



UNITED STATES DEPARTMENT OF COMMERCE

Bureau of Industry and Security

1401 Constitution Avenue, Suite 3896

Washington, DC 20230

February 24, 2022

MEMORANDUM FOR: Dominic Mancini
Deputy Director, Office of Information and
Regulatory Affairs
Office of Management and Budget

FROM: Karen Nies-Vogel
Director, Office of Exporter Services

SUBJECT: Request for OMB Emergency Review and Approval of
Information Collections for Implementation of Sanctions
Against Russia Under the Export Administration Regulations
(EAR)

On behalf of the Bureau of Industry and Security (BIS), I am seeking approval for emergency Paperwork Reduction Act (PRA) clearance to allow the Department of Commerce (DOC), as represented by BIS, to publish a Federal Register Notice (FRN) announcing the Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR).

BACKGROUND

In response to the Russian Federation's (Russia's) further invasion of Ukraine, with this final rule, the Department of Commerce is adding new Russia-related license requirements and licensing policies to the Export Administration Regulations (15 CFR parts 730 – 774) (EAR) to protect U.S. national security and foreign policy interests. These new Russia-related measures impose new Commerce Control List (CCL)-based license requirements for Russia; add two new foreign "direct product" rules (FDP rules) specific to Russia and Russian 'military end users;' specify a license review policy of denial applicable to all of the license requirements being added in this rule, with certain limited exceptions; significantly restrict the use of EAR license exceptions; expand the existing Russia 'military end use' and 'military end user' control scope to all items "subject to the EAR" other than food and medicine designated as EAR99, or controlled under Export Control Classification Number (ECCN) 5A992.c and 5D992.c, unless for Russian "government end users" and Russian state-owned enterprises (SoEs); transfer forty-five Russian entities from the EAR's Military End-User (MEU) List to its Entity List with an expanded license requirement of all items subject to the EAR (including foreign-produced items subject to the Russia-MEU FDP rules); and add two new Russia entities to and revise two existing Russia entities on the Entity List. Lastly, this rule imposes comprehensive export and reexport restrictions for the so-called Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR) regions of Ukraine ("Covered Regions of Ukraine") and makes conforming revisions to export and reexport restrictions for Crimea Region of Ukraine provisions.



JUSTIFICATION

The collection of information is needed prior to the expiration of the time period normally associated with a routine submission for review under the provisions of the Paperwork Reduction Act in order to respond fully to Russia's further invasion of Ukraine. BIS is imposing extensive sanctions on Russia by amending the EAR because Russia's invasion of Ukraine flagrantly violates international law, is contrary to U.S. national security and foreign policy interests, and undermines global order, peace and security. The Commerce Department's sanctions are one aspect of the broad U.S. Government response to Russia's unprovoked aggression and are being imposed in coordination with international allies and partners.

In response to Russia's 2014 invasion of Ukraine and occupation of the Crimean region, the U.S. Government, in coordination with its partners and allies, imposed restrictions on Russia, including asset-blocking measures, licensing requirements applicable to exports, reexports, and transfers (in-country) of items subject to the EAR destined for certain Russian entities, and special controls on items subject to the EAR intended for use in specified Russian industry sectors. Leading up to Russia's further invasion of Ukraine, the U.S. Government announced that should Russia encroach further on Ukraine's territory, it would impose additional, comprehensive sanctions with significant consequences.

The export control measures implemented in BIS's final rule protect U.S. national security and foreign policy interests by restricting Russia's access to items that it needs to project power and fulfill its strategic ambitions. These items include sophisticated technologies designed and produced in the United States, as well as certain foreign-produced items that contain or are based on U.S.-origin technology subject to the EAR or other technology subject to the EAR that is an essential input to Russia's key technology and other sectors. BIS is primarily targeting the Russian defense, aerospace, and maritime sectors with these new export controls. These export controls include controls on the export from abroad of certain foreign-produced items that are subject to the EAR. Given the global dominance of U.S.-origin software, technology, and equipment (including tooling), these new controls, implemented in parallel with similarly stringent measures by partner and allied countries, will cover a broad scope of items that Russia seeks to advance its strategic ambitions and, consequently, will impair the country's key industrial sectors.

BIS is implementing a new license requirement for Russia on items subject to the EAR and classified under any ECCN in Categories 3 through 9 of the Commerce Control List, Supp. No. 1 to part 774 of the EAR (CCL). The new license requirement is added under new § 746.8(a)(1) (Russia sanctions) in part 746 of the EAR (Embargoes and Other Special Controls). License exceptions described in § 746.8(c)(1)-(7) may be used to overcome the license requirement. When a license application is required, applications for such items will be subject to a policy of denial. However, to minimize unintended consequences, a case-by-case review policy applies to applications to export, reexport, or transfer (in-country) items that ensure safety of flight, maritime safety, meet humanitarian needs, enable government space cooperation, allow transactions for items destined to specified Western subsidiaries and joint ventures, support civil telecommunications infrastructure in certain countries, and allow

or support government-to-government activities. The case-by-case review policy will be used to determine whether a transaction that meets the any of the listed criteria would benefit the Russian government or defense sector.

Additionally, BIS is establishing two new foreign “direct product” rules (FDP rules) in § 734.9 of the EAR. The first relates to the entire country of Russia, as described in new § 734.9(f) (the “Russia FDP rule”). Foreign-produced items subject to the EAR under the Russia FDP rule will be subject to the license requirement described in new § 746.8(a)(2) but will be eligible for certain license exceptions described in § 746.8(c)(1)-(7). When a license application is required, such applications will be subject to a general policy of denial but will be subject to case-by-case review for certain circumstances described in § 746.8(b).

The second new FDP rule targets Russian ‘military end users,’ as described in new § 734.9(g) (the “Russia-MEU FDP rule”). Foreign-produced items subject to the EAR under the Russia-MEU FDP rule will be subject to the license requirement described in new § 746.8(a)(3). No license exceptions are available to overcome this license requirement, except as specified in the Entity List entry for a Footnote 3 entity on the Entity List in supplement no. 4 to part 744 of the EAR, and such items will be subject to a policy of denial for all license applications, as described in § 746.8(b).

BIS has determined that certain countries are committed to implementing substantially similar export controls as part of their domestic sanctions against Russia. These countries are identified in Supplement No. 3 to part 746 (Russia Exclusions List). They are excluded from the requirements of the Russia and Russia-MEU FDP rules and the *de minimis* provisions under Supplement No. 2 to part 734 of the EAR with respect to ECCNs that either specify only Anti-terrorism (AT) in the reason for controls paragraph of the ECCN or are classified under ECCN 9A991. This exclusion from requirements may be full or partial, as noted in the Scope column of the Russia Exclusions List and may only apply when the criteria specified in § 746.8(a)(4) or (a)(5) are met. In addition, the Russia Exclusions List includes certain countries that have committed to implementing substantially similar controls under their domestic laws but have not yet implemented them. A “pending” designation applies to these countries.

BIS also is expanding the scope of the existing ‘military end use’ and ‘military end user’ controls under § 744.21 of the EAR for Russia to apply to all items “subject to the EAR” except food and medicine designated EAR99 or items controlled under ECCNs 5A992.c or 5D992.c unless the items are for Russian “government end users” and Russian state-owned enterprises (SoEs). In conjunction with this change, this rule removes forty-five Russian entities from the Military End-User (MEU) List in Supplement No. 7 to part 744 and adds them to the Entity List with an expanded license requirement for the export, reexport, and transfer (in-country) of all items “subject to the EAR,” including those items subject to the Russia-MEU FDP rule for ‘military end users’ in Russia. Finally, BIS is adding two new Russian entities to the Entity List under this final rule and revising two existing Russian entries on the Entity List.