Ms. Hillary Hess
Director, Regulatory Policy Division
Bureau of Industry and Security, Room 2099B
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

ATTN: RIN 0694–AG32

RE: BIS Proposed Rule Regarding Revisions to Definitions in the Export Administration Regulations (BIS–2015–0019)

Via email: publiccomments@bis.doc.gov

Dear Ms. Hess,

SABIC Innovative Plastics US LLC welcomes the opportunity to comment on the proposed rule issued by the Department of Commerce, Bureau of Industry and Security ("BIS") on June 3, 2015 to revise definitions in the Export Administration Regulations ("EAR").

SABIC's Innovative Plastics business unit is headquartered in Pittsfield, Massachusetts and maintains operations in over 35 countries. The company is a global supplier of plastic pellets, sheets, and films that are widely used by its customers to manufacture various articles of commerce in the automotive, healthcare, consumer electronics, transportation, performance packaging, building and construction, telecommunications, and optical media industries. SABIC is committed to abiding by the EAR and ensuring its global operations are compliant with international trade regulations in all jurisdictions.

SABIC greatly appreciates efforts by BIS to improve and streamline the EAR. The proposed rule carves out certain encrypted technology transfers from the definition of "export," which would facilitate storage and transmission of controlled technology among personnel that are legally authorized. The following comments describe this positive impact in more detail, and also recommend further changes that would enable additional, low-risk transfers to take place more easily, mitigating licensing burdens on BIS and on industry.

Alternative Encryption Standard

Proposed new § 734.18(a)(4)(iii) would allow companies to use encryption that complies with the National Institute of Standards and Technology's FIPS 140-2 standard or, as an alternative, use "other similarly effective cryptographic means[.]" By contrast, the companion rule proposed by the Department of State, Directorate of Defense Trade Controls ("DDTC") does not provide this alternative, requiring all encryption to adhere to the FIPS 140-2 standard. SABIC prefers the approach contained in the BIS version because it affords U.S. businesses flexibility in complying

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with the proposed regulation. Our company is familiar with the FIPS 140-2 encryption standard and similar alternatives, and we do not anticipate a significant economic impact from implementing such standards for export-controlled transfers. However, our information technology personnel choose from a range of cryptographic options for each specific business need that is presented. This flexibility is essential for the company to maintain control over its business costs. Therefore, we favor the inclusion of alternative cryptographic options.

Email

In recent years, SABIC has migrated many global servers – including its email exchange servers – to an overseas location in order to consolidate business operations. As a result, emails sent by all U.S. employees are "exported" before reaching their intended recipient. If a U.S. person emails export-controlled technology to another authorized U.S. employee with the appropriate encryption in place, under proposed new § 734.18(a)(4) the transfer would be not be an export and no licensing would be required. This development represents a welcome shift for SABIC, given that licenses would only be required to authorize recipients but not pass-through server locations. Currently, we advise all employees not to transfer export-controlled technology via email, which impedes their ability to communicate quickly with each other. We offer alternative, less efficient mechanisms for electronic transfers, which require additional resources to manage. The proposed rule would have a positive economic impact by improving communications efficiencies and reducing resource costs.

Enterprise Content Management

The proposed rule enhances our ability to consolidate company data on fewer servers. SABIC is in the process of shifting to a global enterprise content management ("ECM") system, for which the servers will reside overseas. Licenses would no longer be required to store controlled technology in encrypted documents on ECM servers, provided the system is compliant with § 734.18(a)(4)(iii), as this would no longer be an export. SABIC would not require licenses to permit storage of U.S.-controlled documents on these servers, which facilitates our goal of consolidating company data on the ECM servers. Avoiding the cost of redundant servers in multiple locations is a significant economic benefit to the company.

Third Parties

Occasionally we transfer export-controlled technology to legally authorized third parties in the U.S., such as customers or vendors, who do not have access to SABIC systems. Due to the overseas location of our email exchange servers, we exchange controlled technology by sending physical media via courier in order to avoid licensing burdens. Under proposed new § 734.18(a)(4), U.S. industry could lower costs and improve efficiencies by utilizing secure encrypted email transfers.

Intra-Company Transfers

SABIC recommends that BIS consider creating a new rule or augmenting the current proposed rule to include a licensing exception for intra-company transfers, including deemed exports. Although proposed new § 734.18(a)(4) relieves some of the burden of obtaining licenses for a segment of our typical transfers, inclusion of an intra-company exception would have a far

greater economic impact. Due to SABIC's global operations, we employ domestic and expatriate scientists, engineers, and technologists at research facilities in multiple locations. Their ability to collaborate on export-controlled projects is restricted, requiring the company to apply for standard and deemed export licenses.

SABIC's robust compliance procedures include assessing employee location and citizenship in order to determine eligibility to work on specific export-controlled projects. Implementing an intra-company license exception would accelerate resource allocation flexibility for SABIC and similarly compliant U.S. companies. Without an exception for intra-company transfers, including deemed exports, companies with global operations cannot fully take advantage of proposed new § 734.18(a)(4).

Encourage Other Jurisdictions to Implement Similar Rule

Finally, SABIC recommends that BIS encourage adoption of standards similar to proposed new § 734.18(a)(4) by its partners in multilateral export control regimes. The utility of this proposed rule increases when other countries treat encrypted data transfers and storage similarly. For controlled technology originating at our overseas locations, transfers to authorized recipients could occur without licensing for third-country encrypted storage locations. Similar treatment of encrypted data transfers and storage by other countries would have a positive impact on SABIC as well as others in U.S. industry.

Conclusion

While we are looking forward to the benefits of the proposed rule, we recommend that BIS take additional steps to enhance its overall impact: (1) implement a licensing exception for intra-company transfers, including deemed exports, and (2) encourage multilateral partners to adopt similar regulations that allow for encrypted data transfers and storage.

Thank you for the opportunity to provide comments on the proposed rule to amend the EAR. We welcome the opportunity to further discuss our comments and recommendations with the Department of Commerce, and look forward to working with your agency on other export control reform initiatives.

Sincerely,

Andrew Dean
Sr. Manager, Technology Trade Compliance
SABIC