

Fried Frank International Trade and Investment *Alert*TM

BIS Reduces Encryption Reporting Requirements

On March 29, 2021, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) [published a final rule](#) implementing changes to the Export Administration Regulations (EAR) that were agreed to at the December 2019 Wassenaar Arrangement Plenary meeting. In addition to technical changes to several ECCNs, the final rule reduces the reporting burden for exports of certain encryption items. It eliminates the notification requirement for most publicly available encryption source code and beta test encryption software, and eliminates or reduces the classification and reporting requirements for mass market encryption components and toolkits. These changes take effect immediately.

Publicly Available Encryption Source Code and Beta Test Software

The final rule amends License Exception TMP to remove the email notification requirement for exports of beta test encryption software, except for such software that implements "non-standard cryptography." It also amends to the EAR to remove the notification requirement for "publicly available" encryption source code classified under ECCN 5D002, except for "non-standard cryptography." BIS estimates that this change will eliminate 80% of the notifications regarding publicly available encryption software.

Mass Market Encryption Products

The final rule amends License Exception ENC by moving "mass market" chips, chipsets, electronic assemblies and field programmable logic devices, and their qualifying executable software from subparagraph 740.17(b)(3) to (b)(1). This change allows these items to be self-classified, and an exporter no longer needs to obtain a commodity classification (CCATS) from BIS. With the elimination of this classification request requirement, an exporter no longer has to file semiannual sales reports, and is only required to file an annual self-classification report with BIS.

In addition, "mass market" toolsets and toolkits that are standalone products (*i.e.*, not "components" of other "mass market" items) are now authorized for export under subparagraph 740.17(b)(1). Such items can now be self-classified as mass market items under ECCN 5A992.c or 5D992.c, and self-classification reporting is not required.

Under the EAR, mass market encryption items are those items that (1) are generally available to the public by being sold, without restriction, from stock at retail selling points, (2) the cryptographic functionality of which cannot be easily changed by the user, and (3) are designed for installation by the user without further substantial support by the supplier.

Conclusion

These largely technical changes, while modest, may significantly reduce the reporting obligations for software companies that produce and export mass market encryption items and beta test encryption software.

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