

**March 17, 2020
Regulatory Alert:**

**Commerce Department Tightens Controls on Certain Exports to Russia,
Moving the Russian Federation from Country Groups A:2 and A:4
to D:2 and D:4**

**[Export Controls
and Sanctions
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Reportedly as part of a comprehensive review of all EAR Country Groups to ensure that the Groups appropriately reflect current U.S. national security and foreign policy -- including nonproliferation – interests, effective February 24, 2020 the Bureau of Industry and Security (“BIS”) tightened EAR controls on certain exports to Russia. 85 Fed. Reg. 10274 (February 24, 2020). BIS at the same time also tightened EAR controls on certain exports and reexports to Yemen. BIS stated that these changes with respect to Russia and Yemen are the first BIS action related to a larger effort to restructure and realign the EAR’s Country Groups. Lack of Russian cooperation with BIS pre- and post-license checks was also cited as a reason for the changes regarding Russia.

With respect to Russia, BIS moved Russia both from Country Group A:2 to D:2 and from Country Group A:4 to D:4. The move from Country Group A:2 to D:2 applies license requirements to Russia for ECCNs that are subject to Non-Proliferation controls, Column 1. This change affects a number of ECCNs throughout the CCL, so exporters should verify Reasons for Control for ECCNs under which an exporter customarily classifies its products.

The move from A:4 to D:4 is more significant, as the move triggers EAR Part 744.3 supplemental controls. Concurrently with the change in Country Group BIS also revised the licensing policy for items to be exported or reexported to Russia to a policy of presumption of denial when the items are controlled for reasons described under EAR 742.2 (proliferation of chemical and biological weapons), 742.3 (nuclear nonproliferation), or 742.5 (missile technology). Based on the Federal Register notice commentary, this change reflects additional export license requirements stemming from the 2018 nerve agent attack on a former Russian agent and his daughter in the United Kingdom. One exception to the new licensing policy is that license applications for exports and reexports of NP and MT items to Russia in support of U.S.-Russia civil space cooperation activities or commercial space launches will be reviewed on a case-by-case basis.

The primary impact of Russia now being in Country Group D:4 is that exports of any item subject to the EAR (including EAR99) for use in missile or UAV applications specified in EAR 744.3 require a BIS license. Note that some Russian companies involved in long-range missile and UAV production in Russia are already subject to OFAC blocking, BIS Entity List prohibitions, SSI financing restrictions, or are CAATSA Section 321 parties. Some of the State-Owned Companies involved in ICBM or other long-range rocket/UAV projects are not, however, such as the Makayev State Rocket Center JSC, United Rocket and Space Corporation JSC, and related companies.

With respect to Yemen, BIS moved Yemen from Country Group B to Country Group D:1. 85 Fed. Reg. 10274 and 85 Fed. Reg. 13009. This change removed the availability of a number of license exceptions for exports and reexports to Yemen. The change also made exports and reexports of NS-controlled items subject to a licensing policy of BIS approving applications, on a case-by-case basis, when BIS determines that items are for civilian use or otherwise would not make a significant contribution to the military potential of the country of destination that would prove detrimental to United States national security. Additional impacts of Yemen now being in Country Group D:1 include restrictions on the export, reexport, and transfer (in-country) of

certain microprocessors to military end uses and end users in Yemen (EAR 744.17), restrictions on certain exports and reexports to vessels and aircraft located in Yemeni ports or registered in Yemen (EAR 744.7), and expansion of licensing requirements for reexports of foreign-produced direct products of U.S.-origin technology and software to Yemen (General Prohibition Three).