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Export Controls Alert

March 25, 2024

Commerce's Bureau of Industry and Security expands end-user controls

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The revisions complement sanctions programs administered by Treasury's Office of Foreign Assets Control.



What's the impact?

- New revisions to the Export Administration Regulations' end-user controls apply extraterritorially and further restrict transactions involving persons on US sanctions lists, even when no US person is a party to the transaction.
- Under the new provisions, foreign-based businesses who are not generally obligated to comply with US sanctions blocking provisions risk violating the EAR if they participate in a transaction involving a sanctioned person and items subject to the EAR, even if those items are sourced overseas.
- Employing robust know-your-customer and know-your-supply-chain practices can reduce risk but avoiding any transactions involving sanctioned persons remains the safest course.

The US Department of Commerce's Bureau of Industry and Security (BIS) has revised and re-aligned end-user controls in the Export Administration Regulations (EAR) to "backstop" and act

as a “force-multiplier” for sanctions programs administered by the Department of the Treasury’s Office of Foreign Assets Control (OFAC). The revisions, implemented via a [BIS Final Rule](#) published in the *Federal Register* last week, both expand end-user controls and consolidate the various EAR provisions setting forth those controls into a single EAR section, namely § 744.8.

The new Final Rule reflects BIS’s continued willingness to further US interests by imposing regulatory controls extraterritorially. The rule follows a recent Tri-Seal Compliance Note issued by BIS, OFAC, and the Department of Justice reminding industry that US export controls and sanctions laws regulate conduct overseas, including by non-US persons, and that enforcing those laws remains a priority for all three agencies. A key feature of the new EAR revisions is that they allow for controls on items outside the United States and thus on activities beyond OFAC’s jurisdiction, including deemed exports, deemed reexports, reexports, and in-country transfers (export transactions) that do not involve US persons such as US financial institutions. The changes further the Commerce Department’s “strong coordination with the Treasury Department to prevent foreign actors from obtaining the items and financing they seek to conduct activities that threaten US national security and foreign policy interests,” according to Under Secretary of Commerce for Industry and Security Alan Estevez.

New end-user controls

The EAR revisions impose stringent controls on export transactions involving blocked persons—i.e., persons OFAC has placed on its List of Specially Designated Nationals and Blocked Persons (the SDN List)—under a total of fourteen OFAC sanctions programs:

- / Seven Executive Orders (EOs) related to Russia’s harmful foreign activities, including its 2014 annexation of Crimea as well as the recent further invasion of Ukraine in 2022 and the undermining of democratic processes or institutions in Belarus (EOs 13405, 13660, 13661, 13662, 13685, 14024, and 14038);
- / Two programs related to terrorism (Foreign Terrorist Organizations Sanctions Regulations and Global Terrorism Sanctions Regulations);
- / The Weapons of Mass Destruction Proliferators Sanctions Regulations; and
- / Four programs related to narcotics trafficking and other criminal networks (EOs 13581 and 14059, the Narcotics Trafficking Sanctions Regulations, and the Foreign Narcotics Kingpin Sanctions Regulations).

Previously, the EAR imposed controls coinciding with twelve of the above-referenced programs. The revisions add end-user controls for two programs: Illicit Drugs per EO 14059 ([SDN program tag](#) [ILLICIT-DRUGS-14059]) and Transnational Criminal Organizations Sanctions Regulations (SDN program tag [TCO]).

License requirements and licensing policy—presumption of denial

In addition to backstopping additional OFAC sanctions programs, the new EAR end-user controls expand some preexisting licensing requirements by covering more items. For example, the EAR previously restricted export transactions involving “luxury goods,” a term defined in supplement no. 5 to EAR Part 746, when persons placed on the SDN List under the following program tags were parties to the transactions: [BELARUS], [BELARUS-EO14038], [RUSSIA-EO14024], [UKRAINE-EO13660], [UKRAINE-EO13661], [UKRAINE-EO13661], [UKRAINE-EO13662], and [UKRAINE-EO13685]. In such cases, the new end-user controls now apply to all items subject to EAR as defined in 15 C.F.R. § 743.3, not only luxury goods.

Although the new revisions expand end-user control and licensing requirements, they also take into account OFAC general licenses and exemptions, such that if OFAC authorizes a transaction under a specific or general license, or if OFAC regulations exempt the transaction, no separate EAR authorization is required. Even so, a BIS license would still be required for export transactions implicating other EAR provisions, including parts 742 and 746, as well as supplement no. 4 to part 744 or other end-use or end-user controls. In short, regardless of whether OFAC sanctions apply, the newly revised EAR end-user controls do not excuse compliance with other EAR requirements. For example, export transactions involving entities on BIS’s Entity List would still require overcoming the additional EAR license requirements triggered by the entity listing. See 15 C.F.R. § 744.8(a), Note 2. Similarly, export transactions involving highly controlled items, such as “600 series” military items, would require overcoming Commerce-Control-List-based requirements in addition to the new end-user restrictions under § 744.8.

For transactions requiring a license under the new revisions, BIS will review license applications under a “restrictive presumption of denial.” See 15 C.F.R. § 744.8(d).

Clamping down on license exceptions

For export transactions involving a person designated on the SDN List under any of the fourteen OFAC sanctions categories, the EAR now prohibits the use of any EAR license exceptions, unless the person is also listed on BIS’s Entity List and the transaction is eligible for an exception specified in supplement no. 4 to Part 744 of the EAR. See 15 C.F.R. § 744.8(c).

Clean up and consolidation

The new EAR revisions also clarify certain provisions and make technical adjustments, e.g., eliminating obsolete provisions like restrictions relating to SDNs with the [IRAQ2] identifier. But they also consolidate several pre-existing EAR end-user controls under Parts 744, 740, and 746 into a single EAR section, namely § 744.8. According to BIS, consolidating relevant provisions and eliminating others results in six fewer sections parties must consult. BIS expects this

“streamlining and restructuring” to ease compliance burdens on parties by requiring them to consult a single EAR section. BIS also published the following table summarizing these structural changes:

Program Identifier	Sanctions Program	OFAC Sanctions List	EAR section prior to this final rule	New EAR section in this final rule
Terrorism related				
[FTO]	Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597	SDN	§ 744.14	§ 744.8
[SDGT]	Global Terrorism Sanctions Regulations, 31 CFR part 594	SDN	§ 744.12	§ 744.8
*[SDT]	Terrorism Regulations, 31 CFR part 595	N/A	§ 744.13	N/A because this identifier is no longer used
WMD related				
[NPWMD]	Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 CFR part 544	SDN	§ 744.8	§ 744.8
Iraq related				
*[IRAQ2]	E.O. 13315; E.O. 13350	SDN	§ 744.18	N/A, because the vast majority of these persons or entities are either dead or otherwise no longer in existence

In most cases, the practical effect of the new end-user controls is a ban. The goal is clear: BIS intends to limit SDN-listed “persons’ access to items subject to the EAR, regardless of their source.” The new provisions add further incentives for businesses to ensure they fully understand whether items to be exported, reexported, or transferred in country are subject to the EAR. As with most EAR controls, the technical details matter. For example, transactions involving US-origin replacement parts not otherwise controlled for export or reexport to Russia will nonetheless require a license if an SDN designated under EO 14024 is a party to the transaction. BIS is highly unlikely to grant such a license.

New EAR controls demand proactive due diligence

With these new EAR controls, the need for proactive due diligence has never been greater. Companies should screen all parties to a prospective transaction as early as possible in the transaction life cycle. This is so because OFAC regularly adds persons to the SDN list—often weekly—under any number of sanctions programs. The need for enhanced due diligence and comprehensive screening does not only pertain to parties located in “countries of concern,” such as Russia and Belarus, but also to parties in countries that oftentimes are considered less critical from an export controls and sanctions perspective, such as EU-member states. For example, on the day before BIS announced its new end-user controls, OFAC placed Germany-based, dual Iranian-German national Maziar Karimi on the SDN List under two programs [NPWMD] and [IFSR]. [According to OFAC](#), Karimi is a long-time procurement agent who has supported Iran’s defense industry. He is also the majority owner and director of Germany-based Mazixon GmbH and Co KG and Mazixon Verwaltungs GmbH and has used the Oman-based company Mazaya Alardh Aldhabia LLC as a front to facilitate procurements for Iranian defense end-users, including the Islamic Revolutionary Guard Corps Aerospace Force Self Sufficiency Jihad Organization and Iran’s Ministry of Defense and Armed Forces Logistics. Karimi’s addition to the SDN list implicates multiple US sanctions programs. Although those programs may not apply to transactions involving exclusively non-US parties, those foreign parties nonetheless risk violating EAR § 744.8 if the transactions involve exporting, reexporting, or transferring in-country items subject to the EAR.

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