

Applicability

(c) This AD applies to certain Saab Model SAAB SF340A series airplanes, line numbers 004 through 159 inclusive; and SAAB 340B series airplanes, line numbers 160 through 459 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of improperly installed rivets in the retainers located in the elevator trim-tab fittings. The retainers hold the trim-tab bearings. We are issuing this AD to prevent the elevator and aileron trim-tab bearings from coming loose, which could result in excessive play in the elevator and aileron trim systems, and reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection and Related Investigative/Corrective Actions

(f) Within 800 flight hours or 6 months after the effective date of this AD, whichever is first: Do a detailed inspection of the elevator and aileron trim-tab fittings, and all applicable related investigative and corrective actions, by accomplishing all of the actions in the Accomplishment Instructions of Saab Service Bulletin 340-51-025, Revision 01, dated October 21, 2003. Any related investigative and corrective actions must be done before further flight.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Parts Installation

(g) As of the effective date of this AD, no person may install on any airplane an elevator or aileron trim-tab fitting unless it has been inspected, and any applicable corrective actions have been done, in accordance with paragraph (f) of this AD.

Reporting Not Required

(h) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Swedish airworthiness directive 1-194, dated October 14, 2003, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Saab Service Bulletin 340-51-025, Revision 01, dated October 21, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL-401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on October 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Parts 740, 748, and 774**

[Docket No. 041020285-4285-01]

RIN 0694-AD18

Computer Technology and Software Eligible for Export Under License Exception; and Establishment of "Foreign National Review" Requirement and Procedure

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule expands the availability of license exceptions for certain deemed exports of computer technology and source code under the Export Administration Regulations (EAR), partially implementing the expansion set forth in a proposed rule published on October 24, 2003. In addition, this final rule clarifies certain provisions of License Exception CTP. This rule also establishes a new "Foreign National Review (FNR)" requirement for deemed exports of technology or source code under License Exception CTP.

DATES: This rule is effective on November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Senior Export Policy Analyst, Office of Exporter Services,

Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482-2440.

SUPPLEMENTARY INFORMATION:**Background**

On June 4, 2002, BIS published a notice of inquiry (67 FR 39675), requesting information from industry to assist BIS in evaluating the license exception eligibility level of 33,000 MTOPS for exports and reexports of computer technology and software controlled under ECCNs 4D001 and 4E001. BIS received four comments in response to the notice of inquiry, all stating that the license exception threshold should be adjusted.

On October 24, 2003, BIS published a proposed rule with request for comments from industry (68 FR 60891) to expand the availability of License Exception CTP for exports and reexports of computer technology and software on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) under Export Classification Control Numbers (ECCNs) 4D001 and 4E001. These ECCNs control technology and software that can be used for the development, production, or use of computers. The proposed rule also requested comments to assist BIS in evaluating microprocessor technology controlled under ECCN 3E002. BIS received eleven comments in response to the proposed rule and the questions posed in the preamble. BIS has decided to address computer technology and software and microprocessor technology in two different final rules. This final rule implements the license exception expansion for computer technology and software. The corresponding rule on license exception eligibility for microprocessor technology is published elsewhere in this issue of the **Federal Register**.

Current Controls on Computer Technology and Software

Export controls for computer technology and software are controlled multilaterally through the Wassenaar Arrangement. The current Wassenaar Arrangement (WA) control thresholds for computer technology and software are: 28,000 MTOPS for the Basic List (BL), 75,000 MTOPS for the Sensitive List (SL); and 150,000 MTOPS for the Very Sensitive List (VSL). (**Note:** the computer hardware level within WA (under the BL) and in the United States is currently at 190,000 MTOPS. Computer hardware is not controlled on WA's SL and VSL.)

The EAR control the export and reexport of technology and software for the development, production, or use of

computers with a CTP greater than 28,000 Millions of Theoretical Operations per Second (MTOPS) under Export Control Classification Numbers (ECCNs) 4D001 and 4E001 of the Commerce Control List (CCL). Such technology and software requires a license, for national security (NS) reasons, to all destinations except Canada. Heretofore, ECCNs 4D001 and 4E001 have provided that License Exception TSR (section 740.6 of the EAR) is available for exports and reexports of such technology and software: (1) For computers of unlimited CTP to 22 countries; and (2) for computers with a CTP less than or equal to 33,000 MTOPS to countries listed in Country Group B (Supplement No. 1 to part 740). License Exception TSR availability for computer software and technology differs from License Exception CTP availability for computer hardware in two ways: (1) The countries eligible; and (2) the MTOPS level.

Deemed Export Revision

While the original **Federal Register** notice proposed the eligibility of exports and reexports of computer technology and software equal to or less than 150,000 MTOPS to Computer Tier 1 countries under License Exception CTP, this final rule raises the level to 190,000 MTOPS, but expands License Exception availability for deemed exports of computer technology and source code only.

Computer technology and software is listed by the Wassenaar Arrangement on both the Sensitive List (75,000 MTOPS) and the Very Sensitive List (150,000 MTOPS). Accordingly, adjustments in control limits for actual exports and reexports of computer technology and software should be implemented based on agreement with the United States' Wassenaar partners. Therefore, the United States may discuss raising the level of controls for actual exports and reexports of computer technology and software within the Wassenaar Arrangement. After a decision is made on the level of controls for exports and reexports of computer technology and software in the Wassenaar Arrangement, the EAR will be amended accordingly.

Generally, Wassenaar countries do not have in-country transfer controls (deemed export controls), with the exception of classified material. A deemed export is any release of

technology or source code subject to the EAR to a foreign national within the United States. Such release is deemed to be an export to the home country or countries of the foreign national. The deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Deemed export license applications for foreign nationals with dual citizenship should be based on the most recently obtained country citizenship. Applications for foreign nationals with temporary or permanent residence status of a third country (*i.e.*, non-U.S. and a temporary or permanent residence status other than a foreign national's country of origin) should be based on the foreign national's country of citizenship.

Because the United States is one of the only WA country members to implement deemed export controls, U.S. industry has been required to obtain license authorization for these deemed exports when other WA member countries have not imposed such controls on their industries. Expanding the availability of a License Exception for deemed exports of computer technology and source code provides relief from licensing burdens for U.S. industry and levels the playing field in global competition. BIS has found that the expansion of license exception availability under the technology parameters set forth below will not have an adverse impact on the U.S. national security.

Expansion of License Exception CTP for Certain Computer Technology and Software Controlled Under ECCNs 4D001 and 4E001

This final rule provides that the 22 countries previously eligible to receive technology and software for computers with unlimited CTP under License Exception TSR continue to be eligible for export and reexport of unlimited CTP level of technology and software, but this eligibility is now pursuant to License Exception CTP. All of these 22 countries are in "Computer Tier 1" for purposes of License Exception CTP.

This final rule provides that countries in Country Group B previously eligible to receive technology and software for computers and electronic assemblies

classified under ECCN 4A003.b and ECCN 4A003.c, respectively, with a CTP less than or equal to 33,000 MTOPS under License Exception TSR continue to be eligible for export and reexport under License Exception TSR. In addition, technology and software for other equipment, *i.e.*, not controlled under ECCN 4A003.b and ECCN 4A003.c, controlled under ECCNs 4E001 and 4D001 will also continue to be eligible for export and reexport under License Exception TSR.

However, this final rule amends License Exception TSR eligibility paragraphs under ECCNs 4D001 and 4E001 for certain controlled computer technology and software, so that technology and software with a CTP greater than 33,000 MTOPS to the 22 countries previously listed in the TSR paragraph is no longer eligible for export and reexport under TSR. In addition, this rule adds License Exception CTP to the License Exception section of ECCNs 4D001 and 4E001. License Exception CTP formerly applied to only computer hardware classified under ECCN 4A003.

Also, this final rule provides that for Computer Tier 1 destinations other than these 22 countries, technology and source code for computers with a CTP equal to or less than 190,000 MTOPS are eligible for deemed exports under License Exception CTP. Actual exports and reexports of computer technology and software will continue to be controlled for export and reexport under ECCNs 4D001 and 4E001 when the CTP exceeds 28,000 MTOPS, and eligible for License Exception TSR when the CTP is equal to or less than 33,000 MTOPS to Computer Tier 1 countries that are also Country Group B countries.

Lastly, this final rule provides that technology and source code for computers with a CTP equal to or less than 75,000 MTOPS are eligible for deemed exports under License Exception CTP to foreign nationals of "Computer Tier 3" destinations. Certain deemed exports to Computer Tier 3 foreign nationals are subject to a Foreign National Review requirement.

Exports and reexports to countries in Country Group E:1 (terrorist supporting countries) continue to be ineligible for License Exception CTP. The following chart shows the new eligibility thresholds under License Exception CTP.

COMPUTER TECHNOLOGY AND SOFTWARE ELIGIBILITY THRESHOLDS UNDER LICENSE EXCEPTION CTP

Unlimited CTP (deemed exports and actual exports/reexports). 190,000 MTOPS (deemed exports only).	22 "Tier 1" destinations: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, or the United Kingdom. All other "Tier 1" destinations: Antigua and Barbuda, Argentina, Aruba, Bahamas (The), Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo (Democratic Republic of the), Congo (Republic of the), Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Dominica, Dominican Republic, East Timor, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Gabon, Gambia (The), Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Jamaica, Kenya, Kiribati, Korea (Republic of), Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands Antilles, Nicaragua, Niger, Nigeria, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, Sao Tome & Principe, Samoa, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Tuvalu, Uganda, Uruguay, Vatican City, Venezuela, Western Sahara, Zambia, and Zimbabwe.
75,000 MTOPS (deemed exports only).	All "Tier 3" destinations: Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Serbia and Montenegro, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.
Not eligible	Cuba, Iran, Libya, North Korea, Sudan, and Syria.

Foreign National Review Requirement for Deemed Exports

This final rule imposes a foreign national review requirement for deemed exports of specified computer technology and source code under License Exception CTP and section 748.8(s) and (t), and Supplement No. 2 to part 748 of the EAR. Prior to disclosing eligible technology or source code to a foreign national under License Exception CTP, an exporter must submit a Foreign National Review (FNR) request to BIS. The FNR requirement only applies to foreign nationals from a country in Computer Tier 3 that is not also a country listed in Country Group B of Supplement No. 1 to part 740. The exporter must confirm eligibility from the System for Tracking Export License Applications (STELA) or the Simplified Network Application Procedure (SNAP) prior to using License Exception CTP. FNR requests must be submitted using Form BIS-748P (Multipurpose Application), or its electronic equivalent, and must include information about the foreign national who is to receive the computer technology and source code. The information required for the FNR request is set forth in paragraphs (s) and (t) of Supplement No 2 to part 748 of the EAR. BIS will electronically refer the FNR request for interagency review within nine business days or, if necessary, return the FNR request without action to the applicant, *e.g.*, if more information is necessary. Upon receipt of the BIS referral, the agencies have 30 days in which to return a recommendation to BIS. License

exception CTP may not be used until the exporter has received official notification from BIS.

Use of License Exception CTP

Exporters who have current licenses for deemed exports of computer technology or source code to Computer Tier 3 destination foreign nationals that become eligible for License Exception CTP are no longer bound by conditions on their licenses, as provided under section 750.7 of the EAR. Termination of license conditions does not relieve an exporter of its responsibility for violations that occurred prior to the availability of the License Exception.

Although most licenses for computer technology and source code have been issued to companies who employ Computer Tier 3 destination foreign nationals in their U.S. facilities and who hold work visas issued by the U.S. Government, the availability of License Exception CTP for deemed exports is not confined to employer releases of technology to employees. It is also available for deemed exports of technology and source code to Computer Tier 3 destination foreign national visitors and customers, under the procedures set forth in License Exception CTP.

Unique Application and Submission Requirements

This rule revises the heading of § 748.8 and the title of Supplement No. 2 to part 748, which currently addresses only unique license application requirements, to include other submission requirements as well. This

rule also adds paragraphs (s) and (t) to Supplement No. 2 to part 748.

Paragraph (s) sets forth the requirements for a Foreign National Review Request under License Exception CTP, using the BIS-748P "Multipurpose Application" form. Paragraph (t) lists the information that an applicant must submit about the foreign national to whom the technology or source code will be disclosed, either as part of a license application or under the Foreign National Review Request.

Additional Amendments

This final rule adds paragraph (r), "Encryption Review Requests," which was inadvertently omitted from a previous amendment to § 748.8 of the EAR. This final rule also removes a reference to ECCN 4A003.d in 740.7(b)(1), because ECCN 4A003.d (graphic accelerators) were removed from ECCN 4A003. (They continue to be controlled for anti-terrorism reasons only under ECCN 4A994.g). Also, this rule restructures paragraph 740.7(a) "Scope" to clarify that computers that are controlled under ECCN 4A003.e (equipment performing analog-to-digital conversion exceeding the limits in ECCN 3A001.a.5.a), and computers controlled for MT reasons are not eligible for License Exception CTP. In addition, this rule moves a restriction concerning proliferation end-users from paragraph 740.7(d)(3) to paragraph 740.7(b)(5), because this restriction pertains to all exports and reexports

under License Exception CTP, regardless of destination. Also, it clarifies within this restriction and within 740.7(b)(3) that "retransfer" is an in-country transfer.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended by the Notice of August 6, 2004, 69 FR 48763 (August 10, 2004) continues the Regulations in effect under the International Emergency Economic Powers Act.

Comments

The comments to the proposed rule that were received by BIS may be found at <http://efoia.bis.doc.gov/pubcomm/Computer%20Tech%20and%20Software/Final.pdf>. Set forth below are the questions that were posed to industry in the proposed rule, a summary of the comments BIS received and, where applicable, BIS's response. BIS's responses to questions on microprocessor technology export controls are published in the final rule on microprocessor technology exports under license exceptions.

1. What impact would the proposed revision of computer technology and software controls have on your company?

The majority of respondents considered the proposed changes a "significant improvement to the current system" and requested that BIS publish a final rule as soon as possible. Many respondents suggested revisions to improve the proposal. One of the recommendations was to make computer technology and software eligible to all of Computer Tier 1 countries with an unlimited Composite Theoretical Performance (CTP), instead of just the 22 countries that already have that authorization under License Exception TSR. BIS has determined that U.S. national security interests warrant continuing to control computer technology and software exports to Tier 1 countries other than these 22 countries. The 22 countries that were eligible to receive technology and software for computers with unlimited CTP under License Exception TSR will continue to be eligible to receive this technology and software; however, this eligibility will be under a different License Exception—License Exception CTP.

In addition, respondents recommended that BIS harmonize the CTP level for technology and software (150,000 Millions of Theoretical Operations per Second (MTOPS)), with that for hardware (190,000 MTOPS)

under License Exception CTP for Computer Tier 3 countries. The reasons given for this recommendation were ease of enforcement and compliance, and that there seemed to be no national security reason for having the technology and software controls at a lower level, because the hardware was already available at these levels to these countries. This final rule does not implement such a harmonization, because computer technology and software is commonly treated as more sensitive in nature than hardware by the Wassenaar Arrangement. Computer technology and software is listed on both the Sensitive (75,000 MTOPS) and Very Sensitive (150,000 MTOPS) lists of the Wassenaar Arrangement, while computer hardware is only listed on Wassenaar's Basic List. While BIS agrees with the exporting community that using the CTP of 190,000 MTOPS instead of 150,000 MTOPS is easier for enforcement/compliance purposes and the difference between the CTPs is minimal, BIS has decided that adjustments in control limits concerning actual exports and reexports should be negotiated at the Wassenaar Arrangement meetings.

However, Wassenaar countries generally do not have in-country transfer controls (deemed export controls), with the exception of classified material. Therefore, this rule makes eligible, under License Exception CTP, deemed exports of computer technology and source code equal to or less than 75,000 MTOPS to foreign nationals of Computer Tier 3 countries and deemed exports of computer technology and source code equal to or less than 190,000 MTOPS to foreign nationals of Computer Tier 1 countries (other than the 22 countries that were previously listed in the License Exception TSR eligibility paragraphs of ECCNs 4D001 and 4E001). A decision to raise the level of controls for actual exports and reexports of computer technology and software should be negotiated in the Wassenaar Arrangement. After a decision is made on the level of controls for exports and reexports of computer technology and software in the Wassenaar Arrangement, the EAR will be amended accordingly.

2. Is there another proposal regarding computer technology and software, and microprocessor technology controls that you would like Commerce to consider? If so, describe your proposal in detail and please give technical and other justifications for your proposal.

Many comments received suggested creation of a technology license. In response to these comments and those

received in the past, BIS has discussed with other agencies the possibility of allowing certain exports and reexports of this technology using a "Special Intra-company License (SIL)." The goal is to create a license that will ease the flow of certain authorized technology and source code within the global corporate structure, based on an approved Technology Control Plan, *i.e.*, an internal control program.

A number of respondents suggested that BIS do away with the CTP metric for control and use end-user and end-use based controls. However, computers are listed on the Dual-use and Technologies List of the Wassenaar Arrangement under 4.A.3. The agreed controlling parameter for computers is Composite Theoretical Performance (CTP) in Millions of Operations per Second (MTOPS). Therefore, in keeping with our agreements to the Wassenaar Arrangement, BIS will continue to control computers using the CTP metric for control.

3. What is the highest CTP level for microprocessors currently being manufactured by your company?

Comments in response to this question are addressed in the final rule for microprocessor technology export controls.

4. What should be the CTP MTOPS limitation for microprocessor technology under the proposed License Exception CIV? Please provide detailed technical and other justification for your proposal.

Comments in response to this question are addressed in the final rule for microprocessor technology export controls.

5. How do other countries license the transfer of computer technology and software, and microprocessor technology? Have there been instances where your company has been placed at a competitive disadvantage based on current U.S. license requirements?

The majority of respondents did not have enough information to comment on procedures or regulations of other countries' export policies with regard to computer technology and software, and microprocessor technology. None of the respondents felt they had enough information to definitively claim that the current export control levels put them at a competitive disadvantage.

6. What are your predictions for the CTP level of microprocessors that will be in production 3 and 5 years from now? On what basis did you make your predictions?

Comments in response to these questions are addressed in the final rule for microprocessor technology export controls.

7. What percentage of your research and development is accomplished: (1) Outside of the United States; and (2) with the assistance of foreign nationals within the United States?

Some respondents said they had already provided such information to BIS. None of the respondents addressed this specifically, but one respondent noted that in the physical sciences and engineering, nearly 50 per cent of all Masters and PhD degrees awarded by U.S. schools are earned by foreign nationals.

8. Is there an alternative method or parameter for controlling exports of computers and microprocessors and the technology and software therefore that industry believes would be more in-line with the way industry produces, develops, or measures these items?

Many of the respondents pointed out that performance-based controls are "unsuited" for general purpose and rapidly advancing technologies such as semiconductors and computers. Many respondents would like to see end-use and end-user based controls. It has been determined by Wassenaar Arrangement members that technology and software to develop or produce computers warrants placement on the Sensitive and Very Sensitive Lists. The control parameter on these lists are based on their performance capabilities, and at this time the only metric that the regime members have agreed upon is CTP. In keeping with the Wassenaar Arrangement agreements, BIS will not adopt a unilateral end-use/user based control for computer technology or software.

However, BIS and industry via the High-Performance Computer (HPC) Working Group of the Information Systems Technical Advisory Committee are jointing investigating a new metric to replace the Millions of Theoretical Operations per Second (MTOPS) parameter, it is called "Weighted Teraflop (WT)". Industry representatives noted that timely implementation of the new metric is important because HPC technology and computer performance levels are advancing at a rapid pace.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694-0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

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 (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 final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical 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 Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 740, 748, and 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901-911, Pub. L. 106-387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 2. Section 740.7 is revised to read as follows:

§ 740.7 Computers (CTP).

(a) *Scope.* (1) *Commodities.* License Exception CTP authorizes exports and reexports of computers, including "electronic assemblies" and specially designed components therefor controlled by ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. When evaluating your computer to determine License Exception CTP eligibility, use the CTP parameter to the exclusion of other technical parameters in ECCN 4A003. Computers controlled for missile technology (MT) reasons are not eligible for License Exception CTP.

(2) *Technology and software.* License Exception CTP authorizes exports of technology and software controlled by ECCNs 4D001 and 4E001 specially designed or modified for the "development", "production", or "use" of computers, including "electronic assemblies" and specially designed components therefor classified in ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), to Computer Tier countries as provided by this section. Technology and software for computers

controlled for missile technology (MT) reasons are not eligible for License Exception CTP.

(b) *Restrictions.* (1) Related equipment controlled under ECCN 4A003.g may not be exported or reexported under this License Exception when exported or reexported separately from eligible computers authorized under this License Exception.

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

(ii) *Technology and source code.* Technology and source code eligible for License Exception CTP may not be released to nationals of Cuba, Iran, Libya, North Korea, Sudan, or Syria.

(3) Computers and software eligible for License Exception CTP may not be reexported or transferred (in country) without prior authorization from BIS, *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 of the EAR. Additionally, the end-use and end-user restrictions in paragraph (b)(5) of this section must be conveyed to any consignee in Computer Tier 3.

(4) 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.

(5) License Exception CTP does not authorize exports and reexports for nuclear, chemical, biological, or missile end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, and § 744.5 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Reexports and transfers (in country) to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(6) Foreign nationals in an expired visa status are not eligible to receive deemed exports of technology or source code under this License Exception. It is the responsibility of the exporter to ensure that, in the case of deemed exports, the foreign national maintains a valid U.S. visa, if required to hold a visa from the United States.

(c) *Computer Tier 1 destinations.* (1) *Eligible destinations.* The destinations that are eligible to receive exports and reexports under paragraph (c) of this section include: Antigua and Barbuda, Argentina, Aruba, Australia, Austria, Bahamas (The), Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo (Democratic Republic of the), Congo (Republic of the), Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, East Timor, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia (The), Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Korea (Republic of), Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands, Netherlands Antilles, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, Sao Tome & Principe, Samoa, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Surinam, Swaziland, Sweden, Switzerland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Turkey, Tuvalu, Uganda, United Kingdom, Uruguay, Vatican City, Venezuela, Western Sahara, Zambia, and Zimbabwe.

(2) *Eligible commodities.* All computers, including electronic assemblies and specially designed components therefor are eligible for export or reexport under License Exception CTP to Tier 1 destinations, subject to the restrictions in paragraph (b) of this section.

(3) *Eligible technology and software.* (i) Technology and software described in paragraph (a)(2) of this section for computers of unlimited CTP are eligible for export or reexport under License Exception CTP to: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, or the United Kingdom; and

(ii) Technology and source code described in paragraph (a)(2) of this section for computers with a CTP less than or equal to 190,000 MTOPS are eligible for deemed exports under License Exception CTP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(d) *Computer Tier 3 destinations.* (1) *Eligible destinations.* Eligible destinations under paragraph (d) of this section are: Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Serbia and Montenegro, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.

(2) *Eligible commodities.* None.

(3) *Eligible technology and source code.* Technology and source code described in paragraph (a)(2) of this section for computers with a CTP less than or equal to 75,000 MTOPS are eligible for deemed exports under License Exception CTP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the restrictions in paragraph (b) and the provisions of paragraph (d)(4) of this section.

(4) *Foreign National Review (FNR) requirement for deemed exports.* (i) *Submission requirement.* Prior to disclosing eligible technology or source code to a foreign national of a Computer Tier 3 country that is not also a country listed in Country Group B in Supplement No. 1 to part 740 of the EAR under this License Exception, you must submit a Foreign National Review (FNR) request to BIS, as required under § 748.8(s) of the EAR. Your FNR request must include information about the foreign national required under § 748.8(t) of the EAR and set forth in Supplement No. 2 of part 748 of the EAR.

(ii) *Confirmation of eligibility.* You may not use License Exception CTP, until you have obtained confirmation of eligibility by calling the System for Tracking Export License Applications (STELA), see § 750.5 for how to use STELA, or electronically from the Simplified Network Application Procedure (SNAP), see <http://>

www.bis.doc.gov/SNAP/index.htm for more information about SNAP.

(iii) *Action by BIS.* Within nine business days of the registration of the FNR request, BIS will electronically refer the FNR request for interagency review, or if necessary return the FNR request without action (e.g., if the information provided is incomplete). Processing time starts at the point at which the notification is registered into BIS's electronic system.

(iv) *Review by other departments or agencies.* The Departments of Defense, State, Energy, and other agencies, as appropriate, may review the FNR request. Within 30 calendar days of receipt of the BIS referral, the reviewing agency will provide BIS with a recommendation either to approve or deny the FNR request. A reviewing agency that fails to provide a recommendation within 30 days shall be deemed to have no objection to the final decision of BIS.

(v) *Action on the FNR Request.* After the interagency review period, BIS will promptly notify the applicant regarding the FNR request, i.e., whether the FNR request is approved, denied, or more time is needed to consider the request.

(e) *Reporting requirements.* See § 743.1 of the EAR for reporting requirements of certain items under License Exception CTP.

PART 748—[AMENDED]

■ 3. The authority citation for part 748 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 4. Section 748.8 is amended by revising the heading, and adding paragraphs (r), (s), and (t), to read as follows:

§ 748.8 Unique application and submission requirements.

* * * * *

(r) Encryption review requests.

(s) Foreign National Review Request.

(t) Foreign National Support Statement for deemed exports.

■ 5. Supplement No. 2 to part 748 is amended by revising the heading and adding paragraphs (s) and (t), to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(s) *Foreign National Review Request.* (1) *BIS-748P "Multipurpose Application" form.* If you are submitting a Foreign National Review (FNR) request for the deemed export

of technology or source code, you must include the following information on the BIS-748P "Multipurpose Application" form:

(i) In Block 1 through 3, insert name, telephone, and facsimile of the person that is most knowledgeable about the foreign national;

(ii) In Block 4 (Date of Application), enter the date;

(iii) In Block 5 (Type of Application), place an "X" in the box marked "Other";

(iv) In Block 6 (Documents Submitted with Application), place an "X" in "Other" to signify that you are submitting the Foreign National Review Support Statement(s) with the BIS-748P, and place an "X" in "BIS-748P-B" if you are submitting this FNR for multiple foreign nationals;

(v) In Block 9 (Special Purpose), insert the phrase "Foreign National Review (FNR)";

(vi) In Block 14 (Applicant), insert the name of the applicant;

(vii) In Block 18 (Ultimate Consignee), insert the name and address of the Foreign National;

(viii) In Block 21 (Specific End-Use), insert any information which may be of interest regarding the export of the technology or source code;

(ix) In Block 24 (Additional Information), insert contact email information;

(x) In Block 25 (Signature), sign the BIS-748P, and insert the name and title of the signer; and

(xi) All other Blocks on the application may be left blank.

(2) *Multiple Foreign Nationals.* If you are submitting a Foreign National Review Request for more than one individual, you may add other foreign nationals by completing and attaching form BIS-748P-B "End-User Appendix."

(t) *Foreign National Review Support Statement.* To request review of your FNR, you must submit to BIS a FNR support statement as set forth below on company letterhead, along with Form BIS-748P (Multipurpose Application), or its electronic equivalent. For FNRs that include multiple foreign nationals, an FNR support statement must be submitted for each foreign national.

(1) Case number (Z number): Zxxxxxx;

(2) Name, and all other names ever used;

(3) Date of birth: dd/mm/yyyy;

(4) Place of birth: city, state/province, and country;

(5) U.S. Address: street address, city, state, zip;

(6) Overseas Address: street address, city, province, country;

(7) Visa type (with expiration date and place issued, if available): type, dd/mm/yyyy, city, country;

(8) I-94 No. xxxxxxxx, dd/mm/yyyy;

(9) Passport and Country of Issue: xxxxxxxx, country;

(10) U.S. Education (schools, degrees, and dates received) (if any): degree, subject, university, city, state, country, month/year-month/year;

(11) Foreign Education: degree, subject, university, city, state, country, month/year-month/year;

(12) Employer (applicant) and address: company, street address, city, state, zip;

(13) Detailed explanation of position requirements and individual's qualifications related to the position; and

(14) Prior Employment Record, (including overseas employment) addresses and dates; explain any periods of unemployment.

PART 774—[AMENDED]

■ 6. The authority citation for 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. 7420; 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; 30 U.S.C. 185(s), 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; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

Supplement No. 1 to Part 774 [Amended]

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D001 is amended by revising the License Exception section, to read as follows:

4D001 "Software" specially designed or modified for the "development", "production" or "use" of equipment or "software" controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994), and other specified software, see List of Items Controlled.

* * * * *

License Exceptions

CIV: N/A

TSR: Yes, except software for commodities controlled by ECCN 4A003.b or ECCN 4A003.c is limited to software for computers or electronic assemblies with a CTP equal to or less than 33,000 MTOPS.

CTP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria)

* * * * *

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4E001 is amended by revising the License Exception section, to read as follows:

4E001 "Technology" according to the General Technology Note, for the "development", "production" or "use" of equipment or "software" controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994), and other specified technology, see List of Items Controlled.

* * * * *

License Exceptions

CIV: N/A

TSR: Yes, except technology for commodities controlled by ECCN 4A003.b or ECCN 4A003.c is limited to technology for

computers or electronic assemblies with a CTP equal to or less than 33,000 MTOPS.

CTP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria)

* * * * *

Dated: October 28, 2004.

Peter Lichtenbaum,
Assistant Secretary for Export
Administration.

[FR Doc. 04-24679 Filed 11-4-04; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 774

Docket No. 041018284-4284-01

RIN 0694-AD04

Microprocessor Technology Eligible for Export Under License Exception

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is expanding the availability of License Exception CIV for certain deemed exports of microprocessor technology on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) under Export Classification Control Numbers (ECCN) 3E001 and 3E002. These ECCNs control technology that can be used for the development and production of microprocessors. This final rule partially implements a proposed rule published on October 24, 2003. The proposed rule included the export and reexport of general purpose microprocessor technology under License Exception CIV, while this final rule limits License Exception CIV eligibility to deemed exports for certain microprocessor technology. BIS has determined that further liberalization of controls on exports of microprocessor technology must await agreement in the Wassenaar Arrangement. This rule also establishes a "Foreign National Review (FNR)" requirement under License Exception CIV for deemed exports of microprocessor technology to certain eligible foreign nationals.

DATES: This rule is effective on November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Senior Export Policy Analyst, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482-2440.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2003, BIS published a proposed rule with request for comments (68 FR 60891) from industry to assist BIS in evaluating microprocessor technology controlled under ECCN 3E002, as well as computer technology and software controls. BIS received eleven comments in response to this request. While the proposed rule covered both microprocessor technology and computer technology and software, BIS has decided to address computer technology and software and microprocessor technology in two different rules. This final rule implements the license exception expansion for microprocessor technology. The corresponding rule on license exception eligibility for computer technology is published elsewhere in this issue of the **Federal Register**.

Current Controls on Microprocessor Technology

Technology for the development and production of microprocessors that have a CTP exceeding 530 MTOPS and an arithmetic logic unit with an access width of 32 bits or more are controlled by ECCN 3E002, pursuant to agreement by members of the Wassenaar Arrangement (WA). License Exception TSR is available for the export and reexport of technology for microprocessors of unlimited CTP to all Country Group B countries (*see* Supplement No. 1 to part 740 of the EAR), if all the criteria of License Exception TSR are met (*see* section 740.6 of the EAR for License Exception TSR requirements).

In addition, technology for the development or production of microprocessors that have more than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel "microprocessor microcircuits" with a transfer rate exceeding 150 Megabytes per second are controlled by ECCN 3E001, because "microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits having this characteristic are controlled under ECCN 3A001.a.3.c. License Exception TSR is available for the export and reexport of technology for microprocessors of unlimited transfer rate to all Country Group B countries (*see* Supplement No. 1 to part 740 of the EAR), if all the criteria of License Exception TSR are met (*see* section 740.6 of the EAR for License Exception TSR requirements).

Deemed Export Revisions

While the original **Federal Register** notice proposed expanding License Exception availability for actual exports and reexports of microprocessor technology, this final rule expands License Exception CIV availability for deemed exports only. Generally, Wassenaar countries do not have in-country transfer controls (deemed export controls), with the exception of classified material.

Microprocessor technology is listed by the Wassenaar Arrangement on the Basic List (530 MTOPS). Accordingly adjustments in control limits for actual exports and reexport of microprocessor technology should be implemented based on agreement with the United States' Wassenaar partners. Therefore, the United States may discuss raising the level of controls for actual export and reexport of microprocessor technology in the Wassenaar Arrangement.

The EAR defines "export" to include, among other things, the release of technology or source code subject to the EAR to a foreign national within the United States. Such release is "deemed" to be an export to the home country or countries of the foreign national. The deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Deemed export license applications for foreign nationals with dual citizenship should be based on the most recently obtained country citizenship. Applications for foreign nationals with temporary or permanent residence status of a third country (*i.e.*, non-U.S. and a temporary or permanent residence status other than a foreign national's country of origin) should be based on the foreign national's country of citizenship.

Because the United States is one of the only WA country members to implement deemed export controls, U.S. industry has been required to obtain license authorization for these deemed exports when other WA member countries have not imposed such controls on their industries. Expanding the availability of a License Exception for general purpose microprocessor technology provides relief from licensing burdens for U.S. industry and levels the playing field in global competition. BIS has found that the expansion of license exception availability under the technology parameters set forth below will not have