

Bureau of Industry and Security
U.S. Department of Commerce
Nicaragua: Implementation of Export Controls FAQs
Published March 29, 2024

Q. Why is the Bureau of Industry and Security (BIS) amending the Export Administration Regulations (EAR) in relation to Nicaragua?

A. This action under the EAR (15 CFR parts 730-774) is consistent with the State Department's recent addition of Nicaragua to the list of countries that are subject to a U.S. arms embargo under the International Traffic in Arms Regulations, 22 CFR parts 120-130 (ITAR). To reflect this changed status under the ITAR, BIS adds Nicaragua to Country Group D:5 (supp. no. 1 to part 740—Country Groups).

Additionally, BIS is moving Nicaragua from Country Group B to Country Group D:1 (see supp. no. 1 to part 740 of the EAR), a more restrictive country grouping, removing eligibility for certain license exceptions and applying a stringent licensing policy for items controlled for national security reasons. BIS has also made Nicaragua subject to 'military end use' and 'military end user' restrictions. These amendments advance the U.S. Government's efforts to restrict the availability of certain items subject to the EAR to Nicaragua's military and security services. Additionally, consistent with BIS's authorities under the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852), this rule demonstrates a commitment to using export controls to protect human rights and promote democracy. In particular, BIS's amendments address concerns regarding the Nicaraguan Government's commission of human rights abuses against citizens and civil society groups. The amendments also address concerns with the regime's ongoing military and security cooperation with Russia. In line with the foregoing, with respect to items subject to the EAR, BIS will impose more restrictive treatment of exports and reexports to, and transfers (in-country) within, Nicaragua.

Q. How do these amendments to the EAR relate to the BIS Entity List action published on March 30, 2023?

A. Under 88 FR 18983, BIS added the Nicaraguan National Police to the Entity List. Under 89 FR 18780, BIS is taking broader actions impacting the entire country to address similar concerns relating to human rights abuses and anti-democratic conduct by the Nicaraguan Government. Among other relevant amendments, Nicaragua has been moved to Country Groups D:1 and D:5 from Country Group B. All license exceptions limited to destinations in Country Group B are consequently no longer available for Nicaragua (e.g., GBS, LVS, TSR). Furthermore, Nicaragua is being added to the countries subject to a stringent licensing policy set forth in § 742.4 (national security controls) in connection with the risk of diversion to defined military end uses and end users. Finally, this rule makes the country subject to the 'military end use' and 'military end user' restrictions in § 744.21. While the Nicaraguan National Police meets the definition of a 'military end user,' it will continue to be subject to a broader license requirement for all items subject to the EAR by virtue of the March 2023 Entity List action.

The newly-applied military end use and end user controls require a license for the export of certain items listed on the Commerce Control List to, among other entities, the armed forces, national guard, and certain government intelligence and reconnaissance organizations in Nicaragua.

Exporters should include Nicaragua in their compliance protocols for General Prohibition 3 (which requires exporters to comply with the Foreign-Direct Product rules set forth in Section 734.9 of the EAR, two of which are newly applicable to Nicaragua as a result of its move from Country Group B to Country Group D:1) and military end-use(r) controls to ensure that license applications are submitted for any shipments or technology transfers to Nicaragua or to Nicaragua military end-use and end-users. Exporters are reminded that any license applications for Nicaragua military end-uses or end-users will be reviewed under a presumption of denial. The following FAQs will discuss these restrictions in further detail.

Q. My shipments were en route to Nicaragua under a license exception when the restrictions on Nicaragua were issued. What will happen to these shipments?

A. Pursuant to the publication of 89 FR 18780, exports and reexports to Nicaragua, as well as transfers (in country) within Nicaragua authorized under a license exception that were on dock for loading, on lighter, laden aboard an exporting or transferring carrier, or en route aboard a carrier to a port of export or reexport on March 15, 2024, may proceed so long as the export, reexport, or transfer (in-country) occurs before April 14, 2024.

Q. Which Nicaragua entities are now on the Military End User List, and what should I do if I have a potential sale to them?

A. As of the date of these FAQs (March 29, 2024), no Nicaraguan entities are listed on the Military End-User List set forth in Supplement No. 7 to part 744 ('Military End-User' (MEU) List). This rule only adds a country heading for Nicaragua to the MEU List; it does not add any entities under this heading. However, exporters are still required to seek a license before exporting certain items listed on the CCL to any entities in Nicaragua that meet the definition of a 'military end user,' such as the armed services, national guard, and certain government intelligence and reconnaissance organizations.

Q. Do I now need a deemed export license for any technology transfer to Nicaraguan foreign nationals located in the U.S. who are employed by me?

A. Not necessarily. Not all technology or source code requires a deemed export (or reexport) license to Nicaraguan nationals. You must review the reasons for control, and if the technology or source code is controlled for any reason to Nicaragua, and a license exception is not available, then a license is required. There are some possible scenarios in which a deemed export (or reexport) license is now required (for example, if the deemed export was previously authorized under a license exception available to Country Group B but not Country Group D:1). For deemed export license FAQs, please refer to <https://www.bis.doc.gov/index.php/policy-guidance/deemed-exports/deemed-exports-faqs>.

Q: What changes has BIS made to the license application review policy concerning Nicaragua?

- A. Pursuant to the publication of 89 FR 18780, BIS has moved Nicaragua from Country Group B to Country Groups D:1 and D:5, thereby removing Nicaragua from eligibility for numerous license exceptions, most notably for certain items controlled for national security reasons. The national security license review policy for Nicaragua has also been revised to take into account the risk of diversion to certain military applications.

BIS has also subjected Nicaragua to military end-use and end-user restrictions previously only applicable to Belarus, Burma, Cambodia, the People's Republic of China, Russia, and Venezuela. The military end-use and end-user license requirements apply not only to certain items controlled by the multilateral export control regimes but also to items controlled unilaterally only for Anti-Terrorism reasons. Any license applications for such items destined to Nicaragua will be reviewed under a presumption of denial.

Q. Do all shipments to Nicaragua require an Electronic Export Information (EEI) filing per Part 758 of the EAR, like China, Russia, and Venezuela?

- A. No, not all shipments to Nicaragua require an EEI filing in the Automated Export System. EEI filings are required where indicated by Section 758.1 of the EAR, including (among other requirements) where the shipment requires a license application, regardless of value, or where the shipment contains more than \$2,500 of commodities or mass market software under a single Schedule B (or HTS) Number. License applications that are now required due to export control amendments under the EAR in relation to Nicaragua may increase the number of EEI filings if the applications are approved. Applicants are advised to review the requirements for EEI filing in Part 758 of the EAR.

Q. Which BIS License Exceptions are no longer available for exports or reexports to Nicaragua, or transfers (in-country) within Nicaragua, either in whole or in part?

- A. The License Exceptions specified below are unavailable for exports or reexports to Nicaragua, or transfers (in-country) within Nicaragua, either in whole or in part, as a consequence of its movement from Country Group B to Country Group D:1.
- Shipments of Limited Value (LVS) (§ 740.3) is unavailable in full.
 - Shipments to Group B Countries (GBS) (§ 740.4) is unavailable in full.
 - Technology and Software under Restriction (TSR) (§ 740.6) is unavailable in full.
 - Temporary Imports, Exports, Reexports, and Transfers (in-country) (TMP) (§ 740.9) is unavailable in part, as follows: The provisions in paragraph (b) that would authorize exports of NS-controlled items are no longer available for shipments destined to Nicaragua. (§ 740.9, (b)(2)(ii)(C)).
 - Servicing and Replacement Parts and Equipment (RPL) (§ 740.10) for Nicaragua is unavailable in part as follows: The availability of subparts(a)(4) (Reexports) and (b)(3)(ii)(C) (regarding the return of defective or unacceptable equipment) authorizing certain items to be returned are no longer available for the return of such items to Nicaragua.

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