

On January 15, 2021, the US Department of Commerce’s Bureau of Industry and Security (BIS) published an [Interim Final Rule](#) imposing new restrictions requiring licenses for certain transactions involving “military-intelligence end uses” or “military-intelligence end users” in China, Russia, Venezuela or a country listed in Country Group E:1 or E:2.

It is important to note the Interim Final Rule applies to exports, reexports and transfers (in-country) of items subject to the Export Administration Regulations (EAR), as well as certain transactions involving items that are not subject to the EAR but involving a US Person, which is broader than the military end user rule implemented in 2020 (see our [blog post](#)).

The Interim Final Rule prohibits foreign or US persons, without a license, from exporting, reexporting or transferring (in-country) any items subject to the EAR with knowledge that the items are intended, entirely or in part, for a military-intelligence end use or military-intelligence end user. Again, these restrictions are broader than under the 2020 rule applicable to “military end users” or “military end uses,” which only requires a license for items subject to the EAR included in Supp. No. 2 to the EAR. Additionally, the Interim Final Rule prohibits US Persons from providing “support” to military-intelligence end uses or military-intelligence end users in subject countries without a license, regardless of whether the transaction involves an item subject to the EAR. BIS defines “support” broadly to include:

- Shipping or transmitting, from one foreign country to another foreign country, any item not subject to the EAR with knowledge that such item will be used in or by a military-intelligence end use or military-intelligence end user, including the sending or taking of such item to or from foreign countries in any manner
- Transferring (in-country) any item not subject to the EAR with knowledge that such item will be used in or by any military-intelligence end use or military-intelligence end user
- Facilitating such shipment, transmission or transfer (in-country)
- Performing any contract, service or employment with knowledge that such performance may assist or benefit any military-intelligence end use or military-intelligence end user, including, but not limited to, ordering, buying, removing, concealing, storing, using, selling, loaning, disposing, servicing, financing, transporting, freight forwarding or conducting negotiations in furtherance of such performance

The Final Interim Rule defines a military-intelligence end use to include the design, development, production, use, operation, installation (including on-site installation), maintenance (checking), repair, overhaul, refurbishing of, or incorporation into, items described on the US Munitions List (USML) or classified under ECCNs ending in “A018” or under “600 series” ECCNs, which are intended to support the actions or functions of a military-intelligence end user. Under the Interim Final Rule, military-intelligence end user means any intelligence or reconnaissance organization of the armed services (army, navy, marine, air force or coast guard) or national guard.

Interested parties must file comments on the Interim Final Rule before March 1, 2021.

The Interim Final Rule is set to become effective March 16, 2021, but the Biden Administration could review the Interim Final Rule before that date. If you feel your company might be impacted and have any questions regarding this matter, please contact us.

Contacts

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About Us

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.

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.”