

BUREAU OF INDUSTRY AND SECURITY
FREQUENTLY ASKED QUESTIONS
FOREIGN DIRECT PRODUCT (FDP) AND DE MINIMUS RULES
CURRENT AS OF MAY 2, 2022

Q1: What foreign-produced items are subject to the new export controls that apply to items subject to the EAR that are destined for Russia and Belarus?

A1: All of the FDP rules in § 734.9 of the EAR should be considered when reexporting or exporting from abroad items that are produced outside of the United States. However, there are two areas in which foreign-produced items are subject to two new FDP rules and related license requirements specific to Russia and Belarus, as follows:

- I) Under § 734.9(f), a license is required when there is “knowledge” that the foreign-produced item not designated EAR99 is destined to Russia or Belarus or will be incorporated into or used in the “production” or “development” of any “part,” “component,” or “equipment” produced in or destined to Russia or Belarus that is:
 - 1) the “direct product” of U.S.-origin “software” or “technology” that is specified in product groups D or E of any category of 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 product groups D or E of any category of the CCL.

- II) Under § 734.9(g), a license is required when there is “knowledge” that a foreign-produced item will be incorporated into, or will be used in the “production” or “development” of any “part,” “component,” or “equipment” produced, purchased, or ordered by an entity with a footnote 3 designation in the license requirement column of the Entity List in Supplement No. 4 to part 744 of the EAR (footnote 3 entity), or when a footnote 3 entity is a party to any transaction involving the foreign-produced item, e.g., as a “purchaser,” “intermediate consignee,” “ultimate consignee,” or “end-user,” and the foreign-produced item is:
 - 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) is 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.

Note: Footnote 3 denotes entities that are ‘military end users’ listed on the Entity List in supplement no. 4 to part 744 that are subject to the license requirements in § 734.9(g). (See §§ 734.9(g), 746.8(a)(3), and 744.21(b) of the EAR).

As defined in § 772.1 of the EAR, “knowledge” means: “Knowledge of a circumstance (the term may be a variant, such as “know,” “reason to know,” or “reason to believe”) includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts.