

U.S. Sanctions and Export Controls Against Russia and FinCEN Alert

MAY 25, 2023

On May 19, 2023, in coordination with the G7 summit in Japan, the U.S. announced new economic sanctions and export controls designed to further restrict the Russian Federation's (Russia) ability to prosecute its invasion of Ukraine. The U.S. Department of Commerce's Bureau of Industry and Security (BIS) and the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) also released a supplemental joint alert regarding Russian export control evasion. At a high level, the new sanctions and export controls impose the following measures.

OFAC and U.S. Department of State Sanctions Measures

- Provide further authorities for sanctions in the architecture, engineering, construction, manufacturing, and transportation sectors of the Russian economy;
- Ban architecture and engineering services to persons located in Russia;
- Require **reporting by June 18, 2023** (and annually thereafter) of certain blocked assets belonging to the Russian Central Bank, National Wealth Fund, or Ministry of Finance and held by U.S. persons;
- Extend the validity of Russian Harmful Foreign Sanctions Regulations (RuHSR) General License (GL) 13 ("Authorizing Certain Administrative Transactions Prohibited by Directive 4 under Executive Order 14024");
- Issued RuHSR GL 66 ("Authorizing the Wind Down of Transactions Involving Public Joint Stock Company Polyus"), GL 67 ("Authorizing Certain Transactions Related to Debt or Equity of, or Derivative Contracts Involving, Public Joint Stock Company Polyus"), and GL 68 ("Authorizing the Wind Down of Transactions Involving Certain Universities and Institutes"); and
- List over 300 natural persons, entities, vessels, and aircraft on the Specially Designated Nationals and Blocked Persons List (SDN List).

BIS Export Controls Measures

- Add 1,224 additional Harmonized Tariff Schedule (HTS) codes describing commercial and industrial items (many of which are designated EAR99) to the Russian and Belarusian Industry Sector Sanctions (RBISS) Supplement No. 4 list, thereby prohibiting their export, reexport, or in-country transfer to or within Belarus and Russia;
- List six chemicals, assay kits/reagents for nucleotide or peptide isolation, extraction, or purification, and laboratory equipment for the analysis or detection of chemical substances to the RBISS Supplement No. 6 list, thereby prohibiting their export, reexport, or in-country transfer to or within Belarus and Russia;
- Expand the destination scope of the Russia/Belarus Foreign Direct Product (FDP) Rule to the “temporarily occupied” Crimea Region of Ukraine;
- Add one item the product scope of foreign-produced UAV-related items requiring a license when destined to Belarus, Russia, Iran, or the Crimea Region of Ukraine;
- Provide additional authority for specified civil end-users to export, reexport, or in-country transfer Export Control Classification Number (ECCN) 5A991 items to or within Belarus and Russia despite the special Belarus/Russia controls and the “luxury goods” controls; and
- Add 71 entities to the Entity List.

NEW U.S. SANCTIONS

Providing further authorities for sanctions in the architecture, engineering, construction, manufacturing, and transportation sectors of the Russian economy. OFAC issued a [Determination Pursuant to Section 1\(a\)\(i\) of E.O. 14024](#) expanding the sanctions authority to the architecture, engineering, construction, manufacturing, and transportation sectors of the Russian economy. Persons operating in these sectors are not automatically sanctioned—the Secretary of the Treasury, in consultation with the Secretary of State, must make a determination that persons operate or have operated in one or more of those sectors before those persons can be sanctioned. See new [FAQ 1127](#). New [FAQ 1126](#) contains a helpful chart of all sanctionable sectors pursuant to E.O. 14024 determinations.

Banning architecture and engineering services to persons located in Russia. OFAC issued a [Determination Pursuant to Section 1\(a\)\(ii\) of E.O. 14071](#) banning the exportation, reexportation, sale, or supply, directly or indirectly, from the U.S., or by a U.S. person, wherever located, of architecture services or engineering services to any person located in Russia. OFAC simultaneously defined “architecture services” and “engineering services” as follows in new [FAQ 1128](#):

- **Architecture services** include advisory services; pre-design services; design services, including schematic design, design development, and final design; contract administration services; combined architectural design and contract administration services; including post-construction services; and all other services requiring the expertise of architects. The prohibition applies to such services as they relate to residential, institutional, leisure, commercial, and industrial buildings and structures; recreational areas; transportation infrastructure; land subdivisions; and not necessarily related to a new construction project. The term also includes urban planning services (i.e., land use, site selection, and servicing of land for systemic, coordinated urban development) and landscape architectural services. OFAC intends to interpret this term consistent with UN Central Product Classification (CPC) Codes 86711-86704, 86719, and 86741-86742.
- **Engineering services** include assistance, advisory, consultative, design, and recommendation services concerning engineering matters or during any phase of an engineering project. Engineering design services may be for: the construction of foundations and building structures (i.e., structural engineering); mechanical and electrical installations for buildings; the construction of civil engineering works; industrial processes and production; or other engineering designs, such as those for acoustics, vibration, traffic control systems, or prototype development for new products. The term additionally includes geotechnical, groundwater, and corrosion engineering services; integrated engineering services, such as those for transportation infrastructure or other projects; engineering-related scientific and technical consulting services, including geological, geophysical, geochemical, surface or subsurface surveying, and map-making services; testing and analysis services of chemical, biological, and physical properties of materials or of integrated mechanical and electrical

systems; and technical inspection services. OFAC intends to interpret this term consistent with UN CPC Codes 86721-86727, 86729, 86731-86733, 86739, 86751-86754, 86761-86764, and 86769.

Requiring reporting by June 18, 2023 (and annually thereafter) of certain blocked assets belonging to the Russian Central Bank, National Wealth Fund, or Ministry of Finance and held by U.S. persons. OFAC amended Directive 4 under E.O. 14024 to require U.S. persons to report to OFAC any property in their possession or control in which the Russian Central Bank, National Wealth Fund, or the Ministry of Finance has an interest. U.S. persons must submit a report to OFAC on or before June 18, 2023, and then by June 30 each year thereafter, on property in their possession or control with an interest, direct or indirect, of an entity subject to Russia-related Directive 4, as amended. OFAC updated FAQs 998-1002, 1004-1005, and 1118 consistent with the amendment.

Extending the validity of RuHSR General License 13. GL 13 authorizes certain transactions involving the Russian Central Bank, the National Wealth Fund, and the Ministry of Finance. Specifically, U.S. persons may “pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, or certifications . . . provided such transactions are ordinarily incident and necessary to the day-to-day operations in the Russian Federation of such U.S. persons or entities.” The validity period was extended to **12:01 a.m. Eastern daylight time, August 17, 2023.**

Issuing General Licenses 66, 67, and 68

- OFAC issued GL 66 authorizing the wind-down of transactions involving Russia-based Public Joint Stock Company Polyus (Polyus), the largest gold-mining company in Russia, or any entity owned 50 percent or greater, directly or indirectly, by Polyus, through **12:01 a.m. Eastern daylight time, August 17, 2023**. This includes any transactions that are ordinarily incident and necessary to the winding down of operations between U.S. persons and Polyus. Polyus was designated on the SDN List on May 19, 2023.
- OFAC issued GL 67 authorizing transactions that “are ordinarily incident and necessary to the divestment or transfer, or the facilitation of the divestment or transfer, of debt or equity” of Polyus, or any entity owned 50 percent or greater, directly or indirectly, by Polyus, through **12:01 a.m. Eastern daylight time, August 17, 2023**.
- OFAC issued GL 68 authorizing U.S. persons to engage in transactions that are ordinarily incident and necessary to the wind-down of transactions with five universities and institutes designated on the SDN List on May 19, 2023, as well as entities owned 50 percent or more by one or more of the five universities and institutes, directly or indirectly, individually or in the aggregate:
 - Federal State Budgetary Educational Institution of Higher Education Grozny State Oil Technical University Named After Academician M.D. Millionshchikov;
 - Federal State Budget Educational Institution of Higher Education Saint Petersburg Mining University;
 - Federal State Budgetary Educational Institution of Higher Education Sergo Ordzhonikidze Russian State University for Geological Prospecting;
 - Federal State Budgetary Educational Institution of Higher Vocational Education Gubkin Russian State University of Oil and Gas; and
 - State Budgetary Educational Institution of Higher Education Almeteyevsk State Oil Institute.

GL 68-authorized transactions are authorized through **12:01 a.m. Eastern daylight time, July 18, 2023.**

Listing over 300 natural persons, entities, vessels, and aircraft on the SDN List

- OFAC’s 126 SDN List designations target sanctions circumventors and evaders, Russia’s energy extraction capabilities, Russia’s financial services sector, and the Foreign Intelligence Service of the Russian Federation (a/k/a the SVR). The sanctions circumvention/evasion designations are particularly wide-ranging, targeting networks in India, Liechtenstein, the Netherlands, and other countries. Also, the sanctions targeting Russia’s energy sector are designed in large part to limit Russia’s future extraction capacity by sanctioning the educational and research institutions in Russia focused on extraction and processing of raw materials, geological exploration technology, technology development in the oil and gas industry, and technical training and studies involving oil

and gas production. A full list of the newly designated persons, entities, and assets is available [here](#), and OFAC's press release providing further context on the designations is available [here](#).

- The U.S. Department of State's nearly 200 SDN List designations covered some of the same topical areas (evasion, energy, etc.), but also included sanctions relating to Russia's fleet of nuclear-powered icebreakers, Iran-related maritime logistics networks, metals and mining sector, military establishment, Private Military Company Wagner, technology sector, unlawful deportations/transfers of Ukrainian children, Russian government officials, elites, and associates, "Kremlin-installed puppet authorities" in the Kherson region, Melitopol city, and Mariupol city of Ukraine, grain theft, and aircraft owned in whole or in part by the 223rd and 224th Flight Unit State Airlines.

NEW U.S. EXPORT CONTROLS

Adding 1,224 additional HTS codes describing commercial and industrial items (many of which are designated EAR99) to the RBISS Supplement No. 4 list. With the addition of 1,224 additional HTS codes describing commercial and industrial items to Supplement No. 4 of the RBISS in the Export Administration Regulations (EAR), BIS is now prohibiting the export, reexport, or in-country transfer to or within Belarus and Russia of the entire HTS Chapters 84, 85, and 90 (if the items are "subject to the EAR"). Chapters 84 and 85 are particularly wide-ranging, with innocuous items now included on the Supplement No. 4 list such as fans,^[1] refrigerators and freezers,^[2] clothes dryers,^[3] dishwashing machines,^[4] a variety of agricultural equipment, printers and copiers,^[5] sewing machines,^[6] vending machines,^[7] space heaters,^[8] hair dryers,^[9] microwave ovens,^[10] electric coffee or tea makers,^[11] toasters,^[12] telephone sets,^[13] pocket-size radio cassette players and radiobroadcast receivers,^[14] and burglar and fire alarms^[15]. Companies whose exports and reexports to Russia have somehow survived U.S. sanctions through May 18, 2023, should review the full list (currently available in the Federal Register [here](#)), which includes many chapters other than 84, 85, and 90, to determine whether their products are listed. Many of these products are designated EAR99.

Listing 6 chemicals, assay kits/reagents for nucleotide or peptide isolation, extraction, or purification, and laboratory equipment for the analysis or detection of chemical substances to the RBISS Supplement No. 6 list. The chemicals, kits, reagents, and/or equipment listed below (when "subject to the EAR") are now prohibited for export, reexport, or in-country transfer to or within Belarus and Russia:

- Triethylamine (CAS 121-44-8);
- Trimethylamine (CAS 75-50-3);
- Lithium chloride (CAS 7447-41-8);
- Lithium chloride hydrate (CAS 85144-11-2);
- Lithium chloride monohydrate (CAS 16712-20-2);
- Lithium carbonate (CAS 554-13-2);
- Assay kits and reagents for nucleotide or peptide isolation, extraction, or purification, n.e.s.; and
- Laboratory equipment, including "components," "parts," "accessories," and consumable "materials" for such equipment, for the analysis or detection, destructive or nondestructive, of chemical substances, n.e.s.

Expanding the destination scope of the Russia/Belarus FDP Rule to the "temporarily occupied" Crimea Region of Ukraine. The FDP rules apply under highly specific circumstances. One of the more expansive FDP rules is the Russia/Belarus FDP, which was further expanded and renamed the Russia/Belarus/Temporarily Occupied Crimea Region of Ukraine FDP Rule on May 19, 2023. Prior to May 19, non-U.S.-produced "direct products" of controlled U.S.-origin software or technology (or equipment/tooling that is itself a "direct product" of controlled U.S.-origin software or technology) were "subject to the EAR" if there was "knowledge" by the exporter/reexporter that the "direct product" was destined for Russia or Belarus, or that the "direct product" would be incorporated into a product destined for Russia or Belarus. Now, the same rules apply under this FDP rule to the additional destination

of Crimea (in addition to any U.S. economic sanctions that might apply with respect to transactions involving the embargoed region of Crimea if there is a U.S. nexus).

Adding HTS code 854800 (ELECTRICAL PARTS OF MACHINERY OR APPARATUS, NESOI) to the product scope of foreign-produced UAV-related items requiring a license when destined to Belarus, Russia, Iran, or the Crimea Region of Ukraine. This addition of a general and widely applicable HTS code to the Supplement No. 7 list in Part 746 of the EAR increases the scope of the controls designed to prevent the use of Iranian UAVs by Russia in Ukraine, as previously explained in our article of March 2, 2023 available [here](#).

Providing additional authority for specified civil end-users to export, reexport, or in-country transfer ECCN 5A991 items to or within Belarus and Russia despite the special Belarus/Russia controls and “luxury goods” controls. According to BIS, “5A991 commodities are used in similar end uses as 5A992 and 5D992 commodities and software” by the specified civil end-users excluded from the special controls on Belarus and Russia in 15 C.F.R. § 746.8(a) and the “luxury goods” controls in 15 C.F.R. § 746.10(a). ECCN 5A991 is now excepted from those license requirements for specified civil end-users in those two provisions.

Adding 71 entities to the Entity List. 69 entities located in Russia, and two entities in Armenia and Kyrgyzstan, respectively, were placed on the Entity List. All the Russian entities received “footnote 3” designations, indicating that BIS believes they meet the definition of “military end-users” (MEUs). As such, those entities are ineligible to receive items “subject to the EAR,” no matter their location, whether in Russia or outside of Russia. Those entities are also subject to the Russia/Belarus Military End User FDP Rule. The Armenian and Kyrgyz entities are listed under more traditional Entity List authorities without MEU implications. All 71 entities are prohibited from receiving all items “subject to the EAR” with very difficult license review policies of “presumption of denial” for the non-Russian entities and “policy of denial” for the Russian entities (with some relaxed treatment for food and medicine designated EAR99).

FINCEN AND BIS SUPPLEMENTAL JOINT ALERT

A new [supplemental alert](#) released jointly by BIS and FinCEN provides further guidance for financial institutions (FIs) after those agencies put FIs on notice of 16 broad categories of items of concern and 22 transactional and behavioral red flags, and reminded FIs of their Bank Secrecy Act reporting requirements in the [first-ever joint alert](#) between BIS and FinCEN in 2022. The new supplemental alert should be viewed as an addition to the first alert rather than a replacement. Of note, it highlights nine Harmonized System codes “covering critical U.S. components that Russia relies on for its weapons systems” (the “High Priority Items List”) which is the same list of items in Supplement No. 7 of Part 746 of the EAR. The new alert reasserts the U.S. government’s desire that FIs take a risk-based approach by performing elevated levels of due diligence on transactions of concern. In addition to the High Priority Items List, the alert provides nine additional transactional and behavioral red flag scenarios for FIs to monitor closely (in addition to the 22 named in the original alert).

[1] 841451 and 841459.

[2] 841810, 841821, 841829, 841830, 841840, and 841850.

[3] 842112.

[4] 842211 and 842219.

[5] 844331, 844332, and 844339.

[6] 845210, 845221, and 845229.

[7] 847621, 847629, 847681, and 847689.

[8] 851629.

^[9] 851631.

^[10] 851650.

^[11] 851671.

^[12] 851672.

^[13] 851711, 851713, and 851718.

^[14] 852712, 852713, and 852719.

^[15] 853110.

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