

On July 29, 2024, the US Department of Commerce published in the Federal Register two new proposed rules to amend the Export Administration Regulations (15 CFR parts 730-774, “EAR”) to update and create additional end-use and end-user controls, and US person controls within part 744 of the EAR.

End-use and End-user Based Export Controls, Including US Persons Activities Controls: Military and Intelligence End-uses and End-users (89 FR 60985)

The proposed rule imposes new licensing requirements based on the end-use and end-user, as well as eliminates Supplement 2 that previously limited the application of the MEU rule. The following license requirements will be imposed:

- **MEU Rule** – You may not export, reexport or transfer (in-country) any item subject to the EAR without a license if, at the time of the export, reexport or transfer (in-country), you have “knowledge,” that the item is intended, entirely or in part, for:
 - A “military end-use,” when the “military end-use” occurs in, or the product of the “military end-use” is destined to Macau or a country specified in Country Group D:5
 - A “military end-user,” wherever located, of Macau or a country specified in Country Group D:5

The MEU rule now applies to all items subject to the EAR (not limited to Supplement 2 items), but the term military end-user relates to governmental and quasi-governmental entities only. It also expands the affected country scope to harmonize with the ITAR policy of denial countries.

- **MSEU Rule** – You may not export, reexport or transfer (in-country) any item subject to the EAR specified in any ECCN on the CCL without a license if, at the time of the export, reexport or transfer (in-country), you have “knowledge,” that the item is intended, entirely or in part, for a “military-support end-user,” in Macau or a country specified in Country Group D:5, or wherever located if identified on the Entity List 4 with a footnote 6 designation.

The MSEU rule is a new rule to capture the military end-user removed from the previous definition and now referred to as military-support end-users. The rule expands the affect items to all items on the CCL.

- **IEU Rule** – You may not export, reexport or transfer (in-country) any item subject to the EAR without a license from BIS if, at the time of the export, reexport or transfer (in-country), you have “knowledge” that the item is intended, entirely or in part, for an “intelligence end-user,” wherever located, that is from a country or destination specified in Country Group D or E, but not also listed in A:5 or A:6.

The IEU rule expands the definition of an intelligence end-user.

The proposed rule contemplates the elimination of the MEU list in a future rule, which would move those designations to the Entity List with new footnote designations that will impose new licensing requirement on all exporters and reexporters, depending on how the end-user is designated on the Entity List as follows:

- **Footnote 3 Entities** – You may not export, reexport or transfer (in-country) any item subject to the EAR, including foreign-produced items that are subject to the EAR without a license from BIS if, at the time of the export, reexport or transfer (in-country), you have “knowledge” that the item is intended, entirely or in part, for a Russian or Belarusian “military end-user,” wherever located that is listed on the Entity List with a footnote 3 designation.
- **Footnote 5 Entities** – You may not export, reexport or transfer (in-country) any item subject to the EAR without a license from BIS if, at the time of the export, reexport or transfer (in-country), you have “knowledge” that the item is intended, entirely or in part, for a “military end-user,” wherever located, that is listed on the Entity List with a footnote 5 designation.
- **Footnote 6 Entities** – You may not export, reexport or transfer (in-country) any item subject to the EAR specified in the license requirement column on the Entity List without a license from BIS if, at the time of the export, reexport or transfer (in-country), you have “knowledge” that the item is intended, entirely or in part, for a “military-support end-user,” wherever located, that is listed on the Entity List with a footnote 6 designation.
- **Footnote 7 Entities** – You may not export, reexport or transfer (in-country) any item subject to the EAR without a license from BIS if, at the time of the export, reexport or transfer (in-country), you have “knowledge” that the item is intended, entirely or in part, for an “intelligence end-user,” wherever located, that is listed on the Entity List with a footnote 7 designation.

The following definitions are required to apply these new requirements:

- Military end-user means the national armed services (army, navy, marine, air force or coast guard), the national guard or any person or entity performing the functions of a “military end-user,” including mercenaries, paramilitary or irregular forces. MEU also includes entities designated with a footnote 3 or 5 on the Entity List.
- Military-support end-user means any person or entity whose actions or functions support “military end-uses.” MSEU also includes entities designated with a footnote 6 on the Entity List.
- Military end-use means incorporation occurring outside the US into a defense article described on the U.S. Munitions List (USML) (International Traffic in Arms Regulations); incorporation into items classified under Export Control Classification Numbers (ECCNs) under “600 series” ECCNs; or any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development” or “production,” of defense articles described on the USML, or items classified under ECCNs under “600 series” ECCNs.
- Intelligence end-user means any foreign government intelligence, surveillance or reconnaissance organizations or other entities performing functions on behalf of such organizations. IEU includes entities designated with a footnote 7 on the Entity List

US Persons Activities – 744.6

The proposed rule also would make certain changes to and would clarify the definition of “support” in the “US persons” activities control provision in § 744.6. The proposed rule would move the definition of support from the current paragraph (b)(6) to a new paragraph (a)(1)(i). The definition of “support” would not be changed significantly, except that the new proposed rule would include certain activities that are excluded from the definition of “support.” Specifically, the new rule would exclude the following activities from the definition of “support” in paragraph (a)(1)(ii):

- a. Activities related to items described in § 734.3(b) of the EAR (i.e., items not subject to the EAR)
- b. Activities related to items enumerated on the USML or on the United States Munitions Import List (USMIL) (27 CFR 447.21), to the extent such activities are subject to control under the ITAR

- c. Activities limited to administrative services, such as providing or arranging office space and equipment, hospitality, advertising or clerical, visa or translation services, collecting product and pricing information to prepare a response to a request for proposal, generally promoting company goodwill at trade shows or activities by an attorney that are limited to the provision of legal advice
- d. With respect to the end-uses and end-users in paragraphs (b)(5) through (7) only [military end-users, military-production activities¹ and intelligence end-users, respectively], commercial activities related to the movement of goods by common carriers
- e. Activities conducted for, on behalf or, or in connection with:
 1. A department or agency of the US government, including any lawfully authorized investigative, protective or intelligence activity of a law enforcement or intelligence agency of the US or of a territory, possession, state or district of the US, including political subdivision thereof
 2. Any US government cooperative program, project, agreement or arrangement with a foreign government or international organization or agency that is authorized by law and subject to control by the president, as further described in § 740.11(b)(2)(iii)(B) of the EAR
 3. Any US government foreign assistance or sales program authorized by law and subject to the control of the president as further described in § 740.11(b)(2)(iii)(C) of the EAR
 4. An Acquisition and Cross Servicing Agreement (ACSA) that is executed at the direction of the US Department of Defense as further described in § 740.11(b)(2)(iii)(D)

The list of general prohibitions in paragraphs (b)(4) through (b)(6) also would be amended to include the following activities:

4. The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, refurbishing, shipment or transfer (in-country) of a whole plant to make chemical weapons precursors identified in ECCN 1C350, in or by countries other than those listed in Country Group A:3 (Australia Group)
5. A “military end-user,” as defined in § 744.21(f)(2), in or from a destination specified in Country Group D:5 or Macau, including, but not limited to, “military end-users” designated with a footnote 3 or 5 on the Entity List in supplement no. 4 to this part, and only those “military-support end-users” designated with a footnote 6 on the Entity List in supplement no. 4 to this part

¹ “Military-production activity” would be defined as incorporation into the following types of items or any other activity that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of the following types of items:

1. “600 series” items, including foreign-origin items not subject to the EAR
2. Any other item that is described on the Commerce Control List in other than a “600 series” ECCN, or designated EAR99, including foreign-origin items not subject to the EAR, that you “know” is ultimately destined to or for use by a military end-user, as defined in § 744.21(f)(2); or an intelligence end-user, as defined in § 744.24(f), wherever located, from a destination specified in Country Group D or E, but not also listed in Country Group A:5 or A:6, including, but not limited to, intelligence end-users designated with a footnote 7 on the Entity List in supplement no. 4 to part 744.

“Military-production activities” would not include activities directly related to USML defense articles. It would include, however, activities related to dual-use items which, if located in the US, would be subject to the EAR.

6. A “military-production activity,” when such activity occurs in, or the product of such activity is destined to a country listed in Country Group D:5 or Macau. The term “military-production activity” means incorporation into the following types of items or any other activity that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development” or “production” of the following types of items:
 - i. “600 series” items, including foreign-origin items not subject to the EAR
 - ii. Any other item that is either described on the Commerce Control List in other than a “600 series” ECCN, or designated EAR99, including foreign-origin items not subject to the EAR, that you “know” is ultimately destined to or for use by a “military end-user,” as defined in § 744.21(f)(2)
7. An “intelligence end-user,” as defined in § 744.24(f), wherever located, from a destination specified in Country Group D or E, but not also listed in Country Group A:5 or A:6 (see supplement no. 1 to part 740 of the EAR for Country Groups), including, but not limited to, “intelligence end-users” designated with a footnote 7 on the Entity List in supplement no. 4 of this part.

Of note, the proposed rule would not include specific reference to activities in support of military-support end-users in 744.22. However, paragraph (b)(5) would prohibit the activities of US Persons only when there is knowledge that the support would assist a military-support end-user specifically identified on the Entity List with a footnote 6 designation.

Export Administration Regulations: Crime Controls and Expansion/Update of US Person Controls (89 FR 60998)

The second proposed rule would create new controls for “foreign-security end-users” in new § 744.25. The new rule would define “foreign-security end-users” as:

- Governmental and other entities with the authority to arrest, detain, monitor, search or use force in furtherance of their official duties, including persons or entities at all levels of the government police and security services from the national headquarters or the Ministry level, down to all subordinate agencies/bureaus (*e.g.*, municipal, provincial and regional)
- Other persons or entities performing functions of a foreign-security end-user, such as arrest, detention, monitoring or search, and may include analytic and data centers (*e.g.*, genomic data centers) forensic laboratories, jails, prisons, other detention facilities, labor camps and reeducation facilities
- Entities designated with a footnote 8 on the Entity List in supplement no. 4 to part 744

Under these new controls, a license would be required when a person has knowledge that an item subject to the EAR and listed on the Commerce Control List is intended, entirely or in part, for foreign-security end-users of a country listed in Country Group D:5 or E.

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