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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 758

[Docket No. 180831812-8812-01]

RIN 0694-XC047

Request for Public Comments Regarding Foreign Disposition of Certain Commodities

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry; request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the effects and costs that would result if BIS were to amend its regulations to reflect new export authorization requirements regarding electronic waste, including new recordkeeping requirements, reporting requirements, and data elements in the Automated Export System, maintained by the U.S. Census Bureau, to track electronic waste that is exported. Comments from all interested persons are welcome and will help BIS determine the feasibility and cost of implementing a mechanism for tracking and controlling electronic waste exports.

DATES: Comments must be received by BIS no later than [INSERT DATE IN FEDERAL REGISTER 60 DAYS FROM DATE OF PUBLICATION].

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (www.regulations.gov). The regulations.gov ID for this rule is: BIS-2018-0022. All relevant

comments (including any personally identifying information) will be made available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, by phone at (202) 482-0092, or by email at eileen.albanese@bis.doc.gov.

SUPPLEMENTARY INFORMATION

Background

In recent years, a number of Congressional studies and actions, including the “Inquiry into Counterfeit Electronic Parts in the Department of Defense Supply Chain” published by the Committee on Armed Services in the United States Senate (Armed Services Report), as well as the “Secure E-Waste Export and Recycling Act” (H.R. 917), have raised concerns regarding counterfeit goods that may enter the United States’ military and civilian electronics supply chain. One of the potential sources for these counterfeit goods identified in the Armed Services Report is the unregulated recycling of discarded electronic equipment that has typically been shipped overseas from the United States for disposal.

Although no specific legislation has yet been passed mandating export controls related to electronic waste, prior Congressional studies and actions have prompted the Bureau of Industry and Security (BIS) to seek comments on potential regulatory changes that would limit the export of discarded electronic equipment (electronic waste) by defining the term “electronic waste” and prohibiting its export from the United States unless certain conditions are met. If electronic waste does not meet these contemplated conditions, persons could be prohibited from exporting the electronic waste and would need to identify a means of disposal within the United States. If

electronic waste meets the contemplated conditions, it would be exempt from the prohibition, potentially eligible to export under a new license exception or other reporting requirement, and the export of these items could require new recordkeeping and tracking requirements.

BIS is seeking public comments on a contemplated new definition of electronic waste, on this potential prohibition on electronic waste exports, and on the basis for an exemption from that prohibition (through criteria for electronic waste exemptions). BIS is also seeking comments on potential regulatory changes, in the form of two reporting approaches identified by BIS that could be used to track the export of electronic waste that is exempt from the prohibition as well as new recordkeeping requirements. In addition, BIS is seeking comments on the potential cost of the regulatory and policy changes associated with a prohibition on the export of electronic waste and the expected effectiveness, if any, of a prohibition to address the issue of counterfeit goods. BIS is also interested in observations from members of the public regarding counterfeit goods and electronic waste exports in the electronics supply chain. Relevant comments from all interested persons are welcome and may help BIS assess the prevalence of counterfeit goods in military and civilian electronic supply chains, the estimated cost to industry to implement these potential regulatory changes, and the effectiveness of the potential strategy to reduce counterfeit goods that enter the military and civilian electronics supply chains.

Potential criteria regarding prohibition and exemption of electronic waste exports

1) Definition of “electronic waste”

The definition for electronic waste being considered by BIS would include any of the following used items containing electronic components or fragments thereof, including parts or subcomponents of such items:

- (i) Computers and related equipment;
- (ii) Data center equipment (including servers, network equipment, firewalls, battery backup systems, and power distribution units);
- (iii) Mobile computers (including notebooks, netbooks, tablets, and e-book readers);
- (iv) Televisions (including portable televisions and portable DVD players);
- (v) Video display devices (including monitors, digital picture frames, and portable video devices);
- (vi) Digital imaging devices (including printers, copiers, facsimile machines, image scanners, and multifunction machines);
- (vii) Consumer electronics, including digital cameras, projectors, digital audio players, cellular phones and wireless Internet communication devices, audio equipment, video cassette recorders, DVD players, video game systems (including portable systems), video game controllers, signal converter boxes, and cable and satellite receivers; and
- (viii) Portable global positioning system navigation.

BIS welcomes comments from the public on the definition, or any alternative construct for a definition of electronic waste.

2) Electronic waste exemptions

Electronic waste that would be exempted from the prohibition on export could include consumer appliances that have electronic features, electronic parts of a motor vehicle, tested working used electronics, and recalled electronics. Tested working used electronics would be determined, through testing methodologies, to be fully functional for the purpose for which they were designed or, in the case of multifunction devices, fully functional for at least one of the primary purposes for which the items were designed. This exemption from the potential export

prohibition would include refurbished items or items exported for reuse for the purpose for which they were designed. Recalled electronics include items that have been recalled by the manufacturer or are subject to a recall notice issued by the U.S. Consumer Product Safety Commission or other pertinent Federal authority.

Also exempt from the prohibition would be items that are unusable that are exported as feedstock, with no additional mechanical or hand separation required, in a reclamation process to render the electronic components or items recycled consistent with the laws of the foreign country performing the reclamation process. Feedstock means any raw material constituting the principal input for an industrial process.

BIS welcomes comments from the public on criteria regarding exempted electronic waste items. Items that do not meet the criteria for exemption could be subject to a prohibition on export. Persons would need to determine a means of disposal or destruction of non-exempted electronic waste within the United States.

BIS recognizes that other organizations and government agencies may have different criteria or definitions for electronic waste and other relevant terms. BIS seeks comment from the public regarding these terms and any discrepancies and uncertainties that may arise from the definition used in this notice of inquiry.

Potential changes to the regulations

(1) Reporting requirements for the export of exempted electronic waste

BIS is seeking public comments on two approaches that could be used to track the export of electronic waste that is exempt from the prohibition. The first approach would be to allow electronic waste that is exempt from the prohibition to be exported under a potential new license exception in the Export Administration Regulations (EAR) (15 CFR, subchapter C, parts 730-

774). A second approach would be to track and record exempted electronic waste exports through a new data element in the Automated Export System (AES), maintained by the U.S. Census Bureau (Census). BIS recognizes that Census proposed the introduction of a similar data element in the Federal Register on March 9, 2016 (81 FR 12423), and ultimately removed the proposed requirement in their final rule published on April 19, 2017 (82 FR 18385), because of public comments and concerns. BIS is nevertheless considering re-introducing an electronic waste indicator in AES as an alternate means to track the export of electronic waste that qualifies for an exemption from the prohibition. BIS welcomes comments and suggestions on other possible approaches and mechanisms that would help the public comply with requirements for the export of electronic waste.

(2) New recordkeeping requirements

BIS is seeking comments on new recordkeeping requirements that would apply to exports of exempted electronic waste under a potential new license exception and exports of electronic waste tracked under a potential new AES data element. Exporters would be required to keep documentation on all electronic waste that is exported, including how the electronic waste met the criteria for exemption, and including but not limited to the methodology used to test the items and the test results for each item.

Cost to industry for potential changes to the regulations and the prevalence of counterfeit items in electronic supply chains

BIS seeks public comments on the costs to exporters of determining eligibility for exemption of items that fall under the definition of electronic waste (including the workability of the testing of used electronics), new recordkeeping requirements for exempted electronic waste, updates to filing systems to reflect regulatory changes (either in the form of a new license

exception or an electronic waste indicator in AES), and costs or effects that may arise from the potential changes described in this notice. In addition, BIS seeks comments on the prevalence of counterfeit commodities in the electronic supply chains and whether the changes contemplated in this notice of inquiry would alleviate this problem.

Dated: October 17, 2018.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

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