



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738 and 746

[Docket No. 220303-0068]

RIN 0694-AI76

Expansion of Sanctions Against the Russian Industry Sector 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’s) further invasion of Ukraine, the Department of Commerce is expanding the existing sanctions against the Russian industry sector by adding a new prohibition under the Export Administration Regulations (EAR) that targets the oil refinery sector in Russia. These new export controls will further limit revenue that could support the military capabilities of Russia.

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: rp2@bis.doc.gov. For emails, include “Russia Industry Sector Sanctions Expansion” in the subject line.

SUPPLEMENTARY INFORMATION:

I. Background

In response to Russia’s February 2022 further invasion of Ukraine, the Bureau of Industry and Security (BIS) imposed extensive sanctions on Russia under the Export Administration Regulations (15 CFR parts 730 – 774) (EAR) as part of the final rule, *Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)*, effective February 24, 2022 (“Russia Sanctions rule”).¹ As described in the Russia Sanctions rule’s preamble, 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, and consequently necessitated the imposition of stringent sanctions.

The export control measures implemented in this final rule build upon the policy objectives set forth in the Russian Sanctions rule by further restricting Russia’s access to items that it needs to support its military capabilities.

The changes made by this rule are intended to further limit the Russian oil sector by restricting the export, reexport and transfer (in-country) of additional items needed for oil refining. Sale of gasoline produced from Russian oil is a major source of revenue for Russia. Limiting the export, reexport and transfer (in-country) of critical oil refining equipment will consequently reduce Russia’s ability to generate revenue that the country needs to support its military capabilities.

As described below, this rule expands the scope of the sanctions against the Russian industry sector that were originally added to the EAR in August 2014 in response to Russia’s 2014 destabilizing conduct in Ukraine and occupation of the Crimea region of Ukraine. See 79 FR 45675 (Aug. 6, 2014). The export controls in this final rule target the oil refinery sector in Russia. These new export controls under the EAR, implemented in parallel with similarly

¹ 87 FR 12226 (March 3, 2022).

stringent measures by partner and allied countries, will further limit sources of revenue that could support the military capabilities of Russia.

II. Overview of New Controls

This final rule amends part 746 of the EAR (Embargoes and Other Special Controls) to expand the scope of the Russian industry sector sanctions by adding a new general prohibition that will apply to additional Harmonized Tariff Schedule (HTS)-6 codes and Schedule B numbers for all exports, reexports, and transfers (in-country) to or within Russia.

III. Amendments to the Export Administration Regulations (EAR)

A. Expansion of Russian Industry Sanctions and conforming change.

1. Expansion of Russian industry sector sanctions by adding a new prohibition.

Under § 746.5 of the EAR (Russian industry sector sanctions), this final rule revises paragraph (a) (License requirement) to expand the scope of the general prohibition under paragraph (a)(1). Prior to this rule, this general prohibition applied to the export, reexport or transfer (in-country) of certain items in situations where a person had “knowledge,” for purposes of the EAR, that the item would be used directly or indirectly in Russia's energy sector for exploration or production from deepwater, Arctic offshore, or shale projects in Russia that have the potential to produce oil or gas, or where a person was unable to determine whether the item would be used in such projects in Russia.

This final rule adds a new paragraph (a)(1)(ii) to expand the scope of the general prohibition under this section by imposing an additional license requirement for exports, reexports or transfers (in-country) of any item subject to the EAR listed in new supplement no. 4 to part 746

to and within Russia. Unlike the existing prohibition (reordered to appear in new paragraph (a)(1)(i)), the prohibition under new paragraph (a)(1)(ii) does not include a “knowledge” requirement.

This final rule also adds new paragraph (a)(1)(iii) to provide cross-references to other EAR license requirements for Russia and guidance for submitting license applications required pursuant to this section. Additionally, this final rule adds new supplement no. 4 to part 746 – HTS Codes and Schedule B Numbers that Require a License for Export, Reexport, and Transfer (in-country) to or within Russia pursuant to § 746.5(a)(1)(ii), to identify the items by HTS code and Schedule B number that will be subject to the prohibition under paragraph (a)(1)(ii). Supplement no. 4 will include four columns consisting of the HTS Code, HTS Description, Schedule B and Schedule B Description to assist exporters, reexporters, and transferors to identify the products in this supplement. There is no difference in the scope of products identified in the supplement by HTS-6 code and HTS description or by the Schedule B number and Schedule B description. The inclusion of both the HTS-6 codes and Schedule B numbers will assist exporters, reexporters, and transferors if they have difficulty in identifying a product based on either the HTS codes or Schedule B numbers alone.

Under paragraph (b) (Licensing policy), this final rule adds new paragraph (b)(1) for the text that appeared in paragraph (b) prior to this final rule, which will specify the licensing policy for the license requirements under new paragraph (a)(1)(i). This rule changes the license review policy that appeared in paragraph (b) which is now paragraph (b)(1) in this rule from a presumption of denial to the more restrictive policy of denial. This change in the license review policy is made to harmonize with the license review policy in new paragraph (b)(2) for the license requirements under paragraph (a)(1)(ii), as well as with the license review policies that have been adopted for other sanctions against Russia. This final rule adds a new paragraph (b)(2) to add the review policy, a policy of denial, that will be applicable to applications that fall within the scope of paragraph (a)(1)(ii). However, for both the license review policies in

paragraphs (a)(1)(i) and (ii), this rule specifies that applications for export, reexport, or transfer (in-country) of items that may be necessary for health and safety reasons will be reviewed under a case-by case license review policy. This inclusion of this case-by-case license review policy is consistent with other parts of the Russia Sanctions rule, in particular, the inclusion of a case-by-case license review policy related to safety of flight and maritime safety. BIS also notes that license applicants may request emergency processing of license applications by following the procedures identified in § 748.4(h) (Emergency processing) of the EAR. Under § 748.4(h), BIS will expedite its evaluation, and attempt to expedite the evaluations of other government agencies, of a license application when, in BIS's judgment, the circumstances justify emergency processing.

BIS estimates that new license requirements under § 746.5(a)(1)(ii) will result in an additional 20 license applications being submitted to BIS annually.

2.. Conforming changes

Based on the foregoing changes to the EAR in § 746.5(a)(1) and the addition of supplement no. 4 to part 746, in supplement no 1 to part 738 – Commerce Country Chart, this final rule also makes one conforming change to footnote 6 to the Commerce Country Chart to add a reference to new supplement no. 4 to part 746. This conforming revision is made so exporters, reexporters, and transferors are aware of the need to review supplement no. 4 to part 746 as part of their analysis of the license requirements in § 746.5(a)(1)(ii).

This rule also adds one sentence at the end of the introductory text of supplement no. 2 to part 746 – Russian Industry Sector Sanction List – to provide guidance on one Schedule B number that is identified in both supplements no. 2 and no. 4 to part 746. This sentence clarifies that Schedule B number 8479.89.9850 is listed on both supplements no. 2 and 4, and that exporters, reexporters, and transferors must comply with the license requirements under both § 746.5(a)(1)(i) and (ii), as applicable, for Schedule B number 8479.89.9850.

3. Impact of these changes on Entity List entries that reference § 746.5

This rule does not change the Entity List in supplement no. 4 to part 744. Seventy-five entries on the Entity List have a license requirement for all items subject to the EAR when used in projects specified in § 746.5 of the EAR. BIS clarifies here that for purposes of the Entity List entries that reference § 746.5, the license requirements set forth on the Entity List apply when items are used in the projects specified in § 746.5(a)(1)(i), but that exporters, reexporters, or transferors must also review the transaction against the license requirements in § 746.5(a)(1)(ii), as well as all other applicable EAR license requirements.

Savings Clause

For the 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.

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 the following OMB-approved collections of information subject to the PRA: 0694-0088, “Multi-Purpose Application,” which carries a burden hour estimate of 29.6 minutes for a manual or electronic submission; 0694-0096 “Five Year Records Retention Period,” which carries a burden hour estimate of less than 1 minute; and 0607-0152 “Automated Export System (AES) Program,” which carries a burden hour estimate of 3 minutes per electronic submission. This rule changes the respondent burden under these control numbers by increasing the estimated number of submissions by 20 which is not expected to exceed the current approved estimates.

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 738

Exports.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

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

PART 738 – COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART

1. 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.

2. Supplement no. 1 to part 738 is amended by revising footnote 6 to read as follows:

Supplement No. 1 to Part 738 – Commerce Country Chart

* * * * *

⁶ 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 supplements no. 2 and no. 4 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 in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL.

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PART 746 – EMBARGOES AND OTHER SPECIAL CONTROLS

3. 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).

4. Section 746.5 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 746.5 Russian industry sector sanctions.

(a) * * *

(1) *General prohibition.* (i) A license is required to export, reexport or transfer (in-country) any item subject to the EAR listed in supplement no. 2 to this part and items specified in ECCNs 0A998, 1C992, 3A229, 3A231, 3A232, 6A991, 8A992, and 8D999 when you “know” that the item will be used directly or indirectly in exploration for, or production of, oil or gas in Russian deepwater (greater than 500 feet) or Arctic offshore locations or shale formations in Russia, or are unable to determine whether the item will be used in such projects. Such items include, but are not limited to, drilling rigs, parts for horizontal drilling, drilling and completion equipment, subsea processing equipment, Arctic-capable marine equipment, wireline and down hole motors and equipment, drill pipe and casing, software for hydraulic fracturing, high pressure pumps, seismic acquisition equipment, remotely operated vehicles, compressors, expanders, valves, and risers.

(ii) A license is required to export, reexport, or transfer (in-country) any item subject to the EAR listed in supplement no. 4 to this part to or within Russia.

(iii) You should be aware that other provisions of the EAR, including parts 742 and 744 and § 746.8, also apply to exports and reexports to Russia. License applications submitted to

BIS under this section may include the phrase “section 746.5(a)(1)(i)” or “section 746.5(a)(1)(ii)” in Block 9 (Special Purpose) as described in supplement no. 1 to part 748 of the EAR.

* * * * *

(b) *Licensing policy.* (1) Applications for the export, reexport, or transfer (in-country) of any item pursuant to paragraph (a)(1)(i) of this section that requires a license for Russia will be reviewed under a policy of denial when for use directly or indirectly for exploration or production from deepwater (greater than 500 feet), Arctic offshore, or shale projects in Russia that have the potential to produce oil or gas, except that applications for export, reexport, or transfer (in-country) of items that may be necessary for health and safety reasons will be reviewed under a case-by case license review policy.

(2) Applications for the export, reexport, or transfer (in-country) of any item pursuant to paragraph (a)(1)(ii) of this section that requires a license for Russia will be reviewed under a policy of denial, except that applications for export, reexport, or transfer (in-country) of items that may be necessary for health and safety reasons will be reviewed under a case-by case license review policy.

* * * * *

5. Supplement no. 2 to part 746 is amended by adding a sentence to the end of the introductory text to read as follows:

Supplement No. 2 to Part 746 – Russian Industry Sector Sanction List

* * * Schedule B number 8479.89.9850 is listed on both supplements no. 2 and 4 to this part, so exporters, reexporters, and transferors must comply with the license requirements under both § 746.5(a)(1)(i) and (ii) as applicable.

* * * * *

6. Add supplement No. 4 to part 746 to read as follows:

Supplement No. 4 to Part 746 – HTS Codes and Schedule B Numbers that Require a License for Export, Reexport, and Transfer (in-country) to or within Russia pursuant to § 746.5(a)(1)(ii)

The source for the Harmonized Tariff Schedule (HTS)-6 codes and descriptions and Schedule B numbers and descriptions in this list comes from the Bureau of the Census's Schedule B concordance of exports 2022. Census's Schedule B List 2022 can be found at www.census.gov/foreign-trade/aes/documentlibrary/#concordance. The Introduction Chapter of the Schedule B provides important information about classifying products and interpretations of the Schedule B, *e.g.*, NESOI means Not Elsewhere Specified or Included. In addition, important information about products within a particular chapter may be found at the beginning of chapters. This supplement includes four columns consisting of the HTS Code, HTS Description, Schedule B and Schedule B Description to assist exporters, reexporters, and transferors in identifying the products in this supplement no. 4 to this part. For information on HTS codes in general, you may contact a local import specialist at U.S. Customs and Border Protection at the nearest port. Schedule B number 8479.89.9850 is listed on both supplements no. 2 and 4 to this part, so exporters, reexporters, and transferors must comply with the license requirements under both § 746.5(a)(1)(i) and (ii) as applicable.

Harmonized Tariff Schedule (HTS)-6 Code	HTS Description	Schedule B	Schedule B Description
847989 or 854370	Alkylation and isomerization units	8479.89.9850 or 8479.89.9900	-Oil and gas field wire line and downhole equipment, or -Other
847989 or 854370	Aromatic hydrocarbon production units	8479.89.9850 or 8479.89.9900	-Oil and gas field wire line and downhole equipment, or -Other
841940	Atmospheric-vacuum crude distillation units (CDU)	8419.40.0080	-Other
847989 or 854370	Catalytic reforming / cracker units	8543.70.9665	-Other
841989, 841989 or 841989	Delayed cokers	8419.89.9585	-For other materials
841989, 841989 or 841989	Flexicoking units	8419.89.9585	-For other materials
847989	Hydrocracking reactors	8479.89.9850, or 8479.89.9900	-Oil and gas field wire line and downhole equipment, or -Other
841989, 841989, 841989, or 847989	Hydrocracking reactor vessels	8419.89.9585	-For other materials
847989 or 854370	Hydrogen generation technology	8479.89.9850, or 8479.89.9900	-Oil and gas field wire line and downhole equipment, or -Other
842139, 842139, 842139, 842139, 847989 or 854370	Hydrogen recovery and purification technology	8421.39.0140, or 8421.39.0190	-Gas separation equipment, or -Other
847989 or 854370	Hydrotreatment technology/units	8479.89.9850, or 8479.89.9900	-Oil and gas field wire line and downhole equipment, or - Other

847989 or 854370	Naphtha isomerisation units	8479.89.9850, or 8479.89.9900	-Oil and gas field wire line and downhole equipment, or -Other
847989 or 854370	Polymerisation units	8479.89.9850, or 8479.89.9900	-Oil and gas field wire line and downhole equipment, or -Other
841989, 841989, or 841989, 847989 or 854370	Refinery fuel gas treatment and sulphur recovery technology (including amine scrubbing units, sulphur recovery units, tail gas treatment units)	8419.89.9585	-For other materials
845690, 847989 or 854370	Solvent de-asphalting units	8456.90.7100, 8479.89.9850, or 8479.89.9900	-Other -Oil and gas field wire line and downhole equipment, or -Other
847989 or 854370	Sulphur production units	8479.89.9850, or 8479.89.9900	-Oil and gas field wire line and downhole equipment, or -Other
847989 or 854370	Sulphuric acid alkylation and sulphuric acid regeneration units	8479.89.9850, or 8479.89.9900	-Oil and gas field wire line and downhole equipment, or -Other.
841989, 841989, or 841989, 847989 or 854370	Thermal cracking units	8419.89.9585, 8479.89.9850, or 8479.89.9900	-For other materials, -Oil and gas field wire line and downhole equipment, or -Other
847989 or 854370	[Toluene and heavy aromatics] Transalkylation units	8479.89.9850, or 8479.89.9900	-Oil and gas field wire line and downhole equipment, or -Other

847989 or 854370	Visbreakers	8479.89.9850, or 8479.89.9900	-Oil and gas field wire line and downhole equipment, or -Other
847989 or 854370	Vacuum gas oil hydrocracking units	8479.89.9850, or 8479.89.9900	-Oil and gas field wire line and downhole equipment, or -Other

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