with China, as the U.S. responds to “civil-military integration” in that market. Parties engaged in transactions with China may be required to seek additional certification from their business partners that items exported will violate the expanded end-use and end-user restrictions.

Further, many exports that would have previously been permissible without specific authorization from BIS will now be subject to BIS licensing requirements. This change may create delays as parties go through the licensing process, and BIS is likely to refuse to authorize transactions where there is insufficient clarity on the national security and foreign policy implications of the proposed

transaction. Companies exporting covered items to China, or using License Exceptions CIV and/or APR should immediately begin preparation to comply with these rules to minimize disruption.

Please contact us if you have questions regarding this rule making or if you would like to discuss compliance strategies.

[1] 15 C.F.R. § 744.21. A military end-user is “the 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’.” 15 C.F.R. § 744.21(g).

[2] The complete list of ECCNs added to the supplement as part of the rule is 2A290, 2A291, 2B999, 2D290, 3A991, 3A992, 3A999, 3B991, 3B992, 3C992, 3D991, 5B991, 5A992, 5D992, 6A991, 6A996, and 9B990.

[3] See 15 C.F.R. Part 740, Supp. No. 1 (Countries include: Armenia, Azerbaijan, Belarus, Cambodia, China, Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Libya, Macau, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam. The exception specifically excludes North Korea.

[4] License Exception CIV authorized exports for approximately 30 ECCNs. These are identified by “CIV: Yes” under the ECCNs heading on the Commerce Control List.

[5] See 15 C.F.R. Part 740, Supp. No. 1.

[6] Venezuela is already subject to significant economic sanctions administered by the U.S. Office of Foreign Assets Control (“OFAC”), and OFAC recently increased those restrictions.