

**ALERT**

# Biden Administration Toughens Sanctions, Export Controls in Response to Continued Harmful Activities of the Russian Government

September 21, 2022

On September 15, 2022, the Biden Administration announced a new package of sanctions and export controls to hold the Russian government accountable for its war against Ukraine. These new measures were implemented by the U.S. Departments of State, Treasury, and Commerce and include new sanctions designations, a prohibition on the provision of quantum computing services to any person in Russia, and enhanced export control restrictions on Russia and Belarus.

## U.S. Government Expands Sanctions on “Facilitators of Russia’s Aggression in Ukraine”

The Department of the Treasury’s Office of Foreign Assets Control (OFAC) imposed blocking sanctions on two entities and 22 individuals. The new Specially Designated National (SDN) targets include individuals who have furthered the Russian government’s objectives in Ukraine, including some individuals connected to human rights abuses, as well as leaders of key financial institutions, and other entities serving Russia’s financial market infrastructure.

In addition to the OFAC designations, the State Department also made several designations, primarily targeting Russia’s defense and high-tech industries as well as certain officials. For example, the State Department designated the Russian electronics manufacturer Limited Liability Company Group of Companies Akvarius (Aquarius), which has been involved in the development of secure smartphones for Russian military and intelligence personnel. Alongside this designation, OFAC issued General License No. 51 to permit the wind

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## Practice Areas

Export Controls and Economic Sanctions  
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down of transactions involving Aquarius (or any entity in which it directly or indirectly 50% owns) through 12:01 a.m. Eastern Daylight Time, October 15, 2022.

### **OFAC Bans Provision of Quantum Computing Services and Cautions Financial Institutions**

OFAC issued a determination pursuant to Executive Order (EO) 14071 prohibiting the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of quantum computing services to any person located in the Russian Federation. This prohibition is designed to cut off Russia's access to key services from U.S. companies and is effective October 15, 2022.

OFAC issued guidance with this determination indicating that quantum computing services "include any of the following services when related to quantum computing, quantum computers, electronic assemblies thereof, or cryogenic refrigeration systems related to quantum computing: [1] infrastructure, web hosting, or data processing services; [2] custom computer programming services; [3] computer systems integration design services; [4] computer systems and data processing facilities management services; [5] computing infrastructure, data processing services, web hosting services, and related services; [6] repairing computer, computer peripherals, or communication equipment; [7] other computer-related services; [and] [8] services related to the exportation, reexportation, sale, or supply, directly or indirectly, of quantum computing, quantum computers, electronic assemblies thereof, or cryogenic refrigeration systems related to quantum computing to any person located in" Russia (*i.e.*, an individual who is a citizen or national of the Russian Federation, or an entity organized under the laws of the Russian Federation).

Exceptions to the new ban include any service to an entity located in Russia that is owned or controlled, directly or indirectly, by a U.S. person; and any service in connection with the wind down or divestiture of an entity located in Russia that is not owned or controlled, directly or indirectly, by a Russian person.

In addition, OFAC issued a determination that Section 1(a)(i) of EO 14024 applies to the quantum computing sector of the Russian Federation economy, and, as a result, OFAC can impose sanctions on any person operating in this sector of the Russian economy.

OFAC's quantum computing restrictions complement the new export restrictions on quantum computing hardware, software, and technology summarized below, as well as the State Department's sanctions on Russian companies in the quantum computing space.

Apart from targeting quantum computing services, OFAC also cautioned non-U.S. financial institutions, warning that they could be sanctioned for materially assisting sanctions targets or sanctioned activities, including for entering certain agreements with the National Payment Card System (NSPK), an entity owned by the Central Bank of Russia that operates Russia's MIR National Payment System. Any such agreements that expand the use of the MIR National Payment System, which clears and settles payments primarily in Russia, could support evasion of U.S. sanctions and result in an SDN designation.

## Commerce Expands Export Controls on Russia and Belarus

In conjunction with the sanctions measures, the Commerce Department's Bureau of Industry and Security (BIS) issued a new rule to expand and tighten export controls on Russia and Belarus. These heightened export control restrictions, which took effect September 15, 2022, are intended to "further limit access to items that enable Russia's military capabilities and sources of revenue that could support Russia's military capabilities, thus enhancing the effectiveness of the multilateral sanctions."

**First**, the rule expands the industry sector sanctions in Section 746.5 of the Export Administration Regulations (EAR), which impose a licensing requirement for exports, reexports, and transfers (in-country) of certain EAR99 items. The rule adds Belarus to the scope of the industry sector sanctions, which formerly only applied to Russia, in an effort to prevent diversion of these items to Russia.

The rule also adds export restrictions on EAR99 items that may support Russia's chemical and biological weapons production capabilities, along with items that enable advanced manufacturing. These items are identified in new Supplement No. 6 to Part 746, and examples include: discrete chemicals (identified by Chemical Abstract Numbers or "CAS"), biologics, fentanyl, precursors, and related equipment such as full face-mask air-purifying and air-supplying respirators, fermenters, reaction vessels, certain laboratory equipment, and nucleic acid synthesizers and assemblers.

Additionally, the new restrictions cover quantum computing and advanced manufacturing hardware, software, and technology. These items are now covered by the Russia/Belarus foreign direct product rule as well, which, prior to this new rule, did not apply to foreign-produced items that would be designated as EAR99 if manufactured in the United States.

Note that BIS previously imposed a license requirement for exports, reexports, and transfers to and within Russia on a broad range of other EAR99 industrial sector inputs and products. The new rule also adds items to this list in Supplement No. 4 of Part 746, which now includes, for example, fork-lift trucks, integrated circuits, and cameras. These controls and licensing requirements also now cover any modified or designed parts, components, accessories, or attachments for the listed equipment, other than fasteners and certain specified minor components. These changes are intended to align the EAR's controls with those of U.S. allies.

**Second**, the rule expands the military end use/end user (MEU) and military-intelligence end use/end user (MIEU) controls applicable to Burma, Belarus, Cambodia, China, Russia, and Venezuela. The rule expands the scope of BIS's "is informed" process authority so that BIS can quickly provide notice to exporters that exports of specified items to an identified party require a license in the interests of U.S. national security or foreign policy.

Notably, the new rule also allows BIS to designate military and military-intelligence end users located worldwide. Entities located outside of the countries directly subject to the MEU/MIEU controls will be specifically identified on BIS's MEU List or Entity List, or, in the case of the MIEU controls, in Section 744.22 of the EAR, in an effort to help alleviate diligence burdens on U.S. industry. BIS cautioned that for military and

military-intelligence end users located in Burma, Belarus, Cambodia, China, Russia, and Venezuela, exporters are expected to continue conducting due diligence as to whether such entities meet the regulatory definitions of these terms. In other words, even if not specifically listed in the MEU List, for example, the MEU controls continue to apply to entities located in Burma, Belarus, Cambodia, China, Russia, and Venezuela if they develop, produce, maintain, or use military items.

**Third**, this rule adds dollar value exclusion thresholds for luxury goods identified in Supplement No. 5 to Part 746. As background, in March 2022, BIS implemented restrictions prohibiting, without a license, exports, reexports, and transfers of certain luxury goods to Russia and Belarus, as well as certain Russian and Belarusian oligarchs and malign actors who have been sanctioned under various Russia- and Ukraine-related EOs (regardless of where they are located). The new dollar value thresholds are intended to align U.S. controls with those of U.S. allies.

**Fourth**, the rule makes several clarifications and corrections to existing export controls on Russia and Belarus. For example, the rule updates the list of items eligible for export to Russia and Belarus under License Exception Consumer Communications Devices (CCD) in Section 740.19 of the EAR, which permits exports of certain communications devices to individuals and non-governmental organizations in Russia, Belarus, and Cuba. Examples of eligible items added to the list include tablets, microphones, speakers, and commercial headphones. To promote the free flow of information, even those items subject to the Russian and Belarusian industry sector sanctions and luxury goods controls discussed above are eligible for License Exception CCD.

The BIS rule also clarifies that the more favorable treatment policy for affiliates of U.S. and allied country entities, including for exports of mass market items to Russia and Belarus as well as eligibility for License Exception ENC, also applies to branch and sales offices of companies headquartered in the United States or a Country Group A:5 or A:6 country. Formerly, such treatment only explicitly applied to separately incorporated subsidiaries and joint ventures.

In addition, BIS added an exclusion to the licensing requirements to permit the movement of an item subject to the EAR within Russia or Belarus for the purposes of returning it to the United States or to a Country Group A:5 or A:6 country, provided the owner retains title to and control of the item while it remains in Russia or Belarus.

The new restrictions build on existing sanctions and export controls on Russia, Belarus, and certain regions of Ukraine. We wrote about those measures in previous Alerts, most recently including:

- *Biden Administration Adds Economic Measures Against Russia During G7 Meeting – New Tariffs, Gold Import Restrictions, Sanctions and Export Designations*
- *New U.S. Sanctions and Export Restrictions Target Professional Services and Russia’s Media, Banking, Defense, and Industrial Sectors*
- *Biden Administration Increases Sanctions, Export Control Restrictions Amid Russia’s Continued Aggression in Ukraine*

- *Treasury, Commerce Target Russia's Tech Sector, Defense Industrial Base*

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