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August 3rd, 2015

ATTN: Hillary Hess
Director, Regulatory Policy Division
Office of Exporter Services
Bureau of Industry and Security
Rpd2@bis.doc.gov

Re: RIN 0694-AG32, 80 FR 31505, Revisions to Definitions in the Export Administration Regulations

Dear Ms. Hess:
Intel Corporation appreciates this opportunity to provide input to BIS in its laudable effort to harmonize terminology and regulations between the EAR and ITAR. As a major U.S. exporter and industry leader, Intel encourages further harmonization and coordination between the Departments of State and Commerce to ensure U.S. foreign policy goals are met and to advance exportability of U.S. technology and products. Intel Corporation is submitting the following public comment in response to the request issued by the U.S. Department of Commerce on proposed revisions to definitions in the Export Administration Regulations ("EAR").

772.1 "Technology"

Intel Corporation respectfully advises BIS that the proposed revision to the definition of "technology" contradicts the EAR and ITAR where the EAR uses "Information *necessary*," and the ITAR uses "Information *required"*. As the term "necessary" is not specifically defined in the EAR and the rest of the definition is otherwise harmonized, we suggest updating the EAR definition to read "Information required".

Due to confusing language as written in the proposed rule, the Note to Paragraph (a)(1) should be accordingly clarified to read, "The modification of an existing item creates a new item, and technology **required** for the modification is **subject to the same controls as the new item**."

Software source code should not be added to the EAR definition to differentiate it as "technology," separate from object code.

734.7 "Published"

Regarding 734.7(a)(1) and (4), Intel wishes to remind BIS of the risk of intentional abuse of this allowance under the EAR, noting that simply making "technology" or "software" available to the public on the internet may not necessarily remove export controls based on commodity classification and end use.

734.8 "Technology" that Arises During, or Results from, Fundamental Research

Intel supports the clarification to the definition of fundamental research as at Intel, our Labs and other business units in research and development collaborate on publications for the wider scientific and technical community in addition to their work on proprietary research. By using this criteria, Intel will be able to implement concrete process changes to track fundamental research activities for compliance to determine if/when a research project falls under the scope of the EAR per Note 2 to paragraph (a) and becomes subject to export controls.

772.1 "Development" (General Technology Note)

Regarding the current published definition of "development", Intel advises BIS that the term "serial production" no longer applies to the overall current technology/manufacturing environment. Considering exporters can develop, design, manufacture, and export "technology" for a single prototype or proof-of-concept which may never be serially manufactured but is still subject to the EAR, the current definition conflicts with modern business models and customer demands. For example, Intel's Custom Foundry business unit designs, develops, and manufactures products based on customer specifications using Intel technology; these may be exported as proof-of-concept or manufactured for enterprise or consumer end-users. The development of technology required is agnostic of whether the resulting commodity will be manufactured once, or serially. Intel strongly suggests removing the word "serial" to ensure the definition of "development" focuses on refining the scope of "technology," rather than restriction based on the type of manufacturing.

772.1 "Required" (General Technology Note)

As noted above per use of "required" vs. "necessary" in the definition of "technology," if BIS wishes to refine technology and software to that which is peculiarly responsible for specific functionalities, the term "required" should be used consistently throughout the EAR. We believe that the extensive examples described in Note 1 and Note 2 are not necessary to include in the definition itself as they conflict with the end use controls exporters should refer to per their specific ECCN. Rather than clarifying the definition, BIS may wish to publish the example Note 1 and Note 2 as a FAQ simultaneous to the final rule to guide exporters.

734.13(b) Export and **734.14(2) Reexport**

Intel Corporation strongly requests BIS to consider publishing a definition of "permanent residency" to aid exporters in establishing the appropriate country of export for foreign national license determinations. In the absence of a sufficiently broad definition to cover the variety of immigration statuses worldwide which equate to the U.S. Citizenship and Immigration Services' *lawful permanent resident/green card holder* status, Intel recommends changing "permanent residency" to "legal residency."

Where Intel adheres to the letter of the law on deemed exports and reexports, including following BIS' published FAQs and guidance on third country nationals, pursuing citizenship data worldwide has become increasingly difficult due to the mobile nature of the modern workforce. "Permanent residency" as an immigration status is somewhat unique to the U.S. and other first-world nations, in contrast to other countries with sovereignty over their own immigration regulations which may not grant legal status even to foreign nationals who have permanently settled in the new country (e.g. Saudi Arabia). Particularly in cases of third country nationals and deemed reexports within multinational corporations like Intel, establishing

residency in a third country results in more confusion as various countries' immigration laws do not cleanly map to the U.S. "green card" standard. Intel requests BIS determine an EAR definition of "legal residency," such as utilizing the U.S. Citizenship and Immigration Services' lawful permanent resident status definition to establish regulatory parameters for determining equivalent international statuses, where such a legal residency status exists, e.g.:

1) right to reside in worksite country indefinitely
2) open market work authorization
3) admissibility without a visa
4) subject to deportation for crimes and without citizenship rights of voting and office holding.

Based on recent case history in industrial espionage and export violations made by U.S. persons alone, it is Intel's opinion that immigration status is not an accurate indicator of personal allegiances or risk of unauthorized export/reexport. Regulating deemed exports based on citizenship/permanent residency do not preclude willful violations of the EAR by individuals, regardless of their immigration status. If BIS wishes to control deemed exports to foreign nationals based on allegiances and personal ties to their home country, those foreign nationals who have chosen to emigrate and settle permanently in new countries with accordant long-term visa status should be afforded greater rights under the EAR with a broad, clear definition of "permanent" or "legal" residency beyond the confines of U.S. green card equivalency. By drawing a bright line between legal residency and temporary worker visa status, BIS and exporters would have fewer deemed export licenses to process, resulting in faster hiring of skilled workers and more efficient implementation of deemed export/reexport controls worldwide.

Another area of concern involves data privacy. Requiring companies to collect proof of an individual' most recent country of citizenship or permanent residency may conflict with international privacy and anti-discrimination laws. In order to avoid this conflict Intel must navigate each country's individual immigration regulation to determine if a candidate's status is equivalent and inviolably permanent in their worksite country. Creating a worldwide standard for "legal residency" which encompasses the variety of settlement statuses besides full-fledged citizenship will allow Intel to facilitate innovation and intra-company mobility of technology and employees without endlessly pursuing and tracking personal data throughout an employee's career.

734.16 Transfer (in-country)

BIS' proposal to define an in-country transfer to include "change in end use or end user" unduly extends export controls outside of the purview of exporters and requires additional compliance interdiction in the already difficult arena of end use assurances and monitoring. Exporters would be subject to an additional burden to monitor customers, partners, resellers, and third-party distributors who may not have the awareness or compliance infrastructure to ensure every transfer has appropriate export authorization. In practice, the original exporter will not be able to determine what constitutes a change in end use, or when such a change occurs. The exporter may only discover a change to end use upon request by the end user for additional services/support, by which time the retransfer has already occurred (out of the exporter's control). Due to the difficulty in tracing and tracking product downstream, exporters must rely

upon the veracity of end use statements made by customers at purchase. Following a product throughout its lifespan is infeasible; this definition is unclear as to whether the extension of transfer in-country applies to the entire range of activities, until a product is outdated or disposed of by destruction. Intel requests BIS reconsider the purpose of this definition and impact to exporters based on the limited reach of knowledge of end use beyond direct customers and lack of control over third parties' activities.

734.18 Activities that are not exports, reexports, or transfers

Requiring exporters to implement end-to-end encryption security protocols to the level of FIPS 140-2 places an undue burden and is logistically infeasible based on the size and variability of Intel's current tools and products which facilitate internal sharing. Intel recommends the FIPS compliance language be deleted from this section of the final rule, and suggests instead 734.18(a)(4)(iii) stipulate end-to-end encryption using "strong cryptographic algorithm" or other "commercially available cryptographic means"; such as 256-bit or stronger encryption. Intel could not take advantage of this highly beneficial release of "technology" shared for internal design and development.

Intel appreciates the opportunity to comment on the Proposed Rule and looks forward to continuing its cooperation with the U.S. Government on export control reform.

Best Regards,

Jeff Rittener
Senior Director, Global Trade
Intel Corporation