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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 742

[Docket No. 210219-0027]

RIN 0694-XC071

Russia: Implementation of Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act) Sanctions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notification of implementation.

SUMMARY: The Secretary of State, acting under authority delegated pursuant to Executive Order 12851, has determined pursuant to the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act) that the Government of the Russian Federation has used chemical or biological weapons in violation of international law or lethal chemical or biological weapons against its own nationals. The sanctions imposed on Russia in connection with this determination include a prohibition, subject to partial waiver, on the export to Russia of national security-controlled goods and technology subject to the Export Administration Regulations (EAR). Pursuant to the EAR, BIS already maintains controls on exports and reexports to Russia of national security-controlled “items” (commodities, software and technology) that are subject to the EAR. This document informs the public that, consistent with BIS’s implementation of the CBW Act sanctions, certain license exceptions will be suspended for use with national security-controlled items destined for Russia, and most license applications

for exports or reexports of national security-controlled items destined for Russia will be reviewed under a presumption of denial.

DATES: March 18, 2021.

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SUPPLEMENTARY INFORMATION:

Implementation of Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 Sanctions on Russia-Related Exports and Reexports of Items Controlled for National Security Reasons

The Secretary of State, acting under authority delegated pursuant to Executive Order 12851, has determined pursuant to Section 306(a) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act) that the Government of the Russian Federation has used chemical weapons in violation of international law or lethal chemical weapons against its own nationals. The sanctions imposed on Russia in connection with this determination include a prohibition on the export to Russia of national security-controlled goods and technology subject to the Export Administration Regulations (EAR). The Secretary of State also issued a partial waiver under the CBW Act of these sanctions on national security grounds. Pursuant to Section 742.4 of the EAR, BIS already maintains controls on exports and reexports to Russia of national security-controlled “items” (commodities, software and technology) that are subject to the EAR. Consistent with BIS’s implementation of the CBW Act sanctions, license applications for exports or reexports of national security-controlled items to Russia will be reviewed under a presumption of denial. However, certain categories of exports and reexports will be permitted under a partial waiver of the application of the sanctions, including exports and reexports made under certain License Exceptions. A License Exception is an authorization

allowing exports, reexports, or transfers (in-country) under stated conditions of items subject to the EAR that would otherwise require a license. Notably, as described in more detail below, one of the waiver provisions for commercial space launch activities will expire on September 1, 2021, after which time the prohibition will apply to the review of such license applications.

While the focus of this document is on BIS's implementing actions, exporters of items subject to the EAR should also be aware that in order to take additional steps to address Russia's use of chemical weapons, the Department of State is amending the International Traffic in Arms Regulations (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. Consistent with Note 1 to Country Group D:5 in Supplement No. 1 to part 740 of the EAR, countries included in § 126.1 of the ITAR are also considered to be in Country Group D:5. Placement of a country in Country Group D:5 generally limits the availability of license exceptions for exports and reexports of certain items. See, generally, 15 CFR part 740.

Prohibitions

Except as described below (under "National Security Waiver"), effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], license applications for exports or reexports of national security-controlled items to Russia will be reviewed under a presumption of denial. In particular, this policy applies to commercial end-users and civil end-uses in Russia and to state-owned enterprises and state-funded enterprises in Russia.

Further, in accordance with the implementation of these new sanctions under the CBW Act, and consistent with Section 740.2(b) of the EAR, which provides that all License Exceptions are subject to revision, suspension, or revocation, in whole or in part, without notice, BIS hereby suspends License Exception RPL (Service and Replacement of Parts and Equipment), License Exception TSU (Technology and Software Unrestricted), and License

Exception APR (Additional Permissive Reexports) for use with items controlled for national security reasons that are destined to Russia.

National Security Waiver

The Secretary of State has determined and certified to Congress pursuant to Section 307(d) of the CBW Act that it is essential to the national security interest of the United States to partially waive the application of the statute with respect to sanctions on the licensing of certain exports and reexports as described below of national security-controlled items.

License Exceptions: 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). See Sections 740.9 (TMP), 740.11 (GOV), 740.14 (BAG), 740.15 (AVS), or 740.17 (ENC) of the EAR.

Safety of Flight: 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. License applications for such transactions will be reviewed consistent with export licensing policy for Russia prior to the date of this document. See Section 742.4(b)(7) of the EAR.

Deemed Exports/Reexports: The waiver covers exports and reexports of national security-controlled items pursuant to licenses for deemed exports and reexports to Russian nationals. License applications for such transactions will be reviewed consistent with export licensing policy for Russia prior to the date of this document. See Section 742.4(b)(7) of the EAR.

Wholly-Owned U.S. and Other Foreign Subsidiaries: 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. License applications for such transactions will be reviewed consistent with export licensing policy for Russia prior to the date of this document. See Section 742.4(b)(7) of the EAR.

Commercial Space Flight: The waiver covers exports and reexports to Russia of national security-controlled items in support of commercial space launch activities. License applications for such transactions will be reviewed consistent with the export licensing policy for Russia prior to the date of this document until September 1, 2021, after which date this waiver provision will expire and license applications will be reviewed under a presumption of denial. See Section 742.4(b)(7) of the EAR.

Government Space Flight: The waiver covers exports and reexports to Russia of national security-controlled items subject to the EAR in support of government space cooperation. License applications for such transactions will be reviewed consistent with the export licensing policy for Russia prior to the date of this document. See Section 742.4(b)(7) of the EAR.

Other Russia-related licensing considerations: BIS has also identified Parties with ties to Russia's chemical and biological weapons program in additions to the Entity List published in the Federal Register (see 85 FR 52898, Aug. 27, 2020 and **Addition of Certain Entities to the Entity List; Correction of Existing Entries on the Entity List** published on March 8, 2021, in the *Federal Register* (see 86 FR 13179)).

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