

Commerce Department Announces 90-Day Pause on Firearms and Ammunition Export Licenses (with some Exceptions)

November 2, 2023

On October 27, 2023, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) announced at the bottom of their FAQ page a 90-day pause, effective immediately, on the issuance of export licenses for firearms, related components, and ammunition to non-governmental end-users, apart from certain destinations. BIS explained that, during the pause, the Department will conduct a review to "more effectively assess and mitigate risk of firearms being diverted to entities or activities that promote regional instability, violate human rights, or fuel criminal activities."

While it is not clear exactly what prompted this sudden change, the pause comes a week after public reporting that was critical of BIS's firearms export and industry outreach practices.

The current pause applies to all license applications submitted on or after October 27, 2023 and all applications pending as of October 27, 2023. Any application subject to the pause that is submitted after October 27, 2023 will be marked as "Hold Without Action" and will not be processed until the pause is lifted.

Controlled Items Subject to the Pause. All items controlled under the following Export Control Classification Numbers (ECCN) that are destined for non-governmental users, apart from those located in Ukraine, Israel, or a country in Country Group A:1 (Wassenaar Arrangement Participating States), are subject to the pause:

- ECCN 0A501 Firearms and Related Parts;

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Practice Areas

Export Controls and Economic Sanctions
International Trade
National Security
Sanctions and Export Controls Resource Center

- ECCN 0A502 Shotguns;
- ECCN 0A504 Firearms Sights; and
- ECCN 0A505 Ammunition.

Exempted End-Users. This license issuance pause applies to all non-government end-users worldwide. Applications to export controlled items under the above ECCNs will continue to be processed for any of the following end-users:

- All government and non-government end users in Ukraine, Israel, or any country in Country Group A:1; and
- All government end-users worldwide.

This exception also extends to items that will be exported, reexported, or transferred (in-country) to any end-user listed above.

License Exceptions. License exceptions such as "LVS" (Limited Value Shipments) and "STA" (Strategic Trade Authorization) may continue to be used, provided they comply with the license exception requirements outlined in Part 740 of the Export Administration Regulations.

Additional Documentation. Exporters are now "encouraged to provide documentation including, but not limited, to copies of contracts or purchase orders with the end users identified in the applications, government tenders, and any other documentation confirming that the transaction has been identified and authorized by the importing end user on the application." It remains unclear whether a failure to supply these documents will result in applications being rejected, i.e., applications not subject to the pause.

Processing Pause on Requests for Export Assistance. The International Trade Administration's Global Markets as well as the U.S. Foreign Commercial Service have likewise stopped accepting requests for export assistance (fee and non-fee based) for firearms and ammunition to non-government end users worldwide except for those in Ukraine, Israel, and countries in Country Group A:1.

In the coming months, industry members should anticipate that new restrictions will likely be announced by BIS that could make exports of the above-referenced ECCNs more burdensome.

Wiley has a robust National Security practice, which includes issues arising from BIS, the Directorate of Defense Trade Controls, 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 do not hesitate to contact one of the attorneys listed on this alert.