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Export Controls Alert

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BIS issues new controls for specific cameras and loosens related military end user restrictions for allied countries

By Jule Giegling,¹ Alexandra López-Casero, and David F. Crosby

Companies that develop or produce cameras, optical systems, and related components should reevaluate their products against the new controls to ensure compliance.



What's the impact?

- The revisions to camera controls in Category 6 of the Commerce Control List show that BIS continuously monitors the landscape of evolving technologies and restricts their availability where it deems necessary, including for China.
- Businesses must remain both agile and compliant as BIS continues to evaluate the necessity of controls involving sensitive technologies.

Last week, the Department of Commerce's Bureau of Industry and Security ("**BIS**") implemented revisions to the Export Administration Regulations ("**EAR**") that capture cameras in a new export

¹ Jule Giegling (Legal Intern—Corporate Practice) assisted with the preparation of this alert.

control classification number (“**ECCN**”) 6A293, which are not controlled by either ECCNs 6A003 or 6A203 and have the following characteristics: (1) minimum exposure time of 1 microsecond (1 millionth of a second) or faster and (2) a throughput of 13.43 Giga Pixels per second or greater when taken at 205,000 frames per second. Additionally, BIS has loosened the military end user restrictions for cameras, optical systems, and related components under § 744.9(a)(1) by introducing a specific carve-out for Country Group A:1. For example, the export of an ECCN 6A993 camera to the German Bundeswehr would no longer require a BIS license.

With its revisions to § 744.9(a)(1), BIS intends to “better align controls with technological and commercial developments, such as the items’ global commercial availability, while recognizing the cooperative strategic relationship the United States has with our closest allies.” Non-U.S. companies should view new ECCN 6A293 as a new unilateral classification for temporary controls for which BIS is seeking multilateral agreement.

The changes went into effect on March 8, 2024.

Changes to Category 6 of the Commerce Control List

The new rules expand Category 6 of the Commerce Control List (“**CCL**”) by adding a new ECCN 6A293. It controls the following cameras, which are not already controlled by ECCNs 6A003 and 6A203 and have the following characteristics: (1) minimum exposure time of 1 microsecond (1 millionth of a second) or faster; and (2) a throughput of 13.43 Giga Pixels per second or greater when taken at 205,000 frames per second. This includes high-speed digital imaging cameras, high-speed video cameras, or slow-motion cameras. The new ECCN also includes a technical note with a formula for throughput and a note that describes some of the ways these cameras may be referenced by the public in non-technical terms. **Cameras controlled under ECCN 6A293 are controlled for nonproliferation (NP Column 1) and antiterrorism (AT Column 1).** Accordingly, cameras captured in this new ECCN are controlled for NP-1 and AT-1 reasons, including for China, Monaco, Pakistan, Russia, and Venezuela. Importantly, they are not eligible for License Exception Strategic Trade Authorization (“**STA**”).

As conforming changes, the rule updates the related controls in ECCNs 6A003 and 6A203 to include ECCN 6A293; it also revises § 740.20(b)(2)(x) to include the limitation on license exception STA for ECCN 6A293.

Modification of General Prohibition § 744.9(a)(1)

§ 744.9(a)(1) is a general prohibition or, simply put, a catch-all control that applies for exports, reexports, or in-country transfers of cameras, optical systems, and related components controlled in ECCN 6A002, 6A003, 0A504 (incorporating commodities controlled by ECCNs 6A002 or 6A003 or commodities controlled by 6A993.a that meet the criterion of Note 3.a to 6A003.b.4), 6A993.a (having a maximum frame rate equal to or less than 9 Hz and, thus, meeting the criteria

of Note 3.a to 6A003.b.4), or 8A002.d if at the time of the export, reexport, or transfer, the exporter, reexporter, or transferor knows or is informed that the item will be or is intended to be (i) used by a “**military end user**,” or (ii) incorporated into a **military commodity** controlled by ECCN 0A919.

The revision to § 744.9(a)(1) restructures this general prohibition into three paragraphs. The changes to § 744.9(a)(1)(i) are only structural. The revision also does not remove the license requirement for cameras, systems, and related components being exported for incorporation into foreign military commodities specified in ECCN 0A919 but only restructures it into the new § 744.9(a)(1)(iii).

The only substantive change to § 744.9(a)(1) is the lifting of the military end-user restriction for certain items for countries listed in Country Group A:1 of Supplement No. 1 to Part 740. With this revision, BIS no longer requires a license for the cameras, systems, and related components described in ECCNs 0A504 (incorporating commodities controlled by ECCNs 6A002 or 6A003 or commodities controlled by 6A993.a that meet the criterion of Note 3.a to 6A003.b.4), 6A002, 6A003 (other than 6A003.a.3, 6A003.a.4, and 6A003.a.6), or 6A993.a (having a maximum frame rate equal to or less than 9 Hz and, thus, meeting the criteria of Note 3.a to 6A003.b.4), or 8A002.d when the items are intended to be used by a military end user in Country Group A:1 countries (i.e., Wassenaar Participating States). Countries in Country Group A:1 include, for example, EU-Member States, Mexico, South Africa, South Korea, New Zealand, Australia, Japan, and the United Kingdom. Prior to the revision of this rule, a license was required for transactions to all destinations except Canada.

In this final rule, BIS notes that certain items controlled by § 744.9 have become mainstream commercial products. In the aftermath of the COVID–19 global pandemic, one of the most popular uses of these cameras is to determine if a person has a fever before entering a building. BIS determined this type of transaction no longer warrants review when destined to close allies given the high number of approvals and the absence of denials, the growing burden the regulations have placed on industry, and the licensing burden placed on BIS itself.

Focal plane arrays will continue to require a license to countries specified in Country Groups A:1 under other provisions of the EAR; these items are controlled for Regional Stability (“**RS**”) reasons to countries specified in RS Column 1 on the Commerce Country Chart, as well as other parts of the EAR (e.g., other sections in part 744 or sanctions provisions in part 746).

Takeaways

The new regulations show that BIS continues to evaluate the necessity of controls involving sensitive technologies. Manufacturers and exporters of high-speed cameras should review ECCN 6A293 and determine whether or not their cameras are now caught in this new ECCN, especially considering that these cameras generally did not require a license prior to March 8, 2024. While

the revisions to § 744.9(a)(1) ease the restrictions for controlled cameras and components in recognition of their wide availability outside the U.S. for close allies, the revisions to the CCL show that BIS continuously monitors the landscape of evolving technologies and restricts their availability where it deems necessary. It is important to note that these changes do not pertain to, and do not change, § 744.21. Companies involved in the development and/or production of cameras, optical systems, and related components should carefully reevaluate their products against the new controls to ensure that they comply with the newly established license requirements. Non-U.S. companies should anticipate that their respective export control lists, e.g., in the EU, may in the future include ECCN 6A293 if the United States succeeds in convincing allied countries to implement this now unilateral classification multilaterally.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

[Alexandra López-Casero](#)

202.213.0171

alopezcasero@nixonpeabody.com

[David F. Crosby](#)

617.345.1264

dcrosby@nixonpeabody.com

