



THE 11TH JOINT INDUSTRY OUTREACH SEMINAR ON STRATEGIC TRADE MANAGEMENT - SINGAPORE 2023

Export Administration Regulations (EAR) Updates

Russia and Belarus Trade Restrictions

Advanced Computing and Semiconductor Manufacturing Equipment Rule

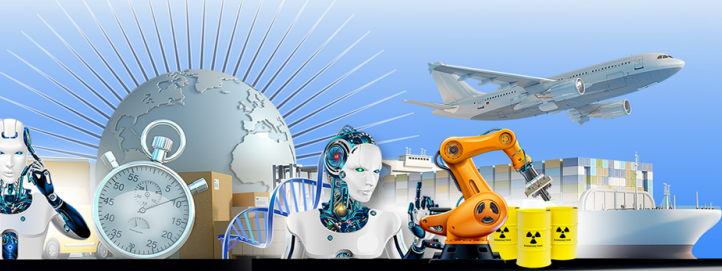
Matthew S. Borman
Deputy Assistant Secretary of Commerce
for Export Administration



Scope of the EAR

- Export Administration Regulations (EAR) generally cover
 - Most items (commodities, software, technology) in the US economy exported, reexported, or transferred in a 3rd country
 - Certain items produced outside the United States
 - More than *de minimis* (+ 25% or 10%) U.S. controlled content
 - Foreign direct products – countries/end users
 - Limited activities of US persons involving items not subject to the EAR
- Subject to the EAR
 - Commerce Control List
 - Multilateral export control regimes
 - Unilateral controls
 - EAR99

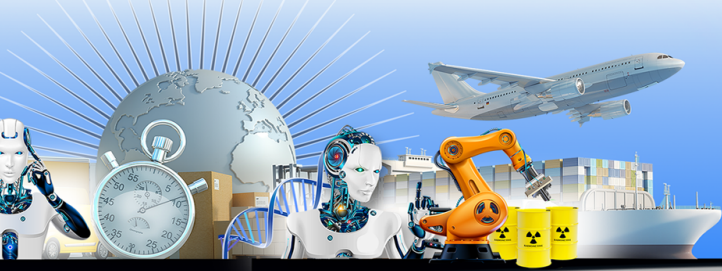




Russia/Belarus Trade Restrictions

- Russia's war of aggression against Ukraine
 - Belarus' support of the invasion
- Objective
 - Impair Russia's ability to develop, produce and field military systems in Ukraine

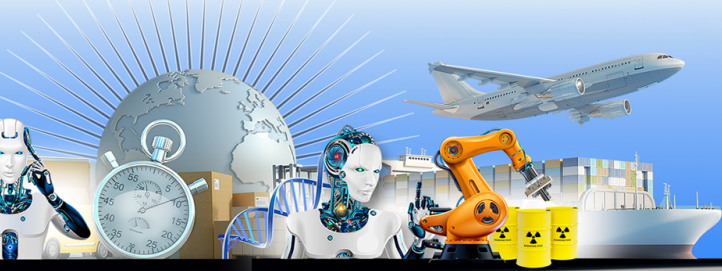




Russia/Belarus Trade Restrictions

- Scope
 - Items controlled by the four multilateral export control regimes
 - Unilaterally controlled items
 - Harmonized Schedule categories (EAR99)
 - *De minimis*
 - Foreign direct product rule
 - Iran drones
 - Entity List
 - Humanitarian and safety exceptions





Russia/Belarus Trade Restrictions

- Global Export Control Coalition
 - 39 countries with aligned trade restrictions
 - Supplement No. 3 to Part 746 of the EAR
 - Exempt from U.S. expanded *de minimis* and foreign direct product rule
- Licensing policy
 - General policy of denial
 - Limited case-by-case review



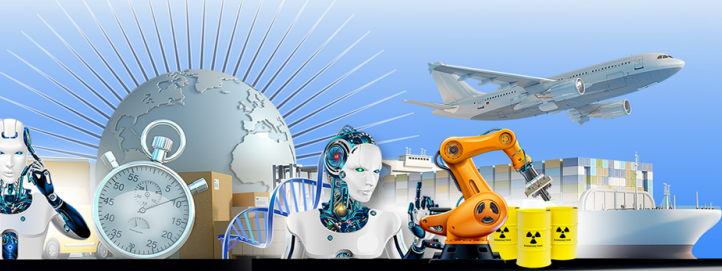


Russia/Belarus Trade Restrictions

EAR Part 734

- Part 734.4 – *De minimis*
 - Foreign made items with more than 25% U.S. controlled content to Russia/Belarus require a license
 - Example – foreign produced civil aircraft with U.S. engines likely above *de minimis* and would require U.S. export license prior to flying to Russia or Belarus from a country without comparable trade restrictions
- Part 734.9 – Foreign Direct Product
 - Russia/Belarus/Occupied Crimea – 734.9(f)
 - CCL items plus HS categories in Supplements 6 and 7 to Part 746
 - Russia/Belarus military end users (includes parties in third countries)
 - Identified with footnote 3 designation
 - All items subject to the EAR

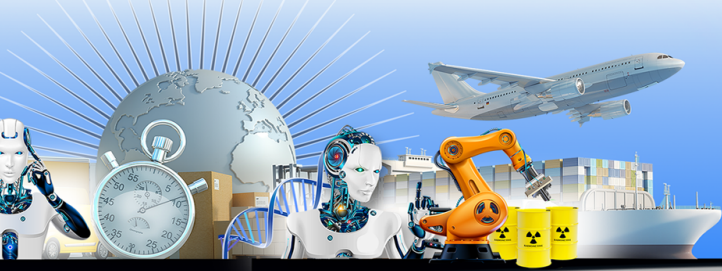




Russia/Belarus Trade Restrictions EAR Part 744

- Entity List
 - Supplement 4 to Part 744
 - Footnotes 3 or 4

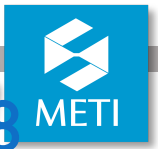


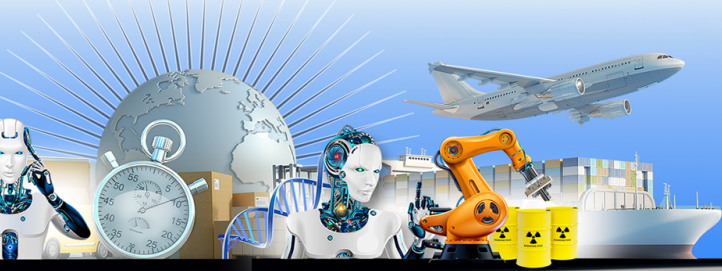


Russia/Belarus Trade Restrictions

EAR Part 746

- § 746.5 Russian/Belarus Industry Sector Sanctions
- § 746.6 Crimea Region of Ukraine and Covered Regions of Ukraine (so-called Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR))
 - 'Donetsk People's Republic (DNR) region' or 'Luhansk People's Republic (LNR) region' include land territory in those regions as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported sovereignty over that land territory or area.
- § 746.8 Sanctions Against Russia and Belarus
- § 746.10 'Luxury goods' sanctions against Russia and Belarus and Russian and Belarusian oligarchs and malign actors





Russia/Belarus Trade Restrictions

- Impact
 - 60% postwar decrease in key microelectronic exports to Russia
- Priority
 - Further decrease key microelectronics exports to Russia
 - 38 HS categories
 - Russia Export Controls – List of Common High-Priority Items – BIS website
- Need Industry Assistance
 - Prevent supply of microelectronics into Russian weapons killing Ukrainian civilians and destroying civil infrastructure and grain





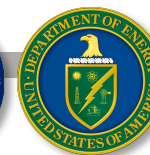
October 7, 2022 Rule

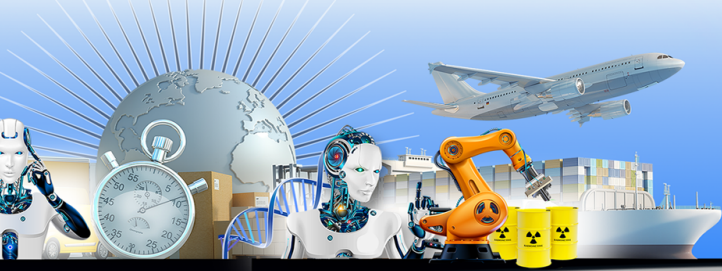
- Objective
 - Restrict items needed for leading edge AI model training and supercomputing
 - Restrict items needed for leading edge logic and memory (NAND and DRAM) integrated circuits



	Summary of October 7th Rule
774 supp 1	CCL Based Controls: new and revised: 3A090, 3A991.p, 3B090, 4A090, 4A994.l, and associated software and technology ECCNs
744.6	“U.S. Person” control for items NOT subject to the EAR
744.23 & 772.1	“Supercomputer” & Semiconductor end-use control, including new definition of “supercomputer”
734.9	New and expanded foreign direct product rules
744 supp 4	<u>28 existing Chinese entities</u> on the Entity List – new footnote 4 designation
736 supp 1 Gen Ord #4	6-month Temporary General License to preserve industry supply chains
740.2(a)(9)	New License Exception restriction

- **January 17, 2023 (public display/effective)**, Interim final rule; to add Macau.
(published January 18, 2023 (88 FR 2821))

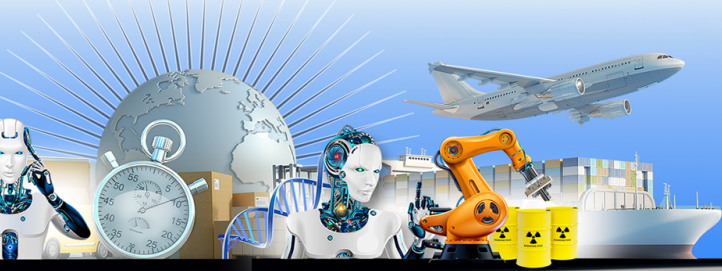




Commerce Control List Controls

- ***Export Control Classification Numbers (ECCNs)***
 - Integrated circuits – ECCN 3A090
 - Semiconductor manufacturing equipment – ECCN 3B090
 - Computers containing ECCN 3A090 integrated circuits – ECCN 4A090
 - Associated software and technology ECCNs





End Use Controls

- Supercomputers
 - Product scope
 - ICs specified in ECCNs 3A001, 3A991, 4A994, 5A002, 5A004, 5A992
 - Computers, electronic assembly or component in ECCNs 4A003, 4A004, 4A994, 5A002, 5A004, 5A992
 - End-use scope
 - For or in a “supercomputer” in or for the PRC
 - Supercomputer – compute capacity in a specified physical footprint
- Semiconductor manufacturing equipment
 - Product scope
 - Any item subject to the EAR to advanced logic/NAND/DRAM development/production
 - Category 3 Product Groups B-E to ECCNs 3B001/2, 3B090, 3B611, 3B991/2
 - End-Use scope
 - Advanced logic (non-planar 16/14 nm, 128 layer + NAND, 18 nm half-pitch -, don't know)
 - Development/production of ECCNs 3B001/2, 3B090, 3B611, 3B991/2

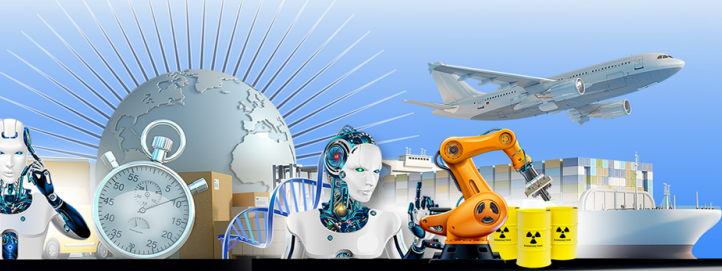




Foreign Direct Product (FDP) Controls

- **734.9(e)(2) Footnote 4 Entities**
 - Expansion of Entity List FDP rule
 - Much like Huawei (footnote 1) – slightly different ECCNs in product scope (includes Category 5 Part 2, instead of Category 5 Part 1 ECCNs); end-user scope is the same
- **734.9(h) New Advanced Computing & Semiconductor Manufacturing FDP rule:** must meet product and destination/end-use scope
- **734.9(i) New “Supercomputer” FDP rule:** must meet product and end-use scope





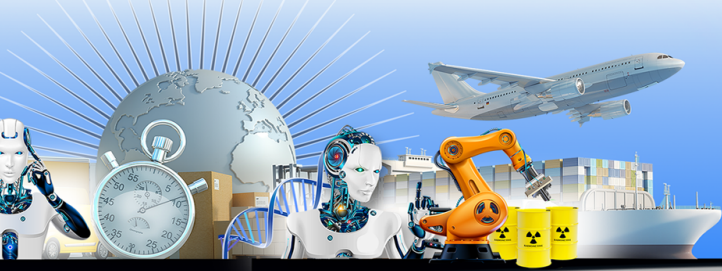
US Persons Control

- EAR §744.6
 - Activities which could support for WMD-related end uses
 - Items not subject to the EAR
 - Shipping, transmitting, transferring (in-country); facilitating shipment, transmission, or transfer (in-country)
 - Servicing

For the development/production of advanced logic, NAND, or DRAM in the PRC
Or

Items meeting ECCNs 3B090, 3D001 (for 3B090) or 3E001 (for 3B090)
Knowledge or don't know





Next Steps



- Public comment period closed January 31, 2023
- 43 responsive comments received by BIS
- About 50 issues raised
- Comments are posted on <https://www.regulations.gov> under docket # BIS-2022-0025. Also available on BIS website by selecting “Regulations” tab and then “Proposed rule public comments” tab on BIS homepage at www.bis.doc.gov
- Drafting rule to respond to comments with revisions as warranted



Contact Information

- **Department of Commerce, Bureau of Industry and Security (BIS):**
 - (202) 482-4811 - (located in Washington, DC)
 - (949) 660-0144 - (located in Newport Beach, CA)
 - (408) 998-8806 - (located in San Jose, CA)
 - E-mail: ECDOEXS@bis.doc.gov
(General questions about the EAR)
 - E-mail: RPD2@bis.doc.gov
(Regulatory interpretation, Advisory Opinions or to submit *De minimis* Reports)
- Anti-boycott Compliance Advice Line - (202) 482-2381
- Encryption – (202) 482-0707
- **Department of State, Directorate of Defense Trade Controls (DTC):**
 - Licenses defense services and defense (munitions) articles.
 - (202) 663-1282
- **Department of the Treasury, Office of Foreign Assets Control (OFAC):**
 - OFAC administers and enforces economic and trade sanctions against targeted foreign countries, terrorism sponsoring organizations, and international narcotics traffickers.
 - (800) 540-6322



