

## BIS Expands Export, Reexport and Transfer (In-Country) Controls for Military End Use or Military End Users in China, Russia or Venezuela

美国工业安全局扩大对中国、俄罗斯及委内瑞拉军事最终用途或军事最终用户的出口、再出口以及国内转移的管控

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On April 28, 2020, the US Department of Commerce's Bureau of Industry and Security (BIS) published in the Federal Register a Final Rule amending the Export Administration Regulations (EAR), 15 CFR parts 730-774.

2020年4月28日，美国商务部工业与安全局（“工业安全局”）在联邦公报上发布了对《出口管制条例》（15 C.F.R.730-774 部分）的最终修订。

This new rule critically expands the licensing requirements for exports, reexports and transfers (in-country) of items subject to the EAR in three respects: (1) the list of items subject to this end use/end user rule is significantly expanded (i.e., the list of items that normally would not require a license for China, Russia or Venezuela); (2) the rule now applies to military end users in China (not just military end users in Russian and Venezuela); and (3) the term “military end use” now includes any end use that “supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of military items.” Without any clarifications or limitations on this definition, the rule could extent deep into the supply chain to items that are steps away from a military item, but that could indirectly support or contribute to an ultimate military item. For example, this could include the supply of US content for the production of commercial items that are not specially designed for a military application.

新规从以下三方面极大扩展了受《出口管制条例》许可证要求管控的物项的出口、再出口及国内转移：（1）受到该最终用途/最终用户规定约束的物项显著增加（即包括了通常不需要取得许可证的出口至中国、俄罗斯以及委内瑞拉的物项）；（2）该规定适用于中国军事最终用户（而不再仅仅是俄罗斯及委内瑞拉）；（3）“军事最终用途”一词的定义扩大：包括一切最终用于“支持或协助军需物品的运行、安装、维护、修理、检修、翻新、开发或生产。”

工业安全局并未对该定义进行任何澄清或限制，该规定可能贯穿适用于整个供应链上的物项，乃至与军需物品相距甚远但可能间接支持或协助军需物品的物项。

Our publication summarizes the changes in three ways and provides information on the safe harbor period.

本文从三方面总结了新规带来的变化，并提供了关于安全港期限的信息。

### 1. Expanded License Requirements and Review Policy for Items Intended for Military End Use or Military End Users in China, Russia or Venezuela

1. 扩大了为军事最终用途或由军事最终用户在中国、俄罗斯或委内瑞拉使用的物项的许可证要求和审查政策

The definition of “military end user” is unchanged, but the prohibition now applies to military end users in China. Prior to the rule, it only applied to military end users in Russia and Venezuela.

“军事最终用户”的定义没有变化，但现在该禁令同样适用于中国的军事最终用户。在新规前，该禁令仅适用于俄罗斯和委内瑞拉的军事最终用户。

The EAR defines “military end user” to include the army, navy, air force, marines, coast guard, the national guard and police, and government intelligence and reconnaissance organizations. The existing EAR definition of “military end use” refers both to direct use – such as for parts, components or subsystems of weapons and other defense articles – and indirect use – such as weapon design and development, testing, repair and maintenance.

《出口管制条例》将“军事最终用户”定义为包括军队、海军、空军、海军陆战队、海岸警卫队、国民警卫队和警察以及政府情报和侦察组织。现行《出口管制条例》中“军事最终用途”的定义既包括直接使用（例如用于武器和其他国防物品的零件、组件或子系统），也包括间接使用（例如武器设计与开发、测试、维修和保养）。

The new Final 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 (USML) of the International Traffic in Arms Regulations (22 CFR 126.1), or items classified under Export Control Classification Numbers (ECCN) ending in (A018) or under “600 series” ECCNs.

新规扩大了“军事最终用途”的定义，包括了用于支持或协助《国际武器贸易条例》（22 CFR 126.1）下《美国军需物品清单》（USML）中或者出口管制分类号（ECCN）中以A018结尾或“600系列”的军需物品的运行、安装、维护、修理、检修、翻新、开发或生产的物项。

Specifically, the new Final Rule adds the following ECCNs in the categories of materials processing, electronics, telecommunications, information security, sensors and lasers, and propulsion to the list of items subject to license requirements in Supplement No. 2 to part 744: 2A290, 2A291, 2B999, 2D290, 3A991, 3A992, 3A999, 3B991, 3B992, 3C992, 3D991, 5B991, 5A992, 5D992, 6A991, 6A996 and 9B990. This rule also expands the range of items under ECCNs 3A992, 8A992 and 9A991 included in Supplement No. 2 to part 744. The new Final Rule also adopts a review policy of presumption of denial for export, reexport or transfer (in-country) license applications for items intended for military end use or military end users in China, Russia or Venezuela.

具体而言，新规将以下ECCN产品纳入了第744部分补编2中需要许可证要求的物项列表，涉及的物项类别包括材料处理、电子、电信、信息安全、传感器和激光以及推进器：2A290、2A291、2B999、2D290、3A991、3A992、3A999、3B991、3B992、3C992、3D991、5B991、5A992、5D992、6A991、6A996及9B990。新规另行扩大了第744部分补编2中ECCN编码为3A992、8A992及9A991的物项范围。对于为军事最终用途或由军事最终用户在中国、俄罗斯或委内瑞拉使用的物项的出口、再出口或国内转移的许可证申请，新规采用推定拒绝的审查政策。

## 2. New Reason for Control and Associated Review Policy for Regional Stability

### 2. 为以区域稳定为由进行管控及相关审查提供了新理由

This new Final Rule amends the EAR by relocating the existing license requirements for items described in a ".y" paragraph of a "9x515" or "600 series" ECCN to China, Russia or Venezuela from § 744.21 to the "License Requirements" sections of the relevant ECCNs on the Commerce Control List (CCL). The license requirements for "600 series" .y and "9x515.y" items were previously implemented on April 16, 2013 and May 13, 2014, respectively. This new rule does not change the scope of the existing license requirements on "600 series" .y and "9x515.y" items, which were intended to impose a license requirement for all "9x515.y" and "600 series" .y items for export, reexport or transfer (in-country) to China, Russia or Venezuela. Rather, this rule relocates those requirements to the "License Requirements" section in the CCL in order to help the public comply with EAR § 744.21.

新规将原本 ".y" 段中所述的针对中国、俄罗斯及委内瑞拉的ECCN编码为 "9x515" 或 "600系列" 物项的现有许可证要求从第744.21条转移至了《贸易控制清单 (CCL) 》中相关ECCN项下的 "许可证要求"。针对 "600系列" .y项以及 "9x515.y" 项物品的许可证要求分别于2013年4月16日以及2014年5月13日实施。新规并未更改 "600系列" .y项和 "9x515.y" 项物品的现行许可证要求，该要求旨在对所有向中国、俄罗斯或委内瑞拉出口、再出口或国内转移的 "9x515.y" 项和 "600系列" .y项物品施加许可证要求。新规只是将这些要求转移至了《贸易控制清单 (CCL) 》中的 "许可证要求" 以帮助企业遵守《出口管制条例》第 744.21 条。

BIS's position is that such items require a license for export to China, Russia or Venezuela in order to support the US policy of regional stability in those areas. For this reason, BIS has listed regional stability (RS) as the reason for control for the items subject to this new Final Rule.

工业安全局的立场是，此类物项需要许可证以出口至中国、俄罗斯或委内瑞拉，以支持美国在这些地区的区域稳定政策。因此，工业安全局已将区域稳定性 (RS) 作为管控新规下物项的理由。

## 3. Electronic Export Information (EEI) Filing Requirements

### 3. 电子出口信息 (EEI) 备案要求

This new Final Rule revises § 758.1 of the EAR to require filing of EEI in AES for items destined to China, Russia or Venezuela regardless of the value of the shipment, unless the shipment is eligible for License Exception GOV. Currently, the EAR exempts exporters from both filing EEI for many 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). In addition to requiring exporters to file EEI for the abovementioned items regardless of value, the new rule requires exporters to list the correct ECCN in the EEI, regardless the reason for control.

新规修改了《出口管制条例》的第758.1条，要求对运往中国、俄罗斯或委内瑞拉的物项在自动出口系统 (AES) 中进行电子出口信息 (EEI) 备案，无论货值如何，除非该物项属于许可例外下的GOV类别 (政府、国际组织、根据化学武器公约进行的国际视察及国际空间站)。目前，《出口管制条例》豁免出口商对价值低于2500美元的商品进行EEI申报 (除非需要出口许可证)，此外，若物项仅因反恐 (AT) 而受控，出口商无需在EEI申报时填写该物项的ECCN编码。新规不仅要求出口商对上述物品进行EEI申报 (无论其价值如何)，还要求出口商在EEI中列出正确的ECCN编码，无论该物项因何原因被管控。

## 4. Safe Harbor

### 4. 安全港

This new Final Rule will take effect on June 29, 2020. Items affected by this new Final Rule may be exported, reexported or transferred (in-country) to China, Russia or Venezuela without a license, (1) provided that such items were on dock for loading, on lighter, laden aboard an exporting carrier or *en route* on a carrier to a port of export, on June 29, 2020, pursuant to actual orders for export, reexport or transfer (in-country); and (2) provided that such items have been exported, reexported or transferred (in-country) before midnight on July 27, 2020.

新规将于2020年6月29日生效。但如果 (1) 根据实际出口、再出口或国内转移订单，物项已于2020年6月29日在码头装载、装船、由出口承运人装载上船、或已由承运人在途送至出口港口，且 (2) 在2020年7月27日0:00前物项已被出口、再出口或进行国内转移，那么该物项即使受新规影响也可以在没有许可证的情形下出口、再出口至中国、俄罗斯或委内瑞拉或在这些国家境内进行转移。

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Our export controls and sanctions lawyers have the ability to provide advice on the shifting regulatory framework on both sides of the Atlantic. We have extensive experience in advising and representing a wide range of companies and financial institutions in Europe, the US and other jurisdictions on export control and sanctions from a multijurisdictional perspective. Our team is part of our overall International Trade Practice, providing a “one-stop shop” solution to global trade compliance through rapid, professional and tailored advice and compliance tools to fit your business needs and processes.

我们出口管制和制裁团队的律师有能力就欧美不断变化的监管框架提供建议。我们从跨辖区和多领域的角度为欧美和其他各国的众多企业和金融机构提供法律意见，并代表他们处理出口管制和制裁问题。该团队是我们全球国际贸易业务组的成员，可通过快速、专业和量身定制的建议与合规工具，来达成您的业务需求和流程要求。

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