

style. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws. A court reporter will record the proceedings of the public meeting, after which a transcript will be available on the above-referenced Web site.

After the public meeting and the close of the comment period on the Framework Document, DOE will begin collecting data, conducting the analyses as discussed in the Framework Document and at the public meeting, and reviewing the comments received.

DOE considers public participation to be a very important part of the process for setting energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Beginning with the Framework Document, and during each subsequent public meeting and comment period, interactions with and between members of the public provide a balanced discussion of the issues to assist DOE with the standards rulemaking process. Accordingly, anyone who would like to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information regarding this rulemaking on walk-in coolers and walk-in freezers, should contact Brenda Edwards at (202) 586-2945, or via e-mail at: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

Issued in Washington, DC, on December 24, 2008.

**John F. Mizroch,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

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BILLING CODE 6450-01-P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Part 736

[Docket No. 0810231384-81391-01]

RIN 0694-XA15

#### Request for Public Comment on Foreign Produced Encryption Items That Are Made From U.S.-Origin Encryption Technology or Software

**AGENCY:** Bureau of Industry and Security.

**ACTION:** Notice of inquiry.

**SUMMARY:** To determine the appropriate extent and scope of U.S. export controls on foreign products that are the direct products of U.S.-origin encryption

technology or software, BIS is seeking information on the potential impact of controlling such foreign made items for Encryption Items ("EI") reasons under the EAR (i.e., those that are classified under ECCN 5A002 or 5D002) if the direct product of U.S.-origin ECCN 5E002 technology or ECCN 5D002 software. Specifically, BIS is requesting comments regarding the impact this control would have on both U.S. exporters of encryption technology and software and foreign manufacturers of products that are derived in whole or in part from U.S.-origin encryption technology or software.

**DATES:** Comments must be received no later than March 9, 2009.

**ADDRESSES:** Written comments may be submitted via <http://www.regulations.gov>; by e-mail directly to BIS at [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov); in hardcopy to U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. and Pennsylvania Ave., NW., Room H-2705, Washington, DC 20230; or by fax to 202-482-3355. Please input "0694-XA15" in the subject line of the written comments.

**FOR FURTHER INFORMATION CONTACT:** For General Information Contact: Sharron Cook, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security at 202-482-2440, or fax 202-482-3355, or e-mail at [scook@bis.doc.gov](mailto:scook@bis.doc.gov).

For Specific Encryption Related Information Contact: C. Randall Pratt, Information Technology Division, Office of National Security and Technology Transfer Controls at 202-482-0707 or E-Mail: [cpratt@bis.doc.gov](mailto:cpratt@bis.doc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Foreign-Produced Direct Product Rule is found in General Prohibition No. 3 under section 736.2(b)(3) of the Export Administration Regulations (EAR) and in section 734.3(a)(4) of the EAR, "Items Subject to the EAR."

Under section 736.2(b)(3)(ii)(A) of the EAR, a foreign-made item is considered a direct product of U.S. technology or software if it meets the following conditions, it is the direct product of technology or software that requires a written assurance as a supporting document for a license, as defined in paragraph (o)(3)(i) of Supplement No. 2 to part 748 of the EAR, or as a precondition for the use of License Exception TSR at section 740.6 of the EAR, and it is subject to national security controls as designated on the

applicable ECCN of the Commerce Control List at part 774 of the EAR.

Section 736.2(b)(3)(i) provides that if a foreign-made item is a direct product of U.S.-origin technology or software pursuant to the criteria set forth above, then it is subject to the EAR if it is exported from the country of manufacture to a destination in Country Group D:1 or E:2 (Cuba) of Supplement No. 1 to Part 740 of the EAR. General Prohibition 3 prohibits the reexport or export from abroad of items meeting the criteria of foreign direct products of U.S.-origin technology or software to Country Group D:1 destinations or Cuba unless authorization has been granted via a license or license exception.

Technology and software controlled under ECCN 5E002 and 5D002 of the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) are subject to national security ("NS") controls. When the foreign-produced direct product of such technology or software would be classified under ECCN 5A002 or 5D002, it would meet the definition of "direct product" under section 736.2(b)(3)(ii)(A) of the EAR.

BIS is seeking information on the impact of making the foreign-produced direct product of U.S.-origin ECCN 5E002 technology or ECCN 5D002 software, classified under ECCN 5A002 or 5D002 subject to the EAR if exported from the country of manufacture to any destination (except the United States or Canada). All such foreign-produced direct product ECCN 5A002 or 5D002 hardware or software would be subject to the license requirements of sections 742.15 ("EI" encryption items) and 742.4 ("NS" national security), or to the review requirements of section 740.17 (License Exception ENC). Reporting requirements under section 740.17(e) would not apply to exports from the country of manufacture of foreign-produced direct products, as reporting is required only for export from the United States or reexports from Canada.

The possible revision described above would apply to the foreign direct product of ECCN 5E002 technology and 5D002 software exported under license, not to the foreign direct product of technology and software exported under License Exception ENC of section 740.17 of the EAR.

Under the current provisions of section 736.2(b)(3), if ECCN 5E002 technology is exported under an export license for purposes of offshore manufacture of an encryption item that has previously been submitted to the U.S. Government for technical review and has been made eligible for export under License Exception ENC, the

foreign-produced direct product of the technology is *not* subject to the EAR unless: (1) It is exported from the country of manufacture to a destination in Country Group D:1 or E:2 (Cuba); or (2) it is exported from the United States after having been shipped to the United States from the country of manufacture.

However, all foreign-produced direct product of technology or software exported under License Exception ENC under either paragraph (a)(1) (for internal development of new products by a 'license-free zone' (Supplement No. 3 to part 740) "private sector end-user") or (a)(2) (to a "U.S. subsidiary" for internal use or development) are currently subject to the EAR by the terms of the notes to paragraphs (a)(1) and (a)(2).

### Request for Comment

BIS is seeking public comment on the impact such a revision to section 736.2(b)(3)(i) would have on both U.S. manufacturers of encryption technology and software and foreign manufacturers of products (including under contract to U.S. companies who own and maintain the intellectual property, branding, marketing and distribution rights to the end-products manufactured offshore) that are derived in whole or in part from U.S.-origin encryption technology or software. BIS is also seeking information about the cost of compliance with such a revision, including U.S. Government review of foreign direct products prior to export from abroad. BIS is also seeking information on the burdens of complying with multiple sets of laws, foreign and U.S., which could result from the potential revision.

BIS would also like information about the various (commercial and military) applications of foreign products that are derived in whole or in part from U.S.-origin encryption technology or software. In addition, BIS is seeking information from foreign-manufacturers of encryption items about the factors that they or their competitors might consider in deciding to produce or use U.S.-origin encryption technology or software.

Additionally, BIS is interested in specific information (URL addresses, technical specifications, etc.) about the availability of foreign encryption technology and software that is equivalent to U.S.-origin encryption technology and software classified under ECCNs 5E002 and 5D002. Finally, BIS seeks information on the impact on the U.S. information technology manufacturing base and American jobs if encryption products continue to be not subject to the EAR when exported from abroad or reexported to countries

other than those listed in Country Group D:1 and E:2, simply by being manufactured under an export license, when identical products manufactured onshore by U.S. companies (or overseas by U.S. subsidiaries pursuant to LE ENC or LE ENC-eligible "private sector end-users") are subject to the EAR.

Dated: December 29, 2008.

**Christopher R. Wall,**

*Assistant Secretary for Export Administration.*

[FR Doc. E8-31371 Filed 1-5-09; 8:45 am]

**BILLING CODE 3510-33-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 46 CFR Part 197

[USCG-1998-3786]

RIN 1625-AA21

#### Commercial Diving Operations

**AGENCY:** Coast Guard, DHS.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the commercial diving regulations. We request public comment on industry standards and current practices that might be incorporated in our regulations or accepted as regulatory equivalents; the use of third-party auditing; new requirements for compliance documentation; the adoption of recommendations made following the investigation of a 1996 fatality; and possible additional regulatory revisions. This rulemaking will promote the enhancement of maritime safety which is a strategic goal of the Coast Guard.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before March 9, 2009 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG-1998-3786 using any one of the following methods:

- (1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- (2) *Fax:* 202-493-2251.
- (3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- (4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Lieutenant Commander Rogers Henderson, U.S. Coast Guard, telephone (202) 372-1411. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents for Preamble

- I. Public Participation and Request for Comments
  - A. Submitting Comments
  - B. Viewing Comments and Documents
  - C. Privacy Act
  - D. Public Meeting
- II. Abbreviations
- III. Background and Purpose

#### I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

##### A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-1998-3786), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-1998-3786" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches,