Recent Updates to Category 5 Part 2

Information Technology Controls Division

License Exception ENC Before March 29, 2021

CCATS	Reporting	Paragraph 740.17	End User Authorization (outside E-1)	Item Description or Purpose of Export
No	No	(a)(1)(i)	Companies HQ'd in Supp 3	Dev/Production ****
No	No	(a)(1)(ii)	Subsidiaries of the same parent company HQ'd in Supp 3. country	Any internal purpose ****
No	No	(a)(2)	U.S. Subs	Any internal purpose ****
Yes	Yes	(b)(2)	license required for Gov't end users not in Supp 3**; LE ENC for non-gov't end users***	(b)(2) commodity list
Yes	Yes for iii items only	(b)(3)	LE ENC to gov't and non-gov't end users	(b)(3) commodity list
No	Yes*	(b)(1)	LE ENC to gov't and non-gov't end users	not (b)(2) or (b)(3)

* Self-classification report required
** Supp 3 means end-users headquartered in Supp 3
*** License also required for cryptanalytic to gov't end users in Supp 3; for any end user outside Supp 3 for OCI items and for special (OCI, non-std, cryptanalytic) technology and for std (other) technology to D-1 countries.
****   All products developed are subject to the EAR.

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License Exception ENC 740.17(b)(2)

- Before March 29, 2021:
  - 740.17(b)(2)
    - ➢ Network infrastructure products
    - ➢ Products that are **designed** or **customized for a government** end-user
    - ➢ Products where the **crypto** is designed to **customer specifications**
    - ➢ Quantum key distribution
    - ➢ Penetration testing
    - ➢ Public safety/first responder radios (**TETRA, P25**)
    - ➢ Cryptanalytic items
    - ➢ Items with an Open Cryptographic Interface
    - ➢ Encryption **source code** that is not publicly available
    - ➢ Technology
  - Requires submission of a classification request plus semi-annual sales reporting
- After March 29, 2021:
  - **No Change to any 740.17(b)(2) requirements**

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License Exception ENC 740.17(b)(3)

- **Before March 29, 2021**
  - Chips, Chipsets, electronic assemblies, etc.
  - Cryptographic libraries, modules, development kits and toolkits
  - Products with "non-standard cryptography".
  - Computer forensics products
  - Automated network analysis or packet inspection and adapting in real time to the operating environment.
- Requires submission of a classification request plus 30 day wait to be eligible for full ENC authorization.

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License Exception ENC 740.17(b)(3)

- After March 29, 2021
  - Mass market Chips, Chipsets, electronic assemblies, etc. move from B3 to B1 and require a self-classification report or classification request.
  - Mass market cryptographic libraries, modules, development kits and toolkits move from B3 to B1 and do *not* require a self-classification report.
  - No change to:
    - Products with "non-standard cryptography" (5x002 or 5x992)
    - Computer forensics products (these items can only be 5x002)
    - Automated network analysis or packet inspection and adapting in real time to the operating environment. (These items can only be 5x002)

- Items that remain in B3 continue to require submission of a classification request plus 30 day wait to be eligible for full ENC authorization.

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License Exception ENC 740.17(b)(1)

- Before March 29, 2021
  - All items in 740.17(b)(1) required submission of a self-classification report or a classification.

- After March 29, 2021
  - Mass market items no longer require a self-classification report or classification *except* mass market Chips, Chipsets, electronic assemblies, etc.

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These Things did not change . . .

- <u>No</u> changes to EAR requirements for:
  - **Non-'mass market'** encryption items.
  - **Items with "Non-standard cryptography", whether mass market or not.**
- <u>No</u> changes to the ECCN of <u>any</u> 'mass market' or non-'mass market' encryption item.

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Other Changes:

The March 29th rule eliminated notifications or self-classification reports for the following, **<u>except</u>** for "non-standard cryptography":

- '<u>Publicly available</u>' encryption software (source code and corresponding object code)
- <u>Beta test</u> encryption software

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Effect on Publicly Available Encryption:

5 ways that items in Cat. 5 Part 2 become publicly available:

• If the item has **"non-standard cryptography"**:

1. Email notification if posting source code & corresponding object code.

2. Classification request for mass market software made publicly available.

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Effect on Publicly Available Encryption Cont'd:

• If the item ***does not*** have "non-standard cryptography"

3. No email notification required to make source code publicly available – treated just like any other source code under the EAR.

4. Mass market software components under 740.17(b)(1) require self-classification report or classification in order to be not subject.

5. Other types of mass market B1 items do not require any report or classifications – these items are treated just like any other item under the EAR.

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Summary of Changes:

ECCN/Authorization	Before March 29, 2021 rule	After March 29, 2021 rule
5x992.c –mass market items described in 740.17(b)(1) X= A for hardware or D for software	Fell under EAR Section 740.17(b)(1) - Required self-classification report or classification.	Falls under EAR Section 740.17(b)(1) - No self-classification report or classification required.
5x992.c – mass market chips, chipsets, electronic assemblies and field programmable logic devices (except for items implementing "non-standard cryptography")	Fell under EAR Section 740.17(b)(3) and required a classification.	Falls under EAR Section 740.17(b)(1) -- Require self-classification report or classification.
5x992.c – mass market cryptographic development kits and toolkits (except for items implementing "non-standard cryptography")	Fell under EAR Section 740.17(b)(3) and required a classification.	Falls under EAR Section 740.17(b)(1) - No self-classification report or classification required.
5x002 – "publicly available" encryption source code and beta test encryption software (except for items implementing "non-standard cryptography")	EAR Section 742.15(b)- "publicly available" encryption source code and corresponding object code required email notification. EAR Section 740.9(b)(8) - beta test encryption software - required email notification.	Based on update to 742.15(b)- "Publicly available" encryption source code and corresponding object code no longer require email notification. Based on update to 740.9(b)(8)- Beta test encryption software no longer requires email notification.

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And what remains the same:

ECCN/Authorization	Before March 29, 2021 rule	After March 29, 2021 rule
5x002.a – encryption items described in EAR Section 740.17(b)(1)	EAR Section 740.17(b)(1) -Required self-classification report or classification.	No change.
5x002.a –non-mass market chips, chipsets, electronic assemblies, field programmable logic devices, cryptographic libraries, modules, development kits, and toolkits	EAR Section 740.17(b)(3) - Required a classification and specifies a 30 day wait period prior to use of ENC.	No change.
5x002.a and 5x992.c items with "non-standard cryptography described in 740.17(b)(3)	EAR Section 740.17(b)(3) - Required a classification and specifies a 30 day wait period prior to use of ENC.	No change.
5x002 - Items described in EAR Section 740.17(b)(2)	Required a classification under EAR Section 740.17(b)(2) and specifies a 30 day wait period prior to use of ENC.	No change.

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Impact:

- We estimate:
    - ▪ 60% **reduction** in annual mass market encryption self-classification notifications
    - ▪ 80% **reduction** in 'publicly available' encryption notifications

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Forensics

- Items described in 5A004.b
- 740.17(b)(3)(iii)
- 5A004.b controls items (without cryptanalytic functions) that:
    - ▪ 'Extract raw data' from a computing or communications device; and
    - ▪ Circumvent authentication or authorization controls on the device.

- Require semi-annual sales reporting

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WPAN Decontrol Note:

- Wireless "Personal Area Network" decontrol –
  - arbitrary number of independent or interconnected 'data devices' to communicate directly with each other; and
  - confined to between devices within the immediate physical vicinity of an individual person or device controller.
- Examples: 802.15, Bluetooth, ZigBee
- *Not* "Local Area Network" – 802.11, Wi-Fi
- Note 2.f for 5A002.a

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Questions ?

Discussion ?

Thank you !!!

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