



**UNITED STATES DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

1401 Constitution Avenue, Suite 3896

Washington, DC 20230

October 12, 2023

MEMORANDUM FOR:

Dominic Mancini  
Deputy Director  
Office of Information and Regulatory Affairs  
Office of Management and Budget

FROM:

Eileen Albanese **ealbanese**  
Director, Office of National Security and Technology Transfer Controls

SUBJECT:

Request for OMB Emergency Review and  
Approval of Information Collection 0694-0088, for the  
addition of the notification requirement for License  
Exception Notified Advanced Computing (NAC) Under  
the Export Administration Regulations (EAR)

On behalf of the Bureau of Industry and Security (BIS), I am seeking approval for emergency Paperwork Reduction Act (PRA) clearances to allow the Department of Commerce (DOC), as represented by BIS, to publish a Federal Register Notice (FRN)(rule) on the *Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections (AC/S IFR)*, which will include the addition of a new EAR authorization called “License Exception Notified Advanced Computing (NAC)” under the Export Administration Regulations (EAR) (15 CFR 730 – 774).

## **BACKGROUND**

In § 740.8 of the EAR, which prior to the effective date of the AC/S IFR was reserved, the AC/S IFR, which will be published today, adds new license exception<sup>1</sup> NAC. This license exception is for less powerful integrated circuits (ICs) controlled under export control classification numbers (ECCNs) 3A090.b (*i.e.*, ICs designed or marketed for use in data centers) and 3A090.a (*i.e.*, ICs *not* designed or marketed for use in data centers and that *do have* a ‘total processing performance’ of 4800 or more). License Exception NAC is available for exports, reexports, and transfers in or within Country Groups D:1, D:4, or D:5<sup>2</sup> with different requirements applicable to China and Macau. The purpose of the notification process, which is only required for exports and reexports to China and Macau, is to provide BIS and its interagency export control partners with the opportunity to evaluate the national security risk posed by ICs that fall within these parameters.

This license exception, as specified under the paragraph (a) (Eligibility requirements), will authorize the export, reexport, and transfer (in-country) of any item classified in ECCNs 3A090, 4A090, 3A001.z, 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, 5A992.z, 5D002.z, or 5D992.z, except for items designed or marketed for use in a datacenter and meeting the parameters of 3A090.a. License Exception NAC will authorize exports, reexports, or transfers (in-country) to any destination specified in Country Groups D:1, D:4, or D:5, provided the criteria specified under paragraphs (a) and (b) of the license exception are met. For exports and reexports to

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<sup>1</sup> A license exception is an authorization for export, reexport or transfer (in-country) specified items under certain conditions that would otherwise require a BIS license.

<sup>2</sup> Within the EAR, country groups delineate countries by their relationship with the United States, the relative maturity of their export control systems, and other factors. While Country Group A countries are generally allies and partners of the United States with mature export control systems, Country Group E countries include the designated state sponsors of terrorism and Cuba.

China or Macau, in addition to meeting the criteria under paragraphs (a) and (b), the notification requirements under paragraph (c) of License Exception NAC must all be met. The notification requirement does not apply to transfers (in-country) within China and Macau.

## **JUSTIFICATION**

The collection of information is needed prior to the expiration of the time period normally associated with a routine submission for review under the provisions of the PRA. The export control measures implemented in this AC/S IFR build upon the policy objectives set forth in the October 7, 2022, BIS interim final rule *Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification* (October 7 IFR) (87 FR 62186), which amended the EAR to implement controls on advanced computing ICs, the computer commodities that contain such ICs, and certain semiconductor manufacturing items, and made other EAR changes to implement appropriate related controls, including on certain “U.S. person” activities.

Today’s AC/S IFR revises the October 7 IFR controls to more effectively achieve BIS’s targeted national security policy objectives. These revisions further restrict China’s ability to obtain critical technologies to modernize its military capabilities in ways that threaten the national security interests of the United States and its allies and to abuse human rights. The changes to the October 7 IFR published today include expanding the Regional Stability (RS) license requirements and the country scope of these license requirements.

The addition of License Exception NAC to the EAR is an important part of the changes being made to the October 7 IFR to ensure that the expanded controls are implemented efficiently, do not unnecessarily burden exporters, reexporters, and transferors. License Exception NAC will also allow for additional oversight of the export and reexport to China and Macau of the eligible items through a prior notification and approval process by BIS.