

# **BIS Amends Export Administration Regulations with Respect to Russia and Belarus**

Article By:

International Trade Practice at Squire Patton Boggs

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On Tuesday, April 12, 2022, the US Department of Commerce, Bureau of Industry and Security (BIS) published in the Federal Register a Final Rule amending the Export Administration Regulations (EAR) (15 CFR parts 730-774) to add four additional countries to the list of countries excluded from certain license requirements (Supp. No. 3 to part 746) that were enacted to control the export, reexport, and transfer (in-country) of certain items destined for Russia in response to the ongoing situation in Ukraine. (See 87 FR 21554)

Additionally, BIS also is scheduled to publish in the Federal Register on April 14, 2022, a separate Final Rule that further expands the licensing requirements for items destined to Russia or Belarus.

## **Background**

Beginning on February 24, 2022, BIS amended the EAR to impose its first in a series of rules targeting Russia for actions in Ukraine. (See 87 FR 12226) (See our alert [here](#)) Since that initial rule, BIS has further amended the EAR to: (1) impose the same licensing restrictions on Belarus as BIS has imposed on Russia (see 87 FR 13048); (2) expand existing sanctions against the Russian industry sector to target the oil refinery sector in Russia (see 87 FR 12856); (3) add 91 additional entities to the Entity List (see 87 FR 13141); and (4) add a license requirement for the export, reexport, or transfer of certain luxury goods destined for Russia and Belarus and for Russian and Belarusian oligarchs and malign actors (see 87 FR 14785).

## **New Rules**

Through these new Final Rules, BIS makes two additional amendments to the EAR.

### **Additional Countries Exempted From FDP Rules**

First, BIS adds four new countries to the list of nations that are not subject to the foreign direct product (FDP) rules that apply to reexports, exports from abroad, and transfers of certain items produced outside the United States and destined for Russia or Belarus. When BIS created the Russia/Belarus FDP rule (15 CFR § 734.9(f)) and Russia/Belarus-Military End User FDP Rule (15 CFR § 734.9(g)), BIS created a list of countries for which those FDP rules did not apply (see 15 CFR

Supp. No. 3 to part 746), as those countries committed to implementing substantially similar export controls on Russia and Belarus (see 15 CFR § 746.8(a)(4)).

Initially, the list of countries included the 27 member countries of the European Union, Australia, Canada, Japan, New Zealand, and the United Kingdom. South Korea was added to that list of countries in a Final Rule published on March 10, 2022 (87 FR 13627). This new Final Rule now adds Iceland, Liechtenstein, Norway, and Switzerland to Supp. No. 3 to part 746, as countries to which the Russia/Belarus FDP rule and Russia/Belarus-Military End User FDP rule do not apply.

### **Additional Licensing Requirements Imposed on Russia/Belarus**

Second, BIS expands the licensing requirements for items destined to Russia and Belarus. In its initial rule from February 24, 2022, BIS imposed a license requirement on all items destined for Russia and classified under any Export Control Classification Number (ECCN) in Categories 3 through 9 on the Commerce Control List (CCL). This new Final Rule expands the licensing requirement also to include items classified under any ECCN in Categories 0 through 2 on the CCL. This Final Rule also revises the Russia/Belarus FDP rule to impose a license requirement on all items on the CCL.

Additionally, this new Final Rule revises paragraph (c) (License Exceptions) of § 746.8, to limit the availability of two paragraphs for certain Belarus-related aircraft under License Exception Aircraft, vessels and spacecraft (AVS) (15 CFR § 740.15). Specifically, the rule imposes the same restrictions against Belarus as already were in place against Russia regarding the availability of License Exception AVS. 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.

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