

# Locke Lord QuickStudy: BIS Issues New FDP Restrictions on Goods Destined for Iran

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On April 24, 2024, President Biden signed into law the “Making Emergency Supplemental Appropriations for the Fiscal Year Ending September 30, 2024, and for Other Purposes” Act. This law mandates that the United States regulate the export of certain foreign-produced items destined for Iran. To fulfill these requirements, the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”) issued a final rule (the “Final Rule”), effective July 23, 2024, that expands the scope of the Export Administration Regulations’ (“EAR”) Foreign Direct Product (“FDP”) rule for Iran and updates applicable license requirements, thus increasing restrictions under the EAR for foreign made products that contain U.S. components or technology, or are made with U.S. machinery.

## Background

The Final Rule implements Division N of Public Law 118-50, the No Technology for Terror Act (the “Act”). The Act, effective July 23, 2024, increases the number of foreign-produced items subject to the EAR under the Export Control Reform Act, 50 U.S.C. 4801-4852, if such foreign goods will be exported, reexported, or transferred in-country to end-users in Iran. The sponsors of the Act highlighted the need to restrict transfers of U.S. technology to Iran when that technology could be used in weapons systems, including drones that pose a threat to U.S. troops or key allies.

Prior to the changes, the Iran FDP Rule at 15 C.F.R. 734.9(j) covered the following foreign-produced items under the EAR:

1. The direct product of U.S.-origin software or technology listed in Supplement No. 7 to part 746 of the EAR (generally, parts and components of manufacturing equipment) or classified under an Export Control Classification Number (“ECCN”) in Categories 3 (Electronics), 4 (Computers), 5 (Telecommunications and Information Security), and 7 (Navigation and Avionics) of the Commerce Control List (“CCL”).
2. Items manufactured in a facility, or by a major component of a facility that is itself the direct product of the above CCL-controlled software or technology.
3. The Iran FDP Rule at § 734.4(c) provides for a de minimis exception of 10% for reexports of a foreign-made commodity incorporating certain controlled U.S.-origin commodities or ‘bundled’ with U.S.-origin software valued at 10% or less of the total value of the foreign-made commodity.

## Key Changes in the Final Rule

The Act expands the scope of the EAR’s Iran FDP rule to require a license for additional foreign-produced items, while also providing certain exclusions from license requirements. The Final Rule revises §§ 734.9 and 746.7 of

the EAR to implement the Act's requirements in four key areas:

1. **Revised Scope:** The paragraph (j)(1) clarifies that foreign produced goods will be subject to the EAR if they fall within either (i) the destination and end-use scope of paragraph (j)(2) or (ii) the new end-user scope in paragraph (j)(3).
  - a. a foreign-produced item meets the scope of this paragraph (j)(2) if there is “knowledge” that the foreign-produced item: (i) Is destined to Iran; or (ii) will be incorporated into or used in the “production” or “development” of any “part,” “component,” or “equipment,” including any modified or designed “components,” “parts,” “accessories,” and “attachments” therefor, identified in supplement no. 7 to part 746 of the EAR or specified in any ECCN in Categories 3 through 9 of the CCL, and located in or destined to Iran, or
  - b. End-user scope of the Iran FDP rule. A transaction meets the end-user scope of paragraph (j)(3) if the reexporter or transferor has “knowledge” that the Government of Iran is a party to any transaction involving the foreign-produced item, e.g., as a “purchaser,” “intermediate consignee,” “ultimate consignee,” or “end-user.”
1. **Expanded Product Scope:** The product scope in § 734.9(j)(1) is expanded from “any ECCN in product group D or E in Categories 3 through 5 or 7” of the CCL to include Categories 3 through 9. This broadened scope now covers Category 6 (Lasers and Sensors), Category 8 (Marine), and Category 9 (Aerospace and Propulsion).

## Section 746.7 (Iran)

The Final Rule expands the license requirement to include in-country transfers within Iran for items subject to the EAR under the Iran FDP rule, as revised. The exclusions from the FDP still include humanitarian goods such as food, medicine, or medical devices designated as EAR99, and items necessary and ordinarily incident to communications specified in ECCN 5A992.c or 5D992.c and classified in accordance with § 740.17 of the EAR or designated as EAR99.

## Savings Clause

Shipments of items that were previously eligible for export, reexport, or in-country transfer without a license, but are now restricted due to this regulatory action, may proceed under the former eligibility criteria if they were on dock for loading, on lighter, aboard an exporting carrier, or en route to a port of export by July 26, 2024. These items must be exported, reexported, or transferred in-country by August 26, 2024, to avoid the new license requirement.

The Final Rule also includes a savings clause for items that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export on or before July 26, 2024, provided they are exported, reexported, or transferred in-country before midnight on August 26, 2024.

## Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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