

On September 5, 2024, the Bureau of Industry and Security (BIS) issued an Interim Final Rule (IFR) implementing export controls on several semiconductor, quantum and additive manufacturing items, as well as Gate-All-Around Field-Effect Transistor (GAAFET) technology.

This long-awaited rule is largely aimed at preventing China and other foreign adversaries from advancing their artificial intelligence (AI) capabilities, as the targeted technologies are crucial for developing high-performance computing systems essential for AI research and applications. Notably, however, the rule includes a new License Exception Implemented Export Controls (IEC) for countries implementing comparable controls, a likely strategic move to strengthen coordination with key partners.

Broadly, the IFR adds new Export Control Classification Numbers (ECCNs) to the Commerce Control List (CCL), revises existing ECCNs, adds a new license exception to authorize exports and reexports to and by countries that have implemented equivalent technical controls for these newly added items, as well as adds two new worldwide license requirements to the national security and regional stability controls in the Export Administration Regulations (EAR). According to BIS, these controls “are the product of extensive discussions with international partners.”

BIS has characterized the types of items covered in the new controls as follows:

- **Quantum Computing Items** – Quantum computers, related equipment, components, materials, software and technology that can be used in the development and maintenance of quantum computers
- **Advanced Semiconductor Manufacturing Equipment** – Tools and machines that are essential for the production of advanced semiconductor devices
- **Gate All-Around Field-Effect Transistor (GAAFET) Technology** – Technology that produces or develops high-performance computing chips that can be used in supercomputers
- **Additive Manufacturing Items** – Equipment, components and related technology and software designed to produce metal or metal alloy components

Below is a high-level overview of the IFR, published in the Federal Register on September 6, 2024. Public comments on the IFR will be accepted for 60 days following its publication.

Additions to the CCL

- The new rule creates a new class of controls called Implemented Export Control (IEC) items by adding ECCNs where the last three digits are 900-979. These entries are subject to a plurilateral National Security (NS) and Regional Stability (RS) that designate the license requirement as “worldwide” rather than designating NS Column 1 and RS Column 1, as would be normal practice. The difference is that by bypassing the Country Chart and stating “worldwide,” a license is required even for close allies – Canada, UK and Australia. Some other ECCNs with NS controls are also designated as worldwide.
- License applications for export or reexport of the items under these ECCNs destined for locations in Country Group A:1, A:5 and A:6 will be reviewed with a presumption of approval and destinations specified in Country Groups D:1 or D:5 will be reviewed under a presumption of denial.
- These ECCNs are eligible for a new License Exception IEC, but eligible destinations and items are not specified in the rule. Instead, the rule refers to the BIS website to allow BIS to make changes without a normal ruling making process, i.e., without a Federal Register notice. (See <https://www.bis.gov/articles/license-exceptions#license-exception-IEC>).

The rule creates two exceptions to the new licensing requirements for these items. First, as just mentioned, there is a new License Exception IEC. Second, General Order No. 6 is added for exports, reexport and in-country transfers of “Gate all-around Field-Effect Transistor” (“GAAFET”) technology.

- **License Exception Implemented Export Control (IEC)**
 - IEC authorizes exports, reexports and transfers (in-country) in accordance with License Exception IEC Eligible Items and Destinations, as specified on the BIS website for specified countries that have implemented equivalent technical national controls for specific items. The BIS website is incorporated into the rule by reference.
 - IEC is a list-driven license exception such that its availability is stated “Yes” in the applicable ECCN if it can be used. To use this license exception, exporters must confirm availability in the ECCN and check the BIS website for eligible items and destination.

- **General Order No. 6**

- **GAAFET exports, reexports and transfers (in-country)**

– This General License (GL) authorizes the export, reexport or transfer (in-country) of GAAFET “technology” specified in ECCN 3E905 for the “development” or “production” of integrated circuits to end users located in a destination specified in Country Group A:5 or A:6 of supplement no. 1 to part 740 of the EAR when that “development” or “production” began to be performed on, or before the effective date.

- **GAAFET grandfather clause for deemed exports and deemed reexports**

– This GL authorizes deemed exports or deemed reexports of GAAFET “technology” specified in ECCN 3E905 (including for future advancements or versions of the same “technology”) to foreign person employees or contractors already employed by entities as of September 6, 2024, whose most recent country of citizenship or permanent residency is a destination specified in Country Group D:1 or D:5, and who are not prohibited persons under part 744 of the EAR, e.g., not listed on the Entity List (supplement no. 4 to part 744), Unverified List (supplement no. 6 to part 744), Military End-User List (supplement no. 7 to part 744) or listed on the Denied Persons List (<https://www.bis.gov>). BIS notes that for purposes of §§ 742.4(a)(5) and 742.6(a) (10), the employee need not be a permanent and regular employee as that term is defined in § 734.20(d), e.g., they may be newly hired.

- **Quantum deemed exports and deemed reexports –**

This GL authorizes deemed exports or deemed reexports of quantum “technology” and “software” in ECCNs 3D901 (for “software” for quantum items in ECCNs 3A901.b, 3B904), 3E901 (for “technology” for quantum items in 3A901, 3A904, 3B904, 3C907, 3C908, 3C909) and “technology” for quantum items in ECCNs 4D906 or 4E906, to foreign persons whose most recent country of citizenship or permanent residency is a destination specified in Country Group D:1 or D:5, as well as who are not prohibited persons under part 744 of the EAR, e.g., not listed on the Entity List (supplement no. 4 to part 744), Unverified List (supplement no. 6 to part 744), Military End-User List (supplement no. 7 to part 744) or listed on the Denied Persons List (<https://www.bis.gov>). BIS notes that for purposes of §§ 742.4(a)(5) and 742.6(a) (10), the employee need not be a permanent and regular employee as that term is defined in § 734.20(d), e.g., they may be newly hired.

- The GL is subject to certain recordkeeping and end-use and end-user restrictions.

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ITAR Handbook

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