

License Exceptions

LVS * * *
 GBS: N/A
 CIV: * * *

* * * * *

■ 26. In Supplement No. 1 to part 774, Category 3—Electronics, Export Control Classification Number 3A001, revise the License Exception section to read as follows:

3A001 Electronic Components, as Follows (see List of Items Controlled)

* * * * *

License Exceptions

LVS: N/A for MT or NP.
 Yes for:

\$1500: 3A001.c
 \$3000: 3A001.b.1, b.2, b.3, .d, .e and .f
 \$5000: 3A001.a (except a.1.a and a.5.a when controlled for MT), and .b.4 to b.7

GBS: Yes for 3A001.a.1.b, a.2 to a.12 (except a.5.a when controlled for MT), b.2, and b.8 (except for TWTAs exceeding 18 GHz)

CIV: Yes for 3A001.a.3.b, a.3.c, a.4, a.7, and a.11.

* * * * *

Dated: February 14, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05-3216 Filed 2-17-05; 8:45 am]

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DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Part 740**

[Docket No. 050209030-5030-01]

RIN 0694-AD38

Revision of License Exception TMP for Activities by Organizations Working To Relieve Human Suffering in Sudan

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule revises the Export Administration Regulations to allow staff and employees of certain organizations to use License Exception TMP to export basic communications equipment such as cell phones, personal computers, personal digital assistants, global positioning systems or similar satellite receivers and related software to Sudan for up to one year to be used in the activities of those organizations to relieve human suffering.

DATES: This rule is effective on February 18, 2005.

FOR FURTHER INFORMATION CONTACT: Eric Longnecker, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, 202-482-5537, *elongnec@bis.doc.gov*.

SUPPLEMENTARY INFORMATION: This rule revises License Exception TMP (15 CFR 740.9) to authorize certain exports, but not reexports, to Sudan of certain commodities and software that otherwise would require a license pursuant to § 742.10 or § 742.15 of the EAR. This rule makes the tools of trade provisions of License Exception TMP available to (1) non-governmental organizations that are engaged in activities to relieve human suffering in Sudan and that are registered by the Department of the Treasury, Office of Foreign Assets Control (OFAC) pursuant to 31 CFR 538.521, or (2) organizations that are authorized by OFAC to take actions, for humanitarian purposes, that otherwise would be prohibited by the Sudanese Sanctions Regulations (31 CFR part 538), or (3) staff or employees of either such type of organization. Under this rule, those parties are authorized, under section 740.9(a)(i) of the EAR, to export to Sudan certain basic telecommunications equipment controlled under Export control Classification Number (ECCN) 5A991 such as cell phones, personal digital assistants and other wireless handheld devices, personal computers (including laptops) controlled under ECCN 4A994 that do not exceed a composite theoretical performance of 6,500 millions of theoretical operations per second (MTOPS), and global positioning system (GPS) or similar satellite receivers controlled under ECCN 7A994. These revisions to License Exception TMP also allow the export of related software controlled under ECCNs 4D994 and 5D992 for the use of such telecommunications equipment or computers. The software must be loaded onto the commodity prior to being exported and remain loaded on the commodity while in Sudan. This rule also authorizes parts and components of those ECCN 5A991 and 4A994 devices that are controlled under ECCN 5A992 and that are installed with, or contained in, such computers or equipment to be exported under License Exception TMP. The parts and components must remain installed with, or contained in, such computers or equipment while in Sudan. The tools of trade must accompany (either hand carried or as checked baggage) a member of the staff or an employee of such an organization to Sudan.

In connection with the temporary tools of trade exports that it authorizes

pursuant to License Exception TMP, this rule employs the term “staff and employees” rather than the term “employees” that applies to other temporary tools of trade exports under License Exception TMP. The broader term will allow the use of License Exception TMP for temporary tools of trade exports by persons traveling to Sudan at the direction of, or with the knowledge of, an organization registered pursuant to 31 CFR 538.521 or an organization authorized by OFAC to take actions, for humanitarian purposes, that otherwise would be prohibited by the Sudanese Sanctions Regulation (31 CFR part 538) to assist in the work of such organization in Sudan, even if such person is not an employee of such organization. For example, a health care worker traveling from the United States to Sudan, at the direction of, or with the knowledge of, an eligible organization to act as a volunteer providing medical care as part of the activities of that organization would be considered “staff” under this rule, even if that person is not an employee of the eligible organization. This rule makes no such expansion of eligibility for use of License Exception TMP for temporary tools of trade exports to destinations other than Sudan.

Exports made pursuant to this rule must also meet the general requirements for temporary exports under License Exception TMP set forth in § 740.9(a) of the EAR and the specific requirements applying to tools of trade set forth in § 740.9(a)(2)(i). Such exports are also subject to the restrictions on the use of all License Exceptions found in § 730.2 of the EAR.

BIS is publishing this rule to facilitate the activities of organizations working to relieve human suffering in Sudan by reducing the need for export licenses faced by such organizations, their staffs and employees. The commodities and software being made eligible for export under License Exception TMP by this rule do not require a license for export or reexport to most destinations, but do require a license for export or reexport to Sudan because that country has been designated by the Secretary of State as a state sponsor of terrorism.

Although the Export Administration Act of 1979 (EAA), as amended, 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 EAR in effect under the International Emergency Economic Powers Act (IEEPA).

Rulemaking Requirements:

1. This rule has been determined to be 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 of 1995 (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 involves a collection of information subject to the PRA that 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 these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at david_rostker@omb.eop.gov or by fax to 202-395-285; 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 this term is defined in Executive Order 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 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. 553 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 rule is being issued in final form.

List of Subjects in 15 CFR Part 740

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

■ Accordingly, part 740 of the Export Administration Regulations (15 CFR parts 730-799) is amended as follows:

PART 740—LICENSE EXCEPTIONS

■ 1. The authority citation for part 740 continues 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. In § 740.9, revise paragraph (a)(2)(i), and paragraph (a)(5) to read as follows:

§ 740.9 Temporary imports, exports, and reexports (TMP).

* * * * *

- (a) * * *
(2) * * *

(i) *Tools of trade.* Usual and reasonable kinds and quantities of tools of trade (commodities and software) for use in a lawful enterprise or undertaking of the exporter. The transaction must meet the requirements of paragraph (a)(2)(i)(A) or paragraph (a)(2)(i)(B) of this section. For exports under this License Exception of laptops, handheld devices and other computers and equipment loaded with encryption commodities or software, refer to interpretation 13 in § 770.2 of the EAR.

(A) *Destinations other than Country Group D:2 or Sudan.* Exports and reexports of tools of trade for use by the exporter or employees of the exporter may be made to destinations other than Country Group E:2 or Sudan. The tools of trade must remain under the "effective control" (*see* § 772.1 of the EAR) of the exporter or the exporter's employee. Eligible tools of trade may include, but are not limited to, equipment and software as is necessary to commission or service goods, provided that the equipment or software is appropriate for this purpose and that all goods to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been legally exported or reexported. Tools of trade may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure.

(B) *Sudan.* Exports, but not reexports, of tools of trade may be made to Sudan by: A non-governmental organization engaged in activities to relieve human suffering in Sudan and registered by the Department of the Treasury, Office of Foreign Assets Control (OFAC) pursuant to 31 CFR 538.521; or by an organization authorized by OFAC to take actions, for humanitarian purposes, that otherwise would be prohibited by the Sudanese Sanctions Regulations (31 CFR part 538); or by staff or employees of either such type of organization. The tools of trade must remain under the "effective control" (*see* § 772.1 of the EAR) of the exporter or its employee or staff. The

tools of trade must be used in activities to relieve human suffering and, when exported, must accompany (either hand carried or as checked baggage) a member of the staff or an employee of such an organization to Sudan. In this paragraph (a)(2)(i)(B), the term "staff" means a person traveling to Sudan, at the direction of, or with the knowledge of an organization registered pursuant to 31 CFR 538.521 or an organization authorized by OFAC to take actions, for humanitarian purposes, that otherwise would be prohibited by the Sudanese Sanctions Regulations (31 CFR part 538), to assist in the work of such organization in Sudan even if such person is not an employee of such organization. The only tools of trade that may be exported to Sudan under this paragraph (a)(2)(i) are:

(1) Personal computers (including laptops) controlled under ECCN 4A994 that do not exceed a composite theoretical performance of 6,500 millions of theoretical operations per second and "software" controlled under ECCNs 4D994 or 5D992 that is for the "use" of such computers and that was loaded onto such computers prior to export and remains loaded on such computers while in Sudan;

(2) Telecommunications equipment controlled under ECCN 5A991 and "software" controlled under ECCN 5D992 that is for the "use" of such equipment and that was loaded onto that equipment prior to export and that remains loaded on such equipment while in Sudan;

(3) Global positioning system (GPS) or similar satellite receivers controlled under ECCN 7A994; and

(4) Parts and components that are controlled under ECCN 5A992, that are installed with, or contained in, computers or telecommunications equipment listed in paragraphs (a)(2)(i)(B)(1) and (2) of this section and that remain installed with or contained in such computers or equipment while in Sudan.

* * * * *

(5) *Reexports.* Commodities and software legally exported from the United States may be reexported to a new country(ies) of destination other than Sudan or Country Group E:2 under provisions of this paragraph (a) provided its terms and conditions are met and the commodities and software are returned to the country from which the reexport occurred.

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Dated: February 14, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM04-14-000; Order No. 652; 110 FERC ¶61,097]

Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority

Issued February 10, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates. The Commission is amending its regulations to establish guidelines concerning the types of events that trigger this reporting obligation and modifying the market-based rate authority of current market-based rate sellers to ensure that all such events are timely reported to the Commission by eliminating the option to delay reporting of such events until submission of a market-based rate seller's updated market power analysis. This reporting requirement will be incorporated into the market-based rate tariff of each entity that is currently authorized to make sales at market-based rates, as well as that of all future applicants.

DATES: *Effective Date:* This Final Rule will become effective on March 21, 2005.

FOR FURTHER INFORMATION CONTACT:

Brandon Johnson, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6143

Michelle Barnaby, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8407

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Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

Introduction

1. On October 6, 2004, the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed to standardize and clarify market-based rate sellers' reporting requirement for changes in status. The Commission proposed to impose uniform standards on all market-based rate sellers by eliminating the option to delay reporting changes in status until submission of the triennial review, or to file a triennial review in lieu of reporting changes in status as they occur. Acting pursuant to section 206 of the FPA, the Commission proposed to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to include the requirement to timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. The Commission proposed that this reporting requirement be incorporated into the market-based rate tariff of each entity that is currently

authorized to make sales at market-based rates, as well as that of all future applicants. The Commission proposed that notice of such changes in status be filed no later than 30 days after the change in status occurs.

2. As discussed more fully below, in this Final Rule, the Commission, among other things: Imposes uniform standards on all market-based rate sellers by eliminating the option to delay reporting changes in status until submission of the triennial review or to file a triennial review in lieu of reporting changes in status as they occur; specifically refers to "control" of generation or transmission facilities as a trigger which could result in the obligation to make a change in status filing; provides guidance as to the "characteristics" the Commission relies on in evaluating whether to grant market-based rate authority; provides guidance as to the form, content, and timing of a change in status filing; and incorporates into all market-based rate tariffs the standards discussed herein.

3. In doing so, the Commission has adopted many of the recommendations suggested by commenters. In this regard, the Commission clarifies that a change in status filing is one of the tools the Commission uses to ensure that wholesale electric rates remain just and reasonable. In particular, a change in status filing informs the Commission of changes that may occur from time to time that relate to the four-part analysis (generation market power, transmission market power, other barriers to entry, and affiliate abuse and reciprocal dealing) the Commission relies on for granting market-based rate authority. At the same time, however, the Commission finds that some of the recommendations made by commenters are more appropriately addressed in the market-based rate rulemaking proceeding that the Commission has initiated in Docket No. RM04-7-000.

4. As discussed below, the Commission finds that a number of issues regarding the Commission's analysis under the four-part test (e.g., what constitutes control of an asset, how to treat long-term contracts, how to evaluate whether an applicant has transmission market power) are more appropriately addressed in the market-based rate rulemaking, in which numerous technical conferences have been held and comments filed. It is in that proceeding that the Commission will examine the recommendations of commenters and address the adequacy of the current four-part analysis, including whether and how it should be modified to assure that electric market-