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US Imposes Additional Sanctions on Russia under the Chemical and Biological Weapons Control and Warfare Elimination Act

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On August 2, 2019, the United States announced the imposition of additional sanctions on the Russian Federation under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act). The sanctions:

- Require the United States to oppose multilateral development bank assistance to the Russian Federation,
- Prohibit US banks from participating in the primary market for non-ruble denominated bonds issued by the “Russian sovereign” and lending non-ruble denominated funds to the Russian sovereign (effective after August 26, 2019), and
- Impose a licensing policy of a presumption of denial for applications for the export of items controlled for chemical and biological weapons-related reasons to Russia (effective upon publication in the Federal Register).

These sanctions will go into effect later this month and will remain in force for at least twelve months.¹

These three sanctions measures are imposed under the CBW Act,² pursuant to a previous US determination that Russia had used chemical weapons in violation of international law or lethal chemical weapons against its own

¹ The State Department indicated in its Fact Sheet that publication in the Federal Register may occur “on or about” August 19, 2019. State Department, Fact Sheet, Second Round of Chemical and Biological Weapons Control and Warfare Elimination Act Sanctions on Russia (dated August 2, 2019), [available here](#).

² 22 U.S.C. 5601 et seq.

nationals.³ The United States previously imposed initial CBW Act sanctions on Russia in August 2018 in relation to the same determination.⁴

The Additional Sanctions

The additional sanctions, to be implemented by the US Department of the Treasury's Office of Foreign Assets Control (OFAC)⁵ and the Department of Commerce's Bureau of Industry and Security (BIS) include the following:

Opposition to Multilateral Development Bank Assistance: The United States will oppose the extension of any loan or financial or technical assistance to Russia by international financial institutions, such as the World Bank or International Monetary Fund.⁶ OFAC asserted in a press release that the Treasury Department will ensure this policy "remains permanently in place until Russia complies with the requirements of the CBW Act."⁷

Prohibition on US Bank Loans: "US banks"⁸ will be prohibited after August 26, 2019 from:

- (a) participating in the primary market for non-ruble denominated bonds issued by the "Russian sovereign"; and
- (b) lending non-ruble denominated funds to the Russian sovereign.⁹

OFAC clarifies in an FAQ that these restrictions do not apply to US bank participation in secondary markets, or to bonds or loans denominated in rubles.¹⁰ Notably, the definition of "US bank" includes foreign financial institutions that meet the definition of US bank, including branches, offices and agencies of foreign financial institutions that are located in the United States.

Additional Restrictions on Export Licensing: License applications for exports to Russia of items controlled for chemical and biological weapons proliferation reasons ("CB" reasons) under US export controls will be subject to a "presumption of denial," according to the State Department Fact Sheet.¹¹ The State Department Fact Sheet later

³ State Department, Fact Sheet, Second Round of Chemical and Biological Weapons Control and Warfare Elimination Act Sanctions on Russia (dated August 2, 2019), [available here](#); State Department, Press Release, Imposition of a Second Round of Sanctions on Russia under the Chemical and Biological Weapons Control and Warfare Elimination Act (dated August 2, 2019) [available here](#); OFAC, Russia-Related Directive Under Executive Order of August 1, 2019 ("CBW Act Directive") (August 2, 2019), [available here](#); OFAC, Press Release, Treasury Announces Sanctions under the Chemical and Biological Weapons Control and Warfare Elimination Act (August 3, 2019), [available here](#).

⁴ Please see our previous alert, [available here](#). State Department, Determinations Regarding Use of Chemical Weapons by Russia under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, 83 FR 43723 (August 27, 2018), [available here](#); revised by 83 FR 47390 (September 19, 2019), [available here](#).

⁵ Executive Order 13883, Executive Order on the Administration of Proliferation Sanctions and Amendment of Executive Order 12851, (August 1, 2019, 84 FR 38113), [available here](#); OFAC, CBW Act Directive (August 2, 2019), [available here](#).

⁶ 22 U.S.C. § 5605(b)(2)(A); 22 U.S.C. 262d; EO 13883 § 1(a)(i).

⁷ OFAC, Press Release, Treasury Announces Sanctions under the Chemical and Biological Weapons Control and Warfare Elimination Act (August 3, 2019), [available here](#).

⁸ For purposes of the CBW Act Directive, "US bank" means any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches), or any entity in the United States, that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures, or options, or procuring purchasers and sellers thereof, as principal or agent. The term "US bank" includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and US holding companies, US affiliates, or US subsidiaries of any of the foregoing. **This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States and otherwise meet the definition of "US bank" used in this Directive, but not such institutions' foreign branches, offices, or agencies.**

⁹ OFAC, CBW Act Directive (August 2, 2019), [available here](#).

¹⁰ OFAC, FAQ 675, 678.

¹¹ State Department, Fact Sheet, Second Round of Chemical and Biological Weapons Control and Warfare Elimination Act Sanctions on Russia (dated August 2, 2019), [available here](#).

states that license applications for the export of CB-controlled items to state-owned or state-funded entities in Russia will be subject to a “presumption of denial” policy. BIS has not issued clarifying guidance on this point.

It is too early to identify the specific parameters of this licensing policy, as BIS has not issued any information. The State Department articulated in the Fact Sheet that the licensing policy applies only where an export license is already required for the export of CB-controlled items to Russia. The State Department also clarified that exceptions to the BIS export licensing requirements will continue to be available for US firms fulfilling existing contracts with Russian customers.

The State Department announced that the applications for export licenses for the following activities will continue to be considered for approval on a case-by-case basis:

- exports needed for space flight activities, including those involving government space cooperation and commercial space launch;
- exports needed to ensure commercial passenger aviation’s safe operation;
- exports to commercial end-users in Russia for civil end-uses;
- exports to wholly-owned subsidiaries of US and other foreign companies in Russia; and
- deemed export licenses for Russian nationals working in the United States.¹²

This second round of CBW Act sanctions was issued pursuant to a partial waiver under the CBW Act, limiting the scope of the US bank sanctions and export licensing policy to be significantly narrower than the related provisions included in the CBW Act. The State Department clarified that these sanctions can be lifted after the 12-month period if the US Executive Branch determines and certifies to Congress that Russia:

- (1) is not making preparations to use chemical weapons;
- (2) has provided assurances it will not use chemical weapons in the future;
- (3) has allowed international inspectors to verify those assurances; and
- (4) has paid restitution to the “victims of the Salisbury [UK] attack.”

Conclusion

US banks engaging in business with the Russian sovereign and persons dealing in CB-controlled items subject to US export jurisdiction should ensure compliance with all applicable sanctions and export controls.

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¹² State Department, Fact Sheet, Second Round of Chemical and Biological Weapons Control and Warfare Elimination Act Sanctions on Russia (dated August 2, 2019), [available here](#).