

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 23, 1998.

Richard O. Gordon,
Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
01/9/98	IN	Knox	Starke County	FDC 8/0263	VOR OR GPS RWY 18, AMDT 1...
01/08/98	TX	Amarillo	Amarillo Intl	FDC 8/0239	NDB OR GPS RWY 4, AMDT 16...
01/08/98	TX	Amarillo	Tradewind	FDC 8/0242	NDB OR GPS—A AMDT 13...
01/12/98	IA	Des Moines	Des Moines Intl	FDC 8/0301	ILS RWY 31R, AMDT 20...
01/13/98	MN	Montevideo	Montevideo-Chippewa County	FDC 8/0318	VOR OR GPS RWY 14, AMDT 4...
01/13/98	ND	Gwinner	Gwinner-Roger Melroe Field	FDC 8/0325	NDB OR GPS RWY 34, ORIG...
01/15/98	NC	Kenansville	Duplin County	FDC 8/0380	NDB OR GPS RWY 22, AMDT 5...
01/5/98	NC	Kenansville	Duplin County	FDC 8/0384	LOC RWY 22, ORIG...
01/15/98	TX	Bridgeport	Bridgeport Muni	FDC 8/0374	VOR/DME RWY 17, ORIG...
01/15/98	TX	Decatur	Decatur Muni	FDC 8/0376	VOR/DME RWY 16, AMDT 1...
01/15/98	TX	El Paso	El Paso Intl	FDC 8/0377	VOR OR GPS RWY 26L, AMDT 29A...
01/16/98	OH	Columbus	Rickenbacker Intl	FDC 8/0401	ILS RWY 23L, ORIG...
01/18/98	TX	Amarillo	Amarillo Intl	FDC 8/0245	VOR RWY 22, ORIG...

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BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740 and 742

[Docket No. 980113010-8010-01]

RIN 0694-AB65

Exports of High Performance Computers Under License Exception CTP

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (15 CFR parts 730-799) by revising the requirements for exports and reexports of high performance computers. This revision implements Sections 1211-

1215 of the National Defense Authorization Act (NDAA) for fiscal year 1998 (P.L. 105-85, 111 Stat. 1629), signed by the President on November 18, 1997.

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 notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) and August 15, 1997 (62 FR 43629).

DATES: This rule is effective February 3, 1998.

Comments: Comments on this rule must be received on or before March 20, 1998.

ADDRESSES: Electronic submission and status tracking of the notices required by this rule will not be available until February 17, 1998. Prior to that date, exporters and reexporters may contact the Bureau of Export Administration at

(202) 482-0899 or (202) 482-0436. After February 17, exporters and reexporters may contact STELA at (202) 482-2752. Written comments on this rule should be sent to Hillary Hess, Director, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Hillary Hess, Director, Regulatory Policy Division, Bureau of Export Administration, Telephone: (202) 482-2440.

SUPPLEMENTARY INFORMATION:

Background

The National Defense Authorization Act (NDAA) for FY98 contains provisions regarding exports and reexports of high performance computers. The NDAA establishes requirements for advance notification of exports and reexports of high performance computers and post-shipment verifications of such exports and reexports.

Export Approvals for High Performance Computers (Sec. 1211)

Section 1211 of the NDAA requires advance notification of all exports and reexports of computers with CTPs between 2,000 and 7,000 MTOPS to Computer Tier 3 countries. Previously, such computers were eligible for export or reexport to civil end-users under License Exception CTP without prior government review. License Exception CTP prohibits exports, reexports, and retransfers to military or proliferation end-users or end-uses under its terms, and provides that such transactions require licenses. It also excludes from eligibility items that the exporter or reexporter knows will be used to enhance the CTP beyond the eligibility limit allowed to the country of destination. These exclusions remain in effect; therefore, exporters or reexporters who have knowledge of a military or proliferation end-user or end-use, or of a prohibited enhancement, must not submit notifications and continue to be ineligible to use License Exception CTP. Licenses continue to be required for such exports. For CTP-eligible transactions destined to Tier 3 countries, this rule adds the NDAA notification requirement to the terms and conditions of License Exception CTP. Exports and reexports of computers with CTPs greater than 7,000 MTOPS to Tier 3 countries continue to require a license.

To comply with the requirements of the NDAA, exporters and reexporters are now required to submit "NDAA notices" for each transaction by completing the Multipurpose Application Form (BXA-748P) including all the information required on that form for a license application, except for selecting "other" as the purpose of the application. This designator will automatically place the notice onto a special review track. BXA will refer complete NDAA notices to the Departments of Defense, Energy, State, and the Arms Control and Disarmament Agency (ACDA) within 24 hours of date of registration of the request. After February 17, 1998, when BXA completes the changes to its system, NDAA notices may be submitted electronically using the procedure for electronic submission of license applications. Before that date, only paper submissions can be accepted.

Since the NDAA authorizes shipment of the computer "if no objection is raised within the 10-day period," any agency objections must be received by Commerce within nine calendar days of referral. In contrast to the Executive Order on License Processing, under

which pre-license checks or requests for additional information may stop the clock, there is no provision for stopping the clock during this procedure. However, BXA will not initiate the registration of NDAA notice unless all the information on the form is complete. Imposition of a license requirement as a result of an objection to an NDAA notice does not constitute "informing" or "knowledge" for purposes of part 744. Similarly, an interagency decision not to impose a licensing requirement does not excuse the exporter or reexporter from licensing requirements based on knowledge of a prohibited end-use and end-user as referenced in general prohibition five (part 736) and set forth in part 744.

Prior to February 17, 1998, BXA will notify exporters and reexporters of the status of their notifications. After February 17, the application control number on the NDAA notice will allow exporters and reexporters to track their notices by calling STELA. STELA will provide the date of registration of the NDAA notice and a notice number. If no agencies raise objections within the 10-day period, STELA will confirm that you may proceed with the transaction. BXA will issue subsequent written confirmation. STELA will also advise the exporter or reexporter if a license is required. The NDAA notice will then be processed by BXA as a license application in accordance with the procedures described in part 750, and the licensing policies set forth in the Export Administration Regulations. Its NDAA notice number will be changed to a license application number. At this time, BXA may request additional information from the exporter or reexporter to complete the processing of the license application.

Post-Shipment Verification of Export of High Performance Computers (Sec. 1213)

The NDAA requires post-shipment verification of exports to Tier 3 countries of computers with a CTP greater than 2,000 MTOPS.

In order to comply with the post-shipment verification requirement, each exporter must provide a written report to BXA within 30 days of export. The report must include the following information: exporter's name, address, and telephone number; the number of the NDAA notice or the license number, whichever is applicable; date of export; end-user's name, a point of contact, address, and telephone number; carrier; air waybill or bill of lading number; commodity description; and quantity. BXA is considering creating a new form

that will incorporate these data elements and replace the written report.

Additionally, BXA may require the exporter or exporter's agent to keep records and provide information on any visit to the site he or she conducts, such as for installation or servicing. When a license is required, BXA will continue to require various safeguards by the exporter or exporter's agent as a license condition.

Savings Clause

Shipments of items now subject to the NDAA notice requirement as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before February 17, 1998 may be exported without submitting an NDAA notice up to and including February 17, 1998. Any such items not actually exported before midnight February 17, 1998, require an NDAA notice in accordance with this regulation.

Rulemaking Requirements

1. This interim 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, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), 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 1995 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 52.5 minutes per submission. This rule contains two new information collection requirements approved under control number 0694-0107, "National Defense Authorization Act", Advance Notifications and Post-Shipment Verification reports. Advance Notifications using the existing Multipurpose Application Form (BXA-748P) require an estimated 52.5 minutes per submission. Reports in support of Post-Shipment Verifications require 15 minutes per submission, whether the Post-Shipment Verification is conducted on an export authorized under a license or License Exception CTP.

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 interim 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.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and comments will be considered in the development of final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do at the earliest possible time to permit the fullest consideration of views.

The period for submission of comments will close March 20, 1998. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street

and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482-5653.

List of Subjects

15 CFR Parts 740

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

15 CFR Part 742

Exports, Foreign trade.

Accordingly, parts 740 and 742 of the Export Administration Regulations (15 CFR parts 730-799) are amended to read 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.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 61 FR 42527, 3 CFR 1996 Comp., p. 298 (1997); Notice of August 13, 1997 (62 FR 43629, August 15, 1997); and P.L. 105-85, 111 Stat. 1629.

2. Section 740.7 is amended by adding a new paragraph (d)(4), adding a sentence to the end of paragraph (e)(2), and revising paragraph (f) to read as follows:

§ 740.7 Computers (CTP).

* * * * *

(d) * * *

(4) **NDAAs notification**—(i) *General requirement.* The National Defense Authorization Act (NDAAs) of FY98 enacted on November 18, 1997 requires advance notification of all exports and reexports of computers with CTPs between 2,000 and 7,000 MTOPS to Computer Tier 3 countries. For each transaction destined to Computer Tier 3, prior to using License Exception CTP, you must first notify BXA by submitting a completed Multipurpose Application Form (BXA-748P). The Multipurpose Application Form should be completed including all information required for a license application according to the

instructions described in Supplement No. 1 to part 748 of the EAR, with two exceptions. You (the applicant as listed in Block 14) shall in Block 5 (Type of Application) mark the box "Other." This designator will permit BXA to route the NDAA notice into a special processing procedure. (Blocks 6 and 7, regarding support documentation, may be left blank.) You must also provide a notice using this procedure prior to exporting or reexporting items that you know will be used to enhance beyond 2,000 MTOPS the CTP of a previously exported or reexported computer. BXA will not initiate the registration of an NDAA notice unless all information on the Multipurpose Application form is complete.

(ii) *Action by BXA.* Within 24 hours of the registration of the NDAA notice, BXA will refer the notice for interagency review. Registration is defined as the point at which the notice is entered into BXA's electronic system.

(iii) *Review by other departments or agencies.* The Departments of Defense, Energy, State, and the Arms Control and Disarmament Agency (ACDA) have the authority to review the NDAA notice. Objections by any department or agency must be received by the Secretary of Commerce within nine days of the referral. Unlike the provisions described in § 750.4(b) of the EAR, there are no provisions for stopping the processing time of the NDAA notice. If, within 10 days after the date of registration, any reviewing agency provides a written objection to the export or reexport of a computer, License Exception CTP may not be used. In such cases, you will be notified that a license is required for the export or reexport. The NDAA notice will then be processed by BXA as a license application in accordance to the provisions described in § 750.4 of the EAR, and the licensing policies set forth in the Export Administration Regulations. Its NDAA notice number will be changed to a license application number. BXA may at this time request additional information to properly review the license application. If BXA confirms that no objection has been raised within the 10-day period (as described in paragraph (d)(4)(iv) of this section), you may proceed with the transaction on the eleventh day following date of registration. (Note that the fact that you have been advised to proceed with the transaction does not exempt you from other licensing requirements under the EAR, such as those based on knowledge of a prohibited end-use or end-user as referenced in general prohibition five (part 736 of the EAR) and set forth in part 744 of the EAR.)

(iv) *Status of pending advance notification requests.* You must contact BXA's System for Tracking Export License Applications ("STELA") at (202) 482-2752. (See § 750.5 of the EAR for procedures to access information on STELA.) STELA will provide the date of registration of the NDAA notice. If no departments or agencies raise objections within the 10-day period, STELA will provide you on the eleventh day following date of registration with confirmation that no objections have been raised and you may proceed with the transaction. BXA will subsequently issue written confirmation to you. If a license is required, STELA will notify you that an objection has been raised and a license is required. The NDAA notice will be processed as a license application. In addition, BXA may provide notice of an objection by telephone, fax, courier service, or other means.

(v) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of computers with a CTP between 2,000 and 7,000 MTOPS to destinations in Computer Tier 3 under the NDAA. These reporting requirements also apply when you know that the items being exported will be used to enhance beyond 2,000 MTOPS the CTP of a previously exported or reexported computer. Such reports must be submitted in accordance with the provisions of this paragraph (d)(4)(v), and records of such exports subject to the post-shipment reporting requirements of this section, must be kept in accordance with part 762 of the EAR.

(A) *Information that must be included in each post-shipment report.* Within 30 days from date of export, the exporter must submit the following information to BXA at the address listed in paragraph (d)(4)(v)(B) of this section:

- (1) Exporter name, address, and telephone number;
- (2) NDAA notification number;
- (3) Date of export;
- (4) End-user name, point of contact, address, telephone number;
- (5) Carrier;
- (6) Air waybill or bill of lading number;
- (7) Commodity description, quantities—listed by model numbers or serial numbers; and
- (8) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

(B) *Mailing address and facsimile number.* A copy of the post-shipment report[s] required under paragraph

(d)(4)(v)(A) of this section shall be delivered to one of the following addresses. Note that BXA will not accept reports sent C.O.D.

(1) For deliveries by U.S. postal service: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Attn: Tom Andrukonis, Director OES, Washington, D.C. 20044.

(2) For courier deliveries: Bureau of Export Administration, U.S. Department of Commerce, Attn: Tom Andrukonis, Director OES, Room 4065, 14th Street and Pennsylvania Ave., Washington, DC 20230.

(3) Facsimile: 202-482-0971.

* * * * *

(e) *Restrictions.*

* * * * *

(2) * * * Additionally, the end-user and end-user restrictions in paragraph (d)(3) of this section must be conveyed to any consignee in Computer Tier 3.

(f) *Reporting requirements.* In addition to the reporting requirements set forth in paragraph (d) of this section, see § 743.1 of the EAR for additional reporting requirements of certain items under License Exception CTP.

PART 742—[AMENDED]

3. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 61 FR 42527, 3 CFR 1996 Comp., p. 298 (1997); Notice of August 13, 1997 (62 FR 43629, August 15, 1997); and P.L. 105-85, 111 Stat. 1629.

4. Section 742.12 is amended:

- a. By adding paragraph (b)(3)(i)(C); and
- b. By adding a new paragraph (b)(3)(iv), as follows:

§ 742.12 High performance computers.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(C) A license may be required to export or reexport computers with a CTP between 2,000 and 7,000 MTOPS to countries in Computer Tier 3 pursuant to the NDAA (see § 740.7(d)(4) of the EAR).

* * * * *

(iv) *Post-shipment verification.* This section outlines special post-shipment

reporting requirements for exporters of computers with a CTP in excess of 2,000 MTOPS to destinations in Computer Tier 3 under the NDAA. These reporting requirements also apply when you know that the items being exported will be used to enhance beyond 2,000 MTOPS the CTP of a previously exported or reexported computer. Such reports must be submitted in accordance with the provisions of this paragraph (b)(3)(iv), and records of such exports subject to the post-shipment reporting requirements of this section, must be kept in accordance with part 762 of the EAR.

(A) *Information that must be included in each post-shipment report.* Within 30 days from date of export, the exporter must submit the following information to BXA at the address listed in paragraph (b)(3)(iv)(B) of this section:

- (1) Exporter name, address, and telephone number;
- (2) License number;
- (3) Date of export;
- (4) End-user name, point of contact, address, telephone number;
- (5) Carrier;
- (6) Air waybill or bill of lading number;
- (7) Commodity description, quantities—listed by model numbers or serial numbers; and
- (8) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

(B) *Mailing address and facsimile number.* A copy of the post-shipment report[s] required under paragraph (b)(3)(vi)(A) of this section shall be delivered to one of the following addresses. Note that BXA will not accept reports sent C.O.D.

(1) For deliveries by U.S. postal service: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Attn: Tom Andrukonis, Director OES, Washington, D.C. 20044.

(2) For courier deliveries: Bureau of Export Administration, U.S. Department of Commerce Attn: Tom Andrukonis, Director OES, Room 4065, 14th Street and Pennsylvania Ave., Washington, DC 20230.

(3) Facsimile: 202-482-0971.

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Dated: January 28, 1998.

R. Roger Majak,
Assistant Secretary for Export Administration.

[FR Doc. 98-2499 Filed 2-2-98; 8:45 am]

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