

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 742

[Docket No. 100309131-0283-03]

RIN 0694-AE89

Clarification of Grace Period for Encryption Registration Requirement

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correcting amendments.

SUMMARY: This rule clarifies the intent of the encryption registration requirement that appeared in a rule published on June 25, 2010. In addition, this rule corrects the e-mail address for the public contact referenced in the June 25, 2010 rule.

DATES: This rule is effective [INSERT DATE OF PUBLICATION].

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Regulatory Policy Division, e-mail *scook@bis.doc.gov*, telephone (202) 482-2440.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 2010, the Bureau of Industry and Security (BIS) published a final rule (75 FR 36482) that, *inter alia*, established an encryption registration requirement for authorization under provisions of License Exception ENC, as codified in § 740.17(b)(1), (b)(2) and (b)(3) of the EAR, and for transactions in connection with mass market encryption transaction, as codified in §§ 742.15(b)(1) and (b)(3) of the EAR. In § 740.17(d)(1)(i)(A) and (d)(1)(i)(B), the rule specified that an encryption registration was required to be filed the first time that a party submits an encryption classification request under § 740.17(b)(2) and (b)(3) or performs an encryption self-classification under § 740.17(b)(1) on or after August 24, 2010. The rule also stated that an encryption registration was required to be submitted in support of an encryption classification or in circumstances where a party is making a mass market encryption item eligible for export and reexport (including the definition at § 734.2(b)(9) for encryption software) under § 742.15(b)(1) for the first time on or after August 24, 2010. Although the rule was issued in final form on June 25, the rule intended to establish a grace period permitting parties to wait until August 24 to submit their registration requirements.

The intent of this grace period was to allow industry time to gather information necessary to accurately submit the information required in the encryption registration (Supplement No. 5 to part 742), to change internal procedures, and to train personnel before submitting the encryption registration. However, the rule inadvertently omitted language that clarifies that parties may self-classify or seek classifications between June 25, 2010 and August 24, 2010 without first submitting a registration. It also inadvertently omitted language that clarifies the post-classification registration requirement for parties that self-classified or sought classifications between June 25,

2010 and August 24, 2010, but did not self-classify or seek a classification again on or after August 24, 2010. This rule corrects the regulations to include language that clarifies the intent of the grace period.

Therefore, this rule adds a sentence to the introductory text of paragraph (b) of § 740.17 that reads, “For items self-classified under paragraph (b)(1) of this section from June 25, 2010 through August 24, 2010, and for requests for classification under paragraphs (b)(2) and (b)(3) of this section submitted from June 25, 2010 through August 24, 2010, exporters have until August 24, 2010 to submit their encryption registrations.” This rule also adds a sentence to the introductory text of paragraph (b) of § 742.15 that reads “For items self-classified under paragraph (b)(1) of this section from June 25, 2010 through August 24, 2010, and for requests for classification under paragraph (b)(3) of this section submitted from June 25, 2010 through August 24, 2010, exporters have until August 24, 2010 to submit their encryption registrations.”

Since this rule is a clarification of contradicting provisions of the regulations, BIS has determined that this rule has no retroactive effect. The registration requirement remains prospective (i.e. by August 24, 2010), and BIS is not actually triggering any requirements with which the affected entities would not otherwise have to comply. The encryption clarification rule simply clarifies that those who proceed with export between June 25, 2010 and August 24, 2010 must file with BIS by August 24, 2010. The public is not adversely affected by this clarification since it provides exporters with a clear guidance for exporting between June 25, 2010 and August 24, 2010.

In addition, the June 25, 2010 rule listed a non-existent e-mail address (encryption@bis.doc.gov) as the e-mail address for technical questions in the “For

Further Information Contact” section of the preamble of the rule. The correct address for technical questions is cpratt@bis.doc.gov. The e-mail address for non-technical questions continues to be scook@bis.doc.gov.

Rulemaking Requirements

1. This rule is not significant for purposes of Executive Order 12866.
2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information that has been approved by the OMB under control number 0694–0088, which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS believes that this rule will make no change to the number of submissions or to the burden imposed by this collection.
3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.
4. BIS finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public

comment because it is unnecessary. These revisions merely clarify the intent of the encryption registration requirement, therefore allowing prior notice and comment on these rules is unnecessary. In addition, BIS finds good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness because this rule merely makes technical changes to the regulations to clarify the intent of the encryption registration requirement. No other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule; therefore, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Parts 740

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

15 CFR Part 742

Exports, Terrorism.

■ Accordingly, the Bureau of Industry and Security amends its Export Administration Regulations (15 CFR parts 730–774) as follows:

Part 740 [Amended]

1. The authority citations for part 740 continue to read as follows:

Authority: 50 U.S.C. app. 2401 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; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

2. Section 740.17 is amended by adding a sentence after the first sentence in paragraph

(b) introductory text to read as follows:

§ 740.17 Encryption commodities, software and technology (ENC).

* * * * *

(b) * * * For items self-classified under paragraph (b)(1) of this section from June 25, 2010 through August 24, 2010, and for requests for classification under paragraphs (b)(2) and (b)(3) of this section submitted from June 25, 2010 through August 24, 2010, exporters have until August 24, 2010 to submit their encryption registrations. * * *

Part 742 [Amended]

3. The authority citations for part 742 continue to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; Sec 1503, Pub. L. 108 11, 117

Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003 23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

4. Section 742.15 is amended by adding a sentence after the fourth sentence in paragraph (b) to read as follows:

§ 742.15 Encryption items.

* * * * *

(b) * * * For items self-classified under paragraph (b)(1) of this section from June 25, 2010 through August 24, 2010, and for requests for classification under paragraph (b)(3) of this section submitted from June 25, 2010 through August 24, 2010, exporters have until August 24, 2010 to submit their encryption registrations.

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Dated: July 21, 2010

Bernard Kritzer,

Director, Office of Exporter Services.

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