

Sudan Web Guidance

In an effort to facilitate the activities of non-governmental organizations (NGOs) working for humanitarian and development purposes in Sudan, the Bureau of Industry and Security (BIS) published a rule on February 28, 2008 to revise License Exception “Temporary Imports, Exports and Reexports” (TMP) (Section 740.9 of the Export Administration Regulations (EAR)). This rule updates a previous rule BIS published on February 18, 2005 that allowed certain organizations to bring items to Sudan such as cell phones, most personal computers, personal digital assistants and global positioning systems and similar satellite receivers for temporary use in their humanitarian relief programs without a BIS license. These items do not require a license to most destinations, but do require a license for export or reexport to Sudan because the Secretary of State has designated that country as a state sponsor of terrorism.

The February 28, 2008 rule makes several changes to make the License Exception more useful to the groups operating in Sudan to help implement the peace agreements, assist in transition and development work and provide humanitarian relief. These changes reflect advances in technology and the changing nature of U.S.-funded assistance in Sudan. Among the changes incorporated in the February 28, 2008 rule are:

- Allows for both exports and reexports;
- Raises the Adjusted Peak Performance (APP) for computers controlled under Export Control Classification Number (ECCN) 4A994.b eligible under the License Exception from 0.0015 to 0.008 Weighted TeraFLOPS (WT) and clarifies which parts of ECCN 4A994 are eligible under the License Exception;
- Expands the authorized purposes for NGOs using the License Exception to include support of the Comprehensive Peace Agreement or the Darfur Peace Agreement, providing humanitarian and development assistance, and relieving human suffering, including in areas exempt from the Sudanese Sanctions Regulations by virtue of the Darfur Peace and Accountability Act and Executive Order 13412, implemented by the Department of the Treasury;
- Allows for the export or reexport of items under the License Exception if the items are shipped or transmitted to an eligible user by a method reasonably calculated to assure delivery to that permissible user;
- Allows for the export or reexport of software not pre-loaded onto computers if the shipment is solely for servicing or in-kind replacement of legally exported or reexported software.

Background

BIS is publishing this rule to continue to facilitate the activities of organizations working to further U.S. interests in Sudan of supporting the peace agreements, providing development and humanitarian assistance and relieving human suffering 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.

Revisions to License Exception TMP

On February 28, 2008 BIS published a regulation that revised License Exception TMP authorizing certain organizations to export and reexport to Sudan specified items without a license. These items may remain in Sudan for up to one year. This rule updates a previous rule BIS published on February 18, 2005 by allowing for technological advances, particularly in computer technology, and to reflect the changing nature of U.S.-funded assistance in Sudan. This rule makes the tools of trade provisions of License Exception TMP available to NGOs that are working to relieve human suffering or to implement the Darfur Peace Agreement or the Comprehensive Peace Agreement by an organization authorized by the Department of the Treasury, and certain support activities to relieve human suffering in Sudan in areas that are exempt from the Sudanese Sanctions Regulations by virtue of the Darfur Peace and Accountability Act and Executive Order 13412, or “staff” or employees of either type of organization.

In this rule, “staff and employees” covers both paid employees of an eligible organization, and persons who are traveling to Sudan at the direction of, or with the knowledge of, such organization. “Staff” could include those volunteering to work in Sudan on behalf of such an organization, but who are not employees thereof. For example, we would consider a health care worker traveling to Sudan at the direction of an eligible organization to act as a volunteer providing medical care as part of the activities of that organization to be “staff” under this rule, even if that person is not employed by the eligible organization. The rule also authorizes contractors of authorized NGOs to utilize this License Exception.

This rule does not expand the eligibility for use of License Exception TMP for temporary tools of trade exports to destinations other than Sudan, which continue to be limited to the exporter or employees of the exporter.

Eligible Commodities

Under this rule, authorized parties may export:

- certain basic telecommunications equipment controlled under ECCN 5A991, including cellular and satellite telephones, personal digital assistants and other wireless handheld devices;
- personal computers (including laptops) controlled under ECCN 4A994.b that do not exceed an APP of 0.008 WT;
- commodities controlled under ECCNs 4A994.d, 4A994.e (other than industrial controllers for chemical processing), 4A994.g and 4A994.h;
- global positioning system (GPS) or similar satellite receivers controlled under ECCN 7A994.

This rule also allows the export of software controlled under ECCNs 4D994 and 5D992 that is used in conjunction with such basic telecommunications devices or computers. The software

must either be loaded onto the commodity prior to being exported or reexported or be shipped or transmitted to an eligible user of this provision by a method reasonably calculated to assure delivery to the permissible user. Software may be shipped separately from the commodity onto which it will be loaded only for servicing or in-kind replacement of legally exported or reexported software. The tools of trade must remain in the effective control (as defined in Part 772 of the EAR) of the eligible user while the items are inside Sudan.

These two software ECCNs were included in the rule so that the commodities authorized for export by the rule could function in Sudan. They include typical “mass market” operating systems and applications software (such as office suite, email and web browser programs) for personal computers, cell phones and personal digital assistants. This rule does not authorize the export of software controlled under any other ECCN to Sudan.

This rule also authorizes parts and components controlled under ECCN 5A992 for use with authorized telecommunications and computer devices. As in the case of software, this parts and components authorization was included in the rule so that the commodities that the rule authorizes could function in Sudan. The parts and components typically would be installed chips or PCI (peripheral component interconnect) cards that allow computers and personal digital assistants to connect to local area networks, and that would otherwise require a license for export or reexport to Sudan because of their encryption capabilities. The parts and components must remain installed with, or contained in, the computers or equipment while in Sudan.

Restrictions

The items exported or reexported under this License Exception must either accompany a member of the staff or an employee of an eligible organization to Sudan either as checked baggage or by being hand carried by the staff member or employee or be shipped or transmitted to an eligible user by a method reasonably calculated to assure delivery to that permissible user.

Items on the CCL that require a BIS license for export to Sudan and do not fall under the ECCNs outlined in this rule continue to require a BIS license. Additionally, items on the CCL that require a BIS license for reexport to Sudan, including those specified in this rule, continue to require a BIS license if reexported to Sudan.

Note that the end-use and end-user controls in Part 744 of the EAR also continue to apply to Sudan.

This License Exception is available only for items that are intended to be in Sudan for one year or less. If an eligible party intends, at the time of export, to keep the article in Sudan for more than one year the party must apply for a BIS license and may not export it until BIS issues the license. If the intent to keep the article in Sudan for more than one year arises after the article arrives via this License Exception, the exporter must obtain a BIS license for longer term export before the expiration of the one year limit.