



FedEx Regulatory Alerts & Updates

Regulatory Alert: DDTC and BIS Russia Sanctions March 2021

March 18, 2021

BACKGROUND

On March 1, 2021, the U.S. Secretary of State issued findings pursuant to Section 306(a) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (“CBW Act”) regarding the Government of Russia. In response, on March 18, 2021 the Directorate of Defense Trade Controls (DDTC) is amending ITAR 126.1(d)(2) to include Russia in the list of countries subject to a policy of denial for exports of defense articles and defense services. Also, on March 18, 2021, the Bureau of Industry and Security (BIS) at the Department of Commerce published notice that license applications for exports or re-exports of national security-controlled items (dual-use) to Russia will be reviewed under a presumption of denial. This policy applies to commercial end-users and civil end-uses in Russia and to state-owned enterprises and state-funded enterprises in Russia.

WHAT U.S. EXPORT CONTROLS HAVE CHANGED?

Both the DDTC and the BIS instituted changes that are effective March 18, 2021.

The DDTC notice amending the licensing policy for defense articles for Russia to a policy of denial means that no export or re-export export authorizations or licenses will be granted to articles listed in the U.S. Munitions List. In other words, that shipments of military or defense articles subject to ITAR, from any origin are generally prohibited (unless one of the three exceptions cited in Q 2 below are invoked).

BIS maintains controls on exports and re-exports to Russia of national security-controlled “items” (dual-use commodities, software, and technology) that are subject to the EAR. In accordance with the implementation of U.S. sanctions under the CBW Act, and consistent with Section 740.2(b) of the EAR, BIS is suspending License Exception RPL (Service and Replacement of Parts and Equipment), License Exception TSU (Technology and Software Unrestricted), and License Exception APR (Additional Permissive Re-exports) for use with items controlled for national security reasons that are destined to Russia.

All exporters who export or re-export ITAR articles or BIS national security controlled items to Russia are encouraged to familiarize themselves with these U.S. export control changes.

Q & A

Q 1 – What is the effective date of these actions by DDTC and BIS?

A 1 – Both actions take effect on March 18, 2021.

Q 2 – Are there any exceptions to the DDTC policy of denial?

A 2 – There are three separate exceptions cited in the Federal Register Notice:

a) An exception is being made to allow for case-by-case review of exports to Russia that support government space cooperation.

b) An exception, valid for six months from the date of the Secretary of State's determination, is being made to allow for case-by-case review of exports to Russia when in support of commercial space launches.

c) DDTC is amending ITAR § 126.1(a) to allow exporters to use the exemptions provided in ITAR § 126.4(a)(2) and (b)(2) for exports to Russia when in furtherance of government space cooperation.

Q 3 – Are there any exceptions or waivers to the BIS policy of denial?

A 3 - There are several waivers provided for national security concerns. Complete details are in the BIS Federal Register Notice provided below but here is a brief summary of the waivers:

a) The waiver covers exports and reexports of national security-controlled items to Russia that are eligible for License Exception TMP (Temporary Imports, Exports, and Reexports); License Exception GOV (Governments, International Organizations, and International Inspections under the Chemical Weapons Convention); License Exception BAG (Baggage); License Exception AVS (Aircraft and Vessels); and License Exception ENC (Encryption Commodities and Software).

b) The waiver covers exports and reexports to Russia of national security controlled items pursuant to licenses necessary for the safety of flight of civil fixed-wing passenger aviation.

c) The waiver covers exports and reexports of national security controlled items pursuant to licenses for deemed exports and reexports.

d) The waiver covers exports and reexports of national security-controlled items pursuant to licenses to wholly-owned U.S. subsidiaries and other foreign subsidiaries of U.S. companies that are located in Russia.

e) The waiver covers exports and reexports to Russia of national security-controlled items in support of commercial space launch activities.

f) The waiver covers exports and reexports to Russia of national security-controlled items subject to the EAR in support of government space cooperation.

REFERENCES:

BIS FR Notice 2021-05488 –

<https://www.federalregister.gov/documents/2021/03/18/2021-05488/russia-implementation-of-chemical-and-biological-weapons-control-and-warfare-elimination-act-of-1991>

DDTC FR Notice 2021-05530 -

<https://www.federalregister.gov/documents/2021/03/18/2021-05530/international-traffic-in-arms-regulations-addition-of-russia>

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