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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 160718621-7125-02]

RIN 0694-AH04

Commerce Control List: Removal of Certain Nuclear Nonproliferation (NP)

Column 2 Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; delay of implementation date.

SUMMARY: In accordance with the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” published in the Federal Register on January 24, 2017 (the Memorandum), this action temporarily delays the implementation date of one revision implemented by the

final rule entitled “Commerce Control List: Removal of Certain Nuclear Nonproliferation (NP) Column 2 Controls” published by the Bureau of Industry and Security (BIS) in the Federal Register on November 25, 2016. The final rule amended the Export Administration Regulations (EAR) to remove nuclear nonproliferation (NP) Column 2 license requirements from certain pressure tubes, pipes, fittings, pipe valves, pumps, numerically controlled machine tools, oscilloscopes, and transient recorders on the Commerce Control List (CCL).

DATES: This rule is effective January 31, 2017. “Software” “specially designed” for the “development,” “production,” or “use” of items previously controlled under ECCN 3A292, as discussed in the final rule published in the Federal Register of November 25, 2016 (81 FR 85138), will continue to be classified and licensed by BIS under the designation EAR99 through a delayed date of March 21, 2017. As of March 22, 2017, such “software” will be classified and licensed by BIS under ECCN 3D991.

FOR FURTHER INFORMATION CONTACT: Steven Clagett, Director, Nuclear and Missile Technology Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482-1641.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 2016, the Bureau of Industry and Security (BIS) published a final rule entitled “Commerce Control List: Removal of Certain Nuclear Nonproliferation (NP) Column 2 Controls” (81 FR 85138) to amend the Export Administration Regulations (EAR) to remove nuclear nonproliferation (NP) Column 2 license requirements from certain pressure tubes, pipes, fittings, pipe valves, pumps, numerically controlled machine tools, oscilloscopes, and transient recorders on the Commerce Control List (CCL). These changes were intended to revise the EAR controls on these items by making them more consistent with the export controls of other countries that manufacture these items and that, together with the United States, are participating countries in the Nuclear Suppliers Group (NSG). As a result of the changes made by this rule, some of these items were no longer listed under an Export Control Classification Number (ECCN) on the CCL. However, such items remain subject to the EAR under the designation EAR99. This rule also created four new ECCNs to maintain anti-terrorism (AT) controls on certain affected commodities and related “software” and “technology.” All items subject to the EAR, regardless of whether they are listed on the CCL, may require a license for reasons described elsewhere in the EAR (e.g., license requirements based on end-user/end-use controls, embargoes, or other special controls).

All but one of the changes made by this rule were implemented on the date of publication, November 25, 2016. A consequence of the amendment of ECCN 3A992 to add certain oscilloscopes and transient recorders under new paragraphs 3A992.d through .g, was that ECCN 3D991, which includes certain “software” for general purpose electronic equipment described in ECCN 3A992, then also controlled “software” for the “development,” “production,” or “use” of the oscilloscopes and transient recorders

described in new 3A992.d through .g. Such “software” had been classified and licensed by BIS under the designation EAR99, and its classification under 3D991 imposed a foreign policy control on the “software” for anti-terrorism reasons. BIS must notify Congress before imposing such a control. This modification in the application of foreign policy controls under the EAR was addressed in BIS’s “2017 Report on Foreign Policy-Based Export Controls,” submitted to the Congress in January 2017. Therefore, the November 25 rule delayed the implementation of this control through January 31, 2017. Effective February 1, 2017, such “software” would have been classified and licensed by BIS under ECCN 3D991 and would have required a license to destinations indicated under Anti-Terrorism (AT) Column 1 on the Commerce Country Chart.

Provisions of This Action

This action delays the implementation date of the imposition of anti-terrorism controls on “software” “specially designed” for the “development,” “production,” or “use” of items previously controlled under ECCN 3A292 but reclassified by the November 25 rule. Such “software” had been classified and licensed by BIS under the designation EAR99; as a result of the November 25 rule, it will be classified and licensed by BIS under ECCN 3D991. The implementation date of this change had been January 31, 2017, but this action delays the implementation date to March 21, 2017. This action is issued in accordance with the Memorandum that required temporary postponement of rules that have been published in the Federal Register but have not yet taken effect, for 60

days from the date of the Memorandum for the purpose of reviewing questions of fact, law, and policy.

Determination of Exemption from Notice and Comment

To the extent that the requirements of 5 U.S.C. 553 apply to this action, there is good cause to exempt this action from notice and comment pursuant to 5 U.S.C. 553(b)(B). BIS is delaying the effective date for this action to give DOC officials the opportunity to further review and consider the revision, consistent with the Memorandum. The rule published November 25 containing the revision was exempt from notice and comment because it involved a military and foreign affairs function of the United States (See 5 U.S.C. 553(a)(1)). Given the imminence of the new effective date, seeking prior public comment on this temporary delay would be impractical, unnecessary, and also contrary to the public interest in the orderly promulgation and implementation of regulations.

Dated: January 27, 2017.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

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