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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740, 770, and 774

[Docket No. 961216357-6357-01]

RIN: 0694-AB54

Revisions to the Export Administration Regulations: Computer
Revisions

AGENCY: Bureau of Export Administration

ACTION: Final rule.

SUMMARY: On March 25, 1996, the Bureau of Export Administration (BXA) published an interim rule (61 FR 12714) that restructured and reorganized the Export Administration Regulations (EAR). The interim rule clarified the language of the EAR and simplified the application and made the export control regulatory regime more

user friendly. This rule amends the EAR by making certain revisions and clarifications and in some cases, inserts material inadvertently omitted from the March 25 interim rule for the export and reexport of computers as described in the Commerce Control List and described by License Exception CTP. Among other revisions, this rule provides that "No License Required" (NLR) is available for the export and reexport of digital computers (other than those controlled for MT reasons) with a CTP of 2,000 Mtops or less, except to embargoed or terrorist-supporting destinations.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notice of August 15, 1995 (60 FR 42767), and notice of August 14, 1996 (61 FR 42527).

DATE: This rule is effective (DATE OF PUBLICATION).

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482-2440.

SUPPLEMENTARY INFORMATION:

Background

Specifically, this rule revises the computer provisions of the EAR, consistent with the Presidential Directive of October 6, 1995, as follows:

1. By revising §740.7(a), scope of License Exception CTP, to limit the scope of this License Exception to apply to digital computers controlled by a CTP parameter, specially designed components therefor and related equipment therefor.

2. By revising §740.7(e)(2), restrictions, to apply only to digital computers and specially designed components therefor.

3. By revising §770.2, to add an interpretation for computers, to clarify that:

a. Digital computers or computer systems classified under paragraphs (a), (b), or (c) of ECCN 4A003, that qualify for "No License Required" (NLR) must be evaluated on the basis of CTP alone, to the exclusion of all other technical parameters.

Digital computers or computer systems classified under paragraphs (a), (b), or (c) of ECCN 4A003 that qualify for License Exception

CTP must be evaluated on the basis of CTP, to the exclusion of all other technical parameters, except for parameters of Missile Technology concern, or for paragraph (e) of ECCN 4A003 (equipment performing analog-to-digital conversions exceeding the limits in paragraph (a.5.a) of ECCN 3A001); and

b. Related equipment classified under paragraphs (d), (e), (f), or (g) of ECCN 4A003 may be exported or reexported under License Exceptions GBS or CIV. When related equipment is exported or reexported as part of a computer system, License Exception CTP is available for the computer system including the related equipment.

4. In Export Control Classification Number (ECCN) 4A001, by revising the control language for nuclear nonproliferation (NP) and computer (XP) controls to specify that these controls apply to electronic computers with a CTP greater than 2,000 Mtops.

5. In Export Control Classification Number (ECCN) 4A002, by revising the control language for nuclear nonproliferation (NP) and computer (XP) controls to specify that these controls apply to hybrid computers with a CTP greater than 2,000 Mtops.

6. By revising Export Control Classification Number (ECCN) 4A003, as follows:

a. By creating a "Note" in the License Requirements section that specifies that "No License Required" (NLR) applies to the export or reexport of digital computers with a CTP between 260 and 2,000 Mtops, except to embargoed or terrorist-supporting destinations and computers controlled for MT reasons.

b. By revising the control language for national security controls to specify that NS Column 1 applies to paragraphs (b) and (c) and NS Column 2 applies to paragraphs (a), (d), (e), (f), and (g).

c. By revising the control language for nuclear nonproliferation (NP) and computer (XP) controls to specify that these controls apply to digital computers with a CTP greater than 2,000 Mtops.

d. By revising License Exception GBS to clarify that related equipment described in paragraphs (d), (e), (f), and (g) are eligible for License Exception GBS.

e. By revising License Exception CTP to clarify that this License Exception is available for computers controlled by paragraphs (a), (b), and (c), to the exclusion of other technical parameters, with the exception of the parameters specified as controlled for Missile Technology (MT) concerns or paragraph (e)

(equipment performing analog-to-digital conversions exceeding the limits of ECCN 3A001.a.5.a).

f. By revising License Exception CIV to clarify that related equipment described in paragraphs (d)(having a 3-D vector rate less than 10 M vectors/sec.), (e), (f), and (g) are eligible for License Exception CIV.

7. In Export Control Classification Number (ECCN) 4D001, by revising the control language for nuclear nonproliferation (NP) and computer (XP) controls to specify that these controls apply to software for computers with a CTP greater than 2,000 Mtops.

8. In Export Control Classification Number (ECCN) 4D002, by revising the control language for nuclear nonproliferation (NP) and computer (XP) controls to specify that these controls apply to software for computers with a CTP greater than 2,000 Mtops.

9. In Export Control Classification Number (ECCN) 4E001, by revising the control language for nuclear nonproliferation (NP) and computer (XP) controls to specify that these controls apply to technology for computers with a CTP greater than 2,000 Mtops.
Savings Clause

Shipments of items removed from eligibility for export or

reexport under a particular General License or License Exception symbol or the designator NLR, as a result of this regulatory action, may continue to be exported under that designator until [90 DAYS FROM DATE OF PUBLICATION].

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These collections have been approved by the Office of Management and Budget under control numbers 0694-0088, 0694-0097, and 0694-0013.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR parts 740 and 744

Administrative practice and procedure, Exports, Foreign

trade, Reporting and recordkeeping requirements.

15 CFR part 770

Exports, Foreign Trade.

Accordingly, parts 740, 770, and 774, of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citation for 15 CFR parts 740 and 770 continue to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527, August 15, 1996).

2. The authority citation for 15 CFR Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 720; 10 U.S.C. 7430(e); 18 U.S.C. 2510 et seq.; 22 U.S.C. 287c; 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; Sec. 201,

Pub. L. 104-58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); Notice of August 14, 1996 (61 FR 42527, August 15, 1996).

PART 740 - [AMENDED]

3. Section 740.7 amended by
 - a. By revising paragraph (a);
 - b. By revising paragraph (b)(2);
 - c. By revising paragraph (c)(2);
 - d. By revising paragraph (d)(2); and
 - e. By revising paragraph (e), as follows:

§740.7 Computers (CTP).

(a) Scope. License Exception CTP authorizes exports and reexports of digital computers and specially designed components therefor, exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. (Related equipment controlled under 4A003.d, .f, and .g is authorized under this License Exception, only when exported or reexported with these computers as part of a system.)

You may not use this License Exception to export or reexport items that you know will be used to enhance the CTP beyond the eligibility limit allowed to your country of destination. When evaluating your computer to determine License Exception CTP eligibility, use the CTP parameter to the exclusion of other technical parameters for computers classified under ECCN 4A003.a, .b and .c, except for parameters specified as Missile Technology (MT) concerns or 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a). This License Exception does not authorize the export or reexport of graphic accelerators or coprocessors, or computers controlled for MT reasons.

(b) Computer Tier 1.

(1) * * *

(2) Eligible Computers. The computers eligible for License Exception CTP to Tier 1 destinations are those with a CTP greater than 2,000 Mtops.

(c) * * *

(2) Eligible computers. The computers eligible for License Exception CTP to Tier 2 destinations are those having a Composite Theoretical Performance (CTP) greater than 2000, but equal to or less than 10,000 Millions of Theoretical Operations Per Second

(Mtops).

(d) * * *

(2) Eligible computers. The computers eligible for License Exception CTP to Tier 3 destinations are those having a Composite Theoretical Performance (CTP) greater than 2,000 Millions of Theoretical Operations Per Second (Mtops), but less than or equal to 7,000 Mtops.

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(e) Restrictions.

(1) Computers eligible for License Exception CTP may not be accessed either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria, except commercial consignees described in Supplement No. 3 to part 742 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(2) Computers eligible for License Exception CTP may not be reexported/retransferred without prior authorization from BXA i.e., a license, a permissive reexport, another License Exception, or "No License Required". This restriction must be conveyed to the consignee, via the Destination Control Statement, see §758.6(a)(ii) of the EAR.

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PART 770 - [AMENDED]

4. Section 770.2 is amended by adding a new paragraph (1) to read as follows:

§770.2 Commodity interpretations.

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(1) Interpretation 12: Computers. (1) Digital computers or computer systems classified under ECCN 4A003.a, .b, or .c, that qualify for "No License Required" (NLR) must be evaluated on the basis of CTP alone, to the exclusion of all other technical parameters. Computers controlled in this entry for MT reasons are not eligible for License Exception CTP regardless of the CTP of the computer.

Digital computers or computer systems classified under ECCN 4A003.a, .b, or .c that qualify for License Exception CTP must be evaluated on the basis of CTP, to the exclusion of all other technical parameters, except for parameters of Missile Technology concern, or ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a). This

License Exception does not authorize the export or reexport of computers controlled for MT purposes regardless of the CTP. Assemblies performing analog-to-digital conversions are evaluated under Category 3 - Electronics, ECCN 3A001.a.5.a.

(2) Related equipment classified under ECCN 4A003.d, .e, .f, or .g may be exported or reexported under License Exceptions GBS or CIV. When related equipment is exported or reexported as part of a computer system, NLR or License Exception CTP is available for the computer system and the related equipment, as appropriate.

PART 774 - [AMENDED]

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4 - Computers, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the "License Requirements" section for ECCNs 4A001 and 4A002;

b. By revising the "License Requirements" and the "License Exceptions" sections for 4A003;

c. By revising the "License Requirements" section for ECCNs 4D001 and 4D002; and

d. By revising the "License Requirements" section for ECCN 4E001, as follows:

4A001 Electronic computers and related equipment, and "electronic assemblies" and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT, NP, XP

<u>Control(s)</u>	<u>Country Chart</u>
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NS applies to entire entry	NS Column 2
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MT applies to 4A001.a	MT Column 1
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AT applies to entire entry	AT Column 1
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NP applies to electronic computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to electronic computers with a CTP greater

than 2,000 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See §742.12 of the EAR for additional information.

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4A002 "Hybrid computers", and "electronic assemblies" and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT, NP, XP

<u>Control(s)</u>	<u>Country Chart</u>
NS applies to entire entry	NS Column 2
MT applies to hybrid computers combined with specially designed "software", for modeling, simulation, or design integration of complete rocket systems and	MT Column 1

unmanned air vehicle systems
that are usable in systems
controlled for MT reasons

AT applies to entire entry AT Column 1

NP applies to hybrid computers with a CTP greater than
2,000 Mtops, unless a License Exception is available.
See §742.3(b) of the EAR for information on applicable
licensing review policies.

XP applies to hybrid computers with a CTP greater than
2,000 Mtops, unless a License Exception is available.
XP controls vary according to destination and end-user
and end-use. See §742.12 of the EAR for additional
information.

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**4A003 "Digital computers", "electronic assemblies", and related
equipment therefor, and specially designed components therefor.**

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)Country Chart

NS applies to 4A003.b and .c

NS Column 1

NS applies to 4A003.a, d, .e,
.f, and .g

NS Column 2

MT applies to digital
computers used as ancillary
equipment for test
facilities and equipment
that are controlled by 9B005
or 9B006

MT Column 1

CC applies to digital computers
for computerized finger-
print equipment

CC Column 1

AT applies to entire entry
(refer to 4A994 for controls
on computers with a CTP \geq 6
but \leq to 260 Mtops)

AT Column 1

NP applies to digital computers with a CTP greater than
2,000 Mtops, unless a License Exception is available.

See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to digital computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See §742.12 of the EAR for additional information.

Note: For all destinations, except Cuba, Iran, Iraq, Libya, N.Korea, Sudan, and Syria, no license is required (NLR) for computers with a CTP between 260 and 2,000 Mtops., and for assemblies described in 4A003.c that are not capable of exceeding a CTP of 2,000 Mtops in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Exceptions

LVS: \$5000

GBS: Yes, for 4A003.d, .e, .f, and .g and specially designed components therefor, exported separately or as part of a system.

CTP: Yes, for computers controlled by 4A003.a, .b and .c, to the exclusion of other technical parameters, with the

exception of parameters specified as controlled for Missile Technology (MT) concerns or 4A003.e (equipment performing analog-to-digital conversions exceeding the limits of 3A001.a.5.a). See §740.7 of the EAR.

CIV: Yes, for 4A003.d (having a 3-D vector rate less than 10 M vectors/sec), .e, .f and .g.

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4D001 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 4A001 to 4A004, 4A101, or "software" controlled by 4D001 to 4D003.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)

Country Chart

NS applies to "software" for equipment controlled by 4A001 to 4A004, 4D001 to 4D003

NS Column 1

MT applies to "software" MT Column 1
for equipment controlled
by 4A001 to 4A003 or 4A101
for MT reasons

CC applies to "software" CC Column 1
for equipment controlled
by 4A003 for CC reasons

AT applies to entire entry AT Column 1

NP applies to "software" for computers with a CTP
greater than 2,000 Mtops, unless a License Exception is
available. See §742.3(b) of the EAR for information on
applicable licensing review policies.

XP applies to "software" for computers with a CTP
greater than 2,000 Mtops, unless a License Exception is
available. See §742.12 of the EAR for information on
applicable licensing review policies.

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4D002 "Software" specially designed or modified to support
 "technology" controlled by 4E001 or 4E002.

License Requirements

Reason for Control: NS, MT, AT, NP, XP

<u>Control(s)</u>	<u>Country Chart</u>
NS applies to entire entry	NS Column 1
MT applies to "software" for equipment controlled by 4A001 to 4A003 or 4A101 for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1
NP applies to "software" for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.	
XP applies to "software" for computers with a CTP greater than 2,000 Mtops, unless a License Exception is	

available. See §742.12 of the EAR for information on applicable licensing review policies.

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4E001 "Technology" according to the General Technology Note, for the "development", "production" or "use" of equipment controlled by 4A001 to 4A004, 4A101 or "software" controlled by 4D001 to 4D003.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)

Country Chart

NS applies to "technology"
for equipment
controlled by
4A001 to 4A004, 4D001 to
4D003

NS Column 1

MT applies to "technology"
for equipment

MT Column 1

controlled by

4A001 to 4A003, 4A101

4D001 or 4D002 for MT

reasons

CC applies to "technology"

CC Column 1

for equipment controlled

by 4A003 for CC reasons

AT applies to entire entry

AT Column 1

NP applies to "technology" for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "technology" for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.12 of the EAR for information on applicable licensing review policies.

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DATED:

Sue E. Eckert
Assistant Secretary
for Export Administration