

ALERT

Commerce, State Departments Restrict Exports to Nicaragua, Citing Human Rights Abuses

March 19, 2024

On March 14, 2024, the U.S. Departments of Commerce and State announced rules restricting a range of exports to Nicaragua, citing the Nicaraguan government's "campaign of repression and blatant human rights abuses." Commerce's Bureau of Industry and Security (BIS) published a final rule imposing new restrictions, including end use and end user prohibitions, on exports to Nicaragua of certain items subject to the Export Administration Regulations (EAR). Concurrently, the Department of State amended the International Traffic in Arms Regulations (ITAR), adding Nicaragua to its list of Section 126.1 prohibited countries.

These actions address ongoing foreign policy and national security concerns raised by the actions of the Nicaraguan government under the leadership of President Daniel Ortega, including by Nicaraguan military and security services. According to BIS, the Nicaraguan government has cracked down on democratic movements, via the targeting of peaceful protestors; participating in death squads; and carrying out extrajudicial killings, disappearances, and kidnappings. BIS also cited Nicaragua's deepening military and security ties with Russia, including Nicaragua's formal support for Russia's February 2022 invasion of Ukraine. Similarly, the State Department expressed concern over the Nicaraguan government's actions, noting that the United States will continue to use all diplomatic and economic tools to support human rights and fundamental freedoms of Nicaraguans.

New Restrictions in the EAR

BIS made the following four changes restricting Nicaragua's access to commercial, dual-use, and less-sensitive military/satellite commodities, software, and technology.

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Practice Areas

Export Controls and Economic Sanctions
International Trade
National Security

1. BIS added Nicaragua to Country Group D:5 in the EAR.

Consistent with the ITAR amendment discussed below, BIS added Nicaragua to the list of countries subject to a U.S. arms embargo under Country Group D:5 in Supplement No. 1 to part 740 of the EAR. Countries listed in Country Group D:5 are subject to additional restrictions in the EAR, including on *de minimis* U.S. content, license exception availability, and licensing policy for certain items. For example, license applications to export satellite items or “600 series” EAR-controlled military products to Nicaragua will now be reviewed consistent with U.S. arms embargo policies, which, for practical purposes, usually means a policy of denial. Exporters to Nicaragua also cannot use EAR license exceptions for these items except in limited circumstances.

2. BIS moved Nicaragua from Country Group B to Country Group D:1.

BIS also moved Nicaragua from Country Group B, a grouping of countries that generally are accorded fairly favorable export treatment, to Country Group D:1, a grouping of countries that raise national security concerns for the U.S. government. As a result of its placement in Country Group D:1, Nicaragua will be subject to more restrictive treatment, including with respect to the end use controls in part 744 of the EAR (e.g., the prohibitions in Section 744.17 on exports of certain microprocessors and associated software and technology for military end uses or to military end users). Nicaragua also will be subject to more restrictive foreign direct product rules that apply to foreign-made items that are direct products of certain U.S. technology and software. Additionally, exporters to Nicaragua can no longer use certain EAR license exceptions that formerly were available, including License Exceptions LVS (§ 740.3), GBS (§ 740.4), and TSR (§ 740.6).

3. Nicaragua is subject to a more restrictive national security-related review of license applications.

BIS is adopting a more restrictive licensing policy for license applications involving the export, reexport, and transfer (in-country) to Nicaragua of items listed on the Commerce Control List and controlled for national security reasons (NS items). Specifically, under Section 742.4(b)(7) of the EAR, applications involving NS items will be reviewed to determine whether there is a risk of diversion to a military end use or end user. Applications for civil end users or civil end uses will be subject to a general policy of approval, while applications to export, reexport, or transfer (in-country) items that will make a material contribution to major weapons systems will be subject to a presumption of denial.

4. BIS added Nicaragua to its military end use/end user rule.

BIS added Nicaragua to the list of countries subject to its expansive military end use and end user (MEU) controls in Section 744.21 of the EAR. The MEU controls prohibit, without a license, knowingly exporting, reexporting, or transferring items subject to the EAR – including U.S.-origin products, products that are exported from the United States, and certain foreign-manufactured products containing above *de minimis* controlled U.S. content or produced from U.S. technology or software – that are identified in Supplement No. 2 to part 744 of the EAR and normally subject to fairly low-level controls to military end users (e.g., national armed services, national guard and national police, government intelligence or reconnaissance organizations, and companies/other persons that develop, produce, maintain, or use military items, including but not limited

to those designated on BIS's MEU List) in Burma, Cambodia, China (including Hong Kong), Venezuela, sanctioned countries, and now Nicaragua or for military end uses in these countries. (Note that BIS's MEU rules for Belarus and Russia are even more restrictive, prohibiting transactions involving *all* items subject to the EAR, including EAR99 goods, to or for a military end use in Belarus or Russia or a Belarusian or Russian military end user.)

New Restrictions in the ITAR

In concert with BIS's actions, the Department of State's Directorate of Defense Trade Controls (DDTC) amended Section 126.1 of the ITAR to include Nicaragua in the list of countries subject to a policy of denial for exports of defense articles and services. The official designation of Nicaragua as a Section 126.1 arms-embargoed country has many implications for U.S. companies. For example, most license applications are subject to a policy of denial, except for exports for non-lethal military equipment intended solely for humanitarian assistance, such as natural disaster relief. Most ITAR exemptions also cannot be used for exports to Nicaragua. Additionally, even proposals or presentations to sell defense articles or furnish defense services to Nicaragua require prior authorization from DDTC, and companies are subject to a mandatory notification requirement if they know of a proposed or actual sale or other transfer of an ITAR-controlled item or service to Nicaragua.

Wiley has unparalleled experience and expertise representing a wide range of U.S. and multinational clients in complex export control, sanctions, and other cross-border national security matters. Should you have any questions about this alert; the evolving scope of U.S. export controls and sanctions; or any other national security-related issues, please do not hesitate to contact one of the attorneys listed on this alert.