



## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 734, 738, and 746

[Docket No. 220408-0089]

RIN 0694-AI83

### Expansion of Sanctions Against Russia and Belarus Under the Export Administration Regulations (EAR)

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** In response to the Russian Federation's (Russia) ongoing aggression in Ukraine following its further invasion of the country, as substantially enabled by Belarus, this rule expands license requirements for Russia and Belarus under the Export Administration Regulations (EAR) to all items on the Commerce Control List (CCL). It also removes license exception eligibility for aircraft registered in, owned or controlled by, or under charter or lease by Belarus or a national of Belarus.

**DATES:** This rule is effective on [INSERT DATE OF FILING FOR PUBLIC INSPECTION].

**FOR FURTHER INFORMATION CONTACT:** For questions on this final rule, contact Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-0092, Fax: (202) 482-482-3355, E-mail: [rpd2@bis.doc.gov](mailto:rpd2@bis.doc.gov). For emails, include "Russia and Belarus" in the

subject line.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

In response to Russia's February 2022 further invasion of Ukraine and Belarus's substantial enabling of this invasion by allowing it to proceed from Belarusian territory, the Bureau of Industry and Security (BIS) imposed extensive sanctions on Russia and Belarus by amending the Export Administration Regulations (15 CFR parts 730 – 774) (EAR). These sanctions reflected the U.S. Government's position that Russia's invasion of Ukraine, as substantially enabled by Belarus, flagrantly violated international law, was contrary to U.S. national security and foreign policy interests, and undermined global order, peace, and security, and therefore necessitated stringent and expansive sanctions. Since February 2022, BIS, in coordination with its allies and partners, has issued several rules that subject both countries to restrictions under the EAR. BIS has primarily targeted the Russian and Belarusian defense, aerospace, and maritime sectors with expanded export controls, including controls on the export from abroad of certain foreign-produced items that are subject to the EAR.

Stringent licensing restrictions under the EAR were initially imposed on Russia as part of the final rule, *Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)*, effective on February 24, 2022, and published March 3, 2022 (87 FR 12226). Among other restrictions, BIS implemented a new license requirement for Russia on items subject to the EAR and classified under any Export Control Classification Number (ECCN) in Categories 3 through 9 of the Commerce Control List, supp. no. 1 to part 774 of the EAR (CCL) as part of new § 746.8(a)(1) (Russia sanctions) in part 746 of the EAR (Embargoes and Other

Special Controls). BIS extended this new license requirement to Belarus (see § 746.8 (Russia and Belarus sanctions)) as part of the final rule, *Implementation of Sanctions Against Belarus Under the Export Administration Regulations (EAR)*, effective on March 2, 2022, and published March 8, 2022 (87 FR 13048) (Belarus rule).

This rule expands the license requirement that was previously imposed on Russia and Belarus to include items classified under any ECCN in Categories 0 through 2 of the CCL. Accordingly, the license requirement under § 746.8(a)(1) (Russia and Belarus sanctions) now applies to all items on the CCL. Additionally, consistent with this expanded license requirement, this rule revises the foreign “direct product” rule (FDP rule) in § 734.9(f) of the EAR that relates to both Russia and Belarus (the “Russia/Belarus FDP rule”) to apply to all items on the CCL. Therefore, foreign-produced items derived from ECCNs in Categories 0 through 9 of the CCL will now be subject to the EAR under the Russia/Belarus FDP rule as well as to the license requirement described in § 746.8(a)(2).

Additionally, as part of the U.S. Government’s response to Belarus’s actions in support of Russia’s aggressive conduct in Ukraine, this rule limits the availability of two paragraphs of License Exception Aircraft, vessels and spacecraft (AVS) (§ 740.15(a) and (b)) for certain Belarus-related aircraft. Specifically, paragraph (c) (License Exceptions) specifies certain license exceptions that apply to § 746.8(a)(1) and (2) for transactions involving Russia or Belarus, and this rule revises paragraph (c)(5) to preclude the availability of paragraphs (a) and (b) of License Exception AVS for any aircraft registered in, owned or controlled by, or under charter or lease by Belarus or a national of Belarus. Thus, as revised by this rule, paragraphs (a) and (b) of License Exception AVS are not available for aircraft registered in, owned, or controlled by, or under charter or lease by, Belarus or Russia, or by a Belarusian or Russian

national. As a conforming change, this rule revises footnote 6 to the Commerce Country Chart (supplement no. 1 to part 738) to reflect the revised license requirements in § 746.8(a)(1).

### *Savings Clause*

For the expanded controls on Russia and Belarus under § 746.8(a)(2), shipments of items removed from eligibility for a License Exception or reexport or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on May 9, 2022, pursuant to actual orders for reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or reexport or transfer (in-country) without a license (NLR).

For all other changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on [INSERT DATE OF FILING FOR PUBLIC INSPECTION], pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

### **Export Control Reform Act of 2018**

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. Sections 4801–4852). ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule. To the extent it applies to certain activities that are the subject of this rule, the Trade Sanctions

Reform and Export Enhancement Act of 2000 (TSRA) (codified, as amended, at 22 U.S.C. Sections 7201-7211) also serves as authority for this rule.

### **Rulemaking Requirements**

1. This final rule is not a “significant regulatory action” because it “pertain[s]” to a “military or foreign affairs function of the United States” under sec. 3(d)(2) of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves three collections of information. BIS believes there will be minimal burden changes to two of these collections -- Five-Year Records Retention Requirement for Export Transactions and Boycott Actions (OMB control number 0694-0096) and Automated Export System (AES) Program (OMB control number 0607-0152).

However, “Multi-Purpose Application (OMB control number 0694-0088) will exceed existing estimates currently associated with this collection as the respondent burden will increase the estimated number of submissions by 150 for license applications submitted annually to BIS. BIS estimates the burden hours associated with this collection would increase by 77 (*i.e.*, 150 applications × 30.6 minutes per response) for a total estimated cost increase of \$2,310 (*i.e.*, 77 hours × \$30 per hour). The \$30 per hour cost estimate for OMB control number 0694–0088 is consistent with the salary data for export compliance specialists currently available through glassdoor.com (glassdoor.com estimates that an export compliance specialist makes \$55,280 annually, which computes to roughly \$26.58 per hour). Consistent with 5 CFR 1320.13, BIS

requested, and OMB has approved, emergency clearance for an increase in the burden estimate due to the additional license requirements imposed by this rule.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4821) (ECRA), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)).

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

## **List of Subjects**

### **15 CFR Part 734**

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

## 15 CFR Part 738

Exports.

## 15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 734, 738, and 746 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

### **PART 734 – SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS**

1. The authority citation for 15 CFR part 734 continues to read as follows:

**Authority:** 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 10, 2021, 86 FR 62891 (November 12, 2021).

2. Section 734.9 is amended by revising paragraph (f) to read as follows:

#### **§ 734.9 Foreign-Direct Product (FDP) Rules.**

\* \* \* \* \*

(f) *Russia/Belarus FDP rule.* A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (f)(1) of this section and the destination scope in paragraph (f)(2) of this section. See § 746.8 of the EAR for license requirements, license review policy, and license

exceptions applicable to foreign-produced items that are subject to the EAR pursuant to this paragraph (f).

(1) *Product scope of Russia/Belarus FDP rule.* The product scope applies if a foreign-produced item meets the conditions of either paragraph (f)(1)(i) or (ii) of this section.

(i) *“Direct product” of “technology” or “software.”* A foreign-produced item meets the product scope of this paragraph (f)(1)(i) if the foreign-produced item is not designated EAR99 and is a “direct product” of U.S.-origin “technology” or “software” subject to the EAR that is specified in any ECCN in product groups D or E of the CCL; or

(ii) *“Direct product” of a complete plant or ‘major component’ of a plant.* A foreign-produced item meets the product scope of this paragraph (f)(1)(ii) if the foreign-produced item is not designated EAR99 and is produced by any plant or ‘major component’ of a plant that is located outside the United States, when the plant or ‘major component’ of a plant, whether made in the United States or a foreign country, itself is a “direct product” of U.S.-origin “technology” or “software” subject to the EAR that is specified in any ECCN in product groups D or E of the CCL.

(2) *Destination scope of the Russia/Belarus FDP rule.* A foreign-produced item meets the destination scope of this paragraph (f)(2) if there is “knowledge” that the foreign-produced item is destined to Russia or Belarus or will be incorporated into or used in the “production” or “development” of any “part,” “component,” or “equipment” not designated EAR99 and produced in or destined to Russia or Belarus.



**PART 738 – COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY**

**CHART**

3. The authority citation for 15 CFR part 738 continues to read as follows:

**Authority:** 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

4. Supplement no. 1 to part 738 is amended by revising the entries for “Belarus” and “Russia” and footnote 6 to read as follows:

**Supplement No. 1 to Part 738 – Commerce Country Chart**

**[Reason for control]**

Countries	Chemical and biological weapons			Nuclear nonproliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
* * * * *																
Belarus <sup>6</sup>	X	X	X	X	X	X	X	X	X	X		X	X			
* * * * *																

Russia <sup>6</sup>	X	X	X	X	X	X	X	X	X	X		X	X			
* * * * *																

\* \* \* \* \*

<sup>6</sup> See § 746.5 of the EAR for additional license requirements under the Russian Industry Sector Sanctions for ECCNs 0A998, 1C992, 3A229, 3A231, 3A232, 6A991, 8A992, and 8D999 and items identified in supplement no. 2 to part 746 of the EAR. See § 746.8 of the EAR for Sanctions against Russia and Belarus, including additional license requirements for items listed in any ECCN on the CCL.

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**PART 746 – EMBARGOES AND OTHER SPECIAL CONTROLS**

5. The authority citation for 15 CFR part 746 continues to read as follows:

**Authority:** 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108-11, 117 Stat. 559; 22 U.S.C. 2151 note; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003-23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007-7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 6, 2021, 86 FR 26793 (May 10, 2021).

6. Section 746.8 is amended by revising paragraphs (a)(1) and (c)(5) to read as follows:

**§ 746.8 Sanctions against Russia and Belarus.**

(a) \* \* \*

(1) *Items classified in any ECCN on the CCL.* In addition to license requirements specified on the Commerce Control List (CCL) in supplement no. 1 to part 774 of the EAR and in other provisions of the EAR, including part 744 and § 746.5, a license is required, excluding deemed exports and deemed reexports, to export, reexport, or transfer (in-country) to or within Russia or Belarus any item subject to the EAR and specified in any Export Control Classification Number (ECCN) on the CCL.

\* \* \* \* \*

(c) \* \* \*

(5) License Exception AVS, excluding any aircraft registered in, owned or controlled by, or under charter or lease by Russia or Belarus or a national of Russia or Belarus (§ 740.15(a) and (b) of the EAR).

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**Matthew S. Borman,**

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