
BEFORE THE
UNITED STATES DEPARTMENT OF COMMERCE,
BUREAU OF INDUSTRY AND SECURITY

Comments on “Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections.”

Docket No. 231013-0248; RIN 0694-AI94

Dated October 25, 2023

December 22, 2023

The National Customs Brokers and Freight Forwarders Association of America, Inc. (“NCBFAA” or the “Association”) submits the following comments in response to the Department of Commerce, Bureau of Industry and Security (“BIS”) Interim Final Rule (“IFR”) published in the Federal Register at 88 Fed. Reg. 73458 (October 25, 2023). The IFR addresses comments received in response to BIS’s IFR released on October 7, 2022, entitled “Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification” (hereinafter referred to as the “October 7 IFR”) with respect to advanced computing integrated circuits (“ICs”) and related computer commodities. In addition to addressing comments, the IFR amends the Export Administration Regulations (“EAR”) to enhance the effectiveness of existing controls on advanced computing ICs and promote U.S. national security interests. The Association, which is comprised of more than 1,275 member companies including the nation’s leading freight forwarders, commends BIS for addressing the comments submitted for the October 7 IFR and implementing additional clarifications and revisions. As NCBFAA members handle a significant percentage of export shipments from the United States, including shipments of items subject to the EAR, the Association appreciates the opportunity to provide BIS with its comments regarding the revisions outlined in the IFR. Pursuant to NCBFAA’s review of the IFR, the Association proposes two recommendations to promote greater industry compliance and increase the accuracy of information reported in the Automated Export System (“AES”).

First, the IFR revises section 758.1(g)(5) of the EAR, “Exports of .z items that meet or exceed the performance parameters of ECCN 3A090 or 4A090,” to impose a “requirement for identifying .z items by ‘items’ level classification.” 88 Fed. Reg. at 73,480 and 73,497. BIS states that this requirement would benefit exporters, re-exporters, transferors and the U.S. government by allowing these parties to easily identify the .z items in Electronic Export Information (“EEI”) filing data in AES. *Id.* at 73,480. While the Association concurs that this requirement would provide such benefits, NCBFAA respectfully recommends that BIS further amend this requirement to provide exporters with the choice of either submitting a report to BIS regarding the .z item(s) or including the .z ECCN paragraph in the commodity description field in AES. This proposed modification would align section 758.1(g)(5) with the reporting options described in sections 758.1(g)(4)(ii) and 743.4(h) of the EAR.

Second, the Association recommends greater coordination between BIS, the U.S. Census Bureau and U.S. Customs and Border Protection to ensure that AES is updated to allow the submission of

ECCN paragraphs, when appropriate, in the EEI filing field for ECCNs. By updating this data field to accept ECCN paragraph inputs, filers would be in a better position to comply with the new reporting requirements for .z items pursuant to this IFR and consistent with other reporting options under the EAR. NCBFAA further recommends that AES be reprogrammed to include flags or notification messages to filers when the inputted ECCN at the paragraph level, License Type, and/or Country of Ultimate Destination is potentially subject to restrictions under the EAR. Such notifications would alert filers to conduct additional due diligence, promote greater compliance with U.S. export controls and enhance the accuracy of data filed in the AES.

The NCBFAA appreciates the opportunity to present these comments in response to BIS's IFR and trusts that its comments have assisted and will continue to assist BIS in implementing the IFR and any future modifications to the EAR. Please do not hesitate to contact the undersigned with any questions on these comments.

Respectfully,

A handwritten signature in blue ink, appearing to read "Jose D. Gonzalez", with a long horizontal flourish extending to the right.

Jose D. Gonzalez
President
NCBFAA