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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 774

[Docket No. 190513446-9446-01]

RIN 0694 - AH84

Elimination of License Exception Civil End Users (CIV)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by removing License Exception Civil End Users (CIV) and requiring a license for national security-controlled items on the Commerce Control List (CCL) to countries of national security concern. This will advance U.S. national security interests by allowing U.S. government review of these transactions to these countries prior to export, reexport or transfer (in-country) in accordance with current licensing policy for national security-controlled items on the CCL. This rule also makes conforming changes to the CCL by removing the CIV paragraph from each Export Control Classification Number on the CCL where it appears.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-0092 or by email at eileen.albanese@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce’s Bureau of Industry and Security (BIS) administers U.S. laws, regulations and policies governing the export, reexport, and transfer (in-country) of commodities, software, and technology (collectively “items”) falling under the jurisdiction of the Export Administration Regulations (EAR) (15 CFR, subchapter C, parts 730 through 774). The primary goal of this effort is to advance U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership. Items subject to the EAR may require a license or other type of authorization prior to export, reexport, or transfer (in-country).

An export license exception is an authorization allowing export, re-export, or transfer (in-country) under stated conditions, of items subject to the EAR otherwise requiring a license. Because there are a number of circumstances under which a license exception may replace the need for a license, there are several types of license exceptions. A description of each of the license exception types, as well as information regarding license exceptions more generally, can be found in 15 CFR part 740, which is available at <https://www.bis.doc.gov/index.php/documents/regulations-docs/2341-740-2/file>.

As described in 15 CFR part 736, transactions involving items subject to the EAR must abide by 10 general prohibitions. Obligations under the ten general prohibitions rely largely on knowledge

of the details of a transaction, including the classification and destination of the item as well as the end-user and end-use of the item. The EAR contains a definition of "knowledge" and its variants "know", "reason to know", or "reason to believe" in part 772.

Removal of License Exception CIV (§ 740.5 Civil End Users)

In this final rule, BIS is removing License Exception Civil End-Users (CIV) (§ 740.5 of the EAR), which authorized exports, reexports, and transfers (in-country) of certain national security-controlled items, without prior review by BIS provided the exception's criteria were met, to most civil end users for civil end uses in Country Group D:1. As set forth in Supplement No. 1 to part 740 of the EAR, countries listed in Country Group D:1 are of concern for national security reasons. To advance the objectives discussed in the Administration's National Security Strategy released in December 2017 available on www.whitehouse.gov as well as address the challenges discussed in the Administration's National Defense Strategy released in January 2018 at <https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>, BIS is removing License Exception CIV due to the increasing integration of civilian and military technology development in these countries of concern.

BIS acknowledges many countries seek to align civil and defense technology development for many reasons -- to achieve greater efficiency, innovation, and growth. This can present an economic challenge to nations that export high-tech products, including the United States, as individual country goals could also directly support military modernization goals contrary to U.S. national security or foreign policy interests. This integration also makes it more difficult for industry to know or determine whether the end use and end users of items proposed for export, reexport or transfer (in-country) will not be or are not intended for military uses or military end users. BIS is making this determination based on the following data:

- an evaluation of export data from current CIV end-users,
- publicly available strategies of D:1 countries currently implementing civil-military integration strategies to obscure U.S. exporters from easily determining if a national-security controlled item will not be or is not intended to be exported, reexported or transferred (in-country) to military uses or military end users, and
- U.S. Government enforcement actions identifying diversion of U.S.-origin items to military end uses and military end users by purported civil end users in these countries.

Based on the above discussion, and in line with the objectives discussed in the National Security Strategy and National Defense Strategy, BIS has determined that transactions involving the national security-controlled items currently permitted under CIV should be reviewed by the U.S. Government prior to export, reexport or transfer (in-country). By removing License Exception CIV and requiring a license for national security-controlled items to Country Group D:1 destinations, U.S. national security interests are maintained as the Government will then review each transaction prior to export in accordance with the licensing policy set forth in § 742.4(b) of the EAR.

Changes to Conform the CCL for the removal of License Exception CIV

This final rule makes conforming changes to Supplement No. 1 to part 774 (the Commerce Control List). The Commerce Control List identifies controlled items by Export Control Classification Number (ECCN). An ECCN is typically made up of four sections, including a section for the list-based license exceptions, which, where applicable, provide eligibility for the ECCN-driven License Exceptions. As a conforming change to the removal of

License Exception CIV, this final rule by amendatory instruction removes the CIV paragraph from the List-Based License Exceptions section wherever it appears in ECCNs on the CCL.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801-4852) that provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) and Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 14, 2019, 84 FR 41881 (August 15, 2019)), or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and

safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866.

2. This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States. As described in this rule and consistent with the Administration’s National Security Strategy and National Defense Strategy, removing and modifying the license exception CIV for D:1 countries would enhance United States’ national security by reducing the risk that exports, reexports, and transfers (in-country) of items subject to the EAR could be diverted and contribute to the military capability of countries of concern. Review of these transactions before completion enhances the Government’s visibility in this area and mitigates the risk associated with certain items on the CCL being used contrary to U.S. national security interests. Thus, the cost-benefit analysis required pursuant to Executive Orders 13563 and 12866 indicate this rule is intended to improve national security as its primary direct benefit. Accordingly, this rule meets the requirements set forth in the April 5, 2017, Office of Management and Budget (OMB) guidance implementing E.O. 13771 (82 FR 9339, February 3, 2017), regarding what constitutes a regulation issued “with respect to a national security function of the United States,” and it is, therefore, exempt from the requirements of E.O. 13771.

3. Notwithstanding any other provision of law, no person is required to respond to, nor may be made subject to a penalty for failure to comply, with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid OMB Control Number. This regulation

involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 42.5 minutes for a manual or electronic submission.

BIS expects the total burden hours associated with this collection to increase. BIS notes for the purposes of discussing change in burden that exports can be more than physical overseas shipments of commodities. Exports may be either “tangible” or “intangible”. Tangible items can be exported by ship or aircraft, sent by post or courier, or carried in checked-in or hand-held luggage. They can include technology stored on a physical medium such as a USB or computer hard drive or in the form of blueprints, diagrams, or notes. An “intangible export” occurs when a person in the US releases or transfers controlled technology by to a foreign person verbally or electronic means by email, fax, telephone, video conferencing, or providing access to electronic files that contain technology.

Tangible shipments that were previously authorized for export, reexport or transfer (in-country) under License Exception CIV will require a license or other license authorization under the EAR. BIS expects the burden hours on these tangible transactions to increase but anticipates a limited impact based on evaluation of current export data regarding CIV usage and the fact that once issued, BIS licenses typically have a four-year validity period and may include prospective sales. Additionally, while BIS recognizes that there may be increased burden hours relating to the intangible exports, as well as the tangible and intangible re-exports and in-country transfers currently authorized by License Exception CIV, there is no readily available data at this time to estimate the increase as there are no filing requirements for these types of transactions. You may send comments regarding the collection of information associated with this rule, including

suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet_K._Seehra@omb.eop.gov, or by fax to (202) 395-7285.

4. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

5. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C 4801-4852, at 4821), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232, 132 Stat. 1636), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

6. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 740 and 774 of the Export Administration Regulations (15 CFR parts 730 – 774) are amended as follows:

Part 740 – [AMENDED]

1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 7201 et seq.; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

§ 740.5 [Removed and Reserved]

2. Remove and reserve § 740.5.

Part 774 – [AMENDED]

3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

Supplement No. 1 to Part 774 [Amended]

4. In Supplement No. 1 to part 774, remove the CIV paragraph from the List-based License Exceptions section in the following ECCNs: 0A018, 0A501, 0A502, 0A503, 0A504, 0A505, 0A602, 0A604, 0A606, 0A614, 0A617, 0A919, 0A978, 0A979, 0A981, 0A982, 0A983, 0A998, 0A999, 0B501, 0B505, 0B602, 0B604, 0B606, 0B614, 0B617, 0B999, 0C606, 0C617, 0D001,

0D501, 0D505, 0D602, 0D604, 0D606, 0D614, 0D617, 0D999, 0E001, 0E501, 0E502, 0E504,
0E505, 0E602, 0E604, 0E606, 0E614, 0E617, 0E982, 1A001, 1A002, 1A003, 1A004, 1A005,
1A006, 1A007, 1A008, 1A101, 1A202, 1A225, 1A226, 1A227, 1A231, 1A290, 1A607, 1A613,
1A984, 1A985, 1A995, 1A999, 1B001, 1B002, 1B003, 1B018, 1B101, 1B102, 1B115, 1B116,
1B117, 1B118, 1B119, 1B201, 1B225, 1B226, 1B228, 1B229, 1B230, 1B231, 1B232, 1B233,
1B234, 1B607, 1B608, 1B613, 1B999, 1C001, 1C002, 1C003, 1C004, 1C005, 1C006, 1C007,
1C008, 1C009, 1C010, 1C011, 1C101, 1C107, 1C111, 1C116, 1C117, 1C118, 1C202, 1C210,
1C216, 1C225, 1C226, 1C227, 1C228, 1C229, 1C230, 1C231, 1C232, 1C233, 1C234, 1C235,
1C236, 1C237, 1C239, 1C240, 1C241, 1C298, 1C350, 1C351, 1C353, 1C354, 1C355, 1C395,
1C607, 1C608, 1C990, 1C991, 1C992, 1C995, 1C996, 1C997, 1C998, 1C999, 1D001, 1D002,
1D003, 1D018, 1D101, 1D103, 1D201, 1D390, 1D607, 1D608, 1D613, 1D993, 1D999, 1E001,
1E002, 1E101, 1E102, 1E103, 1E104, 1E201, 1E202, 1E203, 1E350, 1E351, 1E355, 1E607,
1E608, 1E613, 1E994, 1E998, 2A001, 2A101, 2A225, 2A226, 2A290, 2A291, 2A983, 2A984,
2A991, 2A992, 2A993, 2A994, 2A999, 2B001, 2B002, 2B003, 2B004, 2B005, 2B006, 2B007,
2B008, 2B009, 2B104, 2B105, 2B109, 2B116, 2B117, 2B119, 2B120, 2B121, 2B122, 2B201,
2B204, 2B206, 2B207, 2B209, 2B225, 2B226, 2B227, 2B228, 2B229, 2B230, 2B231, 2B232,
2B233, 2B350, 2B351, 2B352, 2B991, 2B992, 2B993, 2B996, 2B997, 2B998, 2B999, 2D001,
2D002, 2D003, 2D101, 2D201, 2D202, 2D290, 2D351, 2D983, 2D984, 2D991, 2D992, 2D993,
2D994, 2E001, 2E002, 2E003, 2E018, 2E101, 2E201, 2E290, 2E301, 2E983, 2E984, 2E991,
2E993, 2E994, 3A001, 3A002, 3A003, 3A101, 3A201, 3A225, 3A226, 3A227, 3A228, 3A229,
3A230, 3A231, 3A232, 3A233, 3A234, 3A611, 3A980, 3A981, 3A991, 3A992, 3A999, 3B001,
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3D002, 3D003, 3D004, 3D005, 3D101, 3D201, 3D202, 3D611, 3D980, 3D991, 3E001, 3E002,

3E003, 3E101, 3E102, 3E201, 3E202, 3E611, 3E980, 3E991, 4A001, 4A003, 4A004, 4A101, 4A980, 4A994, 4D001, 4D980, 4D993, 4D994, 4E001, 4E980, 4E992, 4E993, 5A001, 5A101, 5A980, 5A991, 5B001, 5B991, 5C991, 5D001, 5D101, 5D980, 5D991, 5E001, 5E101, 5E980, 5E991, 5A002, 5A992, 5A003, 5A004, 5B002, 5D002, 5D992, 5E002, 5E992, 6A001, 6A002, 6A003, 6A004, 6A005, 6A006, 6A007, 6A008, 6A102, 6A107, 6A108, 6A202, 6A203, 6A205, 6A225, 6A226, 6A991, 6A992, 6A993, 6A994, 6A995, 6A996, 6A997, 6A998, 6A999, 6B004, 6B007, 6B008, 6B108, 6B619, 6B995, 6C002, 6C004, 6C005, 6C992, 6C994, 6D001, 6D002, 6D003, 6D102, 6D103, 6D201, 6D619, 6D991, 6D992, 6D993, 6E001, 6E002, 6E003, 6E101, 6E201, 6E202, 6E619, 6E991, 6E992, 6E993, 7A001, 7A002, 7A003, 7A004, 7A005, 7A006, 7A008, 7A101, 7A102, 7A103, 7A104, 7A105, 7A107, 7A116, 7A611, 7A994, 7B001, 7B002, 7B003, 7B101, 7B102, 7B611, 7B994, 7D001, 7D002, 7D003, 7D004, 7D005, 7D101, 7D102, 7D611, 7D994, 7E001, 7E002, 7E003, 7E004, 7E101, 7E102, 7E611, 7E994, 8A001, 8A002, 8A609, 8A620, 8A992, 8B001, 8B609, 8B620, 8C001, 8C609, 8D001, 8D002, 8D609, 8D620, 8D992, 8D999, 8E001, 8E002, 8E609, 8E620, 8E992, 9A001, 9A002, 9A003, 9A004, 9A012, 9A101, 9A102, 9A106, 9A110, 9A115, 9A120, 9A515, 9A604, 9A610, 9A619, 9A620, 9A980, 9A990, 9A991, 9A992, 9B001, 9B002, 9B003, 9B004, 9B005, 9B006, 9B007, 9B008, 9B009, 9B010, 9B104, 9B105, 9B106, 9B115, 9B116, 9B117, 9B515, 9B604, 9B610, 9B619, 9B620, 9B990, 9B991, 9C110, 9C610, 9C619, 9D001, 9D002, 9D003, 9D004, 9D101, 9D104, 9D515, 9D604, 9D610, 9D619, 9D620, 9D990, 9D991, 9E001, 9E002, 9E003, 9E101, 9E102, 9E515, 9E604, 9E610, 9E619, 9E620, 9E990, 9E991, *and* 9E993.

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