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BIS Amends the EAR to Expand Sanctions Against Russia and Belarus and Over 300 New Sanctions Designations

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On June 12, 2024, the US Department of Commerce Bureau of Industry and Security (BIS) imposed additional export control measures against Russia and Belarus by expanding the scope of items subject to the Export Administration Regulations (EAR) sectoral sanctions.

The amendments to the EAR were issued in conjunction with the issuance of sanctions against over 300 individuals and entities by the Department of Treasury Office of Foreign Assets Control (OFAC) and the Department of State.

The US has increasingly implemented restrictive sanctions against Russia since February 2022 (see our last alert).

New Rules – Amendments to the EAR

The new final rule implements additional controls aimed at further strengthening the EAR's sanctions against Russia and Belarus, described as follows:

Imposition of New Export Controls on Russia and Belarus

- Russian and Belarusian Industry Sector Sanctions (changes to Supplement No. 4 and No. 6 to Part 746)
  - Adds 522 HTS-6 Codes to Supplement No. 4 to Part 746, which will now require a license for export or reexport to, or transfer within, Russia or Belarus. With this new rule, BIS will now control 18 additional chapters of HTS codes.
  - Adds a new paragraph (h) to Supplement No. 6 to Part 746 to control certain "riot control agents" as defined under Article II of the Chemical Weapons Convention (CWC). These expanded controls supplement the existing Commerce Control List (CCL) controls under ECCNs 1A984 and 1C607.
  - Effective September 16, 2024, a new license requirement for the following types of EAR99 software destined to Russia or Belarus: enterprise resource planning (ERP); customer relationship management (CRM); business intelligence (BI); supply chain management (SCM); enterprise data warehouse (EDW); computerized maintenance management system (CMMS); project management software, product lifecycle management (PLM); building information modelling (BIM); computer aided design (CAD); computer-aided manufacturing (CAM); and engineering to order (ETO).
    - A new paragraph to §746.8, (a)(8)(iv), excludes entities from the license requirement that exclusively operate in the medical or agricultural sectors.
- Restrictions on license exceptions to Russia and Belarus (changes to §740.19)
  - Narrows the scope of eligible commodities and software under license exception Consumer Communications Devices (CCD) for Russia and Belarus by revising the language in §740.19(b) to limit the scope of eligible commodities and software that may be authorized for export, reexport, or transfer (in-country) to and within Russia, Belarus and Cuba to those described under §740.19(b)(1) through (8) and specifying that eligible commodities and software described in paragraphs (b)(9) through (18) are authorized for export, reexport, or transfer (in-country) to and within Cuba only.
  - The subparagraphs in 740.19(b) are reorganized and the amendments do not otherwise revise the scope of eligible items.

Consolidation of Russia and Belarus Controls

- The new final rule consolidates all license requirements for exports, reexports, and transfers (in-country) to or within Russia and Belarus into a revised and expanded §746.8.
  - Former license requirements under §746.8 are now under paragraphs (a)(1) through (3). Former license requirements under §746.5 are now under paragraphs (a)(4) through (6). Former license requirements under §746.10 are now under paragraph (a)(7).
  - §746.5 (Russian and Belarusian industry sector sanctions) and §746.10 ("luxury goods" sanctions against Russia and Belarus and Russian and Belarusian oligarchs and malign actors) are removed and reserved. The restrictions are now located in §746.8.
  - Exclusions to licensing requirements formerly set forth in §§746.5, 746.8, and 746.10 are now consolidated under §746.8(a)(12).
    - §746.8(a) will include an instructional introductory text that provides an order of review for relevant sections of the CCL and the EAR.
  - No changes were made to the structure or status of Russian and Belarusian industry sector sanctions under supplements nos. 2 through 7 to part 746.
  - The final rule makes various conforming changes to provisions of the EAR to reflect the substantive changes made.

Other Revisions to Existing Controls in the EAR

- Changes to standard for revising, suspending or revoking an EAR license exception.
  - The final rule revises §740.2(b) to confirm that BIS may make revisions, suspensions, or revocations of license exceptions to protect US national security or foreign policy interests, consistent with §1752 of the Export Control Reform Act of 2018 (50 USC 4811).
- Clarification on the application of the exclusion for certain fasteners in supplements nos. 2, 4, 5, and 7.
  - The final rule adds a sentence in supplements nos. 2, 4, 5, and 7 to clarify the scope of the exclusion for fasteners (e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin) specifying that the exclusion of fasteners from the control does not apply to fasteners that are designated under an HTS code that is specified in that supplement.

BIS also added one Russian entity, four Chinese entities and eight Chinese addresses to the Entity List for their connections or support of the Russian military and defense sectors. BIS determined that the addresses of these entities presented a "high diversion risk" due to their significant risk of acting contrary to the national security or foreign policy interests of the US. To facilitate adding the addresses detailed above, BIS revised §744.16, which describes the license requirements, license exceptions and license review policy for entities added to the Entity List, by adding paragraph (f), which states that BIS may identify by address an entity (or multiple entities) on the Entity List that presents a high risk of diversion without an associated entity name.

Sanctions by the Department of the Treasury

- Software and IT-related Sanctions

  In harmony with BIS' expanded export controls that target software, OFAC, in consultation with the Department of State, issued a new determination under Executive Order (EO) 14071 that will take effect on September 12, 2024, prohibiting the supply to any person in the Russian Federation of:

  1. IT consultancy and design services
  2. IT support services and cloud-based services for enterprise management software and design and manufacturing software

  Therefore, the determination prohibits without license, the exportation, reexportation, sale or supply, directly or indirectly, from the US or by a US person, wherever located, of IT consultancy and design services or of IT support services or cloud-based services for covered software to any person located in the Russian Federation. However, the determination excludes:

  1. Any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a US person
  2. Any service in connection with the wind-down or divestiture of an entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person
  3. Any service for software that is:
     a. Subject to the EAR and for which the exportation, reexportation, or transfer (in-country) to the Russian Federation of such software is licensed or otherwise authorized by the Department of Commerce
     b. Not subject to the EAR and for which the exportation, reexportation or transfer (in-country) to the Russian Federation of such software would be eligible for a license exception or otherwise authorized by the Department of Commerce if it were subject to the EAR

- Expanded Restrictions on Foreign Financial Institutions

  The Department of Treasury expanded the definition of Russia's "military-industrial base" to include all persons blocked pursuant to EO 14024. Consequently, foreign financial institutions face increased risk of being sanctioned for conducting or facilitating significant transactions, or providing any service, involving any person blocked pursuant to EO 14024, including designated Russian banks. On June 12, OFAC also provided updates to its sanctions advisory entitled "Updated Guidance for Foreign Financial Institutions on OFAC Sanctions Authorities Targeting Support to Russia's Military-Industrial Base" to provide practical guidance on how individuals and entities can identify sanctions risks and implement corresponding controls.

- Additionally, OFAC issued several general licenses relating to energy, telecommunications, and certain transactions with specific blocked entities, as well as eight new Russia-related frequently asked questions.

On June 12, more than 300 individuals and entities, both in Russia and outside its borders—including in Asia, the Middle East, Europe, Africa, Central Asia and the Caribbean – were designated by the OFAC and the Department of State.

OFAC designated over 200 individuals and entities to the Specially Designated Nationals and Blocked Persons list (SDN List) for connections or involvement in:

- Sanctions evasion, circumvention and backfill through transnational supply chains that feed Russia's war machine and enable its production of critical materials
- Russia's war economy, specifically companies that operate or have operated in the defense and related materiel, manufacturing, technology, transportation, or financial services sectors of the Russian Federation economy
- Russia's liquefied natural gas (LNG) projects in development, the construction of natural gas-related projects or the manufacturing of specialized equipment for LNG transportation

The Department of State designated more than 100 individuals and entities for connections or involvement in:

- Producing, exporting and importing items critical to Russia's military-industrial base, including PRC-based entities supporting Russia's war effort

- Lukashenka regime's support for Russia's illegal, full-scale invasion of Ukraine, including Belarusian entities and associated individuals supporting the Russian military's war effort
- Supplying critical dual-use goods in support of Russia's war effort, including entities in the UAE, Turkey, the Kyrgyz Republic, Moldova and Singapore
- Developing of Russia's future energy production and export capacity, and operating in Russia's metals and mining sector.

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