

WSGR ALERT

JUNE 2010

RELAXATION OF CERTAIN REQUIREMENTS GOVERNING THE EXPORT OF ENCRYPTION ITEMS

On Friday, June 25, 2010, the U.S. Commerce Department's Bureau of Industry and Security (BIS) published amendments to the Export Administration Regulations (EAR) that ease certain restrictions and requirements governing the export of encryption commodities, technology, and software, including the use of License Exception ENC. The amendments are effective immediately.

Key Changes:

- *One-time company registration.* The amendments implement a one-time company encryption registration for most exporters of encryption items and also eliminate, in most instances, the need for a company to submit each encryption item for a classification request (formerly known as an encryption review).
- *Elimination of 30-day waiting period.* The amendments authorize immediate export and reexport of many encryption items, including most "mass market items" and "lesser national security controlled encryption items" without a 30-day waiting period.
- *Relaxation of the reporting requirements under License Exception ENC.* The amendments require companies to submit to BIS an annual report of encryption items that they have self-classified. In many cases, this annual report replaces the requirement to file semiannual reports of exports made under License Exception ENC.

Products that continue to require submission of a classification request, a 30-day waiting period, and semiannual

reporting include, but are not limited to: (1) network infrastructure items; (2) source code; (3) products designed for the government; (4) customized, modifiable, or quantum crypto; (5) penetration-testing items; (6) public-safety radios; (7) cryptanalytic items; (8) items with OCI; and (9) some encryption technology. Additionally, encryption components (chips, electronic assemblies, crypto libraries, tool kits, and development kits), non-standard crypto items, and digital forensics items also require submission of a classification request and a 30-day waiting period.

- *Loosening of requirements on exports of certain encryption technology.* Encryption technology now may be exported under License Exception ENC to non-government end-users in most countries. Licenses still will be required for exports of encryption technology for cryptanalytic items, non-standard encryption, and open cryptographic interfaces.

What Do I Need to Do?

- Submit an encryption registration to BIS using its SNAP-R electronic system. This will authorize you to self-classify new encryption items.
- You can continue to use issued CCATS without submitting an encryption registration unless the encryption functionality of the product has changed.
- You still cannot export encryption items without a license to Cuba, Iran, North Korea, Sudan, or Syria.

Also, on June 30, 2010, from 1:00 p.m. to 3:00 p.m. ET, BIS is hosting a webinar on the June 25 amendments to the encryption provisions in the EAR. Information on the webinar can be found at http://www.bis.doc.gov/seminarsandtraining/webinars/encryption_webinar.htm.

Please contact Josephine Aiello LeBeau, Melissa Mannino, or Anne Seymour of Wilson Sonsini Goodrich & Rosati's export control practice at 202-973-8800 with any questions or to discuss the requirements governing the export of your encryption commodities, software, and technology.



Wilson Sonsini Goodrich & Rosati
PROFESSIONAL CORPORATION

This WSGR Alert was sent to our clients and interested parties via email on June 29, 2010. To receive future WSGR Alerts and newsletters via email, please contact Marketing at wsgr_resource@wsgr.com and ask to be added to our mailing list.

This communication is provided for your information only and is not intended to constitute professional advice as to any particular situation. We would be pleased to provide you with specific advice about particular situations, if desired. Do not hesitate to contact us.

650 Page Mill Road
Palo Alto, CA 94304-1050
Tel: (650) 493-9300 Fax: (650) 493-6811
email: wsgr_resource@wsgr.com

www.wsgr.com

© 2010 Wilson Sonsini Goodrich & Rosati,
Professional Corporation
All rights reserved.