



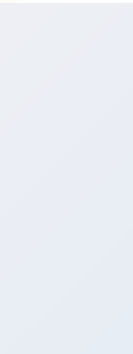
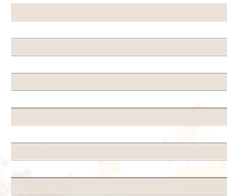
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U.S. Export Controls Update: Review of Important Recent Changes to the EAR and ITAR

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Agenda

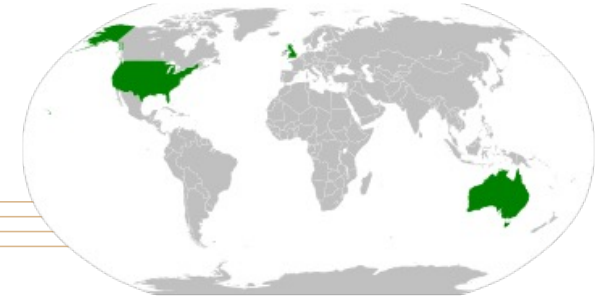
- Review of changes to the International Traffic in Arms Regulations
- Review of changes to the Export Administration Regulations
- Key Enforcement Actions from 2024
- What to expect under the Trump Administration
 - Enforcement priorities
 - Potential areas of focus for regulatory changes



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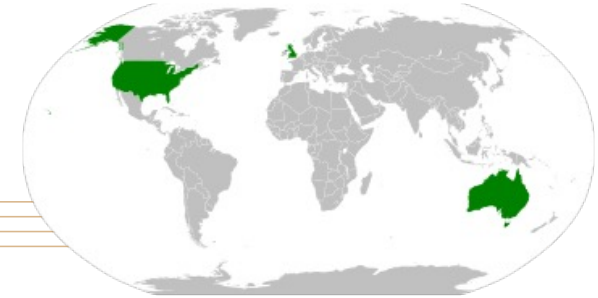
ITAR Regulatory Developments

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- On August 20, 2024, the Department of State published an interim final rule in the Federal Register that took effect on September 1, 2024.
- Amends the ITAR to create an exemption for certain exports, reexports, retransfers, and temporary imports of defense articles and defense services, and certain brokering activities between or among authorized users within Australia, the United Kingdom, and the United States.
- The exemption is available for all defense articles and defense services, except for those contained on the excluded technology list in Supplement No. 2 to part 126 of the ITAR.
- The rule also introduces a provision to allow for certain transfers of classified defense articles to certain dual nationals, codifies an expedited license review process (within 30-45 days, to the extent practicable) for Australia, the United Kingdom, and Canada when the AUKUS exemption is not available, and makes changes to other ITAR sections to support the exemption.
- Authorized Locations: transfers must be to or within the physical territories of Australia, the United Kingdom, and the U.S.

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- Authorized User: Per § 126.7(b)(2), the transferor and recipient(s) must be:
 - U.S. persons registered with the Directorate of Defense Trade Controls (DDTC) and eligible under § 120.16;
 - A U.S. government department or agency; or
 - UK or Australian Authorized Users identified in the Defense Export Control and Compliance System (DECCS) (after having completed an enrollment process initiated through their respective national-level governments).
 - Non-U.S. Person Brokers must be registered with DDTC pursuant to § 129.3, eligible under § 120.16, and identified on the Authorized User List in DECCS.
- Large number of highly technical carve outs from the scope of AUKUS (Excluded Technology List or “ETL” found in Supplement No. 2 to Part 126

U.S. Munitions List Updates

- DDTC removed certain high-energy storage capacitors from Cat. XI(c)(5) of the USML (Effective on April 24, 2024)
 - Purpose was to remove from USML Cat. XI certain high-energy storage capacitors assessed to have broad commercial application, are available internationally, and do not provide a critical military or intelligence advantage to the U.S.
 - Voltage threshold increased from greater than 125 volts to greater than 500 volts
 - Now uses the term “rated voltage” instead of the previous “capable of operating” standard
 - Added definition of “rated voltage”: value, based on the capacitor's design, testing, and evaluation, that describes the maximum amount of continuous voltage, at an operating temperature less than or equal to 85 degrees Celsius (85 °C), which will not damage the capacitor. Rated voltage does not include short-term transient or surge operating conditions.
- On November 26, 2024, the Department extended the temporary modification of the Note to paragraph (h)(1) of USML Category VIII such that parts, components, accessories, and attachments specially designed for aircraft identified in paragraph (h)(1) are not released from that paragraph due to their use in the KF-21 aircraft.
 - The original temporary modification was issued on December 4, 2023, with an original expiration of December 1, 2024.
 - This subsequent extension will keep the temporary modification in place through December 1, 2026.



U.S. Munitions List Updates

- On January 17, 2025, the State Department published an interim final rule that, with an effective date of Sept. 15, 2025, will amend §§ 121.0 and 121.1 of the ITAR by revising certain USML definitions, adding new definitions, and revising certain parts of USML Categories II, IV, V, VII through XIV, and XIX through XXI.
- Consolidated definitions and abbreviations previously found in various places in the USML into Section 121.0
- **USML Category IV:** paragraph (c) is revised and (c)(1) and (2) are added to more clearly describe the equipment controlled therein (including IEDs)
- **USML Category VIII:** various clarifying edits; addition of the MQ-25 and the RQ-170 to the list of aircraft in paragraph (h)(1)(i)
- **USML Category X:** amended by adding a new paragraph (b) to control exoskeletons under development for DoD; amended to align body armor protection levels with the most recent NIJ standard, 0123.00
- **USML Category XI:** amended to decontrol certain anti-jam antennas that are increasingly commercially available by lowering the beam switching speed criterion in paragraph (c)(10)(i) from 50 milliseconds down to one millisecond, and the convergence time criterion in paragraph (c)(10)(ii) is revised from one second down to one millisecond; in addition, DDTC removed Controlled Reception Pattern Antennas (CRPAs) for Position, Navigation, and Timing (PNT)
- **USML Category XIII:** amended to align armor protection levels with the most recent NIJ standard, 0123.00; revised to add specific fluids to paragraph (j)(3) that were developed for one or more critical military applications
- **USML Category XIV:** Additional nerve agents and a defoliant (used in Agent Orange) have been added
- **USML Category XIX:** amended to add specific DoD-funded developmental aircraft engines, as well as their specially designed parts, components, accessories, and attachments. Specifically, XT900, XA100, XA101, XA102, XA103, and T901 engine hardware
- **USML Category XX:** amended to add paragraphs (a)(9) and (10) to control two new classes of uncrewed, untethered vessels and vehicles equipped with anti-recovery features, and larger systems with significant range or endurance

Updates to Activities that are NOT Exports

- On August 15, 2024, State Department published a final rule to amend ITAR section 120.54 to expand the definition of “activities that are not exports, reexports, retransfers, or temporary imports,” subject to certain conditions, to include:
 - 1. The taking of a defense article subject to the reexport or retransfer requirements of this subchapter on a deployment or training exercise outside a previously approved country, provided:
 - (i) There is no change in end-use or end-user with respect to the defense article;
 - (ii) The defense article is transported by and remains in the possession of the previously authorized armed forces of a foreign government or United Nations military personnel; and
 - (iii) The defense article is not being exported from or temporarily imported into the United States; and
 - (2) The transfer of a foreign defense article previously imported into the United States that has since been exported from the United States pursuant to a license or other approval under this subchapter, provided:
 - (i) The foreign defense article was not modified, enhanced, upgraded, or otherwise altered or improved in a manner that changed the basic performance of the item prior to its return to the country from which it was imported or a third country;
 - (ii) A U.S.-origin defense article was not incorporated into the foreign defense article; and
 - (iii) The defense article is not being exported from or temporarily imported into the United States.
- Effective on September 16, 2024

Compliance Findings & Recommendations for Universities & Research Centers

- In April 2024, DDTC issued a white paper providing general findings from visiting various universities and research centers that are engaged in ITAR-controlled activities. The paper provides general compliance commendations, including “best practices” and recommendations.
- Recommendations include:
 - Conduct risk assessment and establish procedures to identify risk areas related to ITAR-controlled activities
 - Export compliance office should report directly to the Office of the General Counsel, President, or similar level of authority
 - Consolidate DDTC registrations, if possible
 - Establish mandatory training for researchers involved with ITAR-controlled projects & provide training on distinction between fundamental research & controlled research
 - Meet regularly with Defense Technology Security Administration (DTSA) and DDTC to provide overview of ITAR-controlled research and ask questions
 - Enhance identification and control of defense services
 - Implement automated tracking of export authorizations and exports
 - Enhance physical security
 - Involve Engineering early in export jurisdiction and classification process



Changes to List of Embargoed Countries

- On March 15, 2024, the State Department added **Nicaragua** to ITAR Section 126.1
 - Growing concerns regarding Nicaragua's continuing dismantling of democratic institutions;
 - attacks on civil society; and
 - increased security cooperation with Russia, to include support of Russia's full-scale invasion of Ukraine
- On September 27, 2024, the State Department continued the suspension of the Republic of **Cyprus** from the list of countries subject to an arms embargo (i.e., Section 126.1 of the ITAR)
 - Extension granted through September 30, 2025



DDTC Registration Fees

- On Dec. 10, 2024, the State Department published changes to the 3 tiers of DDTC registration fees. The new fees went into effect on January 9, 2025

Tier 1: Annual flat fee of \$3,000

- First-time registrants (Manufacturers, Exporters and stand-alone Brokers).
- Registration renewals for stand-alone Brokers.
- Registrants who did not receive an approved license or other authorization during the 12-month period, ending 90 days before the current registration expires.
- Registrants who are wholly exempt from income tax pursuant to 26 U.S.C. 501(c)(3), such as non-profit organizations.
- Tier 1 Discount: Effective Jan. 9, 2025, DDTC is instituting a 1-year initiative for qualifying Tier 1 registrants who may petition DDTC for a \$500 discount, for a total registration fee of \$2,500

Tier 2: Annual flat fee of \$4,000

- Registrants who received 5 or fewer favorable determinations during the 12-month period ending 90 days before the current registration expires

Tier 3: A Calculated Fee

- Registrants who received more than 5 favorable determinations during the 12-month period ending 90 days before the current registration expires.
- The fee calculation formula is: $\$4,000 + (\$1,100 \times \text{the total \# of approved licenses or other authorizations over 5})$
- If the fee calculated using the formula above is greater than 3 percent of the total value of all approvals, the fee will be revised to either 3 percent of the total value of all applications or \$4,000, whichever is greater.
- Some registrants may be eligible for a discounted fee if they have a large number of low value applications.

Increases in Civil Monetary Penalties

- On January 10, 2025, the Department of State published a final rule to adjust the civil monetary penalties at section 127.10 of the ITAR as part of a larger rule amending penalties for all regulatory provisions maintained and enforced by the Department of State.
- The revised amounts for violations of those sections will apply to those penalties assessed on or after January 10, 2025, regardless of the date on which the underlying facts or violations occurred.

FY 2025 Multiplier: 1.02598		
Citation in 22 CFR	FY 24 penalties	New FY 25 max penalties
§ 35.3	\$13,946 up to \$418,405	\$14,308 up to \$429,275.
§ 103.6(a)(1) <i>Prohibited Acts</i>	\$46,901	\$48,119.
§ 103.6(a)(2) <i>Recordkeeping Violations</i>	\$9,380	\$9,624.
§ 127.10(a)(1)(i)	the greater of \$1,238,892 or the amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed	the greater of \$1,271,078 or the amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed.
§ 127.10(a)(1)(ii)	\$1,028,988, or five times the amount of the prohibited payment, whichever is greater	\$1,055,721, or five times the amount of the prohibited payment, whichever is greater.
§ 127.10(a)(1)(iii)	\$1,224,787	\$1,256,607.
§ 138.400 <i>First Offenders</i>	\$24,100	\$24,726.
§ 138.400 <i>Others</i>	\$24,496 up to \$244,958	\$25,132 up to \$251,322.



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EAR Regulatory Developments

Commerce Control List (CCL) Updates

- Effective January 16, 2025, BIS issued an interim final rule imposing controls on certain laboratory equipment and related technology to address dual use concerns about technology
- The new controls cover:
 - (1) flow cytometers and cell sorters that are “specially designed” for spectral analysis or contain 26 or greater detectors or channels
 - (1) high parameter flow cytometers are used to simultaneously measure several characteristics of individual cells or particles;
 - (2) moving high-parameter flow cytometers and certain mass spectrometry equipment from their current control under ECCN 3A999 into new ECCN 3A069
 - (2) liquid chromatography mass spectrometers “specially designed” for top-down proteomics
 - (1) analytical instruments used to elucidate and quantify unknown biomolecular structures, characterize molecules, and aid in the study of molecular interactions.



Commerce Control List (CCL) Updates

- Effective October 23, 2024, BIS issued an interim final rule reduces license requirements on less sensitive spacecraft and related items to reflect the close relations with certain countries to better facilitate space collaboration
- In ECCN 9A515 and related 9E515, the IFR revises the License Requirements section under the NS1 and RS1 Control entries to exclude 9A515.x from the scope of the license requirements and adds an NS2 and RS2 Control for ECCN 9A515.x.
- Adding new 9A004.r for in-space habitats to the exclusion from 9A515.a.
- Addition of 9A515.w to impose NS1 and RS1 license requirements on “parts,” “components,” “accessories,” and “attachments” that would have otherwise been classified under 9A515.x but warrant a more restrictive NS1 and RS1 license requirement.
- Removal of ECCN 9A604.a and .b to clarify the jurisdictional control status of certain thermal batteries. The USML also included control parameters for the same types of thermal batteries, which resulted in confusion
- Addition of License Exception GOV Paragraph (e) Eligibility for ECCN 9A004 when needed in Russia on short notice for launches to the International Space Station
- In addition, on the same day, BIS issued a rule removing controls (in ECCN 9A515.a.1, a.2, a.3, a.4, .g, and ECCN 9E515.f) for spacecraft and related items involving remote sensing or space-based logistics, assembly, or servicing for exports and reexports to Australia, Canada, and the UK.



Commerce Control List (CCL) Updates

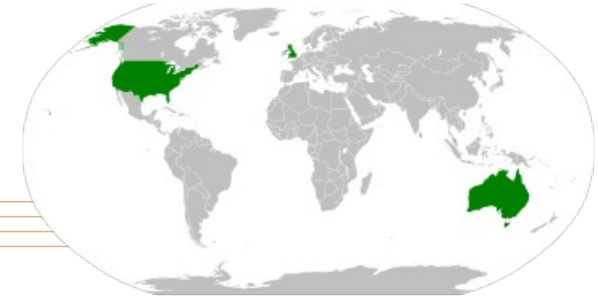
- Effective September 6, 2024, BIS implemented through an IFR export controls on several **semiconductor, quantum, and additive manufacturing items** for national security and foreign policy reasons.
- New controls on:
 - Additive manufacturing equipment, designed to produce metal or metal alloy components (ECCN 2B910)
 - ✦ “Software”, not specified elsewhere, “specially designed” or modified for the “development” or “production” of equipment specified in ECCN 2B910. (ECCN 2D910)
 - “technology”, not specified elsewhere, for the “development” or “production” of coating systems (). (ECCN 2E903)
 - “Technology”, not specified elsewhere, “specially designed” or modified for the “development” or “production” of equipment specified in ECCN 2B910. (ECCN 2E910)
 - In connection with quantum processors, adds 3A901.a to the CCL to control CMOS integrated circuits, not specified by 3A001.a.2, designed to operate at an ambient temperature equal to or less (better) than 4.5 K (−268.65 °C).
 - Cryogenic cooling systems and components (ECCN 3A904)
 - Equipment for manufacturing of specified semiconductor devices, materials, or related equipment, and “specially designed” “components” and “accessories” therefor. (ECCN 3B001)
 - Scanning Electron Microscope (SEM) equipment designed for imaging semiconductor devices or integrated circuits (ECCN 3B903)
 - Cryogenic wafer probing equipment (ECCN 3B904)
 - Hetero-epitaxial materials consisting of a “substrate” having stacked epitaxially grown multiple layers. (ECCN 3C001)
 - Epitaxial materials consisting of a “substrate” having at least one epitaxially grown layer and containing other specified materials. (ECCN 3C907)
 - Fluorides, hydrides, chlorides, of silicon or germanium, containing other specified materials. (ECCN 4A906)
 - Silicon, silicon oxides, germanium or germanium oxides, containing any other specified materials. (ECCN 3C909)
 - Quantum computers and related “electronic assemblies” and “components” therefor. (ECCN 4A906)
- New License Exception: Implemented Export Controls (IEC) to authorize exports and reexports to and among, and transfers (in-country) within, specified countries that have implemented export controls for items subject to the NS worldwide controls in newly added § 742.4(a)(5) and the RS worldwide controls in newly added § 742.6(a)(10).
 - Currently these items include the following ECCNs: 2B910, 2D910, 2E903, 2E910, 3A901, 3A904, 3B001.c.1.a, 3B001.c.1.c, 3B001.q, 3B903, 3B904, 3C907, 3C908, 3C909, 3D001 (for 3B001.c.1.a, 3B001.c.1.c, 3B001.q), 3D002 (for 3B001.c.1.a, 3B001.c.1.c), 3D901, 3D907, 3E001 (for 3B001.c.1.a, 3B001.c.1.c, 3B001.q), 3E901, 3E905, 4A906, 4D906, and 4E906

Commerce Control List (CCL) Updates

- Effective March 8, 2024, BIS revised license requirements for certain cameras, systems, and related components. In addition, BIS added controls on certain cameras that are not already controlled in new ECCN 6A293, which is a classification for temporary controls for which BIS is seeking multilateral agreement.
- BIS no longer requires a license for the cameras, systems, and related components described in ECCNs 0A504 (incorporating commodities controlled by ECCNs 6A002 or 6A003, or commodities controlled by 6A993.a that meet the criterion of Note 3.a to 6A003.b.4), 6A002, 6A003 (other than 6A003.a.3, 6A003.a.4, and 6A003.a.6), or 6A993.a (having a maximum frame rate equal to or less than 9 Hz and thus meeting the criteria of Note 3.a to 6A003.b.4), or 8A002.d when the items are intended to be used by a military end user in Country Group A:1 countries.
- New control will capture cameras that are not controlled by either ECCNs 6A003 or 6A203 and have the following characteristics:
 - (1) minimum exposure time of 1 microsecond or faster; and
 - (2) a throughput of 13.43 Giga Pixels per second or greater when taken at 205,000 frames per second.



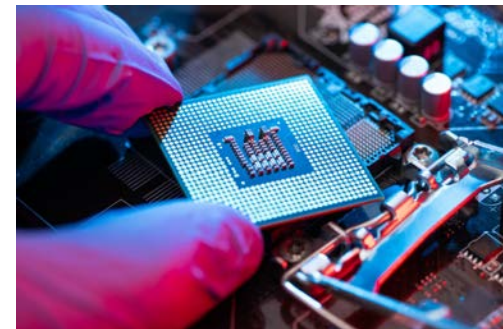
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- Effective April 19, 2024, BIS removed license requirements, expand the availability of license exceptions, and reduce the scope of end-use and end-user-based license requirements for exports, reexports, and transfers (in-country) to or within Australia and the UK
- Australia and the UK will have nearly the same licensing treatment under the EAR as Canada
- Removed license requirements for national security column 1 (NS1), regional stability column 1 (RS1), and missile technology column 1 (MT1) reasons for control for Australia and the UK
 - “600 series” items will no longer require a license to Australia or the UK
- BIS is removing military end-use and end-user-based license requirements for exports, reexports, and transfers (in-country) of certain cameras, systems, or related components
- BIS is revising its treatment of significant items (SI) (*i.e.*, hot section technology for the development, production or overhaul of commercial aircraft engines, components, and systems) controlled under ECCN 9E003.a.1 through a.6, a.8, .h, .i, and .l, and related controls to allow these items to be exported, reexported, or transferred (in-country) to or within Australia and the UK without a license

Semiconductor Controls

- January 15, 2025 IFR on the Implementation of Additional Due Diligence Measures for Advanced Computing Integrated Circuits; Amendments and Clarifications; and Extension of Comment Period
- Revises License Exceptions AIA and ACM;
- New supplement nos. 6 and 7 to part 740, including lists of approved IC designers and approved “OSAT” companies, as well as authorized IC designers in specified destinations;
- New reporting requirements for “front-end fabricators” producing advanced computing ICs for authorized IC, as well as a new “Know Your Customer” (KYC) vetting form;
- Application process for additions, modifications, and removals from the approved IC designer and approved “OSAT” company lists;
- New Definitions;
- Revisions to ECCNs to clarify scope of ECCN 3A090; and
- Amendments and clarifications to the EAR as set forth in the FDP IFR.



Semiconductor Controls

- IFR effective on December 2, 2024
- Adds new controls for certain semiconductor manufacturing equipment and related items
- Creates new Foreign Direct Product (FDP) rules for certain commodities to impair the capability to produce “advanced-node integrated circuits” (“advanced-node ICs”) by certain destinations or entities of concern,
- Adds new controls for certain high bandwidth memory important for advanced computing,
- Clarifies controls on certain software keys that allow for the use of items such as software tools.



Framework for AI Diffusion



- On January 15, 2025, BIS published an interim final rule that amends the EAR and aims to strengthen controls on the global diffusion of certain model weights of advanced dual-use AI models and large clusters of advanced computing integrated circuits (ICs) for national security, regional stability and anti-terrorism.
 - Note: these changes are effective as of January 13, but the compliance date is not until May 15.
- New controls on advanced integrated circuits (ICs) under ECCNs 3A090.a, 4A090.a, and the corresponding .z paragraphs will require an export license for all destinations starting May 15. BIS is also introducing a new licensing policy that determines who can receive chips using country-based total processing performance (TPP) allocations.
- BIS imposed controls on model weights, or parameters, of any closed-weight AI model—i.e., a model with weights that are not published (i.e., generally accessible to the public without restrictions on further dissemination) —that has been trained on more than 10^{26} computational operations. (ECCN 4E091)
- Model weights are “numerical parameter[s] within an AI model” that “help determine the model’s outputs in response to inputs.”
 - ‘Parameters’ refers to any value learned during training (e.g., network weights, biases, etc.).
 - ‘Operations’ refers to mathematical operations used for pre-training and any subsequent training, such as fine-tuning the pre-trained model, but does not include the collection and curation of the input training data.
- New license exceptions: Artificial Intelligence Authorization (License Exception AIA), Advanced Computing Manufacturing (License Exception ACM), and Low Processing Performance (License Exception LPP).
- AI Authorization (AIA) Countries : These countries, identified in new Supplement No. 5 to Part 740, are eligible for more favorable licensing treatment under the new export controls: Australia, Belgium, Canada, Denmark, Finland, Germany, Ireland, Italy, Japan, the Netherlands, New Zealand, Norway, South Korea, Spain, Sweden, Taiwan, and the UK.

License Exception MED



- On April 25, 2024, BIS announced a final rule for a new license exception for “medical devices” under § 740.23 of the EAR (“License Exception MED” or “MED”). License Exception MED is available as of April 29, 2024.
- MED authorizes the export, reexport, and/or transfer of **EAR99** “medical devices,” or “parts,” “components,” “accessories,” and “attachments” that are exclusively for use in such medical devices to or within Russia, Belarus, and the Crimea, so-called Donetsk People’s Republic, and so-called Luhansk People’s Republic regions of Ukraine.
- The license exception does not cover the export, reexport, and or/transfer of medical devices to “proscribed persons,” a “production” “facility,” or when an exporter has “knowledge” that the item is intended to develop or produce other items.
- If exporting medical device “parts,” “components,” “accessories,” and “attachments”:
 - The item may be provided solely to replace a broken or nonoperational “part,” “component,” “accessory,” or “attachment” for use in or with a “medical device,” or the replacement is necessary and ordinarily incident to the proper preventative maintenance of such a “medical device;” and
 - The quantity of replacement “parts,” “components,” “accessories,” and “attachments” that are exported, reexported, transferred (in-country), and stored does not exceed the number of corresponding operational items currently in use in or with the relevant medical devices.
- In addition, there are specific compliance requirements to use this license exception, including the establishment of a system of distribution to avoid delivering medical devices to unauthorized persons, and a requirement to verify the effectiveness of such system of distribution.

Firearms License Requirement Updates



- BIS issued an IFR with an effective date of May 30, 2024, which
 - identifies semi-automatic firearms under new ECCNs;
 - adds additional license requirements for Crime Control and Detection (CC) items, thereby resulting in additional restrictions on the availability of license exceptions for most destinations; and
 - amends license review policies so that they are more explicit as to the nature of review that will accompany different types of transactions and license exception availability
- To better track the export, reexport, transfer (in-country) and diversion of different types of firearms and related items, the IFR added four new ECCNs to the CCL.
 - ECCN 0A506 controls semi-automatic rifles,
 - ECCN 0A507 controls semi-automatic pistols,
 - ECCN 0A508 controls semi-automatic shotguns, and
 - ECCN 0A509 controls certain “parts,” “components,” devices, “accessories,” and “attachments” for items controlled under ECCNs 0A506, 0A507, and 0A508.
- BIS is applying or maintaining CC column 2-based controls on most items under ECCNs 0A501, 0A502, 0A504, 0A505, 0D501, 0D505, 0E501, 0E504, and 0E505
- Exporters must also now obtain a copy of an import certificate or equivalent document (if required by the government of the importing country) before the exporter can use any license exception for items controlled under ECCNs 0A501, 0A502, 0A504, 0A505, 0A506, 0A507, 0A508, or 0A509.

Voluntary Self-Disclosure Process Updates

- Effective, September 16, 2024, BIS revised § 764.5 of the EAR regarding the procedures for submitting voluntary self-disclosures (VSDs) and supplement No. 1 to part 766, which includes guidance on charging and penalty determinations in settlement of administrative enforcement cases.
- These revisions implement certain policies related to the VSD process that BIS has announced in policy memoranda since 2022.
- Dual-track VSD processing
- Minor or Technical Violations Track- rule adds a new paragraph regarding disclosure of minor or technical violations, defined as any violation that does not include aggravating factors.
 - through a “fast-track” process that will be resolved in 60 days, either through a no-action letter or a warning letter. For such apparent violations, firms may submit by email an abbreviated narrative report in lieu of more burdensome narrative and documentation requirements previously set forth in Sections 764.5. For minor or technical violations, the rule also removes the recommendation that firms conduct a five-year lookback, unless OEE suspects that aggravating factors are present. Firms may also “bundle” multiple minor or technical apparent violations into a single submission, if such apparent violations occurred within the prior quarter.
- “Significant” Violations Track
 - follow the prior procedures, including submission of a full narrative report.
 - The rule notes that parties unsure whether a disclosure involves a minor or technical violation or a significant violation are advised to follow the procedures for disclosing a significant violation.
- Any person (not just the party submitting a VSD) may notify the Director of OEE that a violation has occurred and seek a GP 10 waiver
- The final rule confirms that BIS will consider a deliberate decision not to disclose a significant violation to be an aggravating factor
- Disclosure of conduct by others that leads to an enforcement action counts as “exceptional cooperation.” BIS will provide cooperation credit for such tips in “a future enforcement action, even for unrelated conduct”

Voluntary Self-Disclosure Process Updates Continued

- Changes to Penalty Guidelines:
 - the rule removes the base penalty (maximum of \$125,000) for non-egregious cases and instead penalties are tied to transaction value and other circumstances.
 - ◆ Cap for non-egregious VSD cases is now 1/2 the transaction value
 - ◆ For a non-egregious case that were not disclosed, the base penalty is instead capped at the full transaction value.
 - ◆ For egregious VSD cases, the base penalty amount is capped at the greater of one-half of the statutory maximum or twice the full transaction value.
 - ◆ For an egregious case that is not initiated by a VSD, the base penalty amount is capped at the statutory maximum.
 - BIS allowed to issue non-monetary resolutions for non-egregious conduct that has not resulted in serious national security harm, but merits a penalty including the imposition of a suspended denial order with certain conditions, like training and compliance requirements.
 - Removes from the Penalty Guidelines all specific percentage ranges for potential penalty reduction based on various mitigating factors. As the rule explains, “[t]he inclusion of specific percentage ranges for some mitigating factors and not for other factors led parties to incorrect assumptions about the range of reduction to which they were entitled.” “OEE is making clear that the civil monetary penalty will be adjusted (up or down) to reflect the applicable factors for administrative action set forth in the BIS Penalty Guidelines.”
 - Adds transactions that enable human rights abuses as an aggravating factor
 - The rule expands the scope of past corporate criminal resolutions that OEE may consider when determining enforcement. This factor now includes not only where a respondent has been convicted or entered a guilty plea, but also where a party has entered into any other type of resolution with DOJ or other authorities, including a Deferred Prosecution Agreement or a Non-Prosecution Agreement.

SDN List Reception Rule

- On March 21, 2024, BIS made changes to the end-user controls of the EAR to add end-user controls, and in certain cases expand existing end-user controls, on certain persons identified on the List of Specially Designated Nationals and Blocked Persons (SDN List) maintained by the Department of the Treasury's Office of Foreign Assets Control (OFAC)
- BIS will implement EAR license requirements for all items subject to the EAR for all persons blocked under 14 OFAC-administered sanctions programs
 - 7 related to Russia; 4 related to narcotics trafficking/other criminal networks; 2 related to terrorism; and 1 related to WMD
- The imposition of these EAR license requirements for exports, reexports, and transfers (in-country) allows for the EAR controls to act as a backstop for activities over which OFAC does not exercise jurisdiction, including deemed exports and deemed reexports, and for reexports and transfers (in-country) that would otherwise not involve U.S. persons (e.g., U.S. financial institutions). Notably, the new license requirements allow for controls on items outside the U.S.
- If OFAC grants a general or specific license under the 7 Russia-related sanctions programs, no additional BIS authorization is required for exports, reexports, or transfers (in-country) of any item subject to the EAR when that person is a party to the transaction as defined in § 748.5(c) through (f), provided that a license would otherwise only be required under § 744.8
- No license exceptions may overcome the license requirements in this section, except in the case of entities that are also listed on the Entity List in supplement no. 4 to part 744 and for which certain license exceptions are available

Country Policy Changes: Pakistan

- Effective Nov. 25, 2024, BIS implemented a rule that addresses BIS's concern that certain CCL items controlled only for antiterrorism (AT) reasons (and hence not currently subject to a license requirement to Pakistan) have been sought by entities listed on the Entity List, as well as front companies acting on behalf of such entities.
- The following ECCNs now require an export license to Pakistan:
 - (1) 1B999 (“Specific Processing Equipment, n.e.s.”);
 - (2) 2A992 (“Piping, fittings and valves made of, or lined with stainless, copper-nickel alloy or other alloy steel containing 10% or more nickel and/or chromium”);
 - (3) 2B999 (“Specific Processing Equipment, n.e.s.”);
 - (4) 3A992 (“General purpose electronic equipment not controlled by 3A002”);
 - (5) 3A999 (“Specific Processing Equipment, n.e.s.”); and
 - (6) 6A996 (“‘Magnetometers’ not controlled by ECCN 6A006, ‘Superconductive’ electromagnetic sensors, and ‘specially designed’ ‘components’ therefor”).
- the only license exceptions that will be available are TMP (limited to 740.9(a)(1), (a)(4), (a)(5), (a)(10), (b)(2), and (b)(3)), RPL (740.10), and GOV (limited to 740.11(a), (b), and (d))
- License applications will be reviewed on a case-by-case basis



Country Policy Changes: Nicaragua

- Effective March 15, 2024, BIS moved Nicaragua from Country Group B to Country Group D:1 and added Nicaragua to Country Group D:5 to be consistent with the State Department's addition of Nicaragua to Section 126.1 of the ITAR
- BIS is applying a stringent licensing policy for items controlled for national security reasons, and making the country subject to 'military end use' and 'military end user' restrictions.



Country Policy Changes: Iran

- On April 24, 2024, President Biden signed into law legislation that requires the U.S. to regulate the export of certain foreign-produced items destined for Iran.
- Effective July 23, 2024, BIS issued a rule implementing the law’s requirements by expanding the scope of the EAR’s Foreign Direct Product rule for Iran (“Iran FDP”) and applicable license requirements.
- Rule expands the range of items in the product scope of the Iran FDP rule by expanding the CCL category range of items from “any ECCN in product group D or E in Categories 3 through 5 or 7” of the CCL to include Categories 3 through 9 of the CCL.
 - The expanded product scope now includes “technology” and “software” for Category 6—Lasers and Sensors, Category 8—Marine, and Category 9—Aerospace and Propulsion.
- Expansion of end-user scope to include if there is “knowledge” that the Government of Iran is a party to any transaction involving the foreign-produced item, e.g., as a “purchaser,” “intermediate consignee,” “ultimate consignee,” or “end-user.”
- Licensing requirement is expanded to include in-country transfers within Iran



Country Policy Changes: Belarus/Iran/Russia

- In a final rule effective April 18, 2024, BIS expanded the scope of items that require a license for export and reexport to Iran.
- The rule also expanded the scope of the Russia/Belarus/Temporarily occupied Crimea region of Ukraine Foreign Direct Product (FDP) rule and the Iran FDP rule
- Accomplished by adding 39 additional HTS-6 Code entries to supplement no. 7 to part 746:
 - 845710, 845811, 845891, 845961, 846693, 847180, 848210, 848220, 848230, 848250, 848610, 848620, 848640, 850440, 851769, 852589, 852990, 853400, 853669, 853690, 854110, 854121, 854129, 854130, 854149, 854151, 854159, 854160, 854320, 880730, 901310, 901380, 901420, 901480, 902750, 903020, 903032, 903039, and 903082
- In adding 39 additional items to supplement no. 7 to part 746, the supplement will now include all 50 Common High Priority items agreed to with the EU, UK and Japan
- All items subject to the EAR classified under these HTS-6 entries require a license for Belarus, Iran, and Russia



Country Policy Changes: Belarus & Russia

- Effective November 1, 2024, BIS imposed export controls on nine key precursors for riot control agents and a chemical weapon that Russia has deployed against Ukraine in violation of the Chemical Weapons Convention (CWC).
 1. Malononitrile (CAS 109-77-3)
 2. 2-Chlorobenzaldehyde (CAS 89-98-5)
 3. 2-Chlorobenzyl Alcohol (CAS 17849-38-6)
 4. 2-Chlorobenzylamine (CAS 89-97-4)
 5. Benzene, 1-chloro-2-(dimethoxymethyl) (CAS 70380-66-4)
 6. Acetophenone (CAS 98-86-2)s
 7. Chloroacetyl Chloride (CAS 79-04-9)
 8. Chloroform (CAS 67-66-3)
 9. o-Aminophenol (CAS 95-55-6)
- This final rule also extended license exceptions related to certain items for official business of diplomatic or consular missions of the governments of Country Group A:5 and A:6 destinations that are in Russia and Belarus.
- The rule also clarifies that the Russia/Belarus-Military End User and Procurement Foreign-Direct Product (FDP) rule and the EAR's other Entity List FDP rules' license requirements extend to or within any destination or to any end user or party that otherwise meets the criteria of these rules.



Country Policy Changes: Belarus & Russia



- Final rule expands the scope of the Russia/Belarus-Military End User (MEU) Foreign-Direct Product (FDP) rule, and renames it to the “Russia/Belarus-Military End User and Procurement FDP rule,” so that the rule, as renamed, applies to both Russian and Belarusian military end users as defined in § 744.21 of the EAR, as well as to a second, new category of entities under the EAR: Russian or Belarusian Procurement Entities (effective August 27, 2024).
- Added controls on the export, reexport, or transfer (in-country) to or within Russia or Belarus of EAR99 “software” for the operation of computer numerical control (CNC) machine tools (effective Sept. 16, 2024). including:
 - “Software” that provides a user interface for setting up, operating, and troubleshooting the machine tool;
 - “Software” that translates the instructions produced by computer-aided manufacturing (CAM) software into physical actions by the machine tool;
 - “Software” that monitors conditions during the machining process; *and*
 - “Software” that automatically adjusts the machine tool's settings based on real-time conditions.

Country Policy Changes: Belarus & Russia

- Rule adds 522 additional Harmonized Tariff Schedule (HTS)-6 Code entries to supplement no. 4; consequently, these items will now require a license for export to, reexport to, or transfer (in-country) within Russia or Belarus under § 746.8(a)(5). (Effective June 12, 2024)
- Adds export controls on certain riot control agents that are isomers of CS (o-Chlorobenzylidenemalononitrile or o-Chlorobenzalmalononitrile) (CAS 2698-41-1); CN (Phenylacyl chloride or w-Chloroacetophenone) (CAS 532-27-4); or Oleoresin Capsicum (CAS 8023-77-6). (Effective June 12, 2024)
- **Imposing a license requirement for certain EAR99-designated “software” when destined to or within Russia or Belarus. (Effective Sept. 16, 2024).**
Applies to the following types of EAR99 software:
 - Enterprise resource planning (ERP);
 - customer relationship management (CRM);
 - business intelligence (BI);
 - supply chain management (SCM);
 - enterprise data warehouse (EDW);
 - computerized maintenance management system (CMMS);
 - project management software, product lifecycle management (PLM);
 - building information modelling (BIM);
 - computer aided design (CAD);
 - computer-aided manufacturing (CAM); and
 - engineering to order (ETO).
- Narrows the scope of eligible commodities and software under License Exception Consumer Communications Devices (CCD) for Russia and Belarus



Country Policy Changes: Belarus, Iran & Russia

- Effective January 23, 2024, rule adds 94 additional Harmonized Tariff Schedule (HTS)-6 Code entries to supplement no. 4 and these items will now require a license for export, reexport to, or transfer within Russia or Belarus under § 746.5(a)(1)(ii). The items added include a variety of industrial materials, items needed for manufacturing, and certain aircraft-related items.
- Adds one additional HTS-6 Code entry (852910) to supplement no. 7; consequently, items classified under this HTS-6 entry will now require a license for export or reexport to Iran under § 746.7(a)(1)(ii) and to Russia and Belarus under § 746.8(a)(2). The items that fall under this entry include a variety of antennas and antenna reflectors and parts thereof.
- Prohibits the use of de minimis for .y “600 series” and 9x515 items for Belarus and Russia



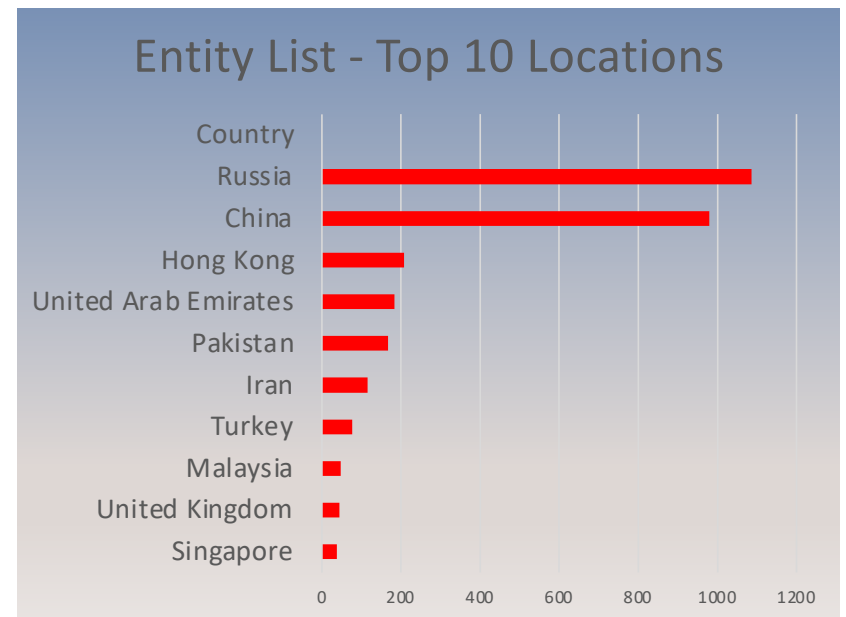


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Key Enforcement Actions

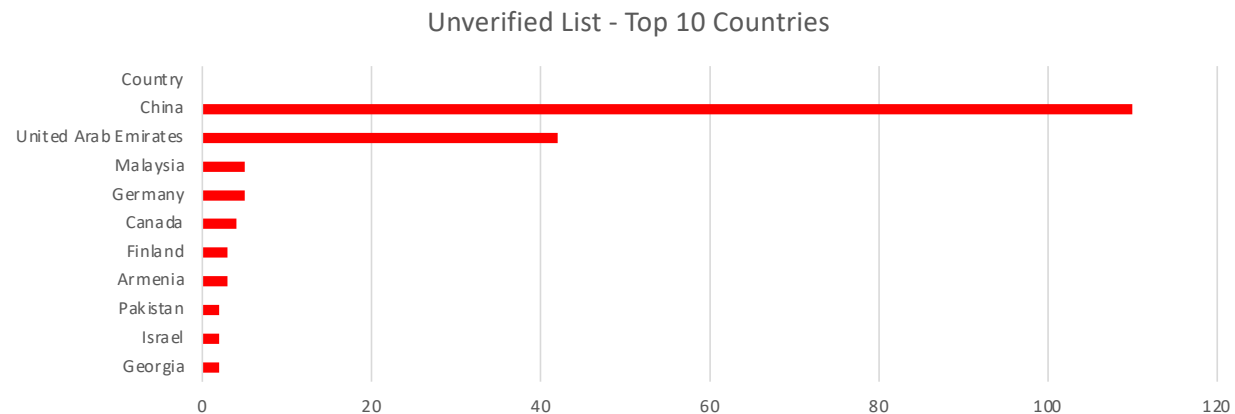
Entity List Designations

- 549 designations by Biden Administration from January 1, 2024, through January 20, 2025
 - Russia, China, and UAE were top locations
- 3,236 total entities on the Entity List as of end of Biden Administration
- 1,953 entities were added during Biden Administration
 - ~60% of entities on the Entity List added by Biden Admin.
 - ~17% of entities were added in the last year



Unverified List Designations

- 21 designations by Biden Administration from January 1, 2024, through January 20, 2025
- 201 total entities on the Unverified List as of end of Biden Administration
- BIS added 8 persons to the UVL on October 16, 2024, from following destinations: China (3), Germany (2), Turkiye (2), and Pakistan (1)
- BIS added 13 persons to the UVL on July 3, 2024, from following destinations: China (8), Cyprus (1), Kyrgyzstan (1), Turkiye (2), and the United Arab Emirates (UAE) (1)



OEE Enforcement Actions in 2024

- Brought 15 criminal cases charging sanctions and export control violations, smuggling conspiracies, and other offenses related to the transfer of sensitive information, goods, and military-grade technology to China, Russia, and Iran
- Imposed a \$5.8 million administrative penalty on TE Connectivity after its voluntary self-disclosure of the unauthorized export of low-level items to parties tied to PRC military electronics programs
- Imposed a \$180k mitigated penalty against a NY company for exports to Russia of solder materials used in electronics manufacturing
- Imposed \$285,000 penalty against Sapphire Havacilik San Ltd. STI related to unauthorized reexports to Russia
- Imposed a \$3.3 million civil penalty on a California company for exporting transistors and related products, including Common High Priority List (CHPL) items, to Russia
- Imposed a \$500,000 mitigated penalty against GlobalFoundries for shipping \$17 million worth of semiconductor wafers to a Chinese company on the Entity List
- Denied the export privileges of USGoBuy LLC, a package forwarding company, for 3 years due to continued export control violations and failure to address past compliance deficiencies
- Subjected Indiana University to administrative penalties for its alleged exports to 16 countries of a certain species of genetically modified fruit flies without the necessary license. No monetary penalty, but agreed to administrative penalties including a suspended denial of export privileges for one year.
- Hired BIS's first-ever Chief of Corporate Enforcement to serve as the primary interface between BIS agents, BIS enforcement attorneys, and DOJ prosecutors to facilitate resolution of corporate investigations
- Imposed a total of nearly \$400k in penalties on 4 companies to resolve alleged antiboycott violations and created the Boycott Requester List

The Boeing Company Consent Agreement (DDTC)



- **Date:** February 28, 2024
- **Industry:** Aerospace & Defense
- **Summary of Violations:** Unauthorized exports to foreign employees and contractors in more than 15 countries (including China and Russia); a trade compliance specialist falsifying an export license to export defense items without authorization; and violations of the terms and conditions of other export licenses.
- **Voluntarily disclosed?:** Yes
- **Remedial measures:** Appointment of Special Compliance Officer, integrate automated export compliance features into its systems, strengthen compliance policies, procedures, and training, two audits, and report regularly on the status of compliance directly to DDTC.
- **Term of Consent Agreement:** 3 years
- **Penalty:** \$51 million with \$24 million allocated toward remedial compliance measures
- **Moral of the Story:** Ensure proper oversight of foreign employees and contractors and careful management of export authorizations

The RTX Corporation Consent Agreement (DDTC)



- **Date:** August 29, 2024
- **Industry:** Aerospace & Defense
- **Summary of Violations:** 750 separate violations of the ITAR. Systemic violations (with a focus on RTX's Collins Aerospace division and Raytheon division) of the ITAR through unlicensed export of defense articles and technical data (including classified defense articles) to a number of prohibited destinations, including China, from approximately August 2017 to September 2023. The root cause of many of the violations was errors in jurisdiction and classification largely through misapplication of "specially designed" and related release criteria. Travel to 126.1 countries, including Lebanon, Russia, and Iran, with company laptops containing ITAR-controlled technical data were also highlighted by DDTC.
- **Voluntarily disclosed?:** Yes
- **Remedial measures:** Appointment of Special Compliance Officer; comprehensive review of classification of all defense articles, including technical data, that RTX's ITAR-regulated businesses manufacture and any defense services they furnish, integrate automated export compliance features into its systems, strengthen compliance policies, procedures, and training, one audit, and report regularly on the status of compliance directly to DDTC.
- **Term of Consent Agreement:** 3 years
- **Penalty:** \$200 million (record-breaking) with \$100 million suspended if allocated toward remedial compliance measures
- **Moral of the Story:** Make sure you have properly trained personnel or outside consultants conducting jurisdiction and classification work

Precision Castparts Corp. Consent Agreement (DDTC)



- **Date:** October 2, 2024
- **Industry:** Aerospace & Defense
- **Summary of Violations:** Unauthorized exports of sensitive technical data related to casting blades for fifth-generation fighter aircraft advanced gas turbine engines to foreign nationals (from Mexico, Honduras, Bhutan, El Salvador, Peru, and Burundi) employed by one of **Precision Castparts Corp's** (PCC) subsidiaries, Mold Masters, between 2017 and 2019. Violations came to light as a result of PCC's post-acquisition compliance review of Mold Masters.
- **Voluntarily disclosed?:** Yes
- **Remedial measures:** Ensure adequate compliance resources; policies and procedure implementation; appointing an Internal Special Compliance Officer; integrate automated export compliance features into its systems, strengthen internal controls, and report regularly on the status of compliance directly to DDTC.
- **Term of Consent Agreement:** 3 years
- **Penalty:** \$3 million with \$1 million suspended if allocated toward remedial compliance measures
- **Moral of the Story:** Ensure proper pre- and post-acquisition due diligence is conducted to identify and quickly remediate ITAR compliance issues



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What to Expect Under the Trump Administration

Potential Enforcement Priorities & Regulatory Updates Under Trump Administrations

■ Enforcement Priorities

- China
- Iran
- Greater use of Entity List and Unverified List
- Potentially significant initial expansion of export controls on Russia (addition to Country Group E?) as a negotiating tactic if Russia refuses end war in Ukraine

■ Regulatory Changes

- Modification of recent export controls on AI and semiconductors
- Simplification of administrative requirements
- Project 2025 included numerous positions on export controls :
 - Denying licenses to countries that do not permit adequate end-use checks, like China and Russia
 - BIS Under Secretary to decide on inter-agency disputes concerning export controls
 - BIS, should make public recommendations for new controls on a quarterly basis
 - There should be an open process where industry leaders and other agencies can make nominations for emerging technologies that may need to be controlled



Questions and Thank You!



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