

SUPPORTING STATEMENT
U.S. Department of Commerce Bureau of Industry and Security
Multipurpose Application
OMB No. 0694-0088

A. Justification for revision:

1. Explain the circumstances that make the collection of information necessary.

BIS is revising this information collection because of the estimated increase of license application submissions that will result from the publication of the final rule entitled, “Changes to Country Policy Under the Export Administration Regulations (EAR).” In response to Russia’s invasion of (significant incursion into) Ukraine, BIS is amending the Export Administration Regulations (15 CFR 730 – 774) (EAR) to impose new sanctions on Russia. This invasion is a threat to the international order and is counter to U.S. national security and foreign policy interests. In order to address these threats to U.S. national security and foreign policy interests, BIS in this final rule is imposing several restrictive sanctions on Russia and on Russian entities; these sanctions are intended to send a clear message to the Government of the Russia Federation that unwarranted invasions into sovereign countries or territories are counter to the international order and to U.S. national security and foreign policy interests. The sanctions being added in this final rule to the EAR are part of a larger sanctions package being implemented by the U.S. Government, including by the Department of the Treasury.

The U.S. Government is partnering with other countries around the world to impose an array of sanctions intended to impose significant costs on Russia and the Government of the Russian Federation. The primary purposes of these sanctions are to target the Russian defense sector, thereby limiting its ability to support further extra-territorial actions, and to impose significant costs on the Government of the Russian Federation. The sanctions that BIS is imposing in this final rule, which are broad in scope and more stringent, in multiple respects, than the United States has previously implemented, reflect the United States’ government’s condemnation of Russia’s actions. In order to achieve their intended results, these sanctions must be broad in scope and will therefore have a significant impact on large segments of the Russian economy.

This final rule adds new Russia sanctions under part 746 of the EAR (Embargoes and Other Special Controls). In addition to imposing additional CCL-based license requirements for Russia for exports, reexports and transfers (in-country), the new sanctions impose a new foreign-produced “direct product” rule specific to Russia. The new Russia sanctions also specify a presumption of denial license review policy and place significant restrictions on the use of the EAR’s license exceptions. This rule also revises the ‘military end use’ and ‘military end user’ control under § 744.19 of the EAR to expand the scope of the prohibition for Russia to apply to all items “subject to the EAR.” Finally, this rule amends the EAR by removing forty-five entities from the Military End-User (MEU) List under the destination of Russia and adding the same entities to the Entity List. All of these changes are described below in detail.

This rule also imposes comprehensive export and reexport restrictions for the so-called Donetsk People’s Republic (DNR) and Luhansk People’s Republics (LNR) regions of Ukraine (“Covered Regions of Ukraine”) and makes conforming revisions to export and reexport restrictions for Crimea Region of Ukraine provisions. BIS estimates that these new controls

for the § 746.6 will result in an additional 20 license applications being submitted to BIS annually.

BIS estimates that these changes will result in an increase of 2,445 additional license applications being submitted to BIS as a result of the new Russia sanctions. Here is a more detailed description of the changes that are anticipated to result in the increase in license applications:

§ 746.8 *Russia sanctions*

In part 746 of the EAR, this final rule adds a new § 746.8 Russia sanctions. Under paragraph (a) (License Requirements) of this new section, this final rule imposes two different types of license requirements, the first specific to the export, reexport and transfer (in-country) of items subject to the EAR, and the second specific to foreign-produced direct products of U.S. software or technology.

The first set of license requirements under new §746.8 of the EAR is added under paragraph (a)(1) (Exports, reexport, and transfers (in-country)). The new license requirements in paragraph (a)(1) are supplemental to the license requirements found elsewhere in the EAR. Paragraph (a)(1) imposes a license requirement on the export, reexport, or transfer (in-country) to Russia of any item subject to the EAR and specified in an Export Control Classification Number (ECCN) in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL in supplement no. 1 to part 774. In implementing these license requirements, BIS is, for the first time, imposing transfer (in-country) requirements on an entire country for the first time, reflecting the significance of the U.S. national security and foreign policy concerns, resulting from the Russian government actions in Ukraine, that this rule is addressing. The license requirements in paragraph (a)(1) extend the EAR license requirement to many items not previously requiring a license on the basis of their CCL-based license requirement alone, such as the parts and components used in civil aircraft controlled under ECCN 9A991.d. BIS estimates these changes will result in an additional 400 license applications being submitted to BIS.

The second set of license requirements added under this final rule are found in paragraph (a)(2) (*Foreign-produced “direct product” items*). Paragraph (a)(2) creates a foreign-produced “direct product” rule specific to Russia (Russia FDP Rule). The Russia FDP Rule extends the extraterritorial reach of the EAR and makes additional foreign-made items that are reexported or exported from abroad to Russia subject to the EAR. The introductory text of paragraph (a) (2) specifies that none of the foreign-produced items specified in paragraph (a)(2)(i) or (ii) of new § 746.8 may be reexported, exported from abroad, or transferred (in-country) without a license or license exception when there is “knowledge” that the foreign-produced item meets certain criteria. Specifically, a license is required, unless a license exception is available, when the specified foreign-produced item will be incorporated into or will be used in the “production” or “development” of any “part,” “component,” or “equipment” produced in or destined to Russia.

Under new paragraph (a)(2)(i) (*“Direct product” of “technology” or “software” subject to the EAR and specified in certain Category 3 - 9 ECCNs*), this rule specifies the criteria under which, for the purposes of these Russian sanctions, a foreign-produced item is a “direct product” of “technology” or “software” subject to the EAR. New paragraph (a)(2)(i) specifies that any ECCN in product groups D or E in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL

is considered a foreign-produced item when it is a “direct product” of “technology” or “software” subject to the EAR and specific to these Russian sanctions.

Under new paragraph (a)(2)(ii) (“*Direct product*” of a plant or major component of a plant), this final rule specifies that a foreign-produced item is an item that is produced by any plant or major component of a plant that is located outside the United States, when the criteria specified in paragraph (a)(2) are met. Specifically, if a plant or major component of a plant,) is the “direct product” of U.S.-origin “technology” or “software” subject to the EAR and specified in any ECCN in product groups D or E in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL, then the item produced in that plant is also considered a “direct product” of U.S.-origin software or technology.

BIS estimates these changes will result in an additional 2,000 license applications being submitted to BIS.

Changes to ‘Military End Use’ and ‘End User’ Controls for Russia

This final rule revises the scope of the ‘military end use’ and ‘military end user’ control under § 744.21 of the EAR to reflect the expanded controls for Russia, which, with the publication of the final rule, apply to all items “subject to the EAR” instead of to the more narrow subset of items identified in supplement no. 2 to part 744. As a result of the expanded controls for Russia for ‘military end user’ and ‘military end use,’ BIS is revising the Entity List in supplement no. 4 to part 744 and the Military End-User (MEU) List in supplement no. 7 of the same part to make conforming changes. BIS estimates these changes will result in an additional 75 license applications being submitted to BIS.

Section 1761(h) under the Export Control Reform Act (ECRA) of 2018, authorizes the President and the Secretary of Commerce to issue regulations to implement the ECRA including those provisions authorizing the control of exports of U.S. goods and technology to all foreign destinations, as necessary for the purpose of national security, foreign policy and short supply, and the provision prohibiting U.S. persons from participating in certain foreign boycotts. Export control authority has been assigned directly to the Secretary of Commerce by the ECRA and delegated by the President to the Secretary of Commerce. This authority is administered by the Bureau of Industry and Security through the Export Administration Regulations (EAR).

BIS administers a system of export, re-export, and in-country transfer controls in accordance with the EAR.

In doing so, BIS requires that parties wishing to engage in certain transactions apply for licenses, submit Encryption Review Requests, or submit notifications to BIS. BIS also reviews, upon request, specifications of various items and determines their proper classification under the EAR. Currently, members of the public submit these applications, requests and notifications to BIS in one of four ways, via:

1. BIS’ Simplified Network Application Process - Redesign (SNAP-R);
2. BIS’ System for Tracking Export License Applications (STELA);
3. Multipurpose Application, Form BIS 748P, and its two appendices the BIS 748P-A (item

appendix) and the BIS 748P-B (end-user appendix); or

4. Advisory opinion requests, pursuant to the instructions in § 748.3(c) of the EAR.

Specific to the submission of applications, requests and notifications, BIS will, under one or more the circumstances specified in § 748.1(d)(1) of the EAR, accept paper submissions of license applications, notifications and requests. However, BIS has not recently received any paper submissions of license applications, notifications or requests.

In many instances, BIS needs additional documents to act on the submission. For submissions made electronically via SNAP-R, the applicant must scan and attach the additional documents in SNAP-R.

For documents that relate to paper submissions, the documents can be mailed or delivered to BIS with the BIS 748P form, as appropriate.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

Export information collected either electronically or from the Multipurpose Application (Forms BIS-748P, 748P-A and 748P-B) is used by BIS as the basis for decisions to grant licenses for export and re-export, for national security reviews of encryption items, and for classifications of items that are controlled for reasons of national security, short supply or foreign policy. These decisions are typically made on a case-by-case basis and are dependent upon the information provided and the policies in effect at the time of the transaction. In many cases, this information is shared with other Federal agencies such as the Department of Defense, State Department, and Department of Energy, to obtain their recommendations on these decisions.

Both the paper and electronic versions of the Multipurpose Application provide detailed instructions and explanations of what data is required in each field. In addition, the SNAP-R system includes a large number of software validations to insure high quality data.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

BIS redesigned the SNAP system to enhance security, support electronic submission of supporting documents and provide increased functionality. BIS currently receives approximately 100% of all submissions of license applications, notifications and commodity classification and encryption registration requests electronically through the SNAP-R system. SNAP-R is located at: <https://snapr.bis.doc.gov/>.

Advisory opinion requests are delivered to BIS by mail, delivery service or via e-mail.

4. Describe efforts to identify duplication.

The information received when applying for an export license, classifications and advisory opinions, Encryption Review Request, or license exception AGR is unique to each application. The information is not duplicated anywhere else in Government nor is it available from any other source.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The information required when applying for an export license, classification request, advisory opinion, Encryption Review Request, and license exception AGR notification must be submitted by exporters or their designated agents, regardless of size. This procedure, as part of the EAR, is governed by national security, foreign policy and proliferation of weapons of mass destruction requirements. BIS maintains an active seminar and counseling program to help all businesses understand and comply with BIS requirements. BIS also maintains an informative web site that provides detailed instructions on how to comply with our paperwork requirements. This web site is located at: <https://www.bis.doc.gov>.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If this information were submitted less frequently, it could result in decreases and delays in trade as well as a higher number of exports to unapproved consignees with the possibility that illegal shipments would be made to countries of concern.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

N/A

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gift will be provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Section 1761(h) of the ECRA provides for the confidentiality of export licensing information submitted to the Department of Commerce.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

The total estimated burden of this collection is 32,693 hours. This estimate includes the increase of burden hours from the final rule, “Changes to Country Policy Under the Export Administration Regulations (EAR).”

BIS estimates that exporters will require 17 minutes to input their application-specific data into the SNAP-R system. 17 additional minutes are required to submit supporting documents into SNAP-R for those applications that require supporting documentation.

Commodity classifications typically require more supporting documentation than other types of applications. About 75% of the commodity classifications and 33% of the other applications require supporting documentation. It is estimated to take one hundred and nine minutes per commodity classification to acquire the corresponding documentation. It is estimated to take 25 minutes for all other types of applications. There is also a record keeping requirement of 2 minutes associated with each application.

The burden hour estimate is detailed in the following table:

Burden Activity	Annual Responses	Average Minutes per Response	Annual Burden Hours
Commodity Classifications Without Supporting Documentation	1,607	17	455
Other SNAP-R Applications Without Supporting Documentation	16,733	17	4,741
Commodity Classifications With Supporting Documentation	4,820	109	8,756
Other SNAP-R Applications With Significant Supporting Documentation	8,550	49	6,928
Other Applications With Minimal Supporting Documentation	32,447	19	10,275
EAR Amendments	3,076	30	1,538
Total	67,233	29.6	32,693

The cost associated with this burden is estimated to be \$980,790. This is obtained by

multiplying 32,693 hours times \$30 per hour.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

There is no additional cost to the respondent.

14. Provide estimates of annualized cost to the Federal government.

The annual cost to the Federal Government is approximately \$2,016,990. This is based on licensing officers spending 45 minutes to review each of the 67,233 applications at \$40 per hour.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

Not applicable.

16. For collections whose results will be published, outline the plans for tabulation and publication.

BIS publishes information based on aggregate data from export license applications. It does not publish information that would identify the details of specific applications or requests. Section 1761(h) of the ECRA restricts release of such detailed data to Congress, the GAO, or to situations in which the Secretary (authority delegated to the Under Secretary for Industry and Security) determines that release is in the national interest.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.