

September 30, 2022

The Commerce Department is issuing a Frequently Asked Question (FAQ) that makes clear that it is prepared to aggressively apply the export controls imposed in response to Russia's war of aggression against Ukraine against any entities, both inside and outside of Russia, that seek to provide material support for Russia and Belarus's military and industrial sectors, including to replenish ("backfill") technologies and other items prohibited by the United States and the 37 allies and partners that have implemented substantially similar controls.

BIS FAQ: What export control restrictions may be placed on companies or government entities in third countries (outside of Russia or Belarus) that support the Russian and Belarusian military?

As part of a rule that went into effect on September 15, 2022 (87 FR 57068, Sep. 16, 2022), the 'military end user' controls in § 744.21 of the EAR have been expanded to allow BIS to designate entities in third countries that support 'military end uses' in Russia or Belarus as Russian and Belarusian 'military end users' on the Entity List (Supplement No. 4 to part 744 of the EAR), and apply the Russian/Belarusian-Military End User Foreign Direct Product (FDP) rule (see: §§ 734.9(g) and 746.8(a)(3) of the EAR) to them. This expansion is intended to degrade Russia's war efforts in Ukraine, as well as to discourage companies or government entities in third countries from backfilling and providing items needed by the Russian and Belarusian military and industrial sectors. The Department of Commerce is prepared to aggressively apply export controls imposed in response to Russia's war of aggression against Ukraine against any entities, both inside and outside of Russia, that seek to provide material support for Russia and Belarus's military and industrial sectors, including to replenish ("backfill") technologies and other items prohibited by the United States and the 37 allies and partners that have implemented substantially similar controls.

Entities in third countries designated on the Entity List as Russian 'military end users' will have a footnote 3 designation in the license requirement column. A license is required when a footnote 3 entity is a party to any export, reexport, or transfer (in-country), e.g., as a "purchaser," "intermediate consignee," "ultimate consignee," or "end-user," involving not only U.S.-origin items or items located in the United States, but also foreign-produced items, that are:

- 1) the "direct product" of any "software" or "technology" subject to the EAR and specified in any ECCN in product groups D or E items on the CCL, or
- 2) produced by any plant or major component of a plant that is located outside the United States, when the plant or major component of a plant itself is a direct product of U.S.-origin "technology" or "software" that is specified in any ECCN in product groups D or E in any categories of the CCL.

Any foreign-produced item meeting *these criteria*, including items that would be designated EAR99, would require a license.

(See also FAQ on Foreign Direct Product and *De minimis* [Rules](#))