

INTERNATIONAL TRADE ALERT

IMPORTANT CHANGES TO BIS FILING REQUIREMENTS AND COMMERCE CONTROL LIST

Compliance officers should be aware of the following new changes to the U.S. Commerce Department's export classification system as well as document filing requirements for dual-use goods and technology:

New Changes to the Commerce Control List. On October 14, 2008, the Department of Commerce's Bureau of Industry and Security (BIS) published a [final rule](#) announcing amendments to the Export Administration Regulations' (EAR) Commerce Control List (CCL) that change existing export classifications and related controls, as well as add some new controls. Compliance officers should review these changes against their existing classifications to determine if any changes need to be made in their current export operations and technology transfer controls.

Upcoming BIS Transition to Electronic Filing Requirements. Beginning Monday, October 20, 2008, exporters must use electronic filing for almost all types of export/reexport license applications, commodity classification requests and certain other types of filings with BIS. As announced in the August 21, 2008 [Federal Register notice](#), BIS will no longer accept paper submissions for these filings and will generally require electronic submission through its Simplified Network Application Process Redesign ([SNAP-R](#)) system. Exporters who have not already done so should apply for authorization to use SNAP-R and incorporate electronic filing requirements into their export compliance procedures.

SUMMARY OF CHANGES

A. New Changes to Commerce Control List

The October 14, 2008 final rule revises the EAR to implement U.S. international treaty obligations by amending several commodity, software and technology classifications. In particular, the rule amends several existing commodity, software and technology classifications under the Commerce Control List and adds certain new classifications. The changes potentially affect a variety of industry groups, including those that export, reexport or transfer goods, software or technology classified under CCL Category 1 (Materials, Chemicals, "Microorganisms" and Toxins), Category 2 (Materials Processing), Category 3 (Electronics),

Category 5 (Telecommunications and Information Security), Category 6 (Sensors), Category 7 (Navigation and Avionics) and Category 9 (Propulsion Systems, Space Vehicles and Related Equipment).

Exporters and reexporters of U.S.-origin items and technology should carefully review these EAR amendments in order to determine whether they affect the classification and resulting export licensing requirements of their products and technology. There are several sets of provisions worth highlighting, including—

- **Semiconductor Manufacturing.** The amendments expand controls on certain equipment and technology used in semiconductor manufacture in order to reflect their use in the manufacture of conventional weapons.
- **Encryption-Capable Devices.** The amendments clarify the scope of controls applied to certain encryption-capable devices and technology, including devices such as CDMA/GSM/GPRS/Wi-Fi (IEEE 802.11)/Bluetooth devices for the transportation (including automotive parts and equipment) and service industries, personal digital assistants (PDAs) and pocket PCs for health care professionals and wireless water/gas/electric utility meter readers.
- **Telecommunications and Other Items Used by Terrorists.** Some of the amendments are intended to cover a number of items and technologies that are increasingly used by terrorists and in counter-insurgency campaigns (e.g., items that have been used for improvised explosive devices (IEDs), specified equipment and related technology used by insurgents to jam or defeat the jamming of mobile telecommunications signals).

While the BIS's final rule is effective immediately, the rule contains a "saving clause" that provides that pending shipments pursuant to actual orders for export or reexport to a foreign destination may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported from the United States or reexported before December 15, 2008 (60 days after the publication date).

B. Upcoming Transition to Electronic BIS Filing Requirements

As of Monday, October 20, 2008, BIS will require electronic filing through SNAP-R of the following submissions—

- all export and reexport license applications (other than Special Comprehensive License and Special Iraq Reconstruction License applications)
- encryption review requests
- License Exception AGR notifications
- commodity classification requests
- all documents submitted in support of, or related to, the above submissions.

Nonetheless, BIS will authorize paper submissions in limited situations. The party must meet one of the following criteria to submit by paper—

- BIS has received no more than one submission (i.e., any submission that must typically be filed through SNAP-R) from the party in the 12 months immediately preceding the current submission.
- The party does not have access to the Internet.

- BIS has rejected the party's electronic filing registration or revoked its eligibility to file electronically.
- BIS has requested that the party submit on paper for a particular transaction.
- BIS has determined that urgency, a need to implement government policy or a circumstance outside the submitting party's control justifies allowing paper submissions in a particular instance.

C. Conclusion

Compliance officers are encouraged to review the classifications of products that may have been affected by the new amendments and to determine whether the amendments will require changes in their technology control plans (e.g., for certain foreign national employees) and other licensing-related procedures in place within their firms. Furthermore, compliance officers should ensure that they are able to use SNAP-R before October 20 in order to avoid delays in processing future BIS filings.

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