

ALERT

Commerce Announces New Restrictions on Firearms Exports, Ends Commercial Firearms Exports to 36 Countries and Revokes Existing Licenses

April 29, 2024

On April 25, 2024, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) announced in a press release that it will publish an interim final rule (IFR) in the Federal Register on April 30, 2024, updating the Export Administration Regulations (EAR) to impose new licensing requirements and review policies for firearms, shotguns, and related items under certain Export Control Classification Numbers (ECCNs). In tandem with the announcement, BIS also circulated a memorandum from the U.S. Department of State (State), which BIS says informed its decision to designate 36 regions as "High-Risk Destinations for Firearms and Related Items." Notably, within 60 days after the IFR's publication in the Federal Register, the IFR will revoke all currently valid licenses to non-government end users in these High-Risk Destinations for Firearms and Related Items.

The IFR would adopt new licensing requirements and review policies, as well as other aspects of the control structure (e.g., license exception eligibility and export clearance requirements) for firearms, shotguns, and related items controlled under the following ECCNs: 0A501, 0A502, 0A504, 0A505, 0A506, 0A507, 0A508, 0A509, 0B501, 0B505, 0D501, 0D505, 0E501, 0E504, and 0E505. Specifically, the IFR will make the following amendments to the EAR, among other changes:

- New ECCNS for Semi-Automatic Firearms and Other Conforming Changes: The rule would add ECCN 0A506 for certain semi-automatic rifles; ECCN 0A507 for certain semi-

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automatic pistols; ECCN 0A508 for certain semi-automatic shotguns; ECCN 0A509 for certain “parts,” “components,” “devices,” “accessories,” and “attachments” for items controlled under ECCN 0A506, 0A507, and 0A508; other changes for existing 0x5zz ECCNs (ECCNs 0A501, 0A502, 0A504, 0A505, 0D501, 0D505, 0E501, 0E504, and 0E505); and other EAR conforming changes to reflect the new ECCNs for semi-automatic firearms and semi-automatic shotguns (e.g., adding references to semi-automatic firearms and semi-automatic shotguns controlled under ECCNs 0A506, 0A507, and 0A508, as well as the commodities controlled under 0A509, where appropriate).

- Changes to License Exceptions and Related Changes: As a conforming change to the addition of the Crime Control and Detection (CC) control under ECCNs 0A501, 0A506, and 0A507, the IFR revises the general restriction on the use of license exceptions. The IFR also requires exporters to obtain a copy of an import certificate or equivalent document before the exporter can use any license exception for items controlled under ECCNs 0A501, 0A502, 0A504, 0A505, 0A506, 0A507, 0A508, or 0A509, among other changes.
- Revisions to License Review Policies: The IFR amends Section 742.6 of the EAR to extend its licensing policy to all firearms and related items under ECCNs 0A501, 0A502, 0A505, 0A506, 0A507, 0A508, or 0A509 that are destined for Country Group D:5 (arms embargoed) destinations. The IFR also amends Section 742.6 of the EAR to extend its “policy of denial” to all items classified under ECCNs 0A501, 0A502, 0A504, 0A505, 0A506, 0A507, 0A508, 0A509, 0B501, 0B505, 0D501, 0D505, 0E501, 0E504, or 0E505, or any 9x515 ECCNs, when destined for China or a Country Group E:1 country. Further, the IFR revises the CC licensing policy in Section 742.7(b) to apply stricter scrutiny to exports of firearms and related items to destinations where diversion risks are particularly acute, such as destinations in which significant drug trafficking and associated criminal activity occur.
- License Review Policies for Non-Government End Users: The IFR adopts a presumption of denial for applications for the export and reexport of firearms and related items involving non-government end users in the following 36 destinations: The Bahamas, Bangladesh, Belize, Bolivia, Burkina Faso, Burundi, Chad, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Indonesia, Jamaica, Kazakhstan, Kyrgyzstan, Laos, Malaysia, Mali, Mozambique, Nepal, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Suriname, Tajikistan, Trinidad and Tobago, Uganda, Vietnam, and Yemen (which the IFR defines collectively as “High-Risk Destinations for Firearms and Related Items”).
- Changes in Support Document Requirements for Firearms License Applications: The IFR will require that all license applications for firearms and related items include an import certificate or equivalent official document as part of the submission. The IFR also amends the EAR to require that a passport or national identity card be submitted for exports and reexports of firearms and related items to natural persons in non-A:1 countries.
- Formalized Interagency Working Group (FLWG): The rule would create the FLWG to ensure proactive tracking of data, active licenses/pending applications, and issues in various countries or with specific end users.

- Reduced License Validity: The rule would shorten the license validity window to 12 months for items controlled under ECCNs 0A501, 0A502, 0A504, 0A505, 0A506, 0A507, 0A508, and 0A509. Currently, a BIS license (with some exceptions) is valid for four years.
- Revocations and Modifications to Existing Licenses: Sixty days after publication of the IFR in the Federal Register (June 29, 2024), BIS will revoke all currently valid licenses to non-government end users in High-Risk Destinations for Firearms and Related Items.

The IFR would effectively make firearm exports more restrictive than when firearms had been previously controlled under the International Traffic in Arms Regulations (ITAR) before March 2020. Items controlled under the EAR tend to have less strict export restrictions because they are considered commercial, dual-use (items that can be used both for commercial and military purposes), or less sensitive military/space items. Conversely, the ITAR tend to be more restrictive because they regulate defense items that the U.S. government deems as providing the United States a critical advantage in military or intelligence. In a final rule with an effective date of March 2020, the U.S. government transferred certain firearms, close assault weapons, and shotguns from being classified under the ITAR to the EAR because it concluded that these items did not “provide a critical military or intelligence advantage to the United States and ... do not have an inherently military function.” The IFR would further restrict the export of firearms despite having been reclassified under the EAR in 2020.

The IFR follows BIS’s announcement on October 27, 2023, regarding an immediate 90-day pause on the issuance of export licenses for firearms, related components, and ammunition to non-governmental end-users, apart from certain destinations. During this pause, BIS said it would conduct a review to “more effectively assess and mitigate the risk of firearms being diverted to entities or activities that promote regional instability, violate human rights, or fuel criminal activities.” In its IFR, BIS explained that the publication of this IFR reflects the result of this policy review.

The IFR will be effective on May 30, 2024, and all comments on the IFR are due no later than 60 days after the IFR’s publication on April 30, 2024.

Wiley has a robust National Security Practice, which includes issues arising from BIS; the Directorate of Defense Trade Controls; and the Bureau of Alcohol, Tobacco, Firearms, and Explosives; as well as related export control laws and regulations. Should you have any questions about this alert, U.S. export controls, or any other national security-related issues, please contact any of the attorneys listed on this alert.