

Commerce Announces Plan to Eliminate License Exception CIV

July 17, 2019

Key Points:

- The Department of Commerce has announced that it plans to eliminate License Exception CIV (civil end-users) from the Export Administration Regulations (EAR).
- Businesses who use or have considered using License Exception CIV should prepare for the possibility that currently exempted activities may soon require specific licenses from the Commerce Department's Bureau of Industry and Security (BIS).
- All exporters and other entities who deal in commodities, software, or technology subject to the EAR should continue monitoring for potential changes in available licenses and related review policies.

Background and Commentary

In the Trump administration's report of "[Unified Agenda of Regulatory and Deregulatory Actions](#)," the [Department of Commerce has announced](#) that it plans to [eliminate License Exception CIV from the EAR](#). The Department provided no other significant details or an anticipated date for its removal.

[License Exception CIV](#) is not a widely applicable exception in the EAR's [Commerce Control List \(CCL\)](#). It does, however, authorize the unlicensed export of a number of items controlled for "national security" (NS) reasons "provided the items are destined to civil end-users for civil end-uses in [Country Group D:1](#)," which is a country group that includes China.

Examples of items that may currently be exported under CIV include specific types of bearings, semiconductors, semiconductor production equipment, materials for semiconductor production, computers, telecommunication equipment, acoustic systems, optical equipment and materials, radar equipment, marine systems, and civil aircraft engine production equipment. The exception also authorizes the release to Chinese and other foreign nationals of a small number of technologies and software related to several of these items.

Contact Information

If you have any questions concerning this alert, please contact:

Kevin J. Wolf

Partner
kwolf@akingump.com
Washington, D.C.
+1 202.887.4051

Chris Chamberlain

Associate
cchamberlain@akingump.com
Washington, D.C.
+1 202.887.4308

Shiva Aminian

Partner
saminian@akingump.com
Los Angeles
+1 310.552.6476

Nathaniel T. Edwards

Senior Trade Compliance Specialist
edwardsn@akingump.com
Washington, D. C.
+1 202.416.5189

Although the notice did not articulate the Commerce Department's basis for its plan to eliminate the exception, the action is likely in response to a [requirement in the Export Control Reform Act \(ECRA\)](#) that Commerce review the EAR's licensing policies with respect to exports involving countries subject to arms embargoes, such as China. (This requirement is separate from ECRA's requirement that Commerce lead an inter-agency effort to [identify and control emerging and foundational technologies](#) that are not now controlled but should be because they are essential to the national security of the United States.)

License Exception CIV is still valid. For those who use it to export items or release technology or software, they may want to prepare and eventually [submit applications](#) for licenses that, if approved by the Commerce Department's Bureau of Industry (BIS), would allow for operational continuity under new licenses.

Removing this license exception is unlikely to be the only amendment to the EAR that affects licensing and other obligations pertaining to exports and reexports to, and transfers within, China and other countries. Accordingly, companies involved in the trade or transfer of commodities, software, or technology subject to the EAR should follow developments in this area closely to ensure compliance and business continuity.

akingump.com