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August 3, 2015

Ms. Hillary Hess
Director, Regulatory Policy Division
Office of Exporter Services
Bureau of Industry and Security

Re: Comments Related to Revision of 15 CFR Parts 734, 740, 750, 764 and 772.

Dear Ms. Hess:

Rockwell Collins appreciates the opportunity to provide comments on the proposed Amendment to the Export Administration Regulations: Revision of 15 CFR Parts 734, 740, 750, 764 and 772; (RIN 0694-AG32), published in the Federal Register on June 3, 2015.

Rockwell Collins, Inc. is an industry recognized leader in the design, production and support of communications and aviation electronics for commercial and military customers worldwide. While our products and systems are primarily focused on aviation applications, our Government Systems business also offers products and systems for ground and shipboard applications. The integrated system solutions and products we provide to our served markets are oriented around a set of core competencies: communications, navigation, automated flight control, displays/surveillance, simulation and training, integrated electronics and information management systems. We also provide a wide range of services and support to our customers through a worldwide network of service centers, including equipment repair and overhaul, service parts, field service engineering, training, technical information services and aftermarket used equipment sales. We are headquartered at 400 Collins RD NE, Cedar Rapids, Iowa 52498 and employ approximately 20,000 individuals worldwide.

Regarding the proposed changes to the International Traffic in Arms Regulations: Revision of 15 CFR Parts 734, 740, 750, 764 and 772: Amendment to the Export Administration Regulations: **Revisions to Definitions in the Export Administration Regulations**.

Rockwell Collins submits the following Comments:

§ 734.7 Published.
(a) Except as set forth in paragraph (b) of this section, unclassified "technology" or "software" is "published," and is thus not "technology" or "software" subject to the EAR, when it has been made available to the public without restrictions upon its further dissemination such as through any of the following:
(1) Subscriptions available without restriction to any individual who desires to obtain or purchase the published information;
(2) Libraries or other public collections that are open and available to the public, and from which the public can obtain tangible or intangible documents;
(3) Unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the interested public;
(4) Public dissemination (*i.e.,* unlimited distribution) in any form (*e.g.,*not necessarily in published form), including posting on the Internet on sites available to the public; or
(5) Submission of a written composition, manuscript or presentation to domestic or foreign coauthors, editors, or reviewers of journals, magazines, newspapers or trade publications, or to organizers of open conferences or other open gatherings, with the intention that the compositions, manuscripts, or publications will be made publicly available if accepted for publication or presentation.

(b) Published encryption software classified under ECCN 5D002 remains subject to the EAR unless it is publicly available encryption object code software classified under ECCN 5D002 and the corresponding source code meets the criteria specified in § 740.13(e) of the EAR.

COMMENTS:

1. *As written this regulation suggests that releasing (publishing) technology that is unclassified but subject to the EAR makes that technology no longer subject to the EAR. For example: publishing a YouTube video describing how to operate and/or repair a weather radar, which is technology subject to the EAR under 6E991 would no longer be subject to the EAR after publishing. This would also include 3E611, 7E101, 7E004.7 and all other unclassified technology.*

§ 734.18 Activities that are not exports, reexports, or transfers.

(a) The following activities are not exports, reexports, or transfers:

(1) Launching a spacecraft, launch vehicle, payload, or other item into space.

(2) While in the United States, releasing technology or software to United States citizens, persons lawfully admitted for permanent residence in the United States, or persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

(3) Shipping, moving, or transferring items between or among the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands or any territory, dependency, or possession of the United States as listed in Schedule C, Classification Codes and Descriptions for U.S. Export Statistics, issued by the Bureau of the Census.

(4) Sending, taking, or storing technology or software that is:

(i) Unclassified;

(ii) Secured using end-to-end encryption;

(iii) Secured using cryptographic modules (hardware or software) compliant with Federal Information Processing Standards Publication 140-2 (FIPS 140-2) or its successors, supplemented by software implementation, cryptographic key management and other procedures and controls that are in accordance with guidance provided in current U.S. National Institute for Standards and Technology publications, or other similarly effective cryptographic means; and

(iv) Not stored in a country listed in Country Group D:5 (*see* Supplement No. 1 to part 740 of the EAR) or in the Russian Federation.

(b) *Definitions.* For purposes of this section, 'end-to-end encryption' means the provision of uninterrupted cryptographic protection of data between an originator and an intended recipient, including between an individual and himself or herself. It involves encrypting data by the originating party and keeping that data encrypted except by the intended recipient, where the means to access the data in unencrypted form is not given to any third party, including to any Internet service provider, application service provider or cloud service provider.

(c) The ability to access "technology" or "software" in encrypted form that satisfies the criteria set forth in paragraph (a)(4) of this section does not constitute the release or export of such "technology" or "software."

Note to § 734.18: Releasing "technology" or "software" to any person with knowledge that a violation will occur is prohibited by § 736.2(b)(10) of the EAR.

COMMENTS:

1. *Rockwell Collins suggests that the language in (4)(iii) mirror the language in the ITAR* § 120.52(a)(4)(iii) *defining the use of the Federal Information Processing Standards Publication 140-2 (FIPS 140-2) or its successors, in accordance with guidance provided in current U.S. National Institute for Standards and Technology publications.*

   Use of alternative methods of encryption outside of the NIST/FIPS 140-2 standards can and will cause interoperability issues across industry. It is recommended that alternative methods not be allowed to cause industry to adopt the NIST/FIPS standard. It is recommended that "or other similarly effective cryptographic means;" be removed.

2. *It is recommended that a transition period be provided to allow industry time to modify its IT systems to accommodate and deploy end-to-end encryption that is compliant with the NIST/FIPS 140-2 standard.*

PART 750—APPLICATION PROCESSING, ISSUANCE, AND DENIAL
§ 750.7 Issuance of licenses.
(a) *Scope.* Unless limited by a condition set out in a license, the export, reexport, or transfer (in-country) authorized by a license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. The applicant must inform the other parties identified on the license, such as the ultimate consignees and end users, of the license's scope and of the specific conditions applicable to them. BIS grants licenses in reliance on representations the applicant made in or submitted in connection with the license application, letters of explanation, and other documents submitted. A BIS license authorizing the release of technology to an entity also authorizes the release of the same technology to the entity's foreign nationals who are permanent and regular employees (and who are not proscribed persons under U.S. law) of the entity's facility or facilities authorized on the license, except to the extent a license condition limits or prohibits the release of the technology to nationals of specific countries or country groups.

COMMENTS:

1. *As written the scope of a license approval could be misconstrued to assume that the approved license also includes the item(s), end-use(s) and parties not included in a license application but included in supporting documentation. It is recommended the language be written as follows:*

   "Unless limited by a condition set out in a license, the export, reexport, or retransfer (in-country) authorized by a license is for the item(s), end-use(s), and parties described in the license application." Remove the words "and any letters of explanation".

PART 772—DEFINITIONS OF TERMS
§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

Applied research. See § 734.8(c) of the EAR.

Basic scientific research. (GTN)— Experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective. See also § 734.8(c) of the EAR.

Export. See § 734.13 of the EAR.

Fundamental research. See § 734.8 of the EAR.

Peculiarly responsible. An item is "peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions" if it is used in or for use in the "development," "production," "use," operation, installation, maintenance, repair, overhaul, or refurbishing of an item subject to the EAR unless:
(1) The Department of Commerce has determined otherwise in a commodity classification determination;
(2) [Reserved];
(3) It is identical to information used in or with a commodity or software that:
(i) Is or was in production (*i.e.,* not in development); and
(ii) Is EAR99 or described in an ECCN controlled only for Anti-Terrorism (AT) reasons;
(4) It was or is being developed with "knowledge" that it would be for use in or with commodities or software:
(i) Described in an ECCN; and
(ii) Also commodities or software either not enumerated on the CCL or the USML (*e.g.,* EAR99 commodities or software) or commodities or software described in an ECCN controlled only for Anti-Terrorism (AT) reasons;
(5) It was or is being developed for use in or with general purpose commodities or software, *i.e.,* with no "knowledge" that it would be for use in or with a particular commodity or type of commodity; or
(6) It was or is being developed with "knowledge" that it would be for use in or with commodities or software described:
(i) In an ECCN controlled for AT-only reasons and also EAR99 commodities or software; or
(ii) Exclusively for use in or with EAR99 commodities or software.

Proscribed person. A person who is prohibited from receiving the items at issue or participating in a transaction that is subject to the EAR without authorization by virtue of U.S. law, such as persons on the Entity List, Specially Designated Nationals, or debarred parties.

Publicly available encryption software. See § 740.13(e) of the EAR.

Published. See § 734.7 of the EAR.

Reexport. See § 734.14 of the EAR.

Release. See § 734.15 of the EAR.

Required. (General Technology Note)—As applied to "technology" or "software", refers to only that portion of "technology" or "software" which is peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions. Such "required" "technology" or "software" may be shared by different products. For example, assume product "X" is controlled if it operates at or above 400 MHz and is not controlled if it operates below 400 MHz. If production technologies "A", "B", and "C" allow production at no more than 399 MHz, then technologies "A", "B", and "C" are not "required" to produce the controlled product "X". If technologies "A", "B", "C", "D", and "E" are used together, a manufacturer can produce product "X" that operates at or above 400 MHz. In this example, technologies "D" and "E" are "required" to make the controlled product and are themselves controlled under the General Technology Note. (See the General Technology Note.)

Note 1 to the definition of *required*: The references to "characteristics" and "functions" are not limited to entries on the CCL that use specific technical parameters to describe the scope of what is controlled. The "characteristics" and "functions" of an item listed are, absent a specific regulatory definition, a standard dictionary's definition of the item. For example, ECCN 9A610.a controls "military aircraft specially designed for a military use that are not enumerated in USML paragraph VIII(a)." No performance level is identified in the entry, but the control characteristic of the aircraft is that it is specially designed "for military use." Thus, any technology, regardless of significance, peculiar to making an aircraft "for military use" as opposed to, for example, an aircraft controlled under ECCN 9A991.a, would be technical data "required" for an aircraft specially designed for military use thus controlled under ECCN 9E610.

Note 2 to the definition of *required*: The ITAR and the EAR often divide within each set of regulations or between each set of regulations:
1. Controls on parts, components, accessories, attachments, and software; and
2. Controls on the end items, systems, equipment, or other items into which those parts, components, accessories, attachments, and software are to be installed or incorporated. Moreover, with the exception of technical data specifically enumerated on the USML, the jurisdictional status of unclassified technical data or "technology" is the same as the jurisdictional status of the defense article or "item subject to the EAR" to which it is directly related. Thus, if technology is directly related to the production of a 9A610.x aircraft component that is to be integrated or installed in a USML VIII(a) aircraft, then the technology is controlled under ECCN 9E610, not USML VIII(i).

"*Technology*" means: (a) Except as set forth in paragraph (b) of this definition:
(1) Information necessary for the "development," "production," "use," operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in ECCNs on the CCL that control "technology") of an item. "Technology" may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information gleaned through visual inspection;

Note to paragraph (a)(1) of this definition:
The modification of an existing item creates a new item and technology for the modification is technical data for the development of the new item.
(2) [Reserved];
(3) [Reserved];
(4) [Reserved]; or
(5) Information, such as decryption keys, network access codes, or passwords, that would allow access to other "technology" in clear text or "software."

(b) "Technology" does not include:
(1) Non-proprietary general system descriptions;
(2) Information on basic function or purpose of an item; or
(3) Telemetry data as defined in note 2 to Category 9, Product Group E (see Supplement No. 1 to Part 774 of the EAR).

Transfer. A shipment, transmission, or release of items subject to the EAR either within the United States or outside the United States. *For in country transfer/transfer (in-country),*see § 734.16 of the EAR.

Note to definition of *transfer*: This definition of "transfer" does not apply to § 750.10 of the EAR or Supplement No. 8 to part 760 of the EAR. The term "transfer" may also be included on licenses issued by BIS. In that regard, the changes that can be made to a BIS license are the non-material changes described in § 750.7(c) of the EAR. Any other change to a BIS license without authorization is a violation of the EAR. See §§ 750.7(c) and 764.2(e) of the EAR.

Comments:

1. *In reference to the definition of "Technology", (a)(5) Rockwell Collins does not agree that decryption keys, network access codes or passwords, that would allow access to other "technology" in clear text or "software", should be considered technology. Such are not specifically enumerated within the CCL. While it is recognized the keys, access codes and passwords control access to other technology or software (both encrypted and unencrypted), such should not be controlled as technology requiring authorization to export.*

2. *For the Definition of "Technology" suggest adding to (b)(4) "information that is subject to the EAR but published without restriction on further dissemination".*

3. *Suggest the expansion of (b)(2) to include the phrase "including requirements that do not contain design implementation information"*

Rockwell Collins is fully committed to supporting the Administration's efforts in moving export control reform forward. We greatly appreciate the opportunity to provide comments to the proposed changes.

If you have any questions or would like to discuss the comments provided above, feel free to contact me directly at 319-295-5396, or via email at perry.smith@rockwellcollins.com

Sincerely,

Perry A. Smith
Director, Export and Import Compliance
Rockwell Collins