

Savings Clause shipments related to the Russia Sanctions rule and Belarus Sanctions rule
Last updated March 17, 2022

Q1. We would like to confirm that “actual orders” as referenced in the savings clauses set forth in the new Russia Sanctions rule and Belarus Sanctions rule include a purchase order or a written contract for delivery of specific items.

A1. Yes, “actual orders” for purposes of these two rules include a purchase order or a written contract for delivery, or any other written documentation that provides evidence of a pre-existing agreement between the parties for purchase and delivery of specific items that was entered into prior to February 24, 2022 (in the case of the Russia Sanctions rule) or March 2, 2022 (in the case of the Belarus Sanctions rule).

See FAQ #2 below, which discusses certain differences in how to apply the savings clause dates with respect to items affected by prohibitions set forth in Section 746.8(a)(1) and 746.8(a)(2) and (3) of the Export Administration Regulations (EAR) respectively.

Q2. We would like to confirm the date by which an “actual order” must have been placed for purposes of the March 26, 2022 [savings] clause for items affected by Section 746.8(a)(2) and (a)(3) (i.e., the Russia/Belarus foreign direct product rule and Russia/Belarus MEU foreign direct product rule). To qualify for the March 26 savings clause, must the “actual order” for the specific items be dated on or before:

- (a) March 26, 2022; or**
- (b) February 24, 2022?**

A2. As an initial matter, exporters should be aware that there are two distinct savings clauses (and with different dates) in each of the two new sanctions rules, the Russia Sanctions rule and the Belarus Sanctions rule.

The Russia Sanctions rule adding Section 746.8 to the EAR was effective February 24, 2022. This rule has two savings clauses, one with a date of March 26, 2022, applicable to items related to Russia that are affected by Section 746.8(a)(2) and (a)(3), and a second one with a date of February 24, 2022, applicable to all other changes to the EAR made by the rule.

The Belarus Sanctions rule that amended Section 746.8 of the EAR to add controls on Belarus was effective March 2, 2022. This rule has two savings clauses, one with a date of March 26, 2022, applicable to items related to Belarus that are affected by Section 746.8(a)(2) and (a)(3), and a second one with a date of March 2, 2022, applicable to all other changes to the EAR made by the rule.

With respect to all sections of these rules, an actual order must have been placed, and the items at issue must have been en route aboard a carrier to a port of export, reexport, or transfer (in-country), by midnight (based on where the shipment takes place) on the applicable

date (*e.g.*, with respect to items affected by Section 746.8(a)(2) and (a)(3), no later than midnight March 26, 2022, (based on where the shipment takes place) for both the Russia Sanctions rule and the Belarus Sanctions rule).

Q3. Would the savings clauses [in the Russia Sanction rule and Belarus Sanctions rule] cover an order when the ultimate consignee is a warehouse or distributor?

A3. Consistent with BIS's longstanding interpretation/practice, yes, but not if the shipped goods will sit in inventory for any period of time before going to the end user (*i.e.*, there must be an identified end user at the time of export, reexport, or transfer (in-country)). It would only cover orders where the distributor/warehouse would be the ultimate consignee and then the goods would be delivered to such already-identified end user.

Additionally, the savings clauses in either of these two rules would authorize multiple shipments based on a previously placed order, provided that all of the requirements of the savings clause are satisfied for all such shipments (*e.g.*, an actual order must have been placed, and the items at issue must have been en route aboard a carrier to a port of export, reexport, or transfer (in-country), by midnight (based on where the shipment takes place) on the applicable date).

For example, if the item was being stored in country at a warehouse in anticipation of a future shipment (*e.g.*, stored in inventory with no identified end user), such a transaction would be outside the scope of the applicable savings clause and a BIS license would be required prior to making the export, reexport or transfer (in-country) to or within Russia or Belarus.