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Comment on FR Doc # 2015-12843

This is a Comment on the **Bureau of Industry and Security** (BIS) Proposed Rule: **Definitions in the Export Administration Regulations**

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Comment

Regarding the definition of reexport in proposed 734.14:
734.14(a)(1): Using the unqualified phrase an item would make this definition overbroad and encompass items that are not subject to the EAR. Suggest inserting subject to the EAR immediately after an item in both places, so subparagraph (a)(1) would read: (1) An actual shipment or transmission of an item subject to the EAR from one foreign country to another foreign country, including the sending or taking of an item subject to the EAR to or from such countries in any manner;
734.14(a)(2): Likewise, by not limiting technology and source code in proposed 734.14(a)(2), the proposed definition would encompass technology and source code that are not subject to the EAR. Suggest inserting subject to the EAR immediately after technology and source code, so paragraph (a)(2) would read: (2) Releasing or otherwise transferring technology or source code subject to the EAR to a foreign national of a country other than the foreign country where the release or transfer takes place (a deemed reexport);
734.14(a)(4): Finally, by not limiting the decryption keys, network access codes, passwords, software, or other information in proposed 734.14(a)(4), the proposed definition would encompass such items that are not subject to the EAR. Suggesting inserting subject to the EAR immediately after other information, so paragraph (a)(4) would read: (4) Releasing or otherwise transferring outside of the United States decryption keys, network access codes, passwords, software, or other information subject to the EAR with knowledge that such provision will cause or permit the transfer of other technology in clear text or software to a foreign national.

Regarding the scope of the EAR in proposed 734.18:
734.18(a)(4): Suggest inserting subject to the EAR immediately after technology or software, so paragraph (a)(4) would read: (4) Sending, taking, or storing technology or

software subject to the EAR that is:

Regarding proposed changes to 740.9:
740.9(a)(3)(iii): Suggest inserting or foreign national immediately after U.S. person, so subparagraph (a)(iii) would read: (iii) The U.S. person or foreign national is an employee of the U.S. Government or is directly employed by a U.S. person and not, e.g., by a foreign subsidiary.