

U.S. Department of Commerce Bureau of Industry & Security

Update on Export Controls under the Export Administration
Regulations (EAR)

October 29, 2024

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Topics Covered

- Overview of Export Controls under Export Administration Regulations (EAR)
- Semiconductor Manufacturing Equipment (SME) and Advanced Computing and Supercomputing (ACS) rules.
- Export Control Measures Against Russia and Belarus.
- AUKUS interim final rule changes.
- Commerce Announces Series of Rules to Modernize Space-Related Export Controls.

ECRA and EAR

- The Export Control Reform Act of 2018 (ECRA) was signed into law on August 13, 2018 (50 U.S.C. 4801–4852).
- BIS is responsible for implementing and enforcing this law, which regulates the export, reexport, and certain transfers of most commercial items (including technology) as well as some less-sensitive military items “subject to the EAR”, in addition to certain activities of U.S. persons.
- Export Administration Regulations (EAR) implement ECRA.

Code of Federal Regulations 15 CFR 730-774

Available on-line:

www.bis.doc.gov

<https://www.ecfr.gov>

“Subject to the EAR”

§§ 734.3-734.5 and § 736.2(b)(3)

- Items in the United States.
- Some items located outside of the United States (De minimis under § 734.4 and supplement no. 2 to part 734, and Foreign Direct Product Rules under § 734.9).
- Activities of U.S. and foreign persons.

“Subject to EAR” does not mean that a license is automatically required

“Subject to the EAR”: All Items In the United States *Except § 734.3(b) as follows:*

- Items subject to the exclusive jurisdiction of another Federal department or agency
 - Example: Foreign Military Sales (FMS) for export.
- Phonograph records, films, newspapers, published books, etc.
- Information & software (excluding encryption under (b) and software” or “technology” for the production of a firearm, or firearm frame or receiver, controlled under ECCN 0A501 that meets the criteria under paragraph (c)) that are **published** (§ 734.7), are **fundamental research** (§ 734.8), are in a **catalogue course or teaching laboratory of an academic institution**, are in **patents** (§ 734.10), are **non-proprietary system descriptions**, or are **telemetry data**.

“Subject to the EAR”: U.S. Persons and Foreign Persons (§ 734.5)

- Certain activities of “U.S. persons” related to proliferation (§ 744.6)
 - Semiconductor Manufacturing Equipment (SME) and Advanced Computing and Supercomputer (ACS) IFRs have expanded § 744.6.
 - Controls expanded by interim final rule (86 FR 4865 of 1/15/21, effective March 16, 2021):
 - to apply even when the items at issue are not subject to the EAR
 - expands the scope of activities subject to chemical and biological weapons and rocket systems and unmanned aerial vehicles end-use controls
 - adds a license requirement on the activities of U.S. persons in connection with foreign military intelligence services
- Activities of U.S. or foreign persons prohibited by any order issued under the EAR.

7/29/24 Proposed rule, End-Use and End-User Based Export Controls, Including U.S. Persons Activities Controls: Military and Intelligence End Uses and End Users (89 FR 60993), proposes additional changes to U.S. persons controls.

Some items outside the United States are “Subject to the EAR”

- Items located outside the United States:
 - U.S.-origin items wherever located.
 - Certain foreign-made items, if:
 - The value of the controlled U.S. content exceeds the *de minimis* percentage;
 - The foreign-produced item is the direct product of certain U.S. technology or software.

One-time *de minimis* report required for technology under supplement no. 2 to part 734.

Foreign-Direct Product (FDP) Rules

- You may **not** without a License or License Exception:

- **No. 3: Export from abroad, Reexport, or Transfer (in-country) foreign- “direct products” subject to the EAR pursuant to §734.9 if such items are subject to a license requirement in part 736, 742, 744, 746, or 764 of the EAR.**

New and expanded FDP rules have played an important role under the EAR, *e.g.*, for the Supercomputers FDP rule, Advanced Computing FDP rule, and Russia/Belarus Military End-User FDP rule.

The FDP Rules

§ 734.9(b) National Security FDP rule

§ 734.9(c) 9x515 FDP rule

§ 734.9(d) “600 series” FDP rule

§ 734.9(e) Entity List FDP rule

- (1) *Entity List FDP rule: Footnote 1*
- (2) *Entity List FDP rule: Footnote 4*

§ 734.9(f) Russia/Belarus/Temporarily occupied Crimea region of Ukraine FDP rule

§ 734.9(g) Russia/Belarus-Military End User FDP rule

§ 734.9(h) Advanced computing FDP rule

§ 734.9(i) “Supercomputer” FDP rule

§ 734.9(j) Iran FDP rule.

What are Deemed Exports and Deemed Reexports

- The EAR defines a deemed export within the definition of export: releasing or otherwise transferring “technology” or source code (but not object code) to a foreign person in the United States. § 734.13(a)(2).
- Deemed reexports are defined in § 734.14(a)(2): releasing or otherwise transferring “technology” or source code subject to the EAR to a foreign person of a country other than the foreign country where the release or transfer takes place (a deemed reexport);
- Such release is “deemed” to be an export to the most recent country of citizenship or permanent residency of the foreign person.
- Situations that can involve release of U.S technology or software include:
 - Tours of laboratories
 - Research, development, & manufacturing activities
 - Foreign students or scholars conducting research
 - Hosting of foreign scientist

Activities that are Not Deemed Reexports are specified in § 734.20

EAR license requirements

- EAR license requirements are based on classification of the item and destinations involved, as well as the end use and end users involved in the transaction.
- CCL-based license requirements do not apply for EAR99 items, so the focus is on the end use and end user restrictions under part 744 and sanctions under part 746. 🌐
- For items classified in ECCNs, the CCL-based license requirements are applicable, so need to be reviewed to determine whether an authorization is required.

Export Controls on “Supercomputers,” “Advanced-node integrated circuits,” and Semiconductor Manufacturing Equipment

Objective: To further protect U.S. national security and foreign policy interests with calibrated controls on exports that would advance China’s military modernization and surveillance efforts.

- The advanced computing integrated circuits controls are critical to impairing China’s further development of weapons of mass destruction, advanced weapons systems and high-tech surveillance systems.
- Advanced artificial intelligence models, trained on advanced computing integrated circuits, can be used to improve the design and use of these systems.
- Advanced semiconductor manufacturing equipment can be used to produce the advanced computing integrated circuits.

Rule History

- First rule:
 - Public Display - October 7, 2022
 - Published: October 13, 2022, (87 FR 62186)
- Second rules (SME & ACS):
 - Public Inspection at OFR Wed., October 18, 2023
 - Effective: November 17, 2023
 - Publication in the FR October 25, 2023
 - SME (88 FR 73424); AC/S (88 FR 73458)
- Correction/Clarification: April 4, 2024 (89 FR 23876)



AC/S and SME IFRs

- Imposed new CCL-based controls under ECCN 3B001 and added new ECCNs 3A090 and 4A090, and added .z paragraphs to 9 ECCNs (3A001.z, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, 5A992.z, 5D002.z, or 5D992.z).
 - Deemed exports and deemed reexports are excluded from these new CCL-based license requirements.
 - License requirements apply to exports, reexports, and transfers (in-country) to the specified destinations.

AC/S and SME IFRs

- Expanded “U.S. person” control under section 744.6.
 - “U.S. persons” need to take into account these expanded controls.
 - Some exclusions included, *e.g.*, for fundamental research.
- Added a new end-use control under section 744.23.
 - Some of these new section 744.23 end-use controls apply to transfers (in-country) when for an entity that is **headquartered in**, or whose **ultimate parent company is headquartered in**, either **Macau** or a destination specified in Country Group **D:5** (*e.g.*, a PRC-headquartered cloud or data server provider located in a destination not otherwise excluded)

Export Control Measures Against Russia and Belarus

- In response to Russia’s February 2022 full-scale invasion of Ukraine, BIS imposed extensive sanctions on Russia under the EAR as part of the final rule, “Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)” (“Russia Sanctions Rule”) (87 FR 12226, March 3, 2022).
- To address Belarus’s complicity in the invasion, BIS imposed similar sanctions on Belarus under the EAR in a final rule, “Implementation of Sanctions Against Belarus” (“Belarus Sanctions Rule”) (87 FR 13048, March 6, 2022).
- During the last two years, BIS has published a number of additional final rules strengthening the export controls on Russia and Belarus, including measures undertaken in coordination with U.S. allies and partners.

§ 746.8 Sanctions against Russia and Belarus

- **License requirements**
- (a)(1) *Items classified in any ECCN on the CCL.*
- (a)(2) *Russia/Belarus/Temporarily occupied Crimea region of Ukraine foreign “direct product” (FDP) rule (§ 734.9(f))*
- (a)(3) *Russia/Belarus-Military End User and Procurement FDP rule (§ 734.9(g))*
- (a)(4) *Oil and Gas —(i) Certain exploration or production of oil or gas. (supp. no. 2 to part 746 + 8 ECCNs)*
- (5) *Industrial Goods.* (supp. no. 4 to part 746)
- (a)(6) *Itemized Items.* (supp. no. 6 to part 746)
- (a)(7) *'Luxury goods.'* (supp. no. 5 to part 746)
- (8) *EAR99 designated software, as specified in (a)(8)(ii).*
- (a)(12) *Exclusions from license requirements and scope of U.S.-origin controlled content (a)(12)(i), (ii), and (iii)(A)*
- **(b) Licensing policy**
- **(c) License exceptions**
- **(d) License applications**

- § 746.6 Temporarily occupied Crimea region of Ukraine and covered regions of Ukraine.
- Supp. no. 7 to part 746—Items That Require a License Under § 746.6 When Destined to the Temporarily Occupied Crimea Region of Ukraine, Under § 746.7 When Destined to Iran, and Under § 746.8 When Destined to Russia or Belarus.

Revisions Implemented through the AUKUS Rule

- “Export Control Revisions for Australia, United Kingdom, United States (AUKUS) Enhanced Trilateral Security Partnership” published April 19, 2024 (89 FR 28594)
- Removal of *list-based license requirements*, *expansion of license exception eligibility*, and *removal of end-use and end-user-based license requirements*.

<https://www.federalregister.gov/documents/2024/04/19/2024-08446/export-control-revisions-for-australia-united-kingdom-united-states-aukus-enhanced-trilateral>

Commerce Announces Series of Rules to Modernize Space-Related Export Controls

On October 23, 2024, BIS published 3 rules (1 Final Rule, 1 Interim Final Rule, and 1 proposed rule – to modernize BIS’s space related exports controls under the EAR.

In a [Final Rule](#), BIS is removing license requirements for exports of certain items involving remote sensing or space-based logistics, assembly, or servicing spacecraft destined for Australia, Canada, and the United Kingdom.

In an [Interim Final Rule](#), BIS is removing license requirements for exports of certain spacecraft components to over 40 allies and partners worldwide, reducing licensing requirements for the least sensitive components for most destinations, and broadening license exceptions to support additional National Aeronautics and Space Administration (NASA) cooperative programs.

In a [Proposed Rule](#) published in concert with the [Department of State](#), BIS outlines initial proposals to transfer jurisdiction of certain space-related defense articles that no longer provide a critical military or intelligence advantage from the U.S. Munitions List (USML) maintained by the Department of State to the Commerce Control List. Examples include spacecraft capable of refueling other spacecraft and spacecraft capable of autonomous collision avoidance.

Comments on the Interim Final Rule and on the Department Commerce and State proposed rules are due by November 22, 2024.

Contact Information

- **Department of Commerce, Bureau of Industry and Security (BIS):**
 - (202) 482-4811 - (located in Washington, DC)
 - (949) 660-0144 - (located in Newport Beach, CA)
 - (408) 998-8806 - (located in San Jose, CA)
 - E-mail: ECDOEXS@bis.doc.gov
(General questions about the EAR)
 - E-mail: RPD2@bis.doc.gov
(Regulatory interpretation, Advisory Opinions or to submit *De minimis* Reports)
- Anti-boycott Compliance Advice Line - (202) 482-2381
- Encryption – (202) 482-0707
- **Department of State, Directorate of Defense Trade Controls (DTC):**
 - Licenses defense services and defense (munitions) articles.
 - (202) 663-1282
- **Department of the Treasury, Office of Foreign Assets Control (OFAC):**
 - OFAC administers and enforces economic and trade sanctions against targeted foreign countries, terrorism sponsoring organizations, and international narcotics traffickers.
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