

US – December 2020

On December 23, 2020, the US Department of Commerce, Bureau of Industry and Security (BIS) published in the *Federal Register* a Final Rule that identified 57 Chinese companies and 45 Russian companies as “military end users,” limiting their ability to purchase certain US goods and technology (“MEU List”).

Prior Amendment to MEU Rule

In April 2020, the Commerce Department amended the Export Administration Regulations (EAR), 15 CFR parts 730-774, by expanding the licensing requirements for exports, reexports and transfers (in-country) of items subject to the EAR in three respects:

- The list of items subject to the end use/end user rule was significantly expanded (i.e., the list of items that normally would not require a license for China, Russia or Venezuela)
- The rule expanded the application to military end users in China (not just military end users in Russia and Venezuela)
- The term “military end use” was expanded to include any end use that “supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of military end items”

See our *Trade Practitioner* blog post on the BIS Rule from April 28, 2020, [here](#).

New MEU List Rule

The Final Rule creates a new MEU List and creates a new Supplement No. 7 to part 744 of the EAR. The MEU List consists of entities that have been determined by the US government to be “military end users” for purposes of the “military-use” and “end-user” controls under § 744.21.

Prior to the Final Rule, § 744.21(a) restricted the export, reexport or transfer (in-country) of items listed in Supplement No. 2 to part 744 to China, Russia or Venezuela, without a BIS license if, at the time of the export, reexport or transfer (in-country), a party had “knowledge,” as defined in § 772.1,¹ that the item was intended, entirely or in part, for a “military end use” or “military end user” in China, Russia or Venezuela, as those terms are defined in § 744.21.

¹ Section 772.1 defines “knowledge” as follows: “Knowledge of a circumstance (the term may be a variant, such as ‘know,’ ‘reason to know,’ or ‘reason to believe’) includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person’s willful avoidance of facts. This definition does not apply to part 760 of the EAR (Restrictive Trade Practices or Boycotts).”

Thus, exporters were required to conduct due diligence and make their own determination as to whether the Chinese, Russian or Venezuelan customer or end user qualified as a “military end user.” The creation of the MEU List by the Final Rule now informs exporters, reexporters and transferors that a BIS license is required to export, reexport or transfer any item listed in Supplement No. 2 to part 744 to those entities designated as “military end users” on the new MEU List.

The Final Rule indicates that BIS periodically will issue further Rules in the *Federal Register* that will add, amend or remove entities on the MEU List as it receives requests for advisory opinions, license applications or requests for removal and determines whether an entity meets the definition of a “military end user.” The MEU List is not intended to be exhaustive (BIS recognizes it cannot know or list every military end user). Rather, it is intended to facilitate compliance by exporters, reexporters and transferors when screening their transactions for “military end users” located in China, Russia or Venezuela.

However, BIS further specifies that, while the creation of the MEU List provides knowledge about those designated military end users, the creation of the MEU List does not relieve exporters, reexporters or transferors of their obligation to screen their transactions to ensure compliance with § 744.21. BIS specifically cited parties that might not be identified on the MEU List, but that might have been identified on the list made public pursuant to Section 1237 of the National Defense Authorization Act of Fiscal Year 1999, 50 U.S.C. § 1701 note, and would thus raise a red flag for possible diversion risk to “military end users” or “military end uses.”

The Final Rule states that all entities on the MEU List will have a presumption of denial for any BIS license applications for items specified in Supp. No. 2 to Part 744, in accordance with § 744.21(d) and (e).

The Final Rule also provides a mechanism for parties that have been designated to the MEU List to request removal from or modification to its entry on the list. In order to be considered for removal, the entity needs to specify in its application why it is not a “military end user” or involved in “military end uses.”

Finally, while BIS only identified 57 Chinese companies and 45 Russian companies as “military end users” for this initial tranche, it has reserved a category for Venezuela under the destinations listed for parties identified on the MEU List. However, regarding Venezuelan entities, the Final Rule clarifies that entities of the US-recognized interim Venezuelan government are not considered “military end users” or engaged in “military end uses” for purposes of the EAR.

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ITAR Handbook

Organizations engaged in the trade of items specially designed for military or space applications are encouraged to download our complimentary *ITAR Practitioner's Handbook*, which covers the International Traffic in Arms Regulations (ITAR) and the US Department of Commerce "600 Series."