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regard to other reviews or matters considered under this part when public comment is necessary. Applicants shall give appropriate notice of their proposals in local newspapers. The Board, the Secretary, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary, as appropriate, may schedule and/or hold hearings during any proceedings or reviews conducted under this part whenever necessary or appropriate.

(b) *Requests for hearings*—(1) A directly affected party showing good cause may request a hearing during a proceeding or review.

(2) The request must be made within 30 days of the beginning of the period for public comment (see, §400.27) and must be accompanied by information establishing the need for the hearing and the basis for the requesting party's interest in the matter.

(3) A determination as to the need for the hearing will be made by the Commerce Department's Assistant Secretary for Import Administration within 15 days after the receipt of such a request.

(c) *Procedure for public hearings.* The Board will publish notice in the FEDERAL REGISTER of the date, time and location of a hearing. All participants shall have the opportunity to make a presentation. Applicants and their witnesses shall ordinarily appear first. The presiding officer may adopt time limits for individual presentations.

§400.52 Official record; public access.

(a) *Content.* The Executive Secretary will maintain at the location stated in §400.53(d) an official record of each proceeding within the Board's jurisdiction. The Executive Secretary will include in the official record all factual information, written argument, and other material developed by, presented to, or obtained by the Board in connection with the proceeding. The official record will contain material that is public, business proprietary, privileged, and classified. While there is no requirement that a verbatim record shall be kept of public hearings, the proceedings of such hearings shall ordinarily be recorded and transcribed when significant opposition is involved.

(b) *Opening and closing of official record.* The official record opens on the date the Executive Secretary files an application or receives a request that satisfies the applicable requirements of this part and closes on the date of the final determination in the proceeding or review, as applicable.

(c) *Protection of the official record.* Unless otherwise ordered in a particular case by the Executive Secretary, the official record will not be removed from the Department of Commerce. A certified copy of the record will be made available to any court before which any aspect of a proceeding is under review, with appropriate safeguards to prevent disclosure of proprietary or privileged information.

§400.53 Information.

(a) *Request for information.* The Board may request submission of any information, including business proprietary information, and written argument necessary or appropriate to the proceeding.

(b) *Public information.* Except as provided in paragraph (c) of this section, the Board will consider all information submitted in a proceeding to be public information. If the person submitting the information does not agree to its public disclosure, the Board will return the information and not consider it in the proceeding.

(c) *Business proprietary information.* Persons submitting business proprietary information and requesting protection from public disclosure shall mark the cover page ''business proprietary,'' as well as the top of each page on which such information appears.

(d) *Disclosure of information.* Disclosure of public information will be governed by 15 CFR part 4. Public information in the official record will be available for inspection and copying at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce Building, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

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SUBCHAPTER A—NATIONAL SECURITY INDUSTRIAL BASE REGULATIONS

PART 700—DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

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APPENDIX IV TO PART 700—MEMORANDUM OF UNDERSTANDING ON PRIORITIES AND ALLOCATIONS SUPPORT BETWEEN THE U.S. DEPARTMENT OF COMMERCE AND THE CANADIAN DEPARTMENT OF SUPPLY AND SERVICES

AUTHORITY: Secs. 101–103, 701–707, 709, and 713, Defense Production Act of 1950 (Pub. L. 81–774, 64 Stat. 798,) as amended (50 U.S.C. app. 2071–2073, 2151–2157, 2159, and 2163); E.O.

10480, 3 CFR 1949–53 Comp. p. 962, as amended; E.O. 12148, 3 CFR 1979 Comp. p. 412, as amended; Defense Mobilization Order (DMO) 3, 44 CFR part 322; DMO–12, 44 CFR part 329; DMO–13, 44 CFR part 330, 50 U.S.C. 486, 10 U.S.C. 4501 and 9501, 50 U.S.C. 82, and Executive Order 12742 of January 8, 1991, 56 FR 1079.

SOURCE: 49 FR 30414, July 30, 1984, unless otherwise noted. Redesignated at 54 FR 601, Jan. 9, 1989.

Subpart A—Purpose

§ 700.1 Purpose of this regulation.

(a) Title I of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) (Defense Production Act), authorizes the President: to require the priority performance of contracts and orders necessary or appropriate to promote the national defense over other contracts or orders; to allocate materials and facilities as necessary or appropriate to promote the national defense; and to require the allocation of, or the priority performance under contracts or orders relating to, supplies of materials and equipment in order to assure domestic energy supplies for national defense needs.

(b) This regulation consolidates, simplifies, and revises the Defense Materials System and the Defense Priorities System regulations, directions, and orders. The Defense Priorities and Allocations System (DPAS) helps to keep current national defense programs on schedule and provides an operating system that can be rapidly expanded in a national emergency.

(c) To aid in understanding and using the DPAS, an overview of its major provisions is incorporated into this regulation as subpart B—Overview. The full text of the DPAS is found in subparts D through L.

Subpart B—Overview

§ 700.2 Introduction.

(a) The Federal Emergency Management Agency authorizes certain national defense programs for priorities and allocations support. For example, military aircraft production, ammunition, and certain programs which maximize domestic energy supplies are ''authorized programs.'' A complete list of currently authorized programs is provided at Schedule I.

(b) To ensure the preferential treatment of certain contracts and orders for authorized programs, the Department of Commerce administers the DPAS.

(c) Commerce has delegated authority to place priority ratings on contracts or orders necessary or appropriate to promote the national defense to the government agencies that issue such contracts or orders. Schedule I includes a list of agencies delegated this authority. Copies of the Delegations of Authority are provided at Appendix I. They set forth the authorities delegated and those retained by Commerce.

§ 700.3 Priority ratings and rated orders.

(a) Rated orders are identified by a priority rating consisting of the rating—either DX or DO—and a program identification symbol. Rated orders take preference over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take preference over DO rated orders. Program identification symbols indicate which authorized program is involved with the rated order. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. The program identification symbols, in themselves, do not connote any priority.

(b) Persons receiving rated orders must give them preferential treatment as required by this regulation. This means a person must accept and fill a rated order for items that the person normally supplies. The existence of previously accepted unrated or lower rated orders is not sufficient reason for rejecting a rated order. Persons are required to reschedule unrated orders if they conflict with performance against a rated order. Similarly, persons must reschedule DO rated orders if they conflict with performance against a DX rated order.

(c) All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date.

(d) Persons who receive rated orders must in turn place rated orders with their suppliers for the items they need

to fill the orders. This provision ensures that suppliers will give priority treatment to rated orders from contractor to subcontractor to suppliers throughout the procurement chain.

(e) Persons may place a priority rating on orders only when they are in receipt of a rated order, have been explicitly authorized to do so by the Department of Commerce or a Delegate Agency, or are otherwise permitted to do so by this regulation.

§700.4 Controlled materials.

(a) Federal central management of certain key materials, designated ''controlled materials'', has been essential in the past to effective industrial mobilizations. Accordingly, special rules are maintained in peacetime to provide an operating mechanism that can be rapidly expanded during a national emergency to meet increased defense and other essential needs. Currently, the controlled materials are steel, copper, aluminum, and nickel alloys.

(b) Under the controlled materials program, the Department of Commerce requires suppliers of controlled materials to accept rated orders up to a specified quantity of material during a given period of time. This quantity is called a ''set-aside''. This provision ensures that the material will be available when rated orders are placed. In addition, the system ensures that controlled materials producers are treated equitably, for after the set-aside quantity levels have been reached, controlled materials producers may generally reject additional rated orders. These orders would then be filled by other controlled materials producers who had not exhausted their set-aside requirement.

(c) In time of national emergency, the level and scope of the controlled materials program may be greatly expanded to ensure the necessary allocation of materials and in order to direct general industrial activity toward supporting the requirements of the emergency.

(d) Certain other items, in addition to the controlled materials, have critical importance to national defense programs. From time-to-time, special rules, similar to those for controlled materials, may be needed to manage those materials.

(e) If items become scarce and critical and the requirements of the national defense cannot be met without creating a significant dislocation in the civilian market place so as to create appreciable hardship, special rules may be established under section 101(b) of the Defense Production Act to control the general distribution of such items in the civilian market.

§700.5 Special priorities assistance.

(a) The DPAS is designed to be largely self-executing. However, from time-to-time production or delivery problems will arise. In this event, special priorities assistance is available from Commerce and from the Delegate Agencies.

(b) Special priorities assistance is available for any reason consistent with this regulation. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items not automatically ratable.

§700.6 Official actions.

When necessary, Commerce takes specific official actions to implement or enforce the provisions of this regulation and to provide special priorities assistance. Such actions may include the issuance of: Rating Authorizations, Directives, Letters of Understanding, Set-asides, and compliance documents (Administrative Subpoenas, Demands for Information, and Inspection Authorizations).

§700.7 Compliance.

(a) Compliance with the provisions of this regulation and official actions is required by the Defense Production Act. Violators are subject to criminal penalties.

(b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.

Subpart C—Definitions

§ 700.8 Definitions.

The following definitions pertain to all sections of the regulation:

Authorized program. A program approved by the Federal Emergency Management Agency for priorities and allocations support under the Defense Production Act.

Construction. The erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Controlled materials. The various shapes and forms of steel, copper, aluminum, and nickel alloys, whether new, remelted, rerolled or redrawn, as specified in Schedule II, and as defined in Schedule III.

Controlled materials suppliers. All persons, including producers, distributors, brokers, importers and exporters engaged in the sale or resale of controlled materials.

Delegate Agency. A government agency authorized by delegation from the Department of Commerce to place priority ratings on contracts or orders needed to support authorized programs.

Defense Production Act. the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.).*

Distributors of controlled materials. Those persons (including warehouse operators or jobbers, but not retailers) engaged in stocking controlled materials at locations regularly maintained for their sale or resale in the form or shape as received, or after performing such operations as cutting to length or shape, slitting, shearing, or sorting and grading.

Further conversion. The further processing of controlled materials by a processor of such materials.

Item. Any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

Lead time. The period of time specified in this regulation for the receipt of orders for controlled materials by a supplier in advance of the first day of the month in which shipment is required.

Maintenance and repair and operating supplies (MRO):

(a) *Maintenance* is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(b) *Repair* is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

(c) *Operating supplies* are any items carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals and other expendable items.

(d) MRO does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

Minimum mill quantity. The minimum quantity of a controlled material that may be obtained from a producer for shipment at any one time to any one destination.

Official action. An action taken by Commerce under the authority of the Defense Production Act and this regulation. Such actions include the issuance of Set-asides, Rating Authorizations, Directives, Letters of Understanding, Demands for Information, Inspection Authorizations, and Administrative Subpoenas.

Person. Any individual, corporation, partnership, association, or any other organized group of persons, and includes any agency of the United States Government or any other government.

Production equipment. Any item of capital equipment used in producing materials or furnishing services that has a unit acquisition cost of $2,500 or

more, an anticipated service life in excess of one year, and the potential for maintaining its integrity as a capital item.

Rated order. A prime contract, a subcontract, or a purchase order in support of an authorized program issued in accordance with the provisions of this regulation.

Set-aside. The amount of an item for which a supplier must reserve order book space in anticipation of the receipt of rated orders.

[49 FR 30414, July 30, 1984; 49 FR 50172, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989]

Subpart D—Industrial Priorities

§700.10 Delegation of authority.

(a) The priorities and allocations authorities given to the President in Title I of the Defense Production Act have been delegated to the Director of the Federal Emergency Management Agency (FEMA), who, in turn, has delegated these authorities with respect to industrial resources to the Secretary of Commerce. FEMA retains the overall policy and coordinating functions for this delegated authority.

(b) Within the Department of Commerce, these responsibilities have been assigned to the Office of Industrial Resource Administration. The Department of Commerce has authorized the Delegate Agencies to assign priority ratings to orders for items needed for authorized programs. Copies of these Delegations of Authority are provided at Appendix I. They set forth the authorities delegated and those retained by Commerce.

§700.11 Priority ratings.

(a) *Levels of priority*. (1) There are two levels of priority established by this regulation, identified by the rating symbols ''DO'' and ''DX''.

(2) All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see §700.14(c).)

(3) In addition, a Directive issued by Commerce takes preference over any DX rated order, DO rated order, or unrated order, as stipulated in the Directive. (For a full discussion of Directives, see §700.62.)

(b) *Program identification symbols.* Program identification symbols indicate which authorized program is being supported by a rated order. The list of authorized programs and their identification symbols are listed in Schedule I. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. Program identification symbols, in themselves, do not connote any priority.

(c) *Priority ratings.* A priority rating consists of the rating symbol—DO and DX—and the program identification symbol, such as A1, B2, or H6. Thus, a contract for the production of an aircraft will contain a DO–A1 or DX–A1 priority rating. A contract for a radar set will contain a DO–A7 or DX–A7 priority rating.

§700.12 Elements of a rated order.

Each rated order must include:

(a) The appropriate priority rating (e.g. DO–A1, DX–A4, DO–H1);

(b) A required delivery date or dates. The words ''immediately'' or ''as soon as possible'' do not constitute a delivery date. A ''requirements contract'' bearing a priority rating may contain no specific delivery date or dates and may provide for the furnishing of items from time-to-time or within a stated period against specific purchase orders or ''calls''. Such ''calls'' must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original ''requirements contract'';

(c) The signature of an individual authorized to sign rated orders for the person placing the order. The signature certifies that the rated order is authorized under this regulation and that the requirements of this regulation are being followed; and

(d) A statement that reads in substance:

This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700).

§ 700.13 Acceptance and rejection of rated orders.

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person shall accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.

(2) A person shall not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by Commerce:

(1) A person shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person shall not accept a DO rated order for delivery on a date which would interfere with delivery of any previously accepted DO or DX rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person shall not accept a DX rated order for delivery on a date which would interfere with delivery of any previously accepted DX rated orders, but must offer to accept the order based on the earliest delivery date otherwise possible.

(c) *Optional rejection.* Unless otherwise directed by Commerce, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not performed;

(3) If the order is for an item produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items, the supplier is obligated to accept rated orders up to that quantity or portion of production, whichever is greater, sold within the past two years;

(4) If the person placing the rated order, other than the U.S. Government, makes the item or performs the service being ordered;

(5) If the rated order is for a controlled material in an amount below the minimum mill quantity established in Schedule II, and the person placing the order is not willing to buy the minimum quantity;

(6) If the rated order is for a controlled material and is not received by the controlled materials producer within the time frame specified in Schedule I;

(7) If the applicable set-aside has been reached or would be exceeded by acceptance, except that a DX order must be accepted without regard for such set-aside;

(8) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of the Department of Commerce issued under the authority of the Defense Production Act [See § 700.75].

(d) *Customer notification requirements.* (1) A person must accept or reject a rated order in writing within ten working days after receipt of a DO rated order and within five working days after receipt of a DX rated order. The person must give reasons in writing for the rejection.

(2) If a person has accepted a rated order and later discovers that, due to circumstances beyond the person's control, deliveries will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment date. If notification is given verbally, written confirmation must be provided within five working days.

§ 700.14 Preferential scheduling.

(a) A person must schedule operations, including the acquisition of all needed production items, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery

dates for rated orders cannot otherwise be met.

(b) DO rated orders must be given production preference over unrated orders, if necessary to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery against unrated orders. Similarly, DX rated orders must be given preference over DO rated orders and unrated orders.

Examples: If a person receives a DO rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX rated order is received calling for delivery on July 15 and a person has a DO rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order.

(c) If a person cannot fill all the rated orders of equal priority status received on the same day, the person must accept those orders which can be filled which have the earliest delivery dates. For example, the person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. For those orders which cannot be filled on time, the supplier must inform the customer within the time limits set forth in §700.13(d), of the earliest date on which delivery can be made and offer to accept the order on the basis of that date.

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in §700.17(b).

§700.15 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this regulation or as directed by the Department of Commerce.

For example, if a person is in receipt of a DO–A3 rated order for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO–A3 rated order to obtain the needed semiconductors.

(b) The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain.

§700.16 Changes or cancellations of priority ratings and rated orders.

(a) The priority rating on a rated order may be changed or cancelled by:

(1) An official action of the Department of Commerce; or

(2) Written notification from the person who placed the rated order (including a Delegate Agency).

(b) If an unrated order is amended so as to make it a rated order, or a DO, rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of §700.13.

(d) The following amendments do not constitute a new rated order: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design; or a change which is agreed upon between the supplier and the customer.

(e) If a person no longer needs items to fill a rated order, any rated orders placed with suppliers for the items, or the priority rating on those orders, must be cancelled.

(f) When a priority rating is added to an unrated order, or is changed or cancelled, all suppliers must be promptly notified in writing.

§ 700.17 Use of rated orders.

(a) A person must use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed, or converted into scrap or by-products, in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders; and

(4) MRO needed to produce the finished items to fill rated orders. However, for MRO, the priority rating used must contain the program identification symbol H7 along with the rating symbol contained on the customer's rated order. For example, a person in receipt of a DO–A3 rated order, who needs MRO, would place a DO–H7 rated order with the person's supplier.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating symbol and the program identification symbol indicated on the customer's rated order must be used on the order (except as provided in § 700.31(d)—Controlled materials program identification symbols). A DX rating symbol may not be used even if the inventory was used to fill a DX rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined. In this case, the program identification symbol H1 must be used (i.e., DO–H1) (not applicable to controlled materials producers).

(c) A person may combine DX and DO rated orders from one customer or several customers if the items covered by each level of priority are identified separately and clearly. If different program identification symbols are indicated on those rated orders of equal priority, the person must use the program identification symbol H1 (i.e., DO–H1 or DX–H1), except as provided in § 700.31(d) (Controlled materials program identification symbols).

(d) *Combining rated and unrated orders.* (1) A person may combine rated and unrated orders provided that the rated quantities are identified separately and are also contained in a separate rated order which conforms to the requirements of § 700.12 (Elements of a rated order). In addition to identifying clearly the rated quantities, the combined purchase order must contain a statement that the rated quantities are contained in a separate rated order placed in accordance with this regulation. Wherever possible, the separate rated order must be physically attached to the combined purchase order. A supplier must give preferential treatment to the rated quanitities of the combined order, if necessary. A supplier may not use the authorities of this regulation to give preferential treatment to the unrated portion.

(2) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this regulation or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under § 700.80.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than $5,000 provided that delivery can be obtained in a timely fashion without the use of the priority rating.

§ 700.18 Limitations on placing rated orders.

(a) *General limitations.* (1) A person may not place a DO or DX rated order unless entitled to do so under this regulation.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item than needed, except to obtain a minimum procurable quantity. Separate

rated orders may not be placed solely for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items in advance of the receipt of a rated order, *except* as specifically authorized by Commerce (see §700.51(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(iv) Any of the following items unless specific priority rating authority has been obtained from a Delegate Agency or Commerce:

(A) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order; and

(B) Production or construction equipment or items to be used for the manufacture of production equipment. [For information on requesting priority rating authority, see §700.53.]

(b) *Jurisdictional limitations.* (1) The priorities and allocations authority for certain items has been delegated under Executive Order 10480, as amended, to other agencies, and, thus, the provisions of this regulation are not applicable to them. These items include:

(i) Petroleum, gas, solid fuel, and electric power and all other forms of energy (Department of Energy);

(ii) Food and the domestic distribution of farm equipment and commercial fertilizer (Department of Agriculture);

(iii) Civil transportation and the movement of persons and property by all modes (Department of Transportation);

(iv) Minerals (Department of the Interior);

(v) Water (Department of Defense—U.S. Army Corps of Engineers);

(vi) Housing facilities (Department of Housing and Urban Development);

(vii) Health facilities (Department of Health and Human Services); and

(viii) Radioisotopes, stable isotopes, source material, and special nuclear material, produced in Government-owned plants or facilities operated by or for Department of Energy (Department of Energy).

(2) The jurisdiction of the Department of Commerce and the Departments of Energy, Agriculture, and the Interior over certain specific items included in the categories listed above has been clarified by Interagency Memoranda of Understanding. Copies of these Memoranda are provided for information at appendix II.

(3) The following items under the jurisdiction of Commerce are currently excluded from the rating provisions of this regulation; however, these items are subject to Commerce Directives. These excluded items are:

Communication services
Copper raw materials (as defined in Schedule III)
Crushed stone
Gravel
Sand
Scrap
Slag
Steam heat, central
Waste paper

Subpart E—Industrial Priorities for Energy Programs

§700.20 Use of priority ratings.

(a) Section 101(c) of the Defense Production Act authorizes the use of priority ratings for projects which maximize domestic energy supplies.

(b) Projects which maximize domestic energy supplies include those which maintain or further domestic energy exploration, production, refining, and transportation; maintain or further the conservation of energy; or are involved in the construction or maintenance of energy facilities.

§700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical and essential supplies of materials and equipment by submitting DOE Form PR 437 to the Department of Energy. Blank applications and further information may be obtained from the Technical Information Center, Department of Energy, P.O. Box 62, Oak Ridge, Tennessee 37830, or from the Procurement and Assistance Management Directorate, Department of Energy, Attn: MA 932, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(b) On receipt of the application, the Department of Energy will:

(1) Determine if the project maximizes domestic energy supplies; and

(2) Find whether the materials or equipment involved in the application are critical and essential to the project.

(c) If the Department of Energy notifies Commerce that the project maximizes domestic energy supplies and that the materials or equipment are critical and essential, Commerce must find whether the items in question are scarce and whether there is a need to use the priorities and allocations authorities.

(1) Scarcity implies an unusual difficulty in obtaining the material or equipment in a timeframe consistent with the timely completion of the energy project. Among the factors to be used in making the scarcity finding will be the following:

(i) Value and volume of material or equipment shipments;

(ii) Consumption of material and equipment;

(iii) Volume and market trends of imports and exports;

(iv) Domestic and foreign sources of supply;

(v) Normal levels of inventories;

(vi) Rates of capacity utilization;

(vii) Volume of new orders; and

(viii) Lead times for new orders.

(2) In finding whether there is a need to use the priorities and allocations authorities, Commerce will consider alternative supply solutions and other measures.

(d) If Commerce does not find that the items of material or equipment are scarce, it will not proceed to analyze the need to use the priorities and allocations authorities.

(e) Commerce will inform the Department of Energy of the results of its analysis. If Commerce has made the two required findings, it will authorize the Department of Energy to grant the use of a priority rating to the applicant.

(f) Schedule I includes a list of authorized programs to support the maximization of domestic energy supplies. A Department of Energy regulation setting forth the procedures and criteria used by the Department of Energy in making its determination and findings is published in 10 CFR part 216.

Subpart F—The Controlled Materials

§ 700.30 Management of the controlled materials.

(a) The controlled materials are steel, copper, aluminum, and nickel alloys in the shapes and forms listed in Schedule II and defined in Schedule III. These materials are basic industrial resources necessary for both authorized defense programs and for general industrial activity. Federal management of these four materials assures the timely availability of the materials to meet current authorized program requirements; assures the equitable distribution of requirements among the suppliers of the materials; and provides a flexible and expandable system capable of directing general economic and industrial activity during times of emergency.

(b) Before controlled materials can be used for authorized programs, the Delegate Agencies must obtain specific approval, known as an allotment, from the Federal Emergency Management Agency (FEMA). Accordingly, the Delegate Agencies submit to FEMA requirements for the controlled materials necessary to support their authorized programs. After reviewing the available supply of the materials and other national security, economic and policy considerations, FEMA approves the use of specific quantities of controlled materials by issuing allotments to each Delegate Agency. (Special controlled materials provisions applicable to the Delegate Agencies are found in the Delegations of Authority and the U.S.-Canadian Memorandum of Understanding appended to this regulation.)

(c) To assure the timely availability of controlled materials, the Department of Commerce manages their supply and distribution by requiring producers and distributors of controlled materials to set-aside or reserve space in their order books for the receipt of rated orders. This process is described in greater detail in the following section.

§ 700.31 Specific rules for controlled materials suppliers and users.

(a) *Rated orders.* Rated orders are used to obtain controlled materials

needed for authorized programs. Such orders must comply with the requirements of § 700.12 (Elements of a rated order). In addition, a rated order for controlled materials placed with a producer must be in sufficient detail to permit entry on mill schedules.

(b) *Set-asides.* (1) Controlled materials suppliers are issued set-asides by type and shape of controlled material as provided in the following paragraphs. Each supplier is required to accept all rated orders received up to the set-aside level. The supplier may reject DO rated orders after the set-aside quantity has been filled except that the supplier must accept all DX rated orders regardless of the set-aside level.

(2) A person who has had a DO rated order rejected because a set-aside has been filled, must attempt to place the rated order with other controlled materials suppliers whose set-asides are not filled. If still unable to place the rated order, the person should request special priorities assistance (see Subpart H).

(3) *Steel controlled materials.* (i) A set-aside is applicable to each steel controlled materials producer who receives a written set-aside notification from Commerce.

(ii) Any steel controlled materials producer who has not received a set-aside notification must accept, in accordance with the provisions of this regulation, all rated orders received, but may receive a set-aside by applying in writing to Commerce.

(iii) The set-aside is a specified monthly quantity based on average monthly shipments during a specific base period.

(4) *Copper controlled materials.* (i) Set-asides are applicable to all copper controlled materials producers.

(ii) The monthly set-aside for each copper controlled materials producer is calculated by multiplying the producer's set-aside base by the appropriate set-aside percentage for each product. The set-aside percentage and set-aside base are contained in Schedule IV.

(5) *Aluminum controlled materials.* (i) A set-aside is applicable to each aluminum controlled materials producer who receives a written set-aside notification from Commerce.

(ii) Any aluminum controlled materials producer who has not received a set-aside notification must, in accordance with the provisions of this regulation, accept all rated orders received, but may receive a set-aside in writing by applying in writing to Commerce.

(iii) The set-aside for aluminum ingot and aluminum molten metal is calculated based on the average monthly production capacity during a specific base period.

(iv) The set-aside for all other aluminum controlled materials is calculated based on the average monthly shipments during a specific base period.

(6) *Nickel alloys controlled materials.* (i) Set-asides are applicable to all nickel alloys controlled materials producers.

(ii) The monthly set-aside for each nickel alloys controlled materials producer is calculated by multiplying the producer's set-aside base by the appropriate set-aside percentage for each product. The set-aside percentage and set-aside base are contained in Schedule V.

(c) *Order books and product lead times.* (1) Each controlled materials producer must open its order books for the acceptance of DO rated orders at least 45 days prior to the commencement of the applicable minimum lead times provided in Schedule II for the various shapes and forms of controlled materials.

(2) When order books are open, a controlled materials producer must accept all rated orders received until the minimum lead time shown in Schedule II is reached or until the set-aside level is reached.

(3) Once the minimum lead time is reached, a controlled materials producer may devote remaining capacity to unrated orders, even if the set-aside has not been filled. However, the producer must accept all DX rated orders without regard to lead time. If unable to make delivery by the required date, the producer must offer to accept the order in accordance with § 700.13.

(d) *Controlled materials program identification symbols.* (1) A controlled materials producer must use the program identification symbol H2 on all rated orders to obtain production materials or to replace inventories used to fill rated orders except for materials for further conversion.

(2) A controlled materials producer must use the program identification symbol H3 on rated orders to obtain controlled materials for further conversion needed for production or inventory replacement.

(3) A controlled materials distributor must use the program identification symbol H4 on rated orders to obtain controlled materials needed to fill rated orders, or to replace in inventory, controlled materials used to fill rated orders.

(e) *Controlled materials shipments and requirements data.* (1) Controlled materials producers and distributors are required to maintain and submit to Commerce upon request, data on shipments against rated and unrated orders and on related activities [OMB Nos. 0625–0107 (Recordkeeping), 0625–0011 (Copper), 0625–0016 (Aluminum), 0625–0017 (Steel), and 0625–0021 (Nickel Alloys)].

(2) Persons performing against rated orders must provide, upon request of the appropriate Delegate Agency or the prime contractor, data on requirements for controlled materials needed to fill rated contracts for items manufactured to authorized program specifications or used in construction for authorized programs [OMB Nos. 0625–0107 (Recordkeeping) and 0625–0013 (Controlled Materials Requirements—Production, Construction, or Research and Development)]. Prime contractors may request this information from their subcontractors only when needed to satisfy a request for requirements data from a Delegate Agency.

Subpart G—Critical Items

§ 700.40 General provisions.

(a) From time-to-time Commerce may determine that certain items have a critical importance to industrial production with respect to the national defense and authorized programs. Special rules for such items are set forth in this subpart.

(b) Commerce may establish special rules as needed to ensure that critical items are available to authorized programs in a timely fashion and to provide for an equitable and orderly distribution of requirements for such items among all suppliers of the items.

§ 700.41 Metalworking machines.

(a) ''Metalworking machines'' include power driven, manual or automatic, metal cutting and metal forming machines and complete machines not supported in the hands of an operator when in use. Basic machines with a list price of $2,500 or less are not covered by this section.

(b) Metalworking machines covered by this section include:

Bending and forming machines
Boring machines
Broaching machines
Drilling and tapping machines
Electrical discharge, ultrasonic and chemical erosion machines
Forging machinery and hammers
Gear cutting and finishing machines
Grinding machines
Hydraulic and pneumatic presses, power driven
Machining centers and way-type machines
Manual presses
Mechanical presses, power driven
Milling machines
Miscellaneous machine tools
Miscellaneous secondary metal forming and cutting machines
Planers and shapers
Polishing, lapping, boring, and finishing machines
Punching and shearing machines
Riveting machines
Saws and filing machines
Turning machines, lathes, including automatic
Wire and metal ribbon forming machines

(c) A metalworking machine producer is not required to accept DO rated orders calling for delivery in any month of a total quantity of any size of machine in excess of 60 percent of scheduled production of that size of machine for that month, or any DO rated orders received less than three months prior to the beginning of the month for which delivery is requested. However, DX rated orders must be accepted without regard to a set-aside or the lead time, if delivery can be made by the required date.

Subpart H—Special Priorities Assistance

§ 700.50 General provisions.

(a) The DPAS is designed to be largely self-executing. However, it is anticipated that from time-to-time problems will occur. In this event, a person

should immediately contact the appropriate contract administration officer for guidance or assistance. If additional formal aid is needed, special priorities assistance should be sought from the Delegate Agency through the contract administration officer. If the Delegate Agency is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Delegate Agency may forward the request to the Department of Commerce for action. Special priorities assistance is a service provided to alleviate problems that do arise.

(b) Special priorities assistance can be provided for any reason in support of this regulation, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not automatically ratable under this regulation.

(c) A request for special priorities assistance or priority rating authority must be submitted on Form ITA–999 (OMB control number 0625–0015) to the local contract administration representative. Form ITA–999 may be obtained from the Delegate Agency representative, any Commerce District Office, or from the Department of Commerce. A sample Form ITA–999 is attached at Appendix III.

[49 FR 30414, July 30, 1984; 49 FR 50171, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989]

§ 700.51 Requests for priority rating authority.

(a) If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this regulation, the person may request the authority to use a priority rating in ordering the needed items. Examples of items for which priority ratings can be authorized include:

(1) Production or construction equipment;

(2) Computers when not used as production items; and

(3) Expansion, rebuilding or replacing plant facilities.

(b) *Rating authority for production or construction equipment.* (1) A request for priority rating authority for production or construction equipment must be submitted to the appropriate Delegate Agency. The Delegate Agency may establish particular forms to be used for these requests (*e.g.,* Department of Defense Form DD 691.)

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) *Rating authority in advance of a rated prime contract.* (1) In certain cases and upon specific request, Commerce, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders if these orders have to be cancelled in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

> It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from a Delegate Agency and our use of that priority rating with our suppliers in no way commits the Delegate Agency, the Department of Commerce or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, Commerce will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time;

(v) The political sensitivity of the project; and

(vi) The time period for which the rating is being requested.

(4) Commerce may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders is cancelled.

§ 700.52 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this regulation, it is usually provided in situations where:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

§ 700.53 Criteria for assistance.

Requests for special priorities assistance should be timely, *i.e.*, the request has been submitted promptly and enough time exists for the Delegate Agency or Commerce to effect a meaningful resolution to the problem, and must establish that:

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

§ 700.54 Instances where assistance will not be provided.

Special priorities assistance is provided at the discretion of the Delegate Agencies and Commerce when it is determined that such assistance is warranted to meet the objectives of this regulation. Examples where assistance will not be provided include situations when a person is attempting to:

(a) Secure a price advantage;

(b) Obtain delivery prior to the time required to fill a rated order;

(c) Gain competitive advantage;

(d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or

(e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

§ 700.55 Assistance programs with Canada and other nations.

(a) To promote military assistance to foreign nations, this section provides for authorizing priority ratings to persons in Canada and in other foreign nations to obtain items in the United States in support of authorized programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Canada.

(b) *Canada.* (1) The joint U.S.-Canadian military arrangements for the defense of North America and the integrated nature of their defense industries as set forth in the *U.S.-Canadian Statement of Principles for Economic Cooperation* (October 26, 1950) require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(2) The Department of Commerce coordinates with the Canadian Department of Supply and Services on all matters of mutual concern relating to the administration of this regulation. A copy of the Memorandum of Understanding between the two departments is provided at appendix IV.

(3) Any person in the United States ordering defense items in Canada should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the

supplier's vendor to fill the order, they should contact the Canadian Department of Supply and Services for authority to place rated orders in the United States.

(4) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applying to the Canadian Department of Supply and Services in accordance with procedures specified by that Department.

(5) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply for such assistance to the Canadian Department of Supply and Services. The Department of Supply and Services will forward appropriate requests to Commerce.

(6) Any person in the United States requiring assistance in obtaining items in Canada must submit a request through the Delegate Agency to Commerce on Form ITA–999. Commerce will forward appropriate requests to the Canadian Department of Supply and Services.

(c) *Foreign nations.* (1) Any person in a foreign nation other than Canada requiring assistance in obtaining defense items in the United States or priority rating authority for defense items to be purchased in the United States, should apply for such assistance or rating authority to the U.S. Department of Defense. The request must be sponsored by the government of the foreign nation prior to its submission.

(2) If the Department of Defense endorses the request, it will be forwarded to Commerce for appropriate action.

Subpart I—Official Actions

§700.60 General provisions.

(a) Commerce may, from time-to-time, take specific official actions to implement or enforce the provisions of this regulation.

(b) Several of these official actions (Rating Authorizations, Directives, and Letters of Understanding) are discussed in this subpart. Other official actions which pertain to compliance (Administrative Subpoenas, Demands for Information, and Inspection Authorizations) are discussed in §700.71(b).

§700.61 Rating Authorizations.

(a) A Rating Authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item not normally ratable under this regulation; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see §700.51.

§700.62 Directives.

(a) A Directive is an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

(b) A person must comply with each Directive issued. However, a person may not use or extend a Directive to obtain any items from a supplier, unless expressly authorized to do so in the Directive.

(c) Directives take precedence over all DX rated orders, DO rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

§700.63 Letters of Understanding.

(a) A Letter of Understanding is an official action which may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (Commerce, the Delegate Agency, the supplier, and the customer).

(b) A Letter of Understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this regulation, or to take other official actions. Rather, Letters of Understanding are used to confirm production or shipping schedules which do not require modifications to other rated orders.

Subpart J—Compliance

§700.70 General provisions.

(a) Compliance actions may be taken for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act, this regulation, or an official action.

Such actions include audits, investigations, or other inquiries.

(b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.

(c) Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act, this regulation, or an official action of the Department of Commerce, is a criminal act, punishable as provided in the Defense Production Act and as set forth in § 700.74 of this regulation.

§ 700.71 Audits and investigations.

(a) Audits and investigations are official examinations of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act, this regulation, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this regulation.

(b) When undertaking an audit, investigation, or other inquiry, the Department of Commerce shall:

(1) Define the scope and purpose in the official action given to the person under investigation, and

(2) Have ascertained that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this regulation, Commerce may issue the following documents which constitute official actions:

(1) *Administrative Subpoenas.* An Administrative Subpoena requires a person to appear as a witness before an official designated by the Department of Commerce to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act, this regulation, or official actions. An Administrative Subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demand for Information.* A Demand for Information requires a person to furnish to a duly authorized representative of the Department of Commerce any information necessary or appropriate to the enforcement or the administration of the Defense Production Act, this regulation, or official actions.

(3) *Inspection Authorizations.* An Inspection Authorization requires a person to permit a duly authorized representative of Commerce to interview the person's employees or agents, to inspect books, records, documents, other writings and information in the person's possession or control at the place where that person usually keeps them, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act, this regulation, or official actions.

(d) The production of books, records, documents, other writings and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the Administrative Subpoena or Demand for Information, a duly authorized official of Commerce is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of Commerce as to the content of the material.

(e) An Administrative Subpoena, Demand for Information, or Inspection Authorization, shall include the name, title or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the Administrative Subpoena, Demand for Information, or Inspection Authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) Service of a Demand for Information or Inspection Authorization shall be made personally, or by Certified Mail—Return Receipt Requested at the person's last known address. Service of an Administrative Subpoena shall be made personally. Personal service may also be made by leaving a copy of the

document with someone of suitable age and discretion at the person's last known dwelling or place of business.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or over may serve an Administrative Subpoena, Demand for Information, or Inspection Authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

§700.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of Commerce to have access to any premises or source of information necessary to the administration or the enforcement of the Defense Production Act, this regulation, or official actions, the Commerce representative may seek compulsory process. Compulsory process means the institution of appropriate legal action, including *ex parte* application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Director of the Office of Industrial Resource Administration, U.S. Department of Commerce, in consultation with the Assistant General Counsel for International Trade, U.S. Department of Commerce, there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

§700.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, Commerce may inform the person in writing where compliance with the requirements of the Defense Production Act, this regulation, or an official action were not met.

(b) In cases where Commerce determines that failure to comply with the provisions of the Defense Production Act, this regulation, or an official action was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willfull violation of the Defense Production Act, this regulation, or an official action.

§700.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or sections 705 or 707 of the Defense Production Act, this regulation, or an official action is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. Except as provided in (b) below, the maximum penalties provided by the Defense Production Act are a $10,000 fine, or one year in prison, or both.

(b) Willful refusal to furnish any information or reports required by Commerce under section 705 of the Defense Production Act, this regulation, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. Maximum penalties provided by the Defense Production Act are a $1,000 fine, or one year in prison, or both.

(c) The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this regulation, or an official action.

(d) In order to secure the effective enforcement of the Defense Production Act, this regulation, and official actions, the following are prohibited (see section 704 of the Defense Production

Act; see also, for example, sections 2 and 371 of Title 18, United States Code):

(1) No person may solicit, influence or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act, this regulation, or an official action. In such instances, the person must immediately notify the Department of Commerce that, in accordance with this provision, delivery has not been made.

§ 700.75 Compliance conflicts.

If compliance with any provision of the Defense Production Act, this regulation, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, this regulation, or an official action, the person must immediately notify the Department of Commerce for resolution of the conflict.

Subpart K—Adjustments, Exceptions, and Appeals

§ 700.80 Adjustments or exceptions.

(a) A person may submit a request to the Office of Industrial Resource Administration, U.S. Department of Commerce, for an adjustment or exception on the ground that:

(1) A provision of this regulation or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequence of following a provision of this regulation or an official action is contrary to the intent of the Defense Production Act or this regulation.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this regulation or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the request is being considered unless such interim relief is granted in writing by the Office of Industrial Resource Administration.

(d) A decision of the Office of Industrial Resource Administration under this section may be appealed to the Assistant Secretary for Trade Administration, U.S. Department of Commerce. (For information on the appeal procedure, see § 700.81.)

§ 700.81 Appeals.

(a) Any person who has had a request for adjustment or exception denied by the Office of Industrial Resource Administration under § 700.80, may appeal to the Assistant Secretary for Trade Administration, U.S. Department of Commerce, who shall review and reconsider the denial.

(b) An appeal must be received by the Office of the Assistant Secretary for Trade Administration, International Trade Administration, U.S. Department of Commerce, Washington, D. C. 20230, Ref: DPAS, no later than 45 days after receipt of a written notice of denial from the Office of Industrial Resource Administration. After this 45-day period, an appeal may be accepted at the discretion of the Assistant Secretary for Trade Administration for good cause shown.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing,

an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Assistant Secretary for Trade Administration.

(e) When a hearing is granted, the Assistant Secretary for Trade Administration may designate an employee of the Department of Commerce to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(f) When determining an appeal, the Assistant Secretary for Trade Administration may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to the Department of Commerce, or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the appeal is being considered unless such relief is granted in writing by the Assistant Secretary for Trade Administration.

(h) The decision of the Assistant Secretary for Trade Administration shall be made within a reasonable time after receipt of the appeal and shall be the final administrative action. It shall be issued to the appellant in writing with a statement of the reasons for the decision.

Subpart L—Miscellaneous Provisions

§700.90 Protection against claims.

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this regulation, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

§700.91 Records and reports.

(a) Persons are required to make and preserve for at least three years, accurate and complete records of any transaction covered by this regulation (OMB control number 0625–0107) or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this regulation or any official action. However, this regulation does not specify any particular method or system to be used.

(c) Records required to be maintained by this regulation must be made available for examination on demand by duly authorized representatives of Commerce as provided in §700.71.

(d) In addition, persons must develop, maintain, and submit any other records and reports to Commerce that may be required for the administration of the Defense Production Act and this regulation.

(e) Section 705(e) of the Defense Production Act provides that information obtained under this section which the President deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the President determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to Commerce in connection with the enforcement or administration of the Act, this regulation, or an official action, is deemed to be confidential under section 705(e) of the Act and shall not be published or disclosed except as required by law.

§700.92 Applicability of this regulation and official actions.

(a) This regulation and all official actions, unless specifically stated otherwise, apply to transactions in any state, territory, or possession of the United States and the District of Columbia.

(b) This regulation and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch,

division, or section of a single entity to another branch, division, or section under common ownership or control.

(c) This regulation and its schedules shall not be construed to affect any administrative actions taken by Commerce, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules or delegations of authority under the Defense Materials System and Defense Priorities System previously issued by Commerce. Such actions, contracts, or orders shall continue in full force and effect under this regulation unless modified or terminated by proper authority.

(d) The repeal of the regulations, orders, schedules and delegations of authority of the Defense Materials System (DMS) and Defense Priorities System (DPS) shall not have the effect to release or extinguish any penalty or liability incurred under the DMS/DPS. The DMS/DPS shall be treated as still remaining in force for the purpose of sustaining any action for the enforcement of such penalty or liability.

§ 700.93 Communications.

All communications concerning this regulation, including requests for copies of the regulation and explanatory information, requests for guidance or clarification, and requests for adjustment or exception shall be addressed to the Office of Industrial Resource Administration, Room 3876, U.S. Department of Commerce, Washington, DC 20230, Ref: DPAS; telephone: (202) 377–4506.

SCHEDULE I TO PART 700—AUTHORIZED PROGRAMS AND DELEGATE AGENCIES

The programs listed in this schedule have been authorized by the Federal Emergency Management Agency for priorities and allocations support under this regulation. They have equal preferential status.

The Department of Commerce has authorized the Delegate Agencies to use this regulation in support of those programs assigned to them, as indicated below.

Program Identification Symbol	Authorized Program	Delegate Agency
	Defense Programs	
A1	Aircraft	Department of Defense and Associated Agencies.[1]
A2	Missiles	Do.
A3	Ships	Do.
A4	Tank—Automotive	Do.
A5	Weapons	Do.
A6	Ammunition	Do.
A7	Electronic and communications equipment	Do.
B1	Military building supplies	Do.
B8	Production equipment (for defense contractor's account)	Do.
B9	Production equipment (Government owned)	Do.
C1	Food resources	Do.
C2	Department of Defense construction	Do.
C3	Maintenance, repair and operating supplies (MRO) for Department of Defense facilities.	Do.
C8	Controlled materials for Defense Industrial Supply Center (DISC)	Do.
C9	Miscellaneous	Do.
	International Defense Programs	
	Canada	
D1	Canadian military programs	Department of Commerce.
D2	Canadian production and construction	Do.
D3	Canadian atomic energy program	Do.
	Other Foreign Nations	
G1	Certain munitions items purchased by foreign governments through domestic commercial channels for export.	Department of Commerce.
G2	Certain direct defense needs of foreign governments other than Canada	Do.
G3	Foreign nations (other than Canada) production and construction	Do.

Program Identification Symbol	Authorized Program	Delegate Agency
	Co-Production	
J1	F–16 Co-Production Program	Departments of Commerce and Defense.
	Atomic Energy Programs	
E1	Construction	Department of Energy.
E2	Operations—including maintenance, repair and operating supplies (MRO)	Do.
E3	Privately owned facilities	Do.
	Other Energy Programs	
F1	Exploration, production, refining and transportation	Department of Energy.
F2	Conservation	Do.
F3	Construction and Maintenance	Do.
	Other Defense, Energy and Related Programs	
H1	Certain combined orders (see § 700.17(c))	Department of Commerce.
H2	Controlled materials producers	Do.
H3	Further converters (controlled materials)	Do.
H4	Distributors of controlled materials	Do.
H5	Private domestic production	Do.
H6	Private domestic construction	Do.
H7	Maintenance, repair and operating supplies (MRO)	Do.
K1	Federal supply items	General Services Administration.
N1	Approved civil defense programs	Federal Emergency Management Agency.

[1] Department of Defense agencies are: Army, Navy (including Coast Guard), Air Force, Defense Logistics Agency, and National Security Agency. Associated Agencies of the Department of Defense include Central Intelligence Agency, Federal Aviation Administration, and National Aeronautics and Space Administration.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, and amended at 56 FR 8109, Feb. 27, 1991]

SCHEDULE II TO PART 700—CONTROLLED MATERIALS

Controlled Materials [1]	Minimum quantity* (net tons, except as specified)		Minimum number of days**			
	Carbon [2]	Alloy [2]	Carbon	High-strength low-alloy	Stainless	Alloy [3]
Steel						
Bar, bar shapes (including light shapes):						
Bar, hot-rolled stock for projectile and shell bodies [4]	(2)	(2)	45	75	.....	[5] 75
Bar, hot-rolled, other (including light shapes):						
Round bars up to and including 3 inches, and squares, hexagons, half rounds, ovals, etc., of approximately equivalent section area	5	(2)	[5] 45	[5] 75	90	[5] 75
Round and square bars over 3 inches, but less than 8 inches	15	(2)	[5] 45	[5] 75	90	[5] 75
Bar-size shapes (angles, tees, channels, and zees under 3 inches)	5	(2)	[5] 45	[5] 75	90	[5] 75
Bar, reinforcing (straight lengths, as rolled)	5	.....	45	.....	.....	75
Bar, cold finished	5	(2)	[5] 75	[5] 105	105	[5] 105

Controlled Materials [1]	Minimum quantity* (net tons, except as specified)		Minimum number of days**			
	Carbon [2]	Alloy [2]	Carbon	High-strength low-alloy	Stainless	Alloy [3]
Sheet, strip (uncoated and coated):						
Sheet, hot-rolled	5	(2)	45	75	90	75
Sheet, cold-rolled	5	(2)	45	75	105	90
Sheet, galvanized	(2)	.....	45	.....	.....	.....
Sheet, all other coated	5	.....	45	.....	.....	.....
Sheet, enameling	5	.....	45	.....	.....	.....
Roofing, galvanized, corrugated, V-crimped channel drains	(2)	.....	45	.....	.....	.....
Ridge roll, valley, and flashing	(2)	.....	45	.....	.....	.....
Siding, corrugated and brick	(2)	.....	45	.....	.....	.....
Strip, hot-rolled	(2)	(2)	45	75	90	75
Strip, cold-rolled	(2)	(2)	45	75	105	90
Strip, galvanized	(2)	.....	[6] 45	.....	.....	.....
Electrical sheet and strip	5	.....	[7] 45	.....	.....	.....
Tin mill black plate (pounds)	12,000	.....	45	.....	.....	.....
Tin plate, hot-dipped (pounds)	12,000	.....	45	.....	.....	.....
Ternes, special coated manufacturing (pounds)	10,000	.....	45	.....	.....	.....
Tin plate, electrolytic (pounds)	12,000	.....	.....	.....	.....	.....
Electrolytic chromium coated steel [8]	(2)	.....	.....	.....	.....	.....
Plate:						
Rolled armor	(2)	(2)	[6] 45	[5] 75	90	[5] 75
Continuous strip mill production	10	(2)	[6] 45	[5] 75	90	[5] 75
Sheared, universal, or bar mill production	3	(2)	[6] 45	[5] 75	90	[5] 75
Structural shapes, piling	(2)	(2)	45	[9] 75	[9] 150	90
Pipe, tubing:						
Standard pipe (including couplings furnished by mill)	(10)	(10)	45	.....	120	.....
Oil-country goods (casing, tubular goods, couplings furnished by mill)	(10)	(10)	45	.....	.....	60
Line pipe (including couplings furnished by mill)	(10)	(10)	45	75	.....	.....
Pressure and mechanical tubing (seamless and welded):						
Seamless cold-drawn (pounds):						
Under 20 pounds per foot	5,000	5,000	[6] 60	.....	120	120
20 pounds per foot and over	5,000	10,000	[6] 60	.....	120	120
Seamless hot-rolled	(2)	(2)	[6] 60	.....	120	120
Welded	(2)	(2)	[6] 60	.....	120	120
Wire, wire products:						
Wire, drawn	(2)	(2)	45	75	90	75
Nails—bright steel wire, steel cut, galvanized, cement-coated and painted	[11] 5	.....	45	.....	.....	.....
Spikes and brads—steel wire, galvanized, cement-coated	[11] 5	.....	45	.....	.....	.....
Staples, bright and galvanized (farm and poultry)	[11] 5	.....	45	.....	.....	.....
Wire rope and strand	(2)	.....	45	.....	105	.....
Welded wire mesh	(2)	.....	45	.....	.....	.....
Woven wire netting	[11] 5	.....	45	.....	.....	.....
Barbed and twisted wire	[11] 5	.....	45	.....	.....	.....
Wire fence, woven and welded (farm and poultry)	[11] 5	.....	45	.....	.....	.....
Bale ties	[11] 5	.....	45	.....	.....	.....
Coiled automatic baler wire	[11] 5	.....	45	.....	.....	.....
Tool steel (all forms including die blocks and tool steel forgings) (pounds)	500	500	[12] 60	.....	.....	[12] 90
Other mill forms and products (excluding castings and forgings):						
Ingots	[13] 25	(14)	45	75	75	75
Billets, projectile and shell stock	(2)	(2)	45	75	.....	75
Blooms, slabs, other billets, tube rounds, sheet bars	[13] 25	(2)	45	75	75	75
Skelp	25	.....	45	.....	.....	.....
Wire rod	(2)	(2)	45	75	90	75
Rail and track accessories	(2)	(2)	45	.....	.....	90
Wheels, rolled or forged (railroad)	(2)	(2)	45	.....	.....	90
Axles (railroad)	(2)	(2)	45	.....	.....	90

Controlled materials[1]	Minimum quantity* (pounds)	Minimum number of days**
Copper		
Copper and copper-base alloy brass mill products:[15]		
Copper (unalloyed):		
Bar	2,000	45
Shapes, wire (except electrical wire)	500	45
Rod	2,000	45
Sheet, plate (24 inches wide and over)	2,000	45
Rolls and strip (up to 24 inches wide)	2,000	45
Pipe, tube (seamless)	2,000	45
Copper-base alloy:		
Bar	2,000	[16] 45
Wire, shapes	500	[16] 45
Free cutting brass rod	2,000	[16] 45
Other rod	1,000	[16] 45
Sheet, and plate (24 inches wide and over)	2,000	[16] 45
Rolls and strip (up to 24 inches in width)	2,000	[16] 45
Military ammunition cups and discs	2,000	[16] 45
Circles	1,000	[16] 90
Pipe, tube (seamless)	2,000	[16] 45
Copper wire mill products:		
Copper wire and cable:		
Bare and tinned	([17]) ([18])	35
Weatherproof	([17]) ([18])	40
Magnet wire	([17]) ([18])	35
Insulated building wire	([17]) ([18])	45
Paper and lead power cable	([17]) ([18])	75
Paper and pulp telephone cable	([17]) ([18])	45
Plastic insulated telephone cable	([17]) ([18])	45
Asbestos cable	([17]) ([18])	60
Portable and flexible cord and cable	([17]) ([18])	45
Communication wire and cable	([17]) ([18])	60
Shipboard cable	([17]) ([18])	75
Automotive and aircraft wire and cable	([17]) ([18])	45
Insulated power cable	([17]) ([18])	75
Signal and control cable	([17]) ([18])	75
Coaxial cable	([17]) ([18])	75
Copper-clad steel wire containing over 20 percent copper by weight regardless of end use	([17]) ([18])	35
Copper-clad aluminium wire containing over 20 percent copper by weight regardless of end use	([17]) ([18])	45
Copper and copper-base alloy foundry products and powder:		
Copper, brass, and bronze castings	.....	[19] [20] 14
Copper, brass, and bronze powder (including copper powder, granular and flake, and copper-base alloy powder, granular and flake)	.....	30

Controlled materials[1]	Minimum quantity*	Minimum number of days**
Aluminum		
Ingot, granular or shot, and molten metal:		
Extrusion ingot (billet)	([18])	90
Other ingot and molten metal, primary	([18])	60
Other ingot and molten metal, secondary	([18])	.....
Sheet and plate:		
Sheet, non-heat treatable	([18])	150
Sheet, heat treatable	([18])	150
Plate, non-heat treatable	([18])	150
Plate, heat treatable	([18])	150
Welded tube	([18])	.....
Foil	([18])	90
Aluminum conductor:		
ACSR and aluminium cable, bare	([18])	60
Wire and cable, insulated or covered	([18])	60

Controlled materials[1]	Minimum quantity*	Minimum number of days**
Rolled bar, rod and wire (continuous cast or rolled):		
Conductor redraw rod	(18)	60
Non-conductor redraw rod	(18)	60
Other rod and bar	(18)	120
Wire, bare, conductor and non-conductor	(18)	120
Extruded bar, rod, shapes and drawn tube:		
Extruded rod and bar—alloys other than 2000 and 7000 series	(18)	60
Extruded rod and bar—alloys in 2000 and 7000 series	(18)	150
Extruded pipe and tube—alloys other than 2000 and 7000 series	(18)	60
Extruded pipe and tube—alloys in 2000 and 7000 series	(18)	150
Extruded shapes—alloys other than 2000 and 7000 series	(18)	60
Extruded shapes—alloys in 2000 and 7000 series	(18)	150
Drawn tube—alloys other than 2000 and 7000 series	(18)	60
Drawn tube—alloys in 2000 and 7000 series	(18)	120
Powder, flake and paste	(18)	60

Controlled materials[1]	Minimum quantity*	Minimum number of days**	
		Solid solution	Precipitation hardened
Nickel Alloys			
Rods and bars (except anode bars):			
Hot-rolled, including wire rod	(2)	90	120
Forging quality	(2)	90	120
Cold-finished	(2)	120	165
Sheet and strip:			
Hot-rolled	(2)	90	120
Cold-rolled	(2)	120	165
Foil	(2)	120	165
Plate	(2)	90	120
Pipe, tubing	(2)	90	120
Wire	(2)	120	165
Other mill forms:			
Ingots	(2)	90	120
Blooms, slabs, billets	(2)	90	120
Powder	(2)	90	120
Shapes and forms not listed above (including anode bars)	(2)	(2)	(2)
Castings (less gates and risers, rough as cast)	(2)	90	120

(1) See technical definitions in Schedule III.
(2) All stainless steel products, certain other steel products and all nickel alloy products. By negotiation between the mill and its customer. If no acceptable arrangements are worked out, the Office of Industrial Resource Administration should be notified.
(3) For clad products, add 45 days to lead time indicated.
(4) Includes projectile body stock, sizes under 2⅞ inches.
(5) If annealed or heat-treated, add an additional 15 days.
(6) For welded tubing or high carbon spring steel strip, 75 days.
(7) 60 days for high grade (AISI M15 and oriented).
(8) Steel pipe or tubing exceeding 36 inches O.D. is not a controlled material.
(9) Applies to special rolled shapes including angles and channels.
(10) Published carload minimum (mixed sizes and grades).
(11) Quantity refers to any assortment of wire merchant trade products.
(12) If cold-finished, add an addtional 15 days.
(13) For forging quality, product of one heat.
(14) Product of one heat.
(15) Includes anodes—rolled, forged, or sheared from cathodes.
(16) For refractory alloys, 60 days, except for tube over 5 inches in diameter, which should be 120 days.
(17) Standard package quantities as published by each mill.
(18) Standard minimum quantities as established by each mill.
(19) Lead time applies to unmachined castings after approval of patterns for production.
(20) Small simple castings to fit 12 x 16 inch flask, 7 days.

*Minimum quantity for each size and grade of any items for mill shipment at any one time to any one destination.
**Minimum number of days in advance of first day of month in which shipment is required.

NOTE: Leaders in figure columns indicate not applicable.

[49 FR 30414, July 30, 1984; 49 FR 50172, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989]

SCHEDULE III TO PART 700—TECHNICAL DEFINITIONS OF CONTROLLED MATERIALS PRODUCTS

Steel

Alloy steel—Steel containing 50 percent or more of iron or steel and any one or more of the following elements in the following amounts: manganese, maximum of range in excess of 1.65 percent; silicon, maximum of range in excess of 0.60 percent (excepting electrical sheet and strip); copper, maximum of range in excess of 0.60 percent; aluminum, boron, chromium (less than 10 percent), cobalt, columbium, molybdenum, nickel, tantalum, titanium, tungsten, vanadium, zirconium, or any other alloying elements in any amount specified or known to have been added to obtain a desired alloying effect. Clad steels which have an alloy steel base or carbon steel base for which nickel and/or chromium is contained in the coating or cladding material (*e.g.*, nickel-copper alloy, nickel-chrome-iron alloy or stainless) are alloy steels.

Alloy steel plate includes the following specifications:

—0.180 inch or thicker, over 48 inches wide
—0.230 inch or thicker, over 8 inches wide
—7.53 pounds per square foot or heavier, over 8 inches wide

Carbon steel—Any steel (including wrought iron) customarily so classified and also includes: (a) ingot iron; (b) all grades of electrical sheet and strip; (c) high-strength low-alloy steels; (d) clad and coated carbon steels not included with alloy steels: *e.g.*, galvanized, tin, terne, copper (excluding copper wire mill products) or aluminum clad and/or coated carbon steels; and (e) leaded carbon steels.

Carbon steel plate includes the following specifications, plus floor plates of any thickness:

—0.180 inch or thicker, over 48 inches wide
—0.230 inch or thicker, over 8 inches wide
—7.53 pounds per square foot or heavier, over 48 inches wide
—9.62 pounds per square foot or heavier, over 8 inches wide

High-strength low-alloy steels—Only the proprietary grade promoted and sold for this purpose, and Navy high-tensile steel grade HT Specification Mil–S–16113 (Ships).

Stainless steel—Heat and corrosion resisting steel containing 50 percent or more of iron or steel and 10 percent or more of chromium whether with or without nickel, molybdenum, or other elements.

Stainless steel plate includes the following size specifications: 3⁄16 inch (0.1875) or thicker, over 10 inches wide.

Standard steel pipe includes the following:

Ammonia pipe
Bedstead tubing
Driven well pipe
Drive pipe
Dry kiln pipe
Dry pipe for locomotives
English gas and steam pipe
Fence pipe
Furniture pipe
Ice machine pipe
Mechanical service pipe
Nipple pipe
Pipe for piling
Pipe for plating and enameling
Pump pipe
Signal pipe
Standard pipe coupling
Structural pipe
Turbine pump pipe
Water main pipe
Water well casing
Water well reamed and drifted pipe

Structural steel shapes—Rolled flanged sections having at least one dimension of their cross section 3 inches or greater, commonly referred to as angles, channels, beams, and wide flange sections.

Copper

Brass-mill products—Copper and copper-base alloys in the following forms: sheet, plate, and strip in flat lengths or coils; rod, bar, shapes, and wire (except copper wire mill products); anodes, rolled, forged, or sheared from cathodes; and seamless tube and pipe. Straightening, threading, chamfering, cutting to width or length, or reduction in gauge, do not constitute changes in form of brass mill products. The following related products which have been produced by a change in form of brass mill products are not included in the definition of brass mill products:

Circles, discs (except brass military ammunition discs)
Cups (except brass military ammunition cups)
Blanks and segments
Forgings (except anodes)
Welding rod, 3 feet or less in length
Rotating bands
Tube and nipple—welded, brazed, or mechanically seamed
Formed flashings
Engravers' copper

Copper-base alloy—Any alloy of which the percentage of copper metal equals or exceeds 40 percent by weight of the metallic content of the alloy. It does not include alloyed gold produced in accordance with U.S. Commercial Standard CS 67–38.

Copper foundry products—Cast copper and copper-based alloy shapes or forms suitable for ultimate use without remelting, rolling, drawing, extruding, or forging. The process of casting includes the removal of gates, risers, and sprues, and sandblasting, tumbling,

and dipping, but does not include any machining or further processing. For centrifugal casting, the process includes the removal of the rough cut in the inner or outer diameter, or both, before delivery to a customer. Castings include anodes and shot cast in a foundry or by an ingot maker.

Copper powder mill products—Copper or copper-base alloy in the form of granular or flake powder.

Copper raw materials include:

(a) *Refined copper*—Copper metal which has been refined by any process of electrolysis or fire-refined to a grade and in a form suitable for fabrication;

(b) *Blister copper*—High-grade crude copper in any form produced from converter operations and from which nearly all the oxidizable impurities have been removed by slagging and volatilization;

(c) *Copper and copper-base alloy scrap*—Including fired and demilitarized cartridge and artillery cases;

(d) *Brass mill casting*—From which brass mill or intermediate shapes may be rolled, drawn, or extruded, without remelting;

(e) *Copper-base alloy ingot*—To be used in remelting, alloying, or deoxidizing operations;

(f) *Copper or copper-base alloy shot and waffle*—To be used in remelting, alloying, deoxidizing, or chemical operations; and

(g) *Copper precipitates (or cement copper)*—Precipitated from mine water by contact with iron scrap, tin cans, or iron in other forms.

Copper wire mill products—Uninsulated or insulated wire and cable made from copper or copper-base alloy, used for transmission of electrical energy, whatever the outer protective coverings may be, and also copper-clad steel or aluminum wire containing over 20 percent copper by weight regardless of end use. Copper wire mill products shall be measured in terms of pounds of copper content.

Aluminum

Foil—A flat rolled product, rectangular in cross section, of thickness less than 0.006 inch.

Ingot includes:

(a) *Extrusion ingot (billet)*—A solid or hollow cast form, usually cylindrical, suitable for extruding;

(b) *Other ingot and molten metal, primary*—A cast form other than extrusion ingot (or molten metal), shipped by an integrated producer or nonintegrated fabricator from a company-owned facility not exclusively devoted to producing secondary ingot; and

(c) *Other ingot and molten metal, secondary*—A cast form other than extrusion ingot (or molten metal), principally produced from aluminum scrap to specification by secondary smelters (or others at a facility exclusively devoted to producing ingot from scrap for sale); excludes remelt scrap ingot (RSI) which is considered scrap until remelted and cast into specification ingot.

Pipe and tube includes:

(a) *Drawn tube*—A hollow wrought product that is long in relation to its cross section, which is round, square, rectangular, hexagonal, octagonal, or elliptical in shape, sharp or rounded corners, with a uniform wall thickness except as affected by corner radii, and brought to final dimensions by cold drawing through a die (includes tube that is sized);

(b) *Extruded pipe and tube*—A hollow wrought product formed by hot extruding with a uniform wall thickness (except as affected by corner radii) that is long in relation to its cross section, round, square, rectangular, hexagonal, octagonal, or elliptical in shape (excludes tube that is sized by cold drawing); and

(c) *Welded tube*—A hollow product that is long in relation to its cross section, which is round, square, rectangular, hexagonal, octagonal, or elliptical in shape, produced by forming and seam-welding sheet longitudinally.

Plate includes:

(a) *Plate, nonheat-treatable*—A flat rolled product, rectangular in cross section, 0.250 inch or greater in thickness, which can be strengthened only by cold work; and

(b) *Plate, heat-treatable*—A flat rolled product, in 2000, 6000, or 7000 alloy series (except 7072), rectangular in cross section, 0.250 inch or greater in thickness, which can be strengthened by a suitable thermal treatment.

Powder—An aggregate of discrete particles of aluminum, substantially all of which are finer than 1,000 microns (minus 18 mesh); and includes:

(a) *Atomized powder*—Powder produced by blowing or asperating molten metal through an orifice;

(b) *Flaked powder*—Powder consisting of flat or scale-like particles of a thickness small compared with other dimensions, produced by milling in the presence of a lubricant; and

(c) *Paste*—A blend of powder or flake with a thinner or plasticizer.

Rod and bar includes:

(a) *Conductor redraw rod (continuous-cast or rolled)*—A solid round product that is long in relation to cross section, 0.375 inch or greater in diameter, produced by continuous casting followed by size-rolling or by rolling from DC cast ingot, suitable for drawing into electrical conductor wire;

(b) *Nonconductor redraw rod (continuous-cast or rolled)*—A solid round product that is long in relation to cross section, 0.375 inch or greater in diameter, produced by continuous casting followed by size-rolling, or by rolling from D.C. cast ingot, suitable for drawing into nonconductor wire;

(c) *Other rod and bar (continuous-cast or rolled)*—A solid round, square, rectangular, hexagon, or octagon-shaped product, produced by continuous casting or rolling that is long in relation to cross section, 0.375 inch or greater in diameter or in at least one perpendicular distance between parallel faces, other than the redraw rod and DC cast ingot; and

(d) *Extruded rod and bar*—A solid product produced by extruding (sometimes brought to final dimensions by drawing) that is long in relation to cross section, which is round, square, rectangular, hexagonal, or octagonal in shape and 0.375 inch or greater in diameter or in at least one perpendicular distance between parallel faces.

Shapes includes:

(a) *Extruded shapes*—A product produced by extruding, that is long in relation to its cross-sectional dimensions and has a cross section other than that of rod and bar and pipe and tube; and

(b) *Rolled structural shapes*—A structural shape produced by hot rolling.

Sheet includes:

(a) *Sheet, nonheat-treatable*—A rolled product, flat or coiled, rectangular in cross section, of 0.006 inch thickness but under 0.250 inch thickness, which can be strengthened only by cold work; and

(b) *Sheet, heat-treatable*—A rolled product, in 2000, 6000, 7000 alloy series (except 7072), flat or coiled, rectangular in cross section, of 0.006 inch thickness but under 0.250 inch thickness, which can be strengthened by a suitable thermal treatment.

Wire and cable includes:

(a) *Wire, bare, conductor and nonconductor*—A solid wrought product that is long in relation to its cross section, which is square, round, rectangular, hexagonal, or octagonal in shape, whose diameter or greatest perpendicular distance between parallel faces (except for flattened wire) is less than 0.375 inch;

(b) *ACSR and aluminum cable, bare*—Aluminum stranded conductor reinforced by a core of steel (ACSR), or aluminum (ACAR), or any other bare stranded aluminum conductor; and

(c) *Wire and cable, insulated or covered*—Aluminum electrical conductor wire or stranded conductors that are insulated or covered.

Nickel Alloys

Nickel alloys—Those alloys for which the specified nickel content is 10 percent or more up to and including pure nickel, and which the iron content is nominally less than 50 percent of iron, and which does not contain as much as 40 percent of copper, nor as much as 50 percent of aluminum, in the shapes and forms shown in Schedule II. It also includes cast iron for which the specified nickel content is 5 percent or more. It does not include primary nickel in the forms of electrolytic cathodes, pigs, rondelles, cubes, pellets, shot, briquettes, oxide (including sintered oxide), salts, or chemicals; nor does it include primary nickel in the forms of ingots or powder for remelting.

SCHEDULE IV TO PART 700—COPPER CONTROLLED MATERIALS PRODUCERS' SET-ASIDE BASE AND PERCENTAGES

Set-aside Base—Average monthly shipments for a producer's own account during the previous calendar year.

Product	Set-aside percentages[1]
Brass mill products:	
Unalloyed:	
Plate, sheet, strip, and rolls	3
Rod, bar, shapes, and wire	3
Seamless tube and pipe	2
Alloyed:	
Plate, sheet, strip, and rolls	2
Rod, bar, shapes, and wire	2
Seamless tube and pipe	7
Military ammunition cups and discs	10
Copper wire mill products:	
Bare and tinned	2
Weatherproof	2
Magnet wire	2
Paper and lead power cable	2
Paper and lead telephone cable	2
Asbestos cable	2
Portable and flexible cord	2
Communications wire and cable	2
Shipboard cable	2
Automotive and aircraft wire and cable	2
Insulated power cable	2
Signal and control cable	2
Coaxial cable	2
Copper-clad steel wire containing over 20 percent copper by weight regardless of end use	2
Copper foundry products	2
Copper and copper-base alloy powder mill products	(2)

[1] Applies to metal weight, except copper wire mill products, which are by copper content.

[2] No reserve space required. Producers of these products are nevertheless required to accept rated orders for such products in accordance with the provisions of this regulation.

SCHEDULE V TO PART 700—NICKEL ALLOYS CONTROLLED MATERIALS PRODUCERS' SET-ASIDE BASE AND PERCENTAGES

Set-aside Base— Average monthly shipments, by each producer, during the previous calendar year.

Product	Set-aside percentages
Rod and bars (except anode bars):	
Hot-rolled, including wire rod	10
Forging quality	10
Cold-finished	10

Product	Set-aside percentages
Sheet and strip:	
Hot-rolled	10
Cold-rolled	10
Foil	10
Plate	10
Pipe, tubing	10
Wire	10
Other mill forms:	
Ingots	10
Blooms, slabs, billets	10
Powder	10
Shapes and forms not listed above (including anode bars)	10
Castings (less gates and risers, rough as cast)	10

APPENDIX I TO PART 700—DELEGATIONS OF AUTHORITY

DPAS DEL. 1—Delegation of Authority to the Secretary of Defense; Defense Priorities and Allocations System (15 CFR part 700)

1. *Authority.*

Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*); Executive Order 10480, 18 FR 4939, 3 CFR 1949–1953 Comp., p. 962, as amended; and Defense Mobilization Order (DMO) 3, 44 CFR 322.

2. *Purpose.*

(a) This document delegates certain authority to the Secretary of Defense necessary to the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700).

(b) Certain specifics concerning the implementation of this delegated authority are contained in a Statement of Conditions to this delegation issued by the Office of Industrial Resource Administration (OIRA), Department of Commerce (DOC).

3. *Rating Authority.*

(a) The Secretary of Defense is delegated the authority to place rated contracts and orders in support of Department of Defense (DOD) programs authorized by the Director, Federal Emergency Management Agency.

(b) The Secretary of Defense is delegated the authority to use the DX rating symbol in placing rated orders for those authorized programs determined by the President to be of the Highest National Priority as described in the DOD Master Urgency List.

4. *Co-production Programs.*

(a) The Secretary of Defense may request priority rating authority from DOC for specific co-production programs, and if granted, may authorize only those foreign firms which have entered into a formal co-production agreement with a U.S. producer to use priority ratings.

(b) DOC may authorize the use of priority ratings by other foreign firms providing items necessary to the co-production activity on a case-by-case basis.

5. *Production and Construction Equipment.*

(a) The Secretary of Defense may authorize persons to place rated orders for delivery of production equipment required to support authorized programs of DOD, when the equipment is necessary for the timely performance of rated orders and timely delivery of the equipment cannot be obtained otherwise.

(b) The Secretary of Defense may authorize persons to place rated orders for delivery of construction equipment, when the equipment is to be used for authorized construction projects and when timely delivery of the equipment cannot be obtained otherwise.

6. *Delivery Scheduling.*

The Secretary of Defense is delegated the authority to reschedule deliveries of materials which are required in support of DOD programs, provided that such authority shall be used (1) only to reschedule deliveries among contracts or orders assigned priority ratings by DOD, and (2) only to the extent that such rescheduling of deliveries requires no change in production schedules of other rated orders.

7. *Special Priorities Assistance.*

The Secretary of Defense may sponsor requests by persons for special priorities assistance upon determining the defense urgency of the requested assistance. DOD will: (1) serve as the initial point of contact for persons needing assistance, (2) verify the accuracy of the information provided and make reasonable efforts to resolve the issues, and, when necessary, (3) expeditiously forward the request through established DOD channels to DOC to facilitate timely resolution. Upon receipt of the request for special priorities assistance, DOC will take immediate action to effect resolution and will keep DOD advised of progress.

8. *Controlled Materials.*

The Secretary of Defense is delegated the authority to make allotments of controlled materials to other agencies in support of authorized defense programs.

9. *Compliance, Audits, and Training.*

In exercising this delegation, the Secretary of Defense should ensure that both DOD personnel and defense contractors are in full compliance with the provisions of the DPAS regulation. Accordingly:

(a) The Secretary of Defense is delegated the authority to review the implementation of the DPAS by all persons who are in receipt of rated orders supporting DOD programs. However, this review shall not include inquiries into any unrated activities of these persons.

(b) The Secretary of Defense shall notify DOC of any alleged violations of the priorities and allocations provisions of the Defense Production Act or the DPAS regulation.

(c) The Secretary of Defense should conduct a continuing training program to ensure that appropriate DOD and contractor personnel are thoroughly familiar with the provisions of the DPAS and this delegation.

10. *Limitations of Authority.*

(a) This delegated authority shall not be used for (1) civilian items for resale in Military Exchanges or the packaging for such items; (2) material purchased from exclusively retail establishments; (3) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management; or (4) direct procurement by or for DOD of any items specifically set forth in the Statement of Conditions to this delegation (not published).

(b) This delegation shall be implemented in accordance with the DPAS regulation, the Statement of Conditions to this delegation (not published), and any other regulations or official actions issued by DOC. It does not limit the authority of the Secretary of Commerce under Executive Order 10480 or other authority.

11. *Redelegations of Authority.*

The authority granted by this delegation may be redelegated within DOD and to other agencies of the United States administering DOD programs. Any redelegations of such authority shall be made in writing with a copy furnished to DOC. No other redelegations of such authority shall be made without the prior written approval of DOC.

12. *Effective Date and Revocation of Previous Delegations.*

This delegation of authority shall take effect August 29, 1984, revoking all previous delegations issued by DOC to DOD relating to these authorities.

Dated: June 21, 1984.

Walter J. Olson,

Deputy Assistant Secretary of Commerce for Export Administration.

DPAS DEL. 2—Delegation of Authority to the Secretary of Energy; Defense Priorities and Allocations System (15 CFR part 700)

1. *Authority.*

Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*); Executive Order 10480, 18 FR 4939, 3 CFR 1949–1953 Comp., p. 962, as amended; Executive Order 11912, 41 FR 15825, 3 CFR 1976 Comp., p. 114, as amended; Executive Order 12148, 44 FR 43239, 3 CFR 1979 Comp., p. 393, as amended; Defense Mobilization Order (DMO) 3, 44 CFR 322; and DMO–13, 44 CFR 330.

2. *Purpose.*

(a) This document delegates certain authority to the Secretary of Energy necessary to the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700).

(b) Certain specifics concerning the implementation of this delegated authority are contained in a Statement of Conditions to this delegation issued by the Office of Industrial Resource Administration (OIRA), Department of Commerce (DOC).

3. *Rating Authority.*

(a) The Secretary of Energy is delegated the authority to place rated contracts and orders in support of Department of Energy (DOE) programs for national defense authorized by the Director, Federal Emergency Management Agency.

(b) The Secretary of Energy, in accordance with Executive Order 11912, is delegated the authority to make the findings required by section 101(c) of the Defense Production Act of 1950, as amended, that specified material or equipment is critical and essential:

(1) To maintain or further domestic exploration, production, refining, or transportation;

(2) To conserve energy supplies; or

(3) To construct or maintain energy facilities.

(c) The Secretary of Energy is delegated the authority to use the DX rating symbol in placing rated orders for those authorized programs determined by the President to be of the Highest National Priority as described in the DOD Master Urgency List.

4. *Production and Construction Equipment.*

(a) The Secretary of Energy may authorize persons to place rated orders for delivery of production equipment required to support authorized atomic energy programs, when the equipment is necessary for the timely performance of rated orders and timely delivery of the equipment cannot be obtained otherwise.

(b) The Secretary of Energy may authorize persons to place rated orders for delivery of construction equipment, when the equipment is to be used for authorized atomic energy construction projects and timely delivery of the equipment cannot be obtained otherwise.

5. *Delivery Scheduling.*

The Secretary of Energy is delegated the authority to reschedule deliveries of materials which are required in support of DOE programs, provided that such authority shall be used (1) only to reschedule deliveries among contracts or orders assigned priority ratings by DOE, and (2) only to the extent that such rescheduling of deliveries requires no change in production schedules of other rated orders.

6. *Special Priorities Assistance.*

The Secretary of Energy may sponsor requests by persons for special priorities assistance upon determining the defense or energy-related urgency of the requested assistance. DOE will: (1) serve as the initial point of contact for persons needing assistance, (2) verify the accuracy of the information provided and make reasonable efforts to resolve

the issues, and when necessary, (3) expeditiously forward the request through established DOE channels to DOC to facilitate timely resolution. Upon receipt of the request for special priorities assistance, DOC will take immediate action to effect resolution and will keep DOE advised of progress.

7. *Compliance, Audits, and Training.*

In exercising this delegation, the Secretary of Energy should ensure that both DOE personnel and defense contractors are in full compliance with the provisions of the DPAS regulation. Accordingly:

(a) The Secretary of Energy is delegated the authority to review the implementation of the DPAS by all persons who are in receipt of rated orders supporting DOE programs. However, this review shall not include inquiries into any unrated activities of these persons.

(b) The Secretary of Energy shall notify DOC of any alleged violations of the priorities and allocations provisions of the Defense Production Act or of the DPAS regulation.

(c) The Secretary of Energy should conduct a continuing training program to ensure that appropriate DOE and contractor personnel are thoroughly familiar with the provisions of the DPAS and this delegation.

8. *Limitations of Authority.*

(a) This delegated authority shall not be used for (1) material purchased from exclusively retail establishments; (2) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management; or (3) direct procurement by or for DOE of any items specifically set forth in the Statement of Conditions to this delegation (not published).

(b) Priority ratings to support the maximization of domestic energy supplies provided by section 101(c) of the Defense Production Act of 1950, as amended, may only be used after the findings required by section 101(c) have been made:

(1) The Secretary of Energy must determine that the energy program involved maximizes domestic energy supplies; and find that the specific material or equipment is critical and essential.

(2) The Secretary of Commerce must find that the specific material or equipment is scarce; and that there is a reasonable need to use the priorities and allocations authorities.

(c) This delegation shall be implemented in accordance with the DPAS regulation, the Statement of Conditions to this delegation (not published), and any other regulations and official actions issued by DOC. It does not limit the authority of the Secretary of Commerce under Executive Order 10480 or other authority.

9. *Redelegations of Authority.*

The authority granted by this delegation may be redelegated within DOE and to other agencies of the United States administering DOE programs. Any redelegations of such authority shall be made in writing with a copy furnished to DOC. No other redelegations of such authority shall be made without the prior written approval of DOC.

10. *Effective Date and Revocation of Previous Delegations.*

This delegation of authority shall take effect August 29, 1984, revoking all previous delegations issued by DOC relating to these authorities.

Dated: June 21, 1984.

Walter J. Olson,

Deputy Assistant Secretary of Commerce for Export Administration.

DPAS DEL. 3—Delegation of Authority to the Administrator of General Services; Defense Priorities and Allocations System (15 CFR part 700)

1. *Authority.*

Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*); Executive Order 10480, 18 FR 4939, 3 CFR 1949–1953 Comp., p. 962, as amended; and Defense Mobilization Order (DMO) 3, 44 CFR 322.

2. *Purpose.*

(a) This document delegates certain authority to the Administrator of General Services necessary to the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700).

(b) Certain specifics concerning the implementation of this delegated authority are contained in a Statement of Conditions to this delegation issued by the Office of Industrial Resource Administration (OIRA), Department of Commerce (DOC).

3. *Rating Authority.*

The Administrator of General Services is delegated the authority to place DO rated contracts and orders in support of the General Services Administration's (GSA) Supply Distribution Program for items acquired for authorized programs of the Departments of Defense and Energy. In placing rated orders, GSA is to use the program identification symbol K1.

4. *Special Priorities Assistance.*

The Administrator of General Services may sponsor requests by persons for special priorities assistance upon determining the defense urgency of the requested assistance. GSA will: (1) serve as the initial point of contact for persons needing assistance, (2) verify the accuracy of the information provided and make reasonable efforts to resolve the issues, and when necessary, (3) expeditiously forward the request through established GSA channels to DOC to facilitate timely resolution. Upon receipt of the request for special priorities assistance, DOC will take immediate action to effect resolution and will keep GSA advised of progress.

5. *Compliance, Audits, and Training.*

In exercising this delegation, the Administrator of General Services should ensure that both GSA personnel and defense contractors are in full compliance with the provisions of the DPAS regulation. Accordingly:

(a) The Administrator of General Services is delegated the authority to review the implementation of the DPAS by all persons who are in receipt of rated orders supporting the GSA Supply Distribution Program. However, this review shall not include inquiries into any unrated activities of these persons.

(b) The Administrator of General Services shall notify DOC of any alleged violations of the priorities and allocations provisions of the Defense Production Act or the DPAS regulation.

(c) The Administrator of General Services should conduct a continuing training program to ensure that appropriate GSA and contractor personnel are thoroughly familiar with the provisions of the DPAS and this delegation.

6. *Limitations of Authority.*

(a) This delegation is restricted to the GSA Supply Distribution Program and shall be implemented in accordance with the DPAS regulation, the Statement of Conditions to this delegation (not published), and any other regulations and official actions issued by DOC. It does not limit the authority of the Secretary of Commerce under Executive Order 10480 or other authority.

(b) This delegated authority shall not be used for (1) material purchased from exclusively retail establishments; (2) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management; or (3) direct procurement by or for GSA of any items specifically set forth in the Statement of Conditions to this delegation (not published).

7. *Redelegations of Authority.*

The authority granted by this delegation may be redelegated within GSA. Any redelegations of such authority shall be made in writing with a copy furnished to DOC. No other redelegations of such authority shall be made without the prior written approval of DOC.

8. *Effective Date and Revocation of Previous Delegations.*

This delegation of authority shall take effect August 29, 1984, revoking all previous delegations issued by DOC to GSA relating to these authorities.

Dated: June 21, 1984.

Walter J. Olson,

Deputy Assistant Secretary of Commerce for Export Administration.

DPAS DEL. 4—Delegation of Authority to the Director of the Federal Emergency Management Agency; Defense Priorities and Allocations System (15 CFR part 700)

1. *Authority.*

Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*); Executive Order 10480, 18 FR 4939, 3 CFR 1949–1953 Comp., p. 962, as amended; and Defense Mobilization Order (DMO) 3, 44 CFR 322.

2. *Purpose.*

(a) This document delegates certain authority to the Director, Federal Emergency Management Agency (FEMA), necessary to the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700).

(b) Certain specifics concerning the implementation of this delegated authority are contained in a Statement of Conditions to this delegation issued by the Office of Industrial Resource Administration (OIRA), Department of Commerce (DOC).

3. *Rating Authority.*

The Director of FEMA is delegated the authority to place, and upon application, to authorize state and local governments to place, DO rated contracts and orders in support of federal, state, and local civil defense programs or projects approved by FEMA as directly related to programs for the national defense. In placing rated orders, FEMA and the state and local governments are to use the program identification symbol N1.

4. *Special Priorities Assistance.*

The Director of FEMA may sponsor requests by persons for special priorities assistance upon determining the defense urgency of the requested assistance. FEMA will: (1) serve as the initial point of contact for persons needing assistance, (2) verify the accuracy of the information provided and make reasonable efforts to resolve the issues, and when necessary, (3) expeditiously forward the request through established FEMA channels to DOC to facilitate timely resolution. Upon receipt of the request for special priorities assistance, DOC will take immediate action to effect resolution and will keep FEMA advised of progress.

5. *Compliance, Audits, and Training.*

In exercising this delegation, the Director of FEMA should ensure that FEMA personnel, federal, state, and local officials, and defense contractors are in full compliance with the provisions of the DPAS regulation. Accordingly:

(a) The Director of FEMA is delegated the authority to review the implementation of the DPAS by all persons who are in receipt of, or authorized to place, rated orders supporting the FEMA approved federal, state and local civil defense programs or projects. However, this review shall not include inquiries into any unrated activities of these persons.

(b) The Director of FEMA shall notify DOC of any alleged violations of the priorities and allocations provisions of the Defense Production Act or the DPAS regulation.

(c) The Director of FEMA should conduct a continuing training program to ensure that appropriate FEMA personnel, federal, state, and local officials, and contractor personnel are thoroughly familiar with the provisions of the DPAS and this delegation.

6. *Limitations of Authority.*

(a) This delegation is restricted to federal, state, and local civil defense programs and projects approved by FEMA as directly related to programs for the national defense, and shall be implemented in accordance with the DPAS regulation, the Statement of Conditions to this delegation (not published), and any other regulations and official actions issued by DOC. It does not limit the authority of the Secretary of Commerce under Executive Order 10480 or other authority.

(b) This delegated authority shall not be used for (1) material purchased from exclusively retail establishments; (2) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management; or (3) direct procurement by or for FEMA of any items specifically set forth in the Statement of Conditions to this delegation (not published).

7. *Redelegations of Authority.*

The authority granted by this delegation may be redelegated within FEMA. Any redelegations of such authority shall be made in writing with a copy furnished to DOC. No other redelegations of such authority shall be made without the prior written approval of DOC.

8. *Effective Date of Delegation.*

This delegation of authority shall take effect August 29, 1984.

Dated: June 21, 1984.

Walter J. Olson,

Deputy Assistant Secretary of Commerce for Export Administration.

[49 FR 30414, July 30, 1984; 49 FR 50171, Dec. 27, 1984]

APPENDIX II TO PART 700—INTERAGENCY MEMORANDUM OF UNDERSTANDING

DEPARTMENTS OF AGRICULTURE AND COMMERCE—MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF AGRICULTURE AND COMMERCE CONCERNING PRIORITIES AND ALLOCATIONS JURISDICTION AND RESPONSIBILITIES FOR FOODS WHICH HAVE INDUSTRIAL USES

A. Purpose

This Understanding sets forth the priorities and allocations jurisdiction and responsibilities of the Department of Agriculture (Agriculture) and the Department of Commerce (Commerce) for defense mobilization in the event of a national emergency, and for emergency preparedness functions, as they relate to foods which have industrial uses.

B. Authority

1. Section 201(a) of Executive Order 10480, as amended (E.O. 10480), and Defense Mobilization Order 3 (DMO 3) (44 CFR 322) provide for the delegation of authority for the administration of priorities and allocations functions under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), to the Secretary of Agriculture with respect to food; and to the Secretary of Commerce with respect to all other materials and facilities not specifically delegated to other agencies.

2. Section 901 *et seq.* of Executive Order 11490, as amended (E.O. 11490), delegates to the Secretary of Commerce the authority for preparing national emergency plans and developing preparedness programs covering the production and distribution of all materials and the use of all production facilities, except those that are specifically assigned to, or under the jurisdiction of other agencies. Section 801 *et seq.* of E.O. 11490 provides for the delegation of authority with respect to the production, processing, distribution, and storage of food resources, and the use of food resource facilities, to the Secretary of Agriculture.

3. Section 601(h) of E.O. 10480 defines the term ''food'' as:

* * * all commodities and products, simple, mixed, or compound or complements to such commodities or products, that are capable of being eaten or drunk by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption * * *. The term ''food'' shall also include all starches, sugars, vegetable and animal fats and oils, cotton, tobacco, wool, mohair, hemp, flax fiber, and naval stores, but shall not include any such material after it loses its identity as an agricultural commodity or agricultural product.

Section 802(1) of E.O. 11490 defines the term ''food resources'' in the same language. Accordingly, these terms are used interchangeably in this Understanding.

4. The functions delegated by these authorities to the Secretaries of Agriculture and Commerce have been redelegated by the Secretary of Agriculture to the Administrator, Agricultural Stabilization and Conservation Service (ASCS), and by the Secretary of Commerce to the Director, Office of Industrial Resource Administration (OIRA).

C. General Provisions

1. This Understanding covers only food and agricultural commodities and products

which have industrial uses. Jurisdiction over such commodities will normally pass to Commerce at the point where the foods are no longer capable of being eaten or drunk, except as otherwise provided.

2. The provisions of this Understanding covering fibers are limited to those specifically mentioned in E.O. 10480 and 11490 (*i.e.*, cotton, wool, mohair, hemp and flax fiber), and have the purpose of defining the points at which these fibers lose their identity as agricultural commodities or agricultural products.

3. Both Agriculture and Commerce have jurisdiction over the major food commodities listed in section D of this Understanding. For each of these commodities, the point at which the jurisdiction of Agriculture will end is indicated and, except as otherwise provided, the jurisdiction of Commerce will begin at that point.

(a) The points at which the jurisdiction of Agriculture will terminate are expressed in terms of a particular stage of production or processing pursuant to the authority provided in E.O. 10480 and 11490, and at a point considered to be most administratively feasible.

(b) Consideration is given wherever possible to the structure of an industry. The wet-milling industry, for example, is large and integrated and it is desirable that Agriculture have jurisdiction over the raw products while they are a part of this industry and until they enter the processes of other industries which result in their becoming nonfood or nonagricultural products. As an illustration, corn starch for textile sizing would be under the jurisdiction of Agriculture while it is being extracted from the corn and prepared for use by the textile industry. It would still be under the jurisdiction of Agriculture until it enters the textile manufacturing process. At this point, jurisdiction over this commodity shifts to Commerce.

(c) Commodities such as fats and oils, grain products, egg products, starch from all sources, spices, and tartaric acid are used for the manufacture of so many nonfood or nonagricultural products that it is not practical to enumerate all of these products in section D and to identify in each case the exact beginning process. Consequently, the principle for determining the respective jurisdiction of the two Departments in cases of this type is expressed broadly and supplemented by a few examples of nonfood and nonagricultural products so as to clarify the application of the principle. These examples are not intended to be all-inclusive.

4. Imports and exports of food and agricultural commodities and products in any form prior to industrial uses are within the jurisdiction of Agriculture, subject to meeting requirements that may be imposed by any other agency in the exercise of its authority.

5. Agriculture will, with noted exceptions, allocate and exercise priority controls on food and agricultural commodities and products, taking into account claims presented by Commerce. However, the suballocation of food and agricultural commodities or products for conversion into non-food and nonagricultural commodities or products will be made in accordance with the recommendations of Commerce.

6. It is understood that relationships between Agriculture and Commerce involving jurisdiction over particular functions and particular commodities may have to be amplified at a later time. It is also recognized that there will be situations in which operations of the same person, as defined in section 702(a) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2152(a)), will be affected by the exercise of the respective authorities of the two Departments under this Understanding. To avoid overlapping and duplication of reporting and related operations in such situations, it is agreed that the two Departments will work out specific cooperative arrangements whereby the facilities of one shall be utilized by the other and that efforts will be made to provide the most feasible arrangements for administering necessary program controls.

7. To assure that both Agriculture and Commerce have full authority to implement their respective responsibilities under E.O. 10480 and 11490, and DMO 3, as well as to effectuate the provisions of this Understanding, each Department delegates to the other the requisite authority for the exercise of priorities and allocations functions as set forth in this Understanding.

D. Particular Commodities

The following list identifies some major food and agricultural commodities and commodity groups in which both Agriculture and Commerce have an interest and provides the point at which Agriculture's jurisdiction ends and Commerce's jurisdiction begins. This list is not all-inclusive but it does cover the major items for which jurisdiction might become an issue.

1. Agriculture shall have jurisdiction over the following commodities until they enter any manufacturing process and lose their identity as food or as agricultural commodities or products (examples are set forth in parentheses after the name of the commodity):

(a) Egg products. (Shampoos, products used in printing, pharmaceuticals)

(b) Fats and oils. (Paints, soap, varnishes, lacquers, printer's ink, cosmetics, pharmaceuticals)

(c) Fatty acids. (Paints, soap, cosmetics, chemicals, pharmaceuticals)

(d) Grain and grain products, including dextrin, corn syrups, grain sugars, lactic acid, gluten, and low-grade wheat flour.

(Textiles, adhesives, leather, core binders, pharmaceuticals, nonbeverage alcohol)

(e) Molasses, including blackstrap and high-test, and potatoes. (Nonbeverage alcohol)

(f) Spices, essential oils. (Cosmetics)

(g) Starches. (Adhesives, asbestos, textiles, explosives)

(h) Sugars. (Insecticides, plasticizing agents, adhesives)

(i) Tartaric acid. (Products used in photography, dyeing, textile printing)

2. Agriculture shall have jurisdiction over the following commodities until the specifically designated point in their processing, except as otherwise provided:

(a) Cotton lint and linters, hemp and flax fiber—When the bale is opened for the purpose of processing in the mill in which it is opened. This authority shall extend to the delivery and distribution of soft types of cotton waste but shall not include control over the use of such waste in the mill producing it.

(b) Milk and milk products—When the milk and milk products enter a plant where they are to be used or processed for industrial purposes as distinct from use as human food or animal feed. Agriculture shall have jurisdiction over imports of milk and milk products intended for use as human food or animal feed, while Commerce shall have jurisdiction over imports intended for industrial purposes only.

(c) Wool and mohair—When the wool and mohair (grease and scoured, shorn and pulled) enter a plant where they are to be used, or manufactured into a final product. Inventories of scoured wool or scoured mohair held by manufacturers for their use in producing other products, whether by incorporation into such products or otherwise, shall be controlled by Commerce. The jurisdiction of Agriculture shall extend to the delivery and distribution of noils but shall not include control over the use of noils by the mill producing them.

(d) Naval stores:

(1) Tall oil (sulfate naval stores). Commerce shall have jurisdiction over the production, distribution, processing, and allocation. The distribution of tall oil fatty acids shall be under the jurisdiction of Agriculture.

(2) Wood. Commerce shall have jurisdiction over production, distribution, processing, and allocation.

(3) Gum. Agriculture shall have jurisdiction over production through the first processing of the gum. Commerce shall have jurisdiction over allocation.

(4) Commerce will consult with Agriculture before allocating naval stores in order to avoid conflict with programs administered by Agriculture.

3. The following commodities are under the jurisdiction of the designated Department:

(a) Ice—Agriculture.

(b) Tobacco and tobacco products—Agriculture.

(c) Hides and leather, hair and bristles, feathers, soap. detergents, beeswax, pharmaceuticals (including medicines and vitamins), acetic acid, chemical leavening compounds and salt—Commerce.

4. In order to further clarify the division of authority for fats and oils, Schedule A to this Understanding lists major fats and oils, and fat and oil products, over which Agriculture has jurisdiction and the major products of fats and oils, and products produced using fats and oils, over which Commerce has jurisdiction.

5. It is recognized that quantities of certain commodities may be needed for food use which are under the jurisdiction of Commerce. Conversely, raw materials for manufacturing may be needed which are under the jurisdiction of Agriculture. In situations of this kind and for other similar commodities not listed in this section, working arrangements will be developed between ASCS and OIRA as the need arises pursuant to the principles set forth in this Understanding.

E. Effective Date

This Memorandum of Understanding supersedes the Memorandum of Agreement between the Administrators of the Agricultural Marketing Service and the ASCS of the Department of Agriculture, and the Acting Deputy Assistant Secretary for Competitive Assessment and Business Policy of the Department of Commerce, concerning foods which have industrial uses, and signed by them on November 2, 7, and 10, 1973, respectively (38 FR 33504, December 5, 1973); and shall take effect August 29, 1984.

Department of Agriculture

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service

Date: June 15, 1984.

Department of Commerce

John A. Richards,

Director, Office of Industrial Resource Administration

Date: June 14, 1984.

SCHEDULE A—JURISDICTION OVER FATS AND OILS

I. Fats and oils and fats and oils products under the jurisdiction of Agriculture:

A. Animal and marine.

1. ANIMAL FATS

Lard	Wool grease and lanoline
Marrow	Neats foot oil
Tallows and greases	

2. MARINE OILS

Cod	Salmon
Dogfish	Sardine
Fulachon	Seal
Herring	Shark
Menhaden	Whale
Pilchard	

3. MARINE LIVER OILS

Cod	Swordfish
Dogfish	Tuna fish
Shark	

4. OTHER ANIMAL AND MARINE FATS AND OILS

Fatty acids	Oleo oil and oleo searin
Foots	Soap stocks

B. Vegetable.

1. VEGETABLE FATS AND OILS

Cocoa butter	Olive residue
Fatty acids	Soap stocks
Lecithin	Tallows and greases
Oiticic	

2. MAJOR VEGETABLE OILS

Babassu nut	Palm kernel
Castor	Peanut
Corn	Rapeseed
Coconut	Safflower seed
Cottonseed	Sesame
Linseed	Soybean
Olive	Sunflower seed
Palm	Tung

3. OTHER VEGETABLE OILS

Cashew nut	Ouricury
Cohune	Perilla
Colza	Poppy seed
Hemp seed	Rubber seed
Kapok seed	Tea seed
Murumuru	Tucum
Mustard	

C. Edible fats and oils products, including:

Butter	Margarine
Cooking oil and compounds	Salad oils
Lard compounds	Shortenings

D. Combinations and mixtures of animal, marine, vegetable, nut and seed fats and oils, or any of them.

II. Products of fats and oils and products produced using fats and oils under the jurisdiction of Commerce:

Coated fabrics and floor coverings
Glycerine
Inedible products of fats and oils
Paints, varnishes, lacquers
Printer's ink
Soap

DEPARTMENTS OF AGRICULTURE AND COMMERCE—MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF AGRICULTURE AND COMMERCE CONCERNING PRIORITIES AND ALLOCATIONS JURISDICTION AND RESPONSIBILITIES FOR FARM EQUIPMENT

A. Purpose

This Understanding sets forth the priorities and allocations jurisdiction and responsibilities of the Department of Agriculture and the Department of Commerce for defense mobilization in the event of a national emergency, and for emergency preparedness functions, as they relate to the domestic distribution of farm equipment.

B. Authority

1. Section 201(a) of Executive Order 10480, as amended (E.O. 10480), and Defense Mobilization Order 3 (DMO 3) (44 CFR 322) provide for the delegation of authority for the administration of priorities and allocations functions under the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*), to the Secretary of Agriculture with respect to the domestic distribution of farm equipment; and to the Secretary of Commerce with respect to all other materials and facilities not specifically delegated to other agencies.

2. Section 601(i) of E.O. 10480 defines the term ''farm equipment'' to mean equipment manufactured for use on farms in connection with the production or processing of food.

3. Section 901 *et seq.* of Executive Order 11490, as amended (E.O. 11490), delegates to the Secretary of Commerce the authority for preparing national emergency plans and developing preparedness programs covering the production and distribution of all materials and the use of all production facilities, except those that are specifically assigned to, or under the jurisdiction of other agencies. Section 801 *et seq.* of E.O. 11490 provides for the delegation of this authority with respect to the domestic distribution of farm equipment to the Secretary of Agriculture.

4. The functions delegated by these authorities to the Secretaries of Agriculture and Commerce have been redelegated by the Secretary of Agriculture to the Administrator, Agricultural Stabilization and Conservation Service (ASCS), and by the Secretary of Commerce to the Director, Office of Industrial Resource Administration (OIRA).

C. General Provisions

1. The term ''farm equipment'' as used in E.O. 10480 and 11490, for the purposes of this Understanding, includes only those items of machinery, equipment, attachments, and repair or replacement parts identified in Schedule A to this Understanding.

2. In a national emergency or mobilization situation, OIRA may request ASCS to make

special distribution of the farm equipment items listed in Schedule A that can be used off the farm for civil defense and life saving purposes. ASCS will give full consideration to these requests in accordance with the priorities and allocations policies of the Federal Government in effect at that time.

D. Effective Date

This Memorandum of Understanding supersedes the Memorandum of Understanding and Agreement between the Administrator of the ASCS of the Department of Agriculture, and the Acting Deputy Assistant Secretary for Competitive Assessment and Business Policy of the Department of Commerce, concerning the scope of the term ''Farm Equipment'', and signed by them on November 7 and 10, 1973, respectively (38 FR 34749, December 5, 1973); and shall take effect August 29, 1984.

Department of Agriculture
Everett Rank,
Administrator, Agricultural Stabilization and Conservation Service

Date: June 15, 1984.

Department of Commerce
John A. Richards,
Director, Office of Industrial Resource Administration

Date: June 14, 1984.

SCHEDULE A—FARM EQUIPMENT

Tractors, Wheel, Manufactured Specifically for Farm Use

Farm Tractors, 2-Wheel Drive, 20 to 39 PTO HP
Farm Tractors, 2-Wheel Drive, 40 to 99 PTO HP
Farm Tractors, 2-Wheel Drive, Over 100 PTO HP
Farm Tractors, 4-Wheel Drive,

Tillage Equipment

Bedders, Bed Levelers, Shapers, and Splitters
Blockers and Thinners, row crop
Cultivators, Field, Row Crop, Tobacco and Vineyard, mounted and pull type
Harrows, including: spike-tooth, spring-tooth, tine-tooth, disk, rotary, offset, knife, oscillating, bush and bog, and tandem disk
Land Levelers
Middlebusters, Ridgebusters, and Clodbusters
Mulch Tillage Implements
Plows, including: moldboard, chisel, ditching, terracing, and one-way disk
Pulverizers, stalk
Ridgelevelers
Rod Weeders
Rotary Hoes and Tillers, field type
Rollers and Cultipackers, including combination harrow-packers
Shredders, brush and stalk, bush hog
Stubble Shavers, cane
Subsoilers, Tractor mounted and pull-type
Tillers, basin and disk
Tool bars and carriers
Transport carriers, farm implement

Fertilizing and Liming Equipment

Anhydrous Ammonia Applicators, Pumps, Tanks and Tank Wagons
Dry and Liquid Fertilizer Attachments for Drills and Planters
Fertilizer Distributors and Applicators
Fertilizer storage bins and tanks
Pumps, Liquid Fertilizer
Side-Dressing attachments
Spreaders, Lime and Fertilizer, Tractor or Truck mounted and pull type
Sprayers, Liquid fertilizer, Truck mounted and pull type

Planting Equipment

Drills and Planters, including fertilizer attachments
Grass Seeder, Broadcast-type, Tractor mounted or pull type
Grass Seeder attachments, Drill and Tillage equipment
Listers
Planters, Minimum or no Tillage, Tractor mounted or pull type
Potato Planters, Brushers, Cutters, and Desprouters
Seeders
Transplanters

Agricultural Dusters and Sprayers

Dusters, Crop, Field, Livestock, Poultry, Orchard, and Vineyard
Foggers and Mist Blowers
Granular Chemical Applicators, Broadcast and Band-type
Herbicide Applicators, Low Volume
Sprayers, Field, Livestock, Poultry, Orchard, and Vineyard, Air Mist, Boomtype and Boomless, Trailer or Tractor mounted and self-propelled

Harvesting Equipment

Augers, Conveyors and Elevators, farm type, portable and stationary, with or without wheels
Bunchers and Tiers, Vegetable, farm type
Combines, Harvester-thresher, self-propelled and pull type, including corn head and windrow attachments
Corn Cribs
Corn Pickers and Picker-shellers, self-propelled, pull type, and semi-mounted
Cotton Pickers and Strippers, self-propelled, Tractor mounted and pull type
Crop and Grain Dryers and Fans, batch, bin, and continuous operation types
Curers, Tobacco

Grain Bins, including: perforated floors, ladders, spreaders, stirring devices, unloaders, and ventilation equipment
Grain Blowers
Harvesters, Harvesting and Handling Equipment for Corn, Grain, Vegetables, Peanuts, Tobacco, Onions and Nuts
Hullers, Graders, Sorters, Sackers, Conveyors, farm type for Potatoes, Fruit, Vegetables, Grain, Seed and Nuts
Orchard and Vineyard Pruning Equipment, power
Peanut Drying Equipment
Potato Diggers, Pickers and Baggers
Power Units for Harvesting Equipment, self-propelled
Sugar Beet Harvesters, Toppers, Lifters, and Loaders
Sugar Cane Harvesting Equipment
Toppers, Crop and Vegetable
Windrowers and Swathers, Dry Edible Beans and Pea Vine

Hay and Forage Harvesting Equipment

Balers, Twine, and Wire, self-propelled and pull type, including round bale type
Forage Blowers and Cutter Blowers, Pipe, and Spouts
Forage Harvesters, self-propelled, Tractor mounted and pull type
Forage Wagons and Boxes, running gear and truck mounted
Giant Hay Balers, Stackers and Transportation Equipment
Hay Tedders
Hay Wafering and Cubing Machines
Mowers, Choppers, conditioners, Mower-conditioners, and Windrowers, field, flail, rotary, or sickle bar, mounted or pull type
Rakes, side delivery
Loaders, loose hay
Loaders, Stackers and Bale Throwers

Dairy, Poultry and Livestock Equipment

Barn Manure Cleaners, dairy, livestock and poultry types
Bale Feeders, giant-size Bale and Stack types
Brooders, poultry and hog
Bunk Feeder Systems, including: Wagon or truck-mounted feeder boxes
Carriers, Hay, Litter and Feed, overhead and track type
Dairy Barn Equipment, including: pens, stanchions and stalls
Egg Gathers and Collecting Systems, automatic
Egg Room Coolers and Humidifiers
Egg Graders, Candlers and Washers
Feed Mills, Grinder-mixers, Roller Mills, and Mixers, stationary and portable
Feed Storage Bins and Tanks, elevated, bulk
Feed and Grain Metering Devices
Feeders and Waterers, cattle, sheep, hog and poultry, automatic and manual
Hog Confinement Systems, Farrowing Stalls and Feeding Systems
Incubators, poultry
Livestock Confinement Buildings, including: feeding, watering, ventilation and cleaning systems
Livestock Handling Gates, Pens and Chutes
Liquid Manure Pumps and Tanks
Manure Loaders, Tractor mounted
Milk Cooling Tanks, bulk and can type
Milking Machines, Pipelines and Transfer Stations
Milk Room Equipment, including: water heaters, sterilizing and washing tanks
Milking Parlor Stalls, including: feeding systems
Poultry Cages, Feed and Water Systems
Silo, upright and concrete trench-type
Silo Unloaders, upright and trench-type, top or bottom
Silo-filling Equipment, including: pipe and distribution equipment
Spreaders, Barn and Liquid Manure
Tanks, Livestock, Dipping and Stock Water
Ventilation Systems, automatic, electric

Water Supply Equipment

Jacks, Pump
Pumps, Hand, Windmill, electric, PTO and motor-powered
Water Systems including: storage and/or pressure tanks, domestic and farmstead, deep and shallow well, jet and non-jet

Irrigation Equipment

Ditch Gates, Furrow Openers, Levee Plows
Pipe, Couplers, Valves and Sprinkler Heads
Systems Controls, automatic and center pivot
Systems Pumps, deep well, shallow well and surface water supply type

Other Farm Equipment, N.E.C.

Alcohol Distilling Plants, farm type
Chain Saws
Cleaners and Graders, farm type, grain and seed
Diggers, post-hole, Tractor mounted, farm type
Electric Generating Plants, farm type, continuous duty and standby, Tractor or motor powered
Fencing Materials
Log Skidders and Splitters
Post Drivers and Pullers, power, farm type
Tracks, Crawler, combine and wheel Tractor
Wagon Running Gears, farm type
Wagon Boxes, including: Auger unloading, barge and flare, bunk feeding, forage, feed-mixing, gravity and hydraulic dump
Windmill Towers and Heads

Repair and Replacement Parts

Parts manufactured specifically for use in the maintenance and repair of the farm equipment (including plowshares and disk blades) listed in this Schedule.

DEPARTMENTS OF ENERGY AND COMMERCE—MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF ENERGY AND COMMERCE CONCERNING THE JURISDICTION AND RESPONSIBILITIES FOR PRODUCTS AND EQUIPMENT ASSOCIATED WITH THE PRODUCTION OF PETROLEUM AND GAS FOR EMERGENCY PREPAREDNESS AND MOBILIZATION

A. Purpose

This Understanding sets forth the jurisdiction and responsibilities of the Department of Energy (DOE) and the Department of Commerce (DOC) for defense mobilization, emergency preparedness, and resource management programs under the authorities listed in section B, in the event of a national emergency, as such programs relate to the production and distribution of: (1) chemicals and fluids made especially for use in the petroleum and gas industry; (2) oil and gas field machinery and equipment; and (3) petrochemicals derived from oil, gas, and natural gas liquids.

B. Authority

1. Pursuant to section 201(a) of Executive Order 10480, as amended (E.O. 10480), Defense Mobilization Order 3 (DMO 3) (44 CFR 322) delegates authority for the administration of priorities and allocations functions under the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*), to the Secretary of Energy with respect to petroleum, gas, solid fuels, and electric power; and to the Secretary of Commerce with respect to all other materials and facilities not specifically delegated to other agencies.

2. Executive Order 11490, as amended (E.O. 11490), delegates to the Secretary of Commerce the authority for preparing national emergency plans and developing preparedness programs covering the production and distribution of all materials, and the use of all production facilities except those that are specifically assigned to, or under the jurisdiction of, other agencies. Such an exception is provided for the production and distribution of, and the use of facilities for, petroleum and gas. E.O. 11490 provides for the delegation of this authority to the Secretary of Energy.

3. The functions delegated by these authorities to the Secretaries of Energy and Commerce have been redelegated by the Secretary of Energy to the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness, and by the Secretary of Commerce to the Director, Office of Industrial Resource Administration (OIRA).

C. Departmental Jurisdiction

The primary use of a product or material is the basis for the division of Departmental jurisdiction set forth below. Any product or material not specifically identified in this Understanding which is used primarily as a fuel or in a primary manufacturing process to produce fuel, is under the jurisdiction of DOE. Generally, any non-fuel product or material, or any product or material which is used primarily as an industrial raw material, is under the jurisdiction of DOC. In the event that questions arise with respect to jurisdiction over particular products, materials, or production facilities, it is agreed that the two Departments will resolve these questions in such a manner as to provide the most feasible arrangements for program administration.

1. Production.

Department of Energy: DOE has jurisdiction over the production of: (a) petroleum and gaseous fuels, natural gas liquids, and petroleum lubricants, including ''refinery finished products,'' ''unfinished oils,'' and ''petrochemical feedstocks''; (b) ''petrochemicals'' from processing units located within a petroleum refinery where the weight of ''petrochemicals'' in the output of the processing unit constitutes less than 30 percent by weight of the net input to the unit; (c) n-paraffin ''petrochemical intermediates''; (d) ''special petroleum chemical supplies''; and (e) any fossil fuel or synthetic product not specifically indentified which is or can be used as a fuel or lubricant.

Department of Commerce: DOC has jurisdiction over the production of: (a) all ''chemicals'' including ''petroleum processing catalysts'' and ''fuel combustion improvers''; and (b) ''petrochemicals'' including those from processing units located within a petroleum refinery where the weight of ''petrochemcials'' in the output of the processing unit constitutes 30 percent or more by weight of the net input to the unit; and (c) oil and gas field machinery and equipment as identified in Schedule A to this Understanding, as well as any machinery, equipment, and technologies not yet developed for obtaining petroleum and natural gas.

2. Facilities.

Department of Energy: DOE has jurisdiction over all facilities for which production jurisdiction has been assigned to it by this Understanding.

Department of Commerce: DOC has jurisdiction over all facilities for which production jurisdiction has been assigned to it by this Understanding.

3. Distribution.

Department of Energy: DOE has jurisdiction over the distribution of: (a) all petroleum, gaseous fuels (when such jurisdiction as authorized by E.O. 11490 is not exercised by the Federal Energy Regulatory Commission), natural gas liquids, and petroleum lubricants; (b) all ''special petroleum chemical supplies,'' ''petroleum processing catalysts,'' and ''fuel combustion improvers''; (c) ''petrochemical feedstocks'' except those produced

or gathered specifically for a chemical operation; (e) any other fossil fuel or synthetic product which is or can be used as a fuel; and (f) oil and gas field machinery and equipment as identified in Schedule A to this Understanding, as well as any machinery, equipment, and technologies not yet developed for obtaining petroleum and natural gas.

Department of Commerce: DOC has jurisdiction over the distribution of: (a) all ''chemicals'' including ''petrochemicals'' but excluding those chemical product groups assigned to DOE; (b) ''petrochemical feedstocks'' specifically produced or gathered for a chemical operation; and (c) ''non-fuel or non-lubricant petroleum products.''

D. Definitions

Under this Understanding, the term ''petroleum'' means crude oil, synthetic liquid fuel, their products and associated hydrocarbons, including pipelines for their movement and facilities specially designed for their storage; and the term ''gas'' means natural gas (excluding helium) and manufactured gas (but not industrial gases), including pipelines for their movement and facilities specially designed for their storage, when such juridiction as authorized by E.O. 11490 is not exercised by the Federal Energy Regulatory Commission. For the purpose of assigning jurisdiction under this Understanding, the following additional definitions shall apply:

1. ''Petrochemical Feedstocks''

Includes hydrocarbon materials obtained from petroleum and natural gas when used as ''feedstock'' or raw material for the production of ''primary petrochemicals'' or ''petrochemical intermediates.'' These materials also include:

Natural gas (methane) processed to a quality suitable for pipeline transmission;

Natural gas liquids which are the several low boiling point, lower molecular weight hydrocarbons that include ethane, propane, butanes, pentanes, and liquified petroleum gases obtained from the processing of natural gas;

Naphtha (light petroleum liquids) which is a medium boiling point range mixture of hydrocarbons obtained from the processing of natural gas, crude oil, or petroleum refining. Naphtha is the major component of gasoline. The usual distillation range of naphtha feedstock is 100–400° F; and

Gas oil (heavy petroleum liquids) which is a high boiling point mixture of hydrocarbons obtained from the processing of crude oil or petroleum refining. Gas oil is the major component of distillate grades of fuel oil. Atmospheric gas oil may comprise hydrocarbons in the distillation range 400–650° F; vacuum gas oil may comprise higher boiling materials in the distillation range 650–1000° F.

2. ''Chemicals''

For the purpose of this Understanding, ''chemicals'' shall comprise those products listed under Major Group 28, Chemical and Allied Products, Standard Industrial Classification Manual, 1977 Edition; and shall specifically include ''petrochemicals,'' ''petroleum processing catalysts,'' ''fuel combustion improvers''; but shall exclude ''special petroleum chemical supplies.''

3. ''Petrochemicals''

Chemical materials which, directly or indirectly, are manufactured from petrochemical feedstock hydrocarbons. These materials include:

Primary petrochemicals produced directly from feedstocks by chemical conversion or breakdown and mainly used for the production of ''intermediates'' or petrochemical ''products'';

Petrochemical intermediates generally produced by chemical converson of primary petrochemicals to form more complicated derived compounds. Such compounds serve as the raw material for synthesis of petrochemical ''products,'' and for numerous other materials; and

Petrochemical products which are end products of the chemical industry produced by chemical conversion of ''primary'' petrochemicals or petrochemical ''intermediates.''

4. ''Refinery Finished Products''

Any one of the petroleum oils or mixtures of oils which can be used without further processing, including:

Liquified petroleum gases (LPG);
Gasoline;
Jet fuel;
Naphtha;
Distillate fuel oils;
Lubricating oils and greases;
Residual fuel oils;
Asphalt; and
Natural gas products—natural gasoline.

5. ''Unfinished Oils''

Semi-finished refinery products, or unseparated mixtures of refinery products, which are further processed for production of ''refinery finished products.''

6. ''Special Petroleum Chemical Supplies''

Products made especially for use in the production, refining and compounding of petroleum fuels and lubricants, including:

Hydrogen produced in a refinery for use in petroleum processing; and

Special additives:

for fuels and lubricants;
to facilitate the drilling of oil and gas wells;
to stimulate the production of oil and gas for enhanced oil recovery; and
to facilitate the pipeline transmission of petroleum.

7. ''Non-fuel or Non-lubricant Petroleum Products''

Certain products produced in the course of the refining of petroleum whose primary

uses are other than as fuels or lubricants, such as:

Asphalts;
Coke, petroleum—green and calcined;
Cresylic acids;
Naphthenic acids;
Oils, rubber extending;
Solvents—aliphatic and aromatic hydrocarbons;
Waxes, refined—paraffin and micro-crystalline; and
White oils, petrolatums, and other oils for medicinal, pharmaceutical and cosmetic purposes.

8. ''Petroleum Processing Catalysts''

Solid inorganic compositions used in petroleum refining to facilitate the conversion of hydrocarbons by chemical reaction, including:

Catalytic cracking;
Hydrocracking;
Reforming;
Isomerization;
Desulfurization; and
Hydrotreating.

9. ''Fuel Combustion Improvers''

Chemical compostions added to liquid petroleum fuels to improve combustion characteristics, including:

Ethanol (ethyl alcohol);
Methanol (methyl alcohol);
Methyl tertiary butyl ether;
Tertiary butyl alcohol;
Tetraethyl lead and tetramethyl lead, and their blends for use as anti-knock materials; and
Other products such as amyl nitrate, hexyl nitrate, n-methyl aniline, and the manganese-methyl cyclopentadiene complexes.

E. Delegation of Authority

To ensure that DOE and DOC have the requisite authority to implement their responsibilities under E.O. 10480 and 11490, and DMO 3, as well as to effectuate the provisions of this Understanding, each Department delegates to the other its authority for the exercise of priorities and allocations functions under Section 101(a) of the Defense Production Act of 1950, as amended, with respect to the facilities, materials, and products specified in this Understanding.

F. Effective Date

This Memorandum of Understanding shall take effect August 29, 1984, superseding the Memorandum of Agreement between the Department of the Interior and the Department of Commerce that became effective on October 30, 1973 (38 FR 30896, November 8, 1973). The Department of the Interior's authority under this Memorandum of Agreement was transferred to the Department of Energy effective October 1, 1977, by Executive Order 12038 (43 FR 4957, February 7, 1978).

Department of Energy

H. A. Merklein
Assistant Secretary, International Affairs and Energy Emergencies

Date: July 10, 1984.

Department of Commerce
John A. Richards,
Director, Office of Industrial Resource Administration

Date: June 20, 1984.

SCHEDULE A—MACHINERY AND EQUIPMENT REQUIRED FOR THE DISCOVERY, DEVELOPMENT, OR COMPLETION OF OIL AND GAS WELLS

Exploration and Development Drilling

Transportation (trucks, boats, helicopters)
Drilling (rigs, pipes, pumps, engines, tanks, etc.)
Drilling Fluids (weighting materials, chemicals, clays, etc.)
Well Equipment (casing, carbon and alloy steel wellheads)

Completion

Well Equipment (Christmas trees, tubing, liners, safety valves, etc.)
Completion Equipment (workover or drilling rig, wireline unit)
Well Services (sand control, acidizing, fracturing, cleanout)

Oil Production Facilities

Pipe
Structures
Vessels
Instruments
Hardware and Accessories
Associated Gas Facilities

Gas Production Facilities

Field Gathering System
Compression Facilities
Processing Facilities

Artificial Lift Facilities

Rod Pump
Gas Lift
Submersible Pumps
Maintenance

Well Servicing

Well Equipment
Well Servicing Equipment
Well Services
Materials

Enhanced Recovery

Waterflooding
Gas Injection
Tertiary Processes

DEPARTMENTS OF THE INTERIOR AND COMMERCE—MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF THE INTERIOR AND COMMERCE CONCERNING THE JURISDICTION AND RESPONSIBILITIES FOR CERTAIN MINERALS, FACILITIES AND MATERIALS; AND DELEGATION OF AUTHORITY

A. Purpose

This Understanding sets forth the jurisdiction and responsibilities of the Department of the Interior and the Department of Commerce for defense mobilization, emergency preparedness programs, and resource management in the event of a national emergency as they relate to stages of processing and types of facilities concerning certain minerals. This Understanding also provides for a delegation of certain authority to the Secretary of the Interior which is presently assigned to the Secretary of Commerce.

B. Authority

1. Section 201(a) of Executive Order 10480, as amended (E.O. 10480), and Defense Mobilization Order 3 (DMO 3) (44 CFR 322), provide for the delegation of authority to the Secretary of Commerce for administration of priorities and allocations functions under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), for materials and facilities not specifically delegated to other agencies. Section 602 of E.O. 10480 provides for redelegation of this authority.

2. Section 901 *et seq.* of E.O. 11490 provides for the delegation of authority to the Secretary of Commerce for preparing national emergency plans and developing preparedness programs covering the production and distribution of all materials and the use of all production facilities, except those that are specifically assigned to, or under the jurisdiction of, other agencies. Such an exception is provided for the production and related distribution of minerals. Section 701 *et seq.* of E.O. 11490 provides for the delegation of this authority to the Secretary of the Interior.

3. Section 702(5) of E.O. 11490 defines the term ''minerals'' to mean:

* * * all raw materials of mineral origin * * * obtained by mining and like operations and processed through the stages specified and at the facilities designated in an agreement between the Secretary of Commerce as being within the emergency preparedness responsibilities of the Secretary of the Interior.

This Understanding implements this requirement.

4. The functions delegated by these authorities to the Secretaries of Commerce and the Interior have been redelegated by the Secretary of Commerce to the Director, Office of Industrial Resource Administration (OIRA), and by the Secretary of the Interior to the Director, Bureau of Mines.

C. Departmental Responsibilities

1. *Department of the Interior.* Schedule A to this Understanding contains a listing of mineral commodities and related facilities and materials. With respect to the mineral commodities listed in Column 1 of Schedule A, the Secretary of the Interior shall have emergency preparedness and mobilization responsibilities for the facilities listed in Column 2 of the Schedule, the production of materials by these facilities, and the distribution of the materials listed in Column 3 of the Schedule.

2. *Department of Commerce.* With respect to the mineral commodities listed in Column 1 of Schedule A, the Secretary of Commerce shall have emergency preparedness and mobilization responsibilities for all facilities other than those listed in Column 2 of the Schedule, for the production of materials by these other facilities, and for distribution of all materials not listed in Column 3 of the Schedule.

D. Delegation of Authority

1. Pursuant to the authority of section 602(b) of E.O. 10480, the Secretary of Commerce hereby delegates to the Secretary of the Interior with respect to the facilities and materials listed in Columns 2 and 3 of Schedule A, all the functions under the Defense Production Act of 1950, as amended (DPA), which are delegated or assigned to the Secretary of Commerce by or pursuant to the following sections of E.O. 10480:

(a) Section 201(a), as implemented by section 3(a) of DMO 3 (relating to exercise of priorities and allocations authority under Title I of the DPA);

(b) Section 301 (relating to development of measures for expansion of production of materials necessary for the national defense);

(c) Section 302 (relating to guarantees of loans or contracts in connection with the expediting of production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense, etc.);

(d) Section 312 (relating to recommendations for action under sections 302 and 303 of the DPA);

(e) Section 501 (relating to consultation with industry and making recommendations to the Director of the Federal Emergency Management Agency respecting voluntary agreements under section 708 of the DPA); and

(f) Section 602 (relating to the exercise of various general administrative functions under Title VII of the DPA).

2. This delegation shall be effective only with respect to the facilities and materials listed in Columms 2 and 3 of Schedule A.

E. Effective Date

This Memorandum of Understanding and Delegation of Authority supersedes the Agreement between the Secretary of the Interior and the Secretary of Commerce and signed by them on June 21, 1962, and the Delegation of Authority from the Secretary of Commerce to the Secretary of the Interior published in 32 FR 2462 on February 4, 1967; and shall take effect August 29, 1984.

Department of the Interior
Robert C. Horton,
Director, Bureau of Mines

Date: June 21, 1984.

Department of Commerce
John A. Richards,
Director, Office of Industrial Resource Administration

Date: June 20, 1984.

SCHEDULE A—MINERAL COMMODITIES AND RELATED FACILITIES AND MATERIALS

1 Commodity	2 Facilities	3 Materials
Abrasives:		
Alumina:		
Fused	Processing plants	Ores.
Zirconia	Do	Do.
Corundum	Mines; crushing, sizing, washing, grading and concentrating plants.	Do.
Diamond:		
Industrial	Mines; concentrating plants	Do.
Synthetic	Processing plants	Carbon.
Emery	Mines; beneficiation plants	Ores.
Garnet	Do	Do.
Grinding pebbles	Do	Do.
Grinding stones	Quarries; cutting plants	Crude stone.
Silicon carbide	Processing plants	Ores.
Tripoli and rottenstone	Mines; crushing, grinding, and grading plants	Crude tripoli, amorphous silica, rottenstone.
Aluminum	Bauxite mines; drying and calcining plants; alumina plants; reduction plants; secondary smelters; processing plants.	Crude, dried and calcined bauxite, alumina, aluminum-base scrap.
Antimony	Mines; concentrating plants; primary smelters; refineries; leaching plants.	Ores, concentrates, residues, scrap.
Arsenic	Mines; concentrating plants; smelters; refineries	Do.
Asbestos	Mines; separation and classification plants	Ores.
Barium	Mines; beneficiating, grinding and grading plants	Ores, concentrates.
Beryllium	Mines; concentrating and grinding plants; refineries	Do.
Bismuth	Mines; concentrating plants; smelters; refineries	Ores, concentrates, base bullion, residues.
Boron	Mines; wells; refineries	Ores, brines.
Bromine	Plants recovering bromine	Bitterns, brines.
Brucite	Mines; magnesium compound recovery and burning plants	Ores.
Cadmium	Concentrating plants; smelters; refineries	Ores, concentrates, residues.
Calcium:		
Compounds	Brines and synthetic chemical processing plants	Brines.
Metal	Processing plants	Crude materials.
Cement	Blending, sintering, and grinding plants	Limestone, clay, sand, gypsum, iron-containing materials.
Cesium	Mines; concentrating plants; extraction plants	Ores, concentrates, residues, solutions.
Chromium	Mines; processing plants	Ores, concentrates, additives.
Clays:		
Kaolin	Mines; drying, grinding, calcining and concentrating plants	Ores.
Ball clay	Mines; drying, calcining, shredding and grinding plants	Do.
Bentonite	Mines; drying, activating, grinding, concentrating and sizing plants.	Do.
Fuller's earth	Mines; drying, calcining, activating, grinding and screening plants.	Do.
Fire clay	Mines; drying, calcining, concentrating and grinding plants	Do.
Common clay and shales	Mines; beneficiation plants; expanding plants	Crude common clay, shale.
Cobalt	Mines; concentrating plants; leaching plants; refineries	Ores, concentrates, matte, slurries, in-process oxides, smelter anodes.
Columbium	Mines; dredges; processing plants	Ores, slags, additives.
Copper	Mines; concentrating plants; leaching plants; electrowinning plants; smelters; refineries.	Ores, scrap, concentrates, precipitates, matte, speiss, blister, smelter anodes.
Cryolite	Mines; concentrating and grading plants	Ores, concentrates.
Diatomite	Mines; beneficiation plants	Crude materials.

SCHEDULE A—MINERAL COMMODITIES AND RELATED FACILITIES AND MATERIALS—Continued

1 Commodity	2 Facilities	3 Materials
Dolomite	Mines; compounds recovery and burning plants	Ores.
Feldspar	Mines; grinding, concentrating and grading plants	Do.
Ferroalloys	Plants; furnaces	Ores, concentrates, metallic additives.
Fluorspar, natural and synthetic.	Mines; processing plants	Ores, concentrates, hydrofluosilicic acid.
Gallium	Refineries; processing plants	Concentrates, residues.
Gem stones	Mines; concentrating plants	Ores.
Germanium	Refineries	Concentrates, residues.
Gold	Mines; concentrating plants; leaching and precipitation plants; smelters; refineries.	Ores, concentrates, intermediate smelter products, scrap.
Graphite, natural and synthetic	Mines; beneficiating and processing plants	Ores, carbon.
Greensand	Mines; concentrating plants	Ores.
Gypsum	Mines; crushing and calcining plants	Crude gypsum.
Hafnium	Mines; concentrating plants; reduction plants	Ores.
Helium	Processing plants	Helium-rich natural gas.
Ilmenite	Mines; concentrating plants; processing plants; grinding plants.	Ores, concentrates.
Indium	Refineries; leaching plants	Concentrates, fume, dusts, residues, slags.
Iodine	Mines; concentrating plants; wells	Ores, brines.
Iron	Mines; concentrating plants; agglomerating plants; prereduction plants; blast furnaces; crude steelmaking facilities.	Ores, concentrates, direct-reduced materials, scrap, pig iron, additives.
Iron oxide pigments, natural and synthetic.	Mines; beneficiating and processing plants	Ores, additives.
Kyanite, andalusite, sillimanite, and dumortierite.	Mines; concentrating and calcining plants	Do.
Lead	Mines; concentrating plants; smelters; refineries; leaching plants.	Ores, concentrates, base bullion, residues, scrap.
Limestone (lime) and marl	Mines; quarries; crushing and grinding plants; kilns and lime plants.	Crushed limestone, marl.
Lithium	Mines; concentrating plants; brine-processing plants	Ores, brines.
Magnesium	Mines; processing plants	Do.
Manganese	Mines; concentrating plants; agglomerating plants; leaching plants.	Ores, concentrates, agglomerates.
Mercury	Mines; concentrating plants; leaching plants; electrolytic plants; retorts and furnaces.	Ores, concentrates, scrap.
Mica	Mines; beneficiation plants	Crude mica.
Molybdenum	Mines; concentrating plants; processing plants	Ores, concentrates.
Nickel	Mines; concentrating plants; leaching plants; smelters; refineries.	Ores, concentrates, matte, slurries, in-process oxides, smelter anodes.
Nitrogen (fixed)	Processing plants	
Olivine	Mines; concentrating plants	Ores, concentrates.
Perlite	Mines; grinding and screening plants; expanding plants	Crude perlite.
Phosphate rock	Mines; beneficiation plants	Ores, concentrates.
Platinum-group metals	Mines; concentrating plants; refineries	Ores, concentrates, residues.
Potash	Mines; concentrating plants; processing plants; refineries	Ores, concentrates, brines.
Pumice	Mines; crushing, drying, screening and grading plants	Ores.
Quartz crystal	Mines; grading plants	Do.
Rare-earth metals	Mines; beneficiating and processing plants	Ores, concentrates.
Refractories	Processing plants	Ores.
Rhenium	Refineries; processing plants	Ores, concentrates.
Rubidium	Mines; concentrating plants; extraction plants	Ores, concentrates, residues.
Rutile	Mines; concentrating plants	Ores, concentrates.
Salt	Mines; salt wells; processing plants	Crude materials.
Sand and gravel	Pits; washing and grading plants	Crude sand and gravel.
Selenium	Refineries	Residues, slimes, scrap.
Silicon	Furnaces; metal plants	Metallic additives, silica.
Silver	Mines; concentrating plants; smelters; refineries; leaching plants.	Ores, concentrates, intermediate smelter products, scrap.
Slag (iron and steel)	Slag processing facilities	Furnace wastes.
Slate	Quarries; splitting, milling, crushing and grading plants	Crude slate.
Sodium compounds	Mines; brine wells; refineries; synthetic soda ash plants	Natural and synthetic minerals, brines.
Stone:		
Crushed	Quarries; crushing and grading plants	Broken stone.
Dimension	Quarries; milling and grading	Block stone.
Staurolite	Mines; concentrating plants	Ores.

SCHEDULE A—MINERAL COMMODITIES AND RELATED FACILITIES AND MATERIALS—Continued

1 Commodity	2 Facilities	3 Materials
Strontium	Do	Do.
Sulfur	Mines; wells; processing plants	Ores, gases.
Talc, soapstone and pyrophylite.	Mines; crushing, grinding, screening and concentrating plants.	Ores.
Tantalum	Mines; dredges; concentrating plants; processing plants	Ores, concentrates, slags, scrap, residues.
Tellurium	Refineries	Residues, slimes.
Thallium	Do	Concentrates, residues.
Tin	Mines; concentrating plants; smelters; refineries; processing plants.	Ores, concentrates, residues, scrap.
Titanium	Mines; concentrating plants; processing plants	Do.
Thorium	Non-energy processing plants	Ores and compounds.
Tungsten, metal and compounds.	Mines; concentrating plants; reduction plants; processing plants.	Ores, concentrates, brines, scrap.
Vanadium	Mines; concentrating plants; leaching plants; reduction plants.	Ores, concentrates, residues, slags, metallic additives.
Vermiculite	Mines; beneficiating plants; processing plants	Crude vermiculite.
Wollastonite	Mines; concentrating plants	Ores.
Zeolites	Mines; processing plants	Do.
Zinc	Mines; concentrating plants; roasting plants; smelters; electrolytic plants.	Ores, concentrates, calcines, scrap, fume, residues.
Zirconium	Mines; concentrating and reduction plants	Ores, scrap.

APPENDIX III TO PART 700—FORM ITA–999; REQUEST FOR SPECIAL PRIORITIES ASSISTANCE

OMB No. 0625-0015

FORM ITA-999 (REV. 7-84)

U.S. DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION

REQUEST FOR SPECIAL PRIORITIES ASSISTANCE
(TO BE FILED WITH SPONSORING GOVERNMENT AGENCY)
READ INSTRUCTIONS ON REVERSE SIDE
(Typewrite or print in ink)

FOR ITA USE ONLY

Case No.

Received

Routed to

No priorities assistance may be granted unless a completed application form has been received (50 U.S.C. App. Sec. 2155). Any information furnished is deemed confidential pursuant to 50 U.S.C. App. Sec 2155(e).

1. TO: *(Fill in name and address of appropriate Sponsoring Govt. Agency)*

2. a. Applicant's name and complete address *(Street, City, State and ZIP code).*

b. Telephone No. *(Include Area Code)* _____

c. Contact's Name _____

3. Name and address of Applicant's customer.

4. Purchase order or contract number of Applicant's customer.

Date _____

5. Rating on customer's purchase order.

6. Date Applicant accepted customer's purchase order.

7. If known, identify the Government program, end product, and contract number for which Applicant's item(s) is required by customer.

8. Description of item(s) to be delivered or service rendered by Applicant through use of item(s) shown in (10).

9. How will item(s) shown in (10) be used? *(Check)*

☐ As Production Material ☐ For Construction Project
☐ As Capital Equipment ☐ As Maintenance, Repair and Operating Supplies

10. ITEM(S) FOR WHICH APPLICANT REQUESTS ASSISTANCE

Indicate quantity *(Lbs., ft., pcs.)* (a)	Description *(As appearing in Applicant's purchase order with additional information, such as: model, part, die number, etc.)* (b)	Approximate dollar value of quantity shown (c)

11. a. Applicant's purchase order number to Supplier and date *(Attach copy and all amendments and change orders)*

b. Rating on Applicant's purchase order. If none, so state.

c. Date Applicant's purchase order accepted by Supplier. *(Attach copy of acceptance)*

12. a. Supplier's name and complete address. *(Street, City, State and ZIP Code)*

b. Contact's name _____

c. Telephone number _____ *(Include Area Code)*

d. Supplier's shop order number.

e. If Supplier is an agent or distributor, give producer's name and address. *(Provide name and telephone number, including Area Code, of person to contact and supplier's purchase order number, if known)*

13. Original Shipment Schedule of Item(s) shown in 10 — Supplier to Applicant

a. Applicant's Original Shipment Requirement	Month Year							
	No. of Units							Total units
b. Supplier's Original Shipment Promise	Month Year							
	No. of Units							Total units

Current Shipment Schedule of Item(s) shown in 10 — Supplier to Applicant

c. Shipment(s) Now Required by Applicant	Month Year							
	No. of Units							Total units
d. Supplier's Present Shipment Promise	Month Year							
	No. of Units							Total units

USE CONTINUATION BLOCK OR SEPARATE SHEET, IF NECESSARY, FOR ANSWERS TO 14, 15 AND 16 BELOW

14. Reasons given by Supplier for inability to meet Applicant's required shipment date(s), including interfering rated orders or programs, if known.

15. List at least two other suppliers contacted. *(If none contacted, explain why)*

Date (a)	Name and complete address (b)	Best quoted shipment date(s) and other pertinent data (c)

16. Explain the effect of the delay in receipt of item(s) in (10) on the delivery commitment for item(s) in (8); i.e. production stoppage, shipment delays, etc. Describe the attempts to resolve the problems and give specific reasons why special priorities assistance is necessary.

17. a. Is quantity shown in 10(a) entire amount on purchase order listed in 11(a)? ☐ Yes ☐ No

b. Is the same item(s) also on order from another supplier? *(If "yes," explain)* ☐ Yes ☐ No

c. Does the Applicant have an inventory of the item(s) shown in 10? ☐ Yes ☐ No

d. If answer to (c) above is yes, state number of days of production the inventory will support. _____

e. State minimum leadtimes. *(Number of days the item(s) in 10 must be received before applicant can ship to customer)* _____

CERTIFICATION — The undersigned certifies that the information contained in items (2) to (17) of this form, and as any information attached, is correct and complete to the best of his or her knowledge and belief.

_____ Name of applicant

_____ Signature and typed name of authorized official

_____ Date

_____ Title

The U.S. Code, Title 18 *(Crimes and Criminal Procedure)*, Section 1001, makes it a criminal offense to make a wilfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction. The individual company information reported on this form is for use in defense mobilization activities. The unauthorized publication or disclosure of individual company information by Government personnel is prohibited by law, and such personnel are subject to fine and imprisonment for unauthorized disclosure.

USCOMM-DC 84-22042

FOR USE OF GOVERNMENT AGENCY ENDORSING THIS REQUEST (FIELD)

18. a. Actions taken to attempt resolution of applicant's problem.	By whom	Date
b. Estimate of realistic shipment date.		
c. Coordination of other action taken.	By whom	Date

FOR USE OF GOVERNMENT AGENCY SPONSORING THIS REQUEST (HEADQUARTERS ONLY)

19. a. Name of Sponsor.	**b.** Sponsor's address.	
c. Sponsor's Case Reference No.	**d.** Name of person handling case in Sponsor's office.	Telephone No.
e. Sponsor's program or service to be benefited by Applicant's product or service *(Item (7) on first page).*	**f.** Recommendation.	

g. Statement of urgency of particular program or service and Applicant's part in it. Specify the extent to which failure to obtain requested assistance will adversely affect the program or service.

h. Signature.

Signature of sponsor's authorized official — Title

Type name of authorized official — Date

INSTRUCTIONS FOR FILING FORM ITA-999

REQUESTS FOR SPECIAL PRIORITIES ASSISTANCE MAY BE FILED:

a. when the regular procedures of the Defense Priorities and Allocations System (DPAS) will not obtain delivery of item(s)[1] in time to meet required delivery schedules in support of authorized national defense programs;

b. to request assistance in placing rated orders; and

c. to request authority to use a priority rating. Applicants for priority rating authority should complete only sections 1, 2, 10, 11, 12, 16, 19, and the Certification of this form.

REQUESTS FOR ASSISTANCE MUST BE TIMELY AND MUST ESTABLISH:

a. the urgent defense related need for the item(s) covered by the associated rated order; and

b. that the applicant has exercised reasonable effort to resolve the problem.

WHERE TO FILE — Each ITA-999 must be sponsored by a Government Agency.[2] Completed forms should be filed with the Government agency having jurisdiction over the contract.

Department of Defense — File with local Defense Contract Administration Services Office or plant representative.

Department of Energy (DOE) — File with appropriate Field Office.

General Services Administration — File with the contracting officer in the Regional Office or the Headquarters Office in Washington, D.C., whichever issued the contract.

If the appropriate agency cannot be determined from the applicant's customer, this form may be filed with the **Priorities and Allocations Division, Room 3876, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.**

COPIES TO BE FILED — The applicant should file an original and five (5) copies of this form with the appropriate Government Agency.

APPLICATIONS FOR PRIORITY RATING TO OBTAIN CAPITAL/PRODUCTION EQUIPMENT — Prime and subcontractor applications for a priority rating to obtain capital/production equipment for the performance of a rated order or contract for a Department of Defense procurement must file on Department of Defense Form DD-691, "Application for Rating for Production Equipment," in accordance with the instructions on that form.

SPECIAL INSTRUCTIONS

If the space in any block is insufficient for a clear and complete statement of the information called for, use the "continuation" space provided or a separate sheet or letter with a copy attached to each copy of the form.

Entries in block 10 must be restricted to those appearing on a single purchase order of the applicant, except in those instances where "special priorities assistance" is requested for additional purchase orders that have been placed with the same supplier for the same item(s) in which case such purchase orders may be combined on one application; however, each purchase order number must be identified and the quantities and rating on each purchase order must be shown separately.

If disclosure of the use to which the particular customer will put Applicant's product is prohibited by security regulations, give a general description in block 10 and enter "classified."

[1] "Item" is defined in the DPAS as any raw, in-process, or manufactured material, article, commodity, supplies, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

[2] "Government Agency" means the Department of Defense, the Department of Energy, General Services Administration, or other Government agencies so designated.

CONTINUATION

(Identify each statement with the block number concerned)

FORM ITA-999 (REV. 7-84) **Please sign certification on face of form** USCOMM DC 84-22042

APPENDIX IV TO PART 700—MEMORANDUM OF UNDERSTANDING ON PRIORITIES AND ALLOCATIONS SUPPORT BETWEEN THE U.S. DEPARTMENT OF COMMERCE AND THE CANADIAN DEPARTMENT OF SUPPLY AND SERVICES

A. Purpose

Since 1950, the United States and Canada have been assisting each other on priorities and allocations for programs important to the defense of both nations. Details on the implementation of that assistance were spelled out in the U.S. Defense Priorities System Regulation No. 2 (DPS Reg. 2), Operations of the Priorities and Allocations System between Canada and the United States (15 CFR part 351). The Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) supersedes the Defense Materials System and Defense Priorities System regulations (15 CFR parts 330 through 351), including DPS Reg. 2. While the revised regulation addresses the procedures for obtaining priorities and allocations support from the United States and Canada, it does not fully detail the working relationship between the United States and Canada. Accordingly, the following Memorandum of Understanding is set forth between the U.S. Department of Commerce and the Canadian Department of Supply and Services.

B. General

1. The Office of Industrial Resource Administration, U.S. Department of Commerce (DOC), is the United States point of contact for the Canadian government with respect to priorities and allocations.

2. The Supply Information and Data Management Branch, Canadian Department of Supply and Services (DSS), is the Canadian point of contact for the U.S. government with respect to priorities and allocations.

C. Priority Rating Authority

1. DOC will authorize the DSS to use priority ratings, including those for the procurement of controlled materials, in the United States in support of the following programs authorized by the Federal Emergency Management Agency:

D1—Canadian Military Programs
D2—Canadian Production and Construction
D3—Canadian Atomic Energy Program

2. DOC must receive requests for priority rating authority, by program, at least ninety days in advance of the calendar quarter in which the authorization is required. Requests with respect to controlled materials requirements must be received at least 240 days in advance of the calendar quarter in which authorization is required.

D. DX Authority

DSS may authorize the use of the ''DX'' rating symbol for procurements in the United States which are in support of U.S. ''DX'' rated programs.

E. Items Which Will Not Receive Priority Rating Authority

Priority ratings may not be used for procurements in the United States of (1) civilian items for resale in Military Exchanges or the packaging for such items; (2) material purchased from exclusively retail establishments; (3) direct procurement of those Federal Supply Classification classes, groups, or items specified in Attachment A to this Understanding, unless those items are to be used as production material for an authorized program; or (4) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management.

F. Special Priorities Assistance

1. DOC will provide special priorities assistance as needed to Canadian procurements in the United States which are in support of D1, D2, and D3 programs when requests for such assistance are sponsored by DSS.

2. DSS will provide assistance to United States procurements in Canada which are in support of authorized programs when requests for such assistance are sponsored by DOC.

G. Forms and Reports

1. Canadian requests for special priorities assistance from the United States will be submitted to DOC on Form ITA–999, ''Request for Special Priorities Assistance''.

2. Requests for priority rating authority will be submitted to DOC on Form DSS–1451–1, ''Application for U.S. Priority Rating Covering Importation of Quarterly Requirements of Materials from the United States'', on Form DSS–1451–2, ''Application for U.S. Priority Rating Covering Specific Materials'', or other forms as may be established by DSS.

3. DSS will report monthly on the number of rating authorizations and their dollar value against DOC rating authorizations during the previous month.

4. DSS will report, two months following the close of each calendar quarter, the number and quantity of controlled materials allotments issued against DOC authorizations for each program during that quarter.

5. United States requests for assistance from Canada will be submitted to DSS by letter.

H. Compliance

1. DSS will ensure that Canadian Government personnel and Canadian defense contractors are in compliance with the provisions of the DPAS when placing rated orders in the United States, including those for controlled materials.

2. DOC will ensure that U.S. Government personnel and U.S. contractors are in compliance with the provisions of the DPAS when placing rated orders in Canada, including controlled materials.

3. The DSS will inform DOC of any alleged violations of the DPAS of which it may become aware.

I. Training

1. The DSS will develop and implement training programs on the DPAS for appropriate Canadian Government procurement and contract administration personnel and contractor personnel.

2. DOC will develop and implement training programs on the DPAS for appropriate U.S. Government procurement and contract administration personnel and contractor personnel.

3. DSS and DOC training programs shall be coordinated to ensure the conduct of a comprehensive program and to minimize duplication.

J. Effective Date

This Memorandum of Understanding shall take effect August 29, 1984.

Canadian Department of Supply and Services

Peter Smith,

Assistant Deputy Minister, Operations

Date: June 26, 1984.

U.S. Department of Commerce

Walter J. Olson,

Deputy Assistant Secretary, Export Administration

Date: June 21, 1984.

ATTACHMENT A—FEDERAL SUPPLY CLASSIFICATION CLASSES, GROUPS, AND ITEMS NOT ELIGIBLE FOR PRIORITY RATINGS

Group

35 Services and trade equipment—except:
- 3510 Laundry and dry cleaning equipment
- 3520 Shoe repairing equipment
- 3530 Industrial sewing machines and mobile textile repair shoes
- 3540 Wrapping and packaging machinery

71* Furniture

72* Household and commercial furnishings and appliances—except:
- 7240 Household and commercial utility containers

73* Food preparation and serving equipment—except:
- 7310 Food cooking, baking and serving equipment
- 7320 Kitchen equipment and appliances
- 7360 Sets, kits, and outfits: food preparation and serving

74 Office machines, visible record equipment, and data processing equipment**

75* Office supplies and devices

77* Musical instruments, phonographs and home-type radios

78* Recreational and athletic equipment

79 Cleaning equipment and supplies

85* Toiletries

87[1] Agricultural supplies

89 Subsistence

91*[1] Fuels, lubricants, oils, and waxes—except:
- 9135 Liquid propellant fuels and oxidizers, chemical base
- 9150 Oils and greases: cutting, lubricating, and hydraulic
- 9160 Miscellaneous waxes, oils and fats

94* Non-metallic crude materials—except:
- 9420 Fibers: vegetable, animal and synthetic

99* Miscellaneous

Class

7630 Newspapers and periodicals

7660 Sheet and book music

8325 Fur materials

8425 Underwear and nightwear, women's

9610 Ores

*DOC will consider requests for special priority rating authorization in the procurement of these items.

**This Group does not include general purpose automatic data processing equipment, software, supplies and support equipment (see Group 70).

[1]Only those items subject to DOC authority as delegated by E.O. 10480.

PART 701—REPORTING OF OFFSETS AGREEMENTS IN SALES OF WEAPON SYSTEMS OR DEFENSE-RELATED ITEMS TO FOREIGN COUNTRIES OR FOREIGN FIRMS

Sec.
701.1 Purpose.
701.2 Definitions.
701.3 Applicability and scope.
701.4 Procedures.
701.5 Confidentiality.

AUTHORITY: Title I, sec. 124, Pub. L 102–558, 106 Stat. 4207 (50 U.S.C App. 2099).

SOURCE: 59 FR 61796, Dec. 2, 1994, unless otherwise noted.

§701.1 Purpose.

The Defense Production Act Amendments of 1992 require the Secretary of Commerce to promulgate regulations for U.S. firms entering into contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offset agreements exceeding $5,000,000 in value to furnish information regarding such agreements. The Secretary of Commerce has designated the Bureau of Export Administration as the organization responsible for implementing this provision. The information provided by U.S. firms will be aggregated and used to determine the impact of offset transactions on the defense preparedness, industrial competitiveness, employment, and trade of the United States. Summary reports will be submitted annually to the Congress pursuant Section 309 of the Defense Production Act of 1950, as amended.

§701.2 Definitions.

(a) *Offsets*—Compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations.

(b) *Military Export Sales*—Exports that are either Foreign Military Sales (FMS) or commercial (direct) sales of defense articles and/or defense services as defined by the Arms Export Control Act and International Traffic in Arms Regulations.

(c) *Prime Contractor*—A firm that has a sales contract with a foreign entity or with the U.S. Government for military export sales.

(d) *United States*—Includes the 50 states, the District of Columbia, Puerto Rico, and U.S. territories.

(e) *Offset Agreement*—Any offset as defined above that the U.S. firm agrees to in order to conclude a military export sales contract. This includes all offsets, whether they are ''best effort'' agreements or are subject to penalty clauses.

(f) *Offset Transaction*—Any activity for which the U.S. firm claims credit for full or partial fulfillment of the offset agreement. Activities to implement offset agreements may include, but are not limited to, coproduction, licensed production, subcontractor production, overseas investment, technology transfer countertrade, barter, counterpurchase, and buy back.

(g) *Direct Offset*—Contractual arrangements that involve defense articles and services referenced in the sales agreement for military exports.

(h) *Indirect Offset*—Contractual arrangements that involve defense goods and services unrelated to the exports referenced in the sales agreement.

§701.3 Applicability and scope.

(a) This rule applies to U.S. firms entering contracts for the sale of defense articles or defense services (as defined in the Arms Export Control Act and International Traffic in Arms Regulations) to a foreign country or foreign firm for which the contract is subject to an offset agreement exceeding $5,000,000 in value.

(b) This rule applies to all offset transactions completed in performance of existing offset commitments since January 1, 1993 for which offset credit of $250,000 or more has been claimed from the foreign representative, and new offset agreements entered into since that time.

§701.4 Procedures.

(a) To avoid double counting, firms should report only offset transactions for which they are directly responsible for reporting to the foreign customer (i.e., prime contractors should report for their subcontractors if the subcontractors are not a direct party to the offset agreement).

(b) Reports should be delivered to the Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Export Administration, Room 3878, 14th Street and Pennsylvania Avenue, N.W., Washington DC 20230. The first industry reports should be submitted to the Bureau of Export Administration not later than March 15, 1995 and should cover offset transactions completed during the calendar year 1993, as well as information regarding unfulfilled offset agreements. After this initial submission, companies should provide information once yearly

not later than June 15 covering the preceding calendar year. All submissions should include a point of contact (name and telephone number) and should be by a company official authorized to provide such information.

(c) Companies may submit this information in computerized spreadsheet/database format (e.g., Lotus 1–2–3, Quattro Pro, dbase IV) using a 3.5 inch 1.44 megabyte diskette, accompanied by a printed copy.

(d) *Offset Transaction Reporting.* (1) Reports should include an itemized list of offset transactions completed during the reporting period, including the following data elements (Estimates are acceptable when actual figures are unavailable; estimated figures should be followed by the letter ''E''):

(i) Name of Country—Country of entity purchasing the weapon system, defense item or service subject to offset.

(ii) Name or Description of Weapon system, Defense Item, or Service Subject to Offset.

(iii) Name of Offset Fulfilling Entity—Entity fulfilling offset transaction (including first tier subcontractors).

(iv) Name of Offset Receiving Entity—Entity receiving benefits from offset transaction.

(v) Offset Credit Value—Dollar value credits claimed by fulfilling entity including any intangible factors/multipliers.

(vi) Actual Offset Value—Dollar value of the offset transaction without multipliers/intangible factors.

(vii) Description of Offset Product/Service—Short description of the type of offset (e.g., coproduction, technology transfer, subcontract activity, training, purchase, cash payment, etc.).

(viii) Broad Industry Category—Broad classification of the industry in which the offset transaction was fulfilled (e.g., aerospace, electronics, chemicals, industrial machinery, textiles, etc.). Firms may request a list of the Standard Industry Classification (SIC) codes to assist in identifying an appropriate industry category. Forward such requests to the Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Export Administration, Room 3878, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230 or Fax 202–482–5650.

(ix) Direct or Indirect Offset—Specify whether the offset transaction was direct or indirect offset.

(x) Name of Country in Which Offset was Fulfilled—United States, purchasing country, or third country.

(2) Offset transactions of the same type (same fulfilling entity, receiving entity, and offset product/service) completed during the same reporting period may be combined.

(3) Any necessary comments or explanations relating to the above information should be footnoted and supplied on separate sheets attached to the report.

(e) *Reporting on Offset Agreements Entered Into.* (1) In addition to the itemized list of offset transactions completed during the year as specified above, U.S. firms should provide information regarding *new offset agreements entered* into during the year, including the following elements:

(i) Name of Country—Country of entity purchasing the weapon system, defense item, or service subject to offset;

(ii) Name or Description of Weapon System, Defense Item, or Service Subject to Offset;

(iii) Names/Titles of Signatories to the Offset Agreement;

(iv) Value of Export Sale Subject to Offset (approximate);

(v) Total Value of the Offset Agreement;

(vi) Term of Offset Agreement (months);

(vii) Description of Performance Measures—(e.g., ''Best Efforts,'' Liquidated Damages, (describe)).

(2) [Reserved]

§ 701.5 Confidentiality.

(a) As provided by § 309(c) of the Defense Production Act of 1950, as amended, BXA shall not publicly disclose the information it receives pursuant to this part, unless the firm furnishing the information subsequently specifically authorizes public disclosure.

(b) Public disclosure must be authorized in writing by an official of the firm competent to make such an authorization.

(c) Nothing in this provision shall prevent the use of data aggregated from information provided pursuant to this part in the summary report to the Congress described in §701.1.

PARTS 702–704 [RESERVED]

PART 705—EFFECT OF IMPORTED ARTICLES ON THE NATIONAL SECURITY

Sec.
705.1 Definitions.
705.2 Purpose.
705.3 Commencing an investigation.
705.4 Criteria for determining effect of imports on the national security.
705.5 Request or application for an investigation.
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705.7 Conduct of an investigation.
705.8 Public hearings.
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705.10 Report of an investigation and recommendation.

AUTHORITY: Sec. 232, Trade Expansion Act of 1962 (19 U.S.C. 1862), as amended (Pub. L. 100–418, 102 Stat. 1107), Reorg. Plan No. 3 of 1979 (44 FR 69273, Dec. 3, 1979); E.O. 12188 of Jan. 2, 1980 (45 FR 989, Jan. 4, 1980).

SOURCE: 47 FR 14693, Apr. 6, 1982, unless otherwise noted. Redesignated at 54 FR 601, Jan. 9, 1989.

§705.1 Definitions.

As used in this part:

Department means the United States Department of Commerce and includes the Secretary of Commerce and the Secretary's designees.

Secretary means the Secretary of Commerce or the Secretary's designees.

Applicant means the person or entity submitting a request or application for an investigation pursuant to this part.

§705.2 Purpose.

These regulations set forth the procedures by which the Department shall commence and conduct an investigation to determine the effect on the national security of the imports of any article. Based on this investigation, the Secretary shall make a report and recommendation to the President for action or inaction regarding an adjustment of the imports of the article.

§705.3 Commencing an investigation.

Upon request of the head of any government department or agency, upon application of an interested party, or upon motion of the Secretary, the Department shall immediately conduct an investigation to determine the effect on the national security of the imports of any article.

§705.4 Criteria for determining effect of imports on the national security.

(a) To determine the effect on the national security of the imports of the article under investigation, the Department shall consider the quantity of the article in question or other circumstances related to its import. With regard for the requirements of national security, the Department shall also consider the following:

(1) Domestic production needed for projected national defense requirements;

(2) The capacity of domestic industries to meet projected national defense requirements;

(3) The existing and anticipated availabilities of human resources, products, raw materials, production equipment and facilities, and other supplies and services essential to the national defense;

(4) The growth requirements of domestic industries to meet national defense requirements and the supplies and services including the investment, exploration and development necessary to assure such growth; and

(5) Any other relevant factors.

(b) In recognition of the close relation between the strength of our national economy and the capacity of the United States to meet national security requirements, the Department shall also, with regard for the quantity, availability, character and uses of the imported article under investigation, consider the following:

(1) The impact of foreign competition on the economic welfare of any domestic industry essential to our national security;

(2) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; and

(3) Any other relevant factors that are causing or will cause a weakening of our national economy.

§ 705.5 Request or application for an investigation.

(a) A request or application for an investigation shall be in writing. The original and 12 copies shall be filed with the Director, Office of Industrial Resource Administration, Room 3876, U.S. Department of Commerce, Washington, DC 20230.

(b) When a request, application or motion is under investigation, or when an investigation has been completed pursuant to § 705.10 of this part, any subsequently filed request or application concerning imports of the same or related article that does not raise new or different issues may be either consolidated with the investigation in progress as provided in § 705.7(e) of this part, or rejected. In either event, an explanation for taking such action shall be promptly given to the applicant. If the request or application is rejected, it will not be returned unless requested by the applicant.

(c) Requests or applications shall describe how the quantity, availability, character, and uses of a particular imported article, or other circumstances related to its import, affect the national security, and shall contain the following information to the fullest extent possible:

(1) Identification of the applicant;

(2) A precise description of the article;

(3) Description of the domestic industry affected, including pertinent information regarding companies and their plants, locations, capacity and current output of the industry;

(4) Pertinent statistics on imports and domestic production showing the quantities and values of the article;

(5) Nature, sources, and degree of the competition created by imports of the article;

(6) The effect that imports of the article may have upon the restoration of domestic production capacity in the event of national emergency;

(7) Employment and special skills involved in the domestic production of the article;

(8) Extent to which the national economy, employment, investment, specialized skills, and productive capacity is or will be adversely affected;

(9) Revenues of Federal, State, or local Governments which are or may be adversely affected;

(10) National security supporting uses of the article including data on applicable contracts or sub-contracts, both past and current; and

(11) Any other information or advice relevant and material to the subject matter of the investigation.

(d) Statistical material presented should be, if possible, on a calendar-year basis for sufficient periods of time to indicate trends. Monthly or quarterly data for the latest complete years should be included as well as any other breakdowns which may be pertinent to show seasonal or short-term factors.

§ 705.6 Confidential information.

(a) Any information or material which the applicant or any other party desires to submit in confidence at any stage of the investigation that would disclose national security classified information or business confidential information (trade secrets, commercial or financial information, or any other information considered senstitive or privileged), shall be submitted on separate sheets with the clear legend ''National Security Classified'' or ''Business Confidential,'' as appropriate, marked at the top of each sheet. Any information or material submitted that is identified as national security classified must be accompanied at the time of filing by a statement indicating the degree of classification, the authority for the classification, and the identity of the classifying entity. By submitting information or material identified as business confidential, the applicant or other party represents that the information is exempted from public disclosure, either by the Freedom of Information Act (5 U.S.C. 552 et seq.) or by some other specific statutory exemption. Any request for business confidential treatment must be accompanied at the time of filing by a statement justifying non-disclosure and referring to the specific legal authority claimed.

(b) The Department may refuse to accept as business confidential any information or material it considers not intended to be protected under the legal authority claimed by the applicant, or under other applicable legal authority. Any such information or material so refused shall be promptly returned to the submitter and will not be considered. However, such information or material may be resubmitted as non-confidential in which case it will be made part of the public record.

§705.7 Conduct of an investigation.

(a) If the Department determines that it is appropriate to afford interested parties an opportunity to present information and advice relevant and material to an investigation, a public notice shall be published in the FEDERAL REGISTER soliciting from any interested party written comments, opinions, data, information or advice relative to the investigation. This material shall be submitted as directed within a reasonable time period to be specified in the notice. All material shall be submitted with 6 copies. In addition, public hearings may be held pursuant to §705.8 of this part.

(b) All requests and applications filed and all material submitted by interested parties, except information on material that is classified or determined to be confidential as provided in §705.6 of this part, will be available for public inspection and copying in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room H–4886, U.S. Department of Commerce, Washington, DC 20230, in accordance with regulations published in part 4 of title 15, Code of Federal Regulations.

(c) Further information may be requested by the Department from other sources through the use of questionnaires, correspondence, or other appropriate means.

(d) The Department shall, as part of an investigation, seek information and advice from, and consult with, the Secretary of Defense and any other appropriate officers of the United States or their designees, as shall be determined. Communications received from agencies of the U.S. Government or foreign governments will not be made available for public inspection. The Department may also seek assistance in the conduct of an investigation from other agencies of the United States, as shall be necessary.

(e) Any request or application that is filed while an investigation is in progress, concerning imports of the same or related article and raising similar issues, may be consolidated with the request, application or motion that initiated the investigation.

[47 FR 14693, Apr. 6, 1982. Redesignated at 54 FR 601, Jan. 9, 1989 and amended at 54 FR 19355, May 5, 1989]

§705.8 Public hearings.

(a) If it is deemed appropriate by the Department, public hearings may be held to elicit further information.

(1) A notice of hearing shall be published in the FEDERAL REGISTER describing the date, time, place, the subject matter of each hearing and any other information relevant to the conduct of the hearing. The name of a person to contact for additional information or to request time to speak at the hearing shall also be included. Public hearings may be held in more than one location.

(2) Hearings shall be open to the public unless national security classified information will be presented. In that event the presiding officer at the hearing shall close the hearing, as necessary, to all persons not having appropriate security clearances or not otherwise authorized to have access to such information. If it is known in sufficient time prior to the hearing that national security classified information will be presented the notice of hearing published in the FEDERAL REGISTER shall state that national security classified information will be presented and that the hearing will be open only to those persons having appropriate security clearances or otherwise specifically authorized to have access to such information.

(b) Hearings shall be conducted as follows:

(1) The Department shall appoint the presiding officer;

(2) The presiding officer shall determine all procedural matters during the hearing;

(3) Interested parties may appear, either in person or by representation, and produce oral or written information relevant and material to the subject matter of the investigation;

(4) Hearings will be fact-finding proceedings without formal pleadings or adverse parties. Formal rules of evidence will not apply;

(5) After a witness has testified, the presiding officer may question the witness. Questions submitted to the presiding officer in writing by any interested party may, at the discretion of the presiding officer, be posed to the witness. No cross examination of any witness by a party shall be allowed.

(6) Each hearing will be stenographically reported. Transcripts of the hearing, excluding any national security classified information, may be purchased from the Department at actual cost of duplication, and will be available for public inspection in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room H–4886, U.S. Department of Commerce, Washington, DC 20230.

[47 FR 14693, Apr. 6, 1982. Redesignated at 54 FR 601, Jan. 9, 1989 and amended at 54 FR 19355, May 5, 1989]

§ 705.9 Emergency action.

In emergency situations, or when in the judgment of the Department, national security interests require it, the Department may vary or dispense with any or all of the procedures set forth in § 705.7 of this part.

§ 705.10 Report of an investigation and recommendation.

(a) When an investigation conducted pursuant to this part is completed, a report of the investigation shall be promptly prepared. The report shall be organized in several sections, if necessary. One section shall contain all information and material that is not classified or confidential as provided in § 705.6 of this part. Another section shall contain all national security classified information and material. A third section shall contain all business confidential information and material.

(b) The Secretary shall report to the President the findings of the investigation and a recommendation for action or inaction within one year after receiving a request or application or otherwise beginning an investigation pursuant to this part.

(c) The Executive Summary of the report, excluding the sections containing national security classified and business confidential information and material, shall be published in the FEDERAL REGISTER upon the disposition of each request, application, or motion made pursuant to this part. Copies of the full report will then be available for public inspection and copying in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room H–4886, U.S. Department of Commerce, Washington, DC 20230.

[47 FR 14693, Apr. 6, 1982. Redesignated at 54 FR 601, Jan. 9, 1989 and amended at 54 FR 19355, May 5, 1989]

PARTS 706–709 [RESERVED]

SUBCHAPTER B [RESERVED]

PARTS 710–729 [RESERVED]

SUBCHAPTER C—EXPORT ADMINISTRATION REGULATIONS

PART 730—GENERAL INFORMATION

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SUPPLEMENT NO. 1 TO PART 730—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

SUPPLEMENT NO. 2 TO PART 730—TECHNICAL ADVISORY COMMITTEES

SUPPLEMENT NO. 3 TO PART 730—OTHER U.S. GOVERNMENT DEPARTMENTS AND AGENCIES WITH EXPORT CONTROL RESPONSIBILITIES

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p.133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12867, 58 FR 51747, 3 CFR, 1993 Comp., p. 649; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527); E.O. 12981 (60 FR 62981).

SOURCE: 61 FR 12734, Mar. 25, 1996, unless otherwise noted.

§ 730.1 What these regulations cover.

In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C. The EAR are issued by the United States Department of Commerce, Bureau of Export Administration (BXA) under laws relating to the control of certain exports, reexports, and activities. In addition, the EAR implement antiboycott law provisions requiring regulations to prohibit specified conduct by United States persons that has the effect of furthering or supporting boycotts fostered or imposed by a country against a country friendly to United States. Supplement No. 1 to part 730 lists the control numbers assigned to information collection requirements under the EAR by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995.

§ 730.2 Statutory authority.

The EAR have been designed primarily to implement the Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401–2420 (EAA). There are numerous other legal authorities underlying the EAR. These are listed in the FEDERAL REGISTER documents promulgating the EAR and at the beginning of each part of the EAR in the Code of Federal Regulations (CFR). From time to time, the President has exercised authority under the International Emergency Economic Powers Act with respect to the EAR (50 U.S.C. 1701–1706 (IEEPA)). The EAA is not permanent legislation, and when it has lapsed, Presidential executive orders under IEEPA have directed and authorized the continuation in force of the EAR.

§ 730.3 Dual use exports.

The convenient term *dual use* is sometimes used to distinguish the

types of items covered by the EAR from those that are covered by the regulations of certain other U.S. government departments and agencies with export licensing responsibilities. In general, the term dual use serves to distinguish EAR-controlled items that can be used both in military and other strategic uses (e.g., nuclear) and commercial applications. In general, the term dual use serves to distinguish EAR-controlled items that can be used both in military and other strategic uses and in civil applications from those that are weapons and military related use or design and subject to the controls of the Department of State or subject to the nuclear related controls of the Department of Energy or the Nuclear Regulatory Commission. Note, however, that although the short-hand term dual use may be employed to refer to the entire scope of the EAR, the EAR also apply to some items that have solely civil uses.

§ 730.4 Other control agencies and departments.

In addition to the departments and agencies mentioned in § 730.3 of this part, other departments and agencies have jurisdiction over certain narrower classes of exports and reexports. These include the Department of Treasury's Office of Foreign Assets Control (OFAC), which administers controls against certain countries that are the object of sanctions affecting not only exports and reexports, but also imports and financial dealings. For your convenience, Supplement No. 3 to part 730 identifies other departments and agencies with regulatory jurisdiction over certain types of exports and reexports. This is not a comprehensive list, and the brief descriptions are only generally indicative of the types of controls administered and/or enforced by each agency.

§ 730.5 Coverage of more than exports.

The core of the export control provisions of the EAR concerns exports from the United States. You will find, however, that some provisions give broad meaning to the term ''export'', apply to transactions outside of the United States, or apply to activities other than exports.

(a) *Reexports.* Commodities, software, and technology that have been exported from the United States are generally subject to the EAR with respect to reexport. Many such reexports, however, may go to many destinations without a license or will qualify for an exception from licensing requirements.

(b) *Foreign products.* In some cases, authorization to export technology from the United States will be subject to assurances that items produced abroad that are the direct product of that technology will not be exported to certain destinations without authorization from BXA.

(c) *Scope of ''exports''.* Certain actions that you might not regard as an ''export'' in other contexts do constitute an export subject to the EAR. The release of technology to a foreign national in the United States through such means as demonstration or oral briefing is deemed an export. Other examples of exports under the EAR include the return of foreign equipment to its country of origin after repair in the United States, shipments from a U.S. foreign trade zone, and the electronic transmission of non-public data that will be received abroad.

(d) *U.S. person activities.* To counter the proliferation of weapons of mass destruction, the EAR restrict the involvement of ''United States persons'' anywhere in the world in exports of foreign-origin items, or in providing services or support, that may contribute to such proliferation. The EAR also restrict technical assistance by U.S. persons with respect to encryption commodities or software.

[61 FR 12734, Mar. 25, 1996, as amended at 61 FR 68577, Dec. 30, 1996]

§ 730.6 Control purposes.

The export control provisions of the EAR are intended to serve the national security, foreign policy, nonproliferation, and short supply interests of the United States and, in some cases, to carry out its international obligations. Some controls are designed to restrict access to dual use items by countries or persons that might apply such items to uses inimical to U.S. interests. These include controls designed to stem the proliferation of weapons of mass destruction and controls designed

to limit the military and terrorism support capability of certain countries. The effectiveness of many of the controls under the EAR is enhanced by their being maintained as part of multilateral control arrangements. Multilateral export control cooperation is sought through arrangements such as the Nuclear Suppliers Group, the Australia Group, and the Missile Technology Control Regime. The EAR also include some export controls to protect the United States from the adverse impact of the unrestricted export of commodities in short supply.

§730.7 License requirements and exceptions.

A relatively small percentage of exports and reexports subject to the EAR require an application to BXA for a license. Many items are not on the Commerce Control List (CCL) (Supplement No. 1 to §774.1 of the EAR), or, if on the CCL, require a license to only a limited number of countries. Other transactions may be covered by one or more of the License Exceptions in the EAR. In such cases no application need be made to BXA.

§730.8 How to proceed and where to get help.

(a) *How the EAR are organized.* The Export Administration Regulations (EAR) are structured in a logical manner. In dealing with the EAR you may find it helpful to be aware of the overall organization of these regulations. In order to determine what the rules are and what you need to do, review the titles and the introductory sections of the parts of the EAR.

(1) *How do you go about determining your obligations under the EAR?* Part 732 of the EAR provides steps you may follow to determine your obligations under the EAR. You will find guidance to enable you to tell whether or not your transaction is subject to the EAR and, if it is, whether it qualifies for a License Exception or must be authorized through issuance of a license.

(2) *Are your items or activities subject to the EAR at all?* Part 734 of the EAR defines the items and activities that are subject to the EAR. Note that the definition of ''items subject to the EAR'' includes, but is not limited to, items listed on the Commerce Control List in part 774 of the EAR.

(3) *If subject to the EAR, what do the EAR require?* Part 736 of the EAR lists all the prohibitions that are contained in the EAR. Note that certain prohibitions (General Prohibitions One through Three) apply to items as indicated on the CCL, and others (General Prohibitions Four through Ten) prohibit certain activities and apply to all items subject to the EAR unless otherwise indicated.

(4) *Do you need a license for your item or activity? What policies will BXA apply if you do need to submit license application?* The EAR have four principal ways of describing license requirements:

(i) The EAR may require a license to a country if your item is listed on the CCL and the Country Chart in part 738 of the EAR tells that a license is required to that country. Virtually all Export Control Classification Numbers (ECCN) on the CCL are covered by the Country Chart in part 738 of the EAR. That part identifies the limited number of entries that are not included on the Chart. These ECCNs will state the specific countries that require a license or refer you to a self-contained section, i.e., Short Supply in part 754 of the EAR, or Embargoes in part 746 of the EAR. If a license is required, you should consult part 740 of the EAR which describes the License Exception that may be available for items on the CCL. Part 742 of the EAR describes the licensing policies that BXA will apply in reviewing an application you file. Note that part 754 of the EAR on short supply controls and part 746 on embargoes are self-contained parts that include the available exceptions and licensing policy.

(ii) A license requirement may be based on the end-use or end-user in a transaction, primarily for proliferation reasons. Part 744 of the EAR describes such requirements and relevant licensing policies and includes both restrictions on items and restrictions on the activities of U.S. persons.

(iii) A license is required for virtually all exports to embargoed destinations, such as Cuba. Part 746 of the EAR describes all the licensing requirements, license review policies and License Exceptions that apply to such

destinations. If your transaction involves one of these countries, you should first look at this part. This part also describes controls that may be maintained under the EAR to implement UN sanctions.

(iv) In addition, under §§736.2(b)(9) and (10) of the EAR, you may not engage in a transaction knowing a violation is about to occur or violate any orders, terms, and conditions under the EAR. Part 764 of the EAR describes prohibited transactions with a person denied export privileges or activity that violates the terms or conditions of a denial order.

(5) *How do you file a license application and what will happen to the application once you do file it? What if you need authorization for multiple transactions?* Parts 748 and 750 of the EAR provide information on license submission and processing. Part 752 of the EAR provides for a Special Comprehensive License that authorizes multiple transactions. If your application is denied, part 756 of the EAR provides rules for filing appeals.

(6) *How do you clear shipments with the U.S. Customs Service?* Part 758 of the EAR describes the requirements for clearance of exports.

(7) *Where do you find the rules on restrictive trade practices and boycotts?* Part 760 of the EAR deals with restrictive trade practices and boycotts.

(8) *Where are the rules on recordkeeping and enforcement?* Part 762 of the EAR sets out your recordkeeping requirements, and parts 764 and 766 of the EAR deal with violations and enforcement proceedings.

(9) *What is the effect of foreign availability?* Part 768 of the EAR provides rules for determining foreign availability of items subject to controls.

(10) *Do the EAR provide definitions and interpretations?* Part 770 of the EAR contains interpretations and part 772 of the EAR lists definitions used.

(b) *Why the EAR are so detailed.* Some people will find the great length of the EAR and their extensive use of technical terms intimidating. BXA believes, however, that such detail and precision can and does serve the interests of the public. The detailed listing of technical parameters in the CCL establishes precise, objective criteria. This should, in most cases, enable you to ascertain the appropriate control status. Broader, more subjective criteria would leave exporters and reexporters more dependent upon interpretations and rulings by BXA officials. Moreover, much of the detail in the CCL is derived from multilaterally adopted lists, and the specificity serves to enhance the uniformity and effectiveness of international control practices and to promote a ''level playing field''. The detailed presentation of such elements as licensing and export clearance procedures enables you to find in one place what you need to know to comply with pertinent requirements. Of special importance is the detailed listing of License Exception criteria, as these will enable you to determine quickly, and with confidence, that you may proceed with a transaction without delay. Finally, some of the detail results from the need to draft the EAR with care in order to avoid loop-holes and to permit effective enforcement.

(c) *Where to get help.* Throughout the EAR you will find information on offices you can contact for various purposes and types of information. General information including; assistance in understanding the EAR, information on how to obtain forms, electronic services, publications, and information on training programs offered by BXA, is available from the Office of Exporter Services at the following locations:

Exporter Counselling Division, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Room H1099D, Washington, D.C., 20230, Telephone number: (202) 482–4811, Facsimile number: (202) 482–3617

and

Western Regional Office, U.S. Department of Commerce, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660, Telephone number: (714) 660–0144, Facsimile number: (714) 660–9347

and

Santa Clara Branch Office, U.S. Department of Commerce, 5201 Great America Parkway, Suite 333, Santa Clara, California 95054, Telephone number: (408) 748–7450, Facsimile number: (408) 748–7470.

§ 730.9 How the Bureau of Export Administration is organized.

Functionally, the Bureau of Export Administration is divided into two

branches, Export Administration and Export Enforcement. Also, BXA manages a number of Technical Advisory Committees consisting of industry and government representatives which advise and assist BXA and other agencies with respect to actions designed to implement the EAR.

(a) *Export Administration.* Export Administration implements and administers the export controls reflected in the EAR. Export Administration consists of five offices located in Washington D.C. and two field offices in California under the supervision of the Assistant Secretary for Export Administration:

(1) The Office of Nuclear and Missile Technology Controls is responsible for policy and technical issues and license applications related to the Nuclear Suppliers Group and the Missile Technology Control Regime. This office has responsibility for items associated with those regimes, and missile and nuclear related exports and reexports subject to the Enhanced Proliferation Control Initiative.

(2) The Office Chemical/Biological Controls and Treaty Compliance is responsible for implementing multilateral export controls under the Australia Group. This office has licensing responsibility for items associated with the Australia Group and related exports and reexports subject to the Enhanced Proliferation Control Initiative.

(3) The Office of Strategic Trade and Foreign Policy Controls is responsible for implementing multilateral export controls dealing with conventional arms and related dual use items. This office is also responsible for computer export control policies, and implements U.S. foreign policy controls (e.g., crime control, anti-terrorism, and regional stability). It also has licensing responsibility for items controlled for national security and foreign policy reasons.

(4) The Office of Exporter Services is responsible for the Special Comprehensive License, processing and routing all license applications, and preparing responses to requests for advisory opinions and commodity classifications. This office also provides counselling to exporters and reexporters, conducts educational seminars for the business community, maintains the Export Administration Regulations, and coordinates the operations of two field offices listed in § 730.8(c) of this part.

(5) The Office of Strategic Industries and Economic Security implements programs to ensure the continued health of the U.S. defense industrial base, facilitating diversification of U.S. defense related industries into civilian markets, and promoting the conversion of military enterprises. This office is also responsible for analyzing the economic impact of U.S. export controls on industrial competitiveness.

(b) *Export Enforcement.* Export Enforcement implements the enforcement provisions of the EAR, including part 760 of the EAR (Restrictive Trade Practices and Boycotts). This office also conducts outreach programs to assist members of the public in understanding their obligation under EAR. The Office of Export Enforcement is organized into three offices under the supervision of the Assistant Secretary for Export Enforcement.

(1) The Office of Export Enforcement (OEE) is comprised of an office in Washington, D.C. and eight field offices. OEE is staffed with criminal investigators and analysts. This office investigates allegations of violations and supports administrative and criminal enforcement proceedings. The addresses and telephone numbers of the eight field offices are listed in § 764.5(c)(7) of the EAR.

(2) The Office of Enforcement Support (OES) is located in Washington, D.C. OES supports BXA's preventive enforcement efforts, including conducting pre-license checks and post-shipment verifications. OES also provides administrative and analytical support for OEE.

(3) The Office of Antiboycott Compliance administers and enforces the provisions of part 760 of the EAR (Restrictive Trade Practices and Boycotts). It investigates and prepares cases on alleged violations of this part.

(c) *Technical Advisory Committees.* (1) The Technical Advisory Committees (TACs) provide advice and assistance to BXA from U.S. industry regarding the creation and implementation of export

controls. For further information regarding establishment of TACs and other information, see Supplement No. 2 to part 730. Existing TACs include the following:

(i) The Information Systems TAC;

(ii) The Materials TAC;

(iii) The Materials Processing Equipment TAC;

(iv) The Regulations and Procedures TAC;

(v) The Sensors and Instrumentation TAC; and

(vi) The Transportation and Related Equipment TAC.

(2) *For more information.* For information on attending a TAC meeting or on becoming a TAC member, please contact Ms. Lee Ann Carpenter, Director, TAC Unit, OAS-EA/BXA, Room 3886C, U.S. Department of Commerce, Washington, DC 20230; Telephone number: (202) 482–2583. FAX number: (202) 501–8024.

[61 FR 12734, Mar. 25, 1996, as amended at 62 FR 25452, May 9, 1997]

§ 730.10 Advisory information.

The general information in this part is just that—general. To achieve brevity, so as to give you a quick overview, the information in this part is selective, incomplete, and not expressed with regulatory precision. The controlling language is the language of succeeding parts of the EAR and of any other laws or regulations referred to or applicable. The content of this part is not to be construed as modifying or interpreting any other language or as in any way, limiting the authority of BXA, any of its components or any other government department or agency. You should not take any action based solely on what you read in this part.

SUPPLEMENT NO. 1 TO PART 730—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

This supplement lists the control numbers assigned to the information collection requirements for the Bureau of Export Administration by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995. This supplement complies with the requirements of section 3506(c)(1)(B)(i) of the Paperwork Reduction Act requiring agencies to display current control numbers assigned by the Director of OMB for each agency information collection requirement.

Current OMB control No.	15 CFR part or section where collections of information are identified or described
0694–0001	§ 748.12(d) of the EAR.
0694–0004	Part 768 of the EAR.
0694–0008	§ 748.13, Supplement No. 5 to part 748 of the EAR.
0694–0009	§ 748.10(e) of the EAR.
0694–0012	Part 760 and § 762.2(b) of the EAR.
0694–0013	Part 774 of the EAR.
0694–0015	§ 773.3 of the EAR.
0694–0016	§§ 748.13 and 762.2(b) of the EAR.
0694–0017	§ 748.10 of the EAR.
0694–0021	§§ 748.11 and 762.2(b) of the EAR.
0694–0023	§§ 740.3(d) and 740.4(c) of the EAR.
0694–0025	§§ 754.4 and 762.2(b) of the EAR.
0694–0026	§ 754.3 of the EAR.
0694–0027	§ 754.2 of the EAR.
0694–0029	§ 740.4(a) of the EAR.
0694–0030	Supplement No. 2 to part 748, paragraph (p) of the EAR.
0694–0031	§ 750.9 of the EAR.
0694–0032	§ 748.4(d)(2) of the EAR.
0694–0033	§§ 740.7(b) and 762.2(b) of the EAR.
0694–0038	§ 758.6(e)(2) of the EAR.
0694–0040	§§ 758.5(c)(2) and 758.8 of the EAR.
0694–0047	Supplement No. 2 to part 748, paragraph (o)(2) of the EAR.
0694–0048	§ 748.3 of the EAR.
0694–0050	§ 752.5(c)(5) of the EAR.
0694–0051	§ 750.10 of the EAR.
0694–0058	§§ 762.2(b) and 764.5 of the EAR.
0694–0064	§§ 748.9 and 762.2(b) of the EAR.
0694–0065	§ 754.4(c) of the EAR of the EAR.
0694–0073	§ 742.12, Supplement No. 3 to part 742, and § 762.2(b) of the EAR.
0694–0078	Supplement No. 1 to part 774 of the EAR.
0694–0086	Supplement No. 1 to part 774 of the EAR.
0694–0088	Parts 746, 748, and 752; § 762.2(b) of the EAR.
0694–0089	Part 752 and § 762.2(b) of the EAR.
0694–0093	§§ 748.10 and 762.2(b) of the EAR.
0694–0094	Part 758 of the EAR of the EAR.
0694–0095	§§ 740.7(a)(3)(ii) and 758.1(d) of the EAR.
0694–0096	Part 760, § 762.6(a) of the EAR.
0694–0097	§§ 752.15(b), 758.6, and 762.2(b) of the EAR.
0694–0102	§§ 754.6 and 754.7 of the EAR.
0694–0101	§ 734.4 of the EAR.
0694–0100	Supplement No. 1 to part 730.
0607–0001	§ 758.2(m) of the EAR.
0607–0018	§§ 740.1(d), 740.3(a)(3), 752.7(b), § 752.15(a) of the EAR.
	§§ 754.2(h) and (i), 754.4(c) 758.1, §§ 758.2(m) and 758.3 of the EAR.
0607–0152	§§ 740.1(d), 740.3(a)(3), 752.7(b), §§ 752.15(a) of the EAR.
	§§ 754.2(h) and (i), 754.4(c), 758.1, §§ 758.2(m), and 758.3 of the EAR.

SUPPLEMENT NO. 2 TO PART 730—TECHNICAL ADVISORY COMMITTEES

(a) *Purpose.* The purpose of this supplement is to describe the procedures and criteria for the establishment and operation of Technical Advisory Committees.

(b) *Technical advisory committees.* Any producer of articles, materials, or supplies, including technology, software, and other information, that are subject to export controls, or are being considered for such controls because of their significance to the national security of the United States, may request the Secretary of Commerce to establish a technical advisory committee, under the provisions of section 5(h) of the Export Administration Act of 1979, as amended (EAA) to advise and assist the Department of Commerce and other appropriate U.S. Government agencies or officials with respect to questions involving technical matters; worldwide availability and actual utilization of production technology; licensing procedures that affect the level of export controls applicable to a clearly defined grouping of articles, materials, or supplies, including technology, software, or other information; and exports and reexports subject to all controls that the United States maintains including proposed revisions of any such controls. If producers of articles, materials, or supplies, including technology, software, and other information, that are subject to export controls because of their significance to the national security of the United States, wish a trade association or other representative to submit a written request on their behalf for the appointment to a TAC, such request shall be submitted in accordance with paragraph (b)(4) of this supplement.

(1) *Form and substance of requests.* Each request for the appointment of a TAC shall be submitted in writing to: Assistant Secretary for Export Administration, P.O. Box 273, Washington, DC 20044.

The request shall include:

(i) A description of the articles, materials, or supplies including technology and software, in terms of a clear, cohesive grouping (citing the applicable Export Control Classification Numbers where practical);

(ii) A statement of the reasons for requesting the appointment of a TAC; and

(iii) Any information in support of any contention that may be made that the request meets the criteria described in paragraph (b)(2) of this supplement.

(2) *Consideration of request for establishment of a TAC.* The Department of Commerce will review all requests for the establishment of a TAC to determine if the following criteria are met:

(i) That a substantial segment of the industry producing the specified articles, materials, or supplies including technology desires such a committee; and

(ii) That the evaluation of such articles, materials, or supplies including technology and software for export control purposes is difficult because of questions involving technical matters, worldwide availability and actual utilization of production and software technology, or licensing procedures.

(3) *Requests by a substantial segment of an industry.* In determining whether or not a substantial segment of any industry has requested the appointment of a TAC, the Department of Commerce will consider:

(i) The number of persons or firms requesting the establishment of a TAC for a particular grouping of commodities, software and technology in relation to the total number of U.S. producers of such items; and

(ii) The volume of annual production by such persons or firms of each item in the grouping in relation to the total U.S. production. Generally, a substantial segment of an industry (for purposes of this supplement) shall consist of:

(A) Not less than 30 percent of the total number of U.S. producers of the items concerned; or

(B) Three or more U.S. producers who produce a combined total of not less than 30 percent of the total U.S. annual production, by dollar value of the items concerned; or

(C) Not less than 20 percent of the total number of U.S. producers of the items concerned, provided that the total of their annual production thereof is not less than 20 percent of the total U.S. annual production, by dollar value.

(iii) If it is determined that a substantial segment of the industry concerned has requested the establishment of a TAC concerning a specific grouping of items that the Department of Commerce determines difficult to evaluate for export control purposes, BXA will establish and use the TAC requested.

(4) *Requests from trade associations or other representatives.* Requests from trade associations or other representatives of U.S. producers for the establishment of a TAC must comply with the provisions of paragraphs (b)(1) through (3) of this supplement. In addition, in order to assist BXA in determining whether the criteria described in paragraph (b)(3) of this supplement have been met, a trade association or other representative submitting a request for the establishment of a TAC should include the following information:

(i) The total number of firms in the particular industry;

(ii) The total number of firms in the industry that have authorized the trade association or other representative to act in their behalf in this matter;

(iii) The approximate amount of total U.S. annual production by dollar value of the items concerned produced by those firms that have authorized the trade association or other representative to act in their behalf; and

(iv) A description of the method by which authorization to act on behalf of these producers was obtained.

(5) *Nominations for membership on TACs.* When the Department of Commerce determines that the establishment of a TAC is

warranted, it will request nominations for membership on the committee among the producers of the items and from any other sources that may be able to suggest well-qualified nominees.

(6) *Selection of industry members of committee.* Industry members of a TAC will be selected by the Department of Commerce from a list of the nominees who have indicated their availability for service on the committee. To the extent feasible, the Department of Commerce will select a committee balanced to represent all significant facets of the industry involved, taking into consideration such factors as the size of the firms, their geographical distribution, and their product lines. No industry representative shall serve on a TAC for more than four consecutive years. The membership of a member who is absent from four consecutive meetings shall be terminated.

(7) *Government members.* Government members of a TAC will be selected by the Department of Commerce from the agencies having an interest in the subject matter concerned.

(8) *Invitation to serve on committee.* Invitations to serve on a TAC will be sent by letter to the selected nominees.

(9) *Election of Chair.* The Chair of each TAC shall be elected by a vote of the majority of the members of the committee present and voting.

(c) *Charter.* (1) No TAC established pursuant to this supplement shall meet or take any action until an advisory committee charter has been filed with the Assistant Secretary for Export Administration of the Department of Commerce and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction over the Department. Such charter shall contain the following information:

(i) The committee's official designation;

(ii) The committee's objectives and the scope of its activities;

(iii) The period of time necessary for the committee to carry out its purposes;

(iv) The agency or official to whom the committee reports;

(v) The agency responsible for providing the necessary support for the committee;

(vi) A description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(vii) The estimated annual operating costs in dollars and years for such committee;

(viii) The estimated number and frequency of committee meetings;

(ix) The committee's termination date, if less than two years from the date of the committee's establishment; and

(x) The date the charter is filed.

(d) *Meetings.* (1) Each TAC established under the provisions of the EAA and paragraph (b) of this supplement shall meet at least once every three months at the call of its Chair unless it is specifically determined by the Chair, in consultation with other members of the committee, that a particular meeting is not necessary.

(2) No TAC may meet except at the call of its Chair.

(3) Each meeting of a TAC shall be conducted in accordance with an agenda approved by a designated Federal government employee.

(4) No TAC shall conduct a meeting in the absence of a designated Federal government employee who shall be authorized to adjourn any advisory committee meeting, whenever the Federal government employee determines adjournment to be in the public interest.

(e) *Public notice.* Notice to the public of each meeting of a TAC will be issued at least 20 days in advance and will be published in the FEDERAL REGISTER. The notice will include the time and place of the meeting and the agenda.

(f) *Public attendance and participation.* (1) Any member of the public who wishes to do so may file a written statement with any TAC before or after any meeting of a committee.

(2) A request for an opportunity to deliver an oral statement relevant to matters on the agenda of a meeting of a TAC will be granted to the extent that the time available for the meeting permits. A committee may establish procedures requiring such persons to obtain advance approval for such participation.

(3) Attendance at meetings of TACs will be open to the public unless it is determined pursuant to section 10(d) of the Federal Advisory Committee Act to be necessary to close all, or some portion, of the meeting to the public. A determination that a meeting or portion thereof be closed to the public may be made if all or a specific portion of a meeting of a TAC is concerned with matters described in section 552(b) of Title 5, U.S.C.

(4) Participation by members of the public in open TAC meetings or questioning of committee members or other participants shall not be permitted except in accordance with procedures established by the committee.

(5) Every effort will be made to accommodate all members of the public who wish to attend.

(g) *Minutes.* (1) Detailed minutes of each meeting of each TAC will be kept and will contain a record of the persons present, a complete and accurate description of the matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the TAC.

(2) The accuracy of all the minutes will be certified to by the TAC Chair.

(h) *Records.* (1) Subject to section 552 of Title 5, U.S.C. and Department of Commerce

Administrative Order 205–12, ''Public Information,'' and ''Public Information'' regulations issued by the Department of Commerce that are contained in 15 CFR part 4, Subtitle A, the records, reports, transcripts, minutes, appendices, working papers, draft, studies, agenda, or other documents that were made available to or prepared for or by each TAC will be available for public inspection and copying.

(2) Each TAC will prepare once each year a report describing its membership, functions, activities, and such related matters as would be informative to the public consistent with the policy of section 552(b) of Title 5, U.S.C.

(3)(i) Requests for records should be addressed to: Bureau of Export Administration, Freedom of Information, Records Inspection Facility, U.S. Department of Commerce, Room 4513, Washington, DC 20230, Telephone (202) 482–2593.

(ii) Rules concerning the use of the Records Inspection Facility are contained in 15 CFR part 4, Subtitle A, or may be obtained from this facility.

(i) *Compensation.* If the Department of Commerce deems it appropriate, a member of a TAC may be reimbursed for travel, subsistence, and other necessary expenses incurred in connection with the member's duties.

(j) *Scope of advisory committee functions.* All TACs are limited to the functions described in their charters.

(k) *Duration of committees.* Each TAC will terminate at the end of two years from the date the committee was established or two years from the effective date of its most recent extension, whichever is later. Committees may be continued only for successive two-year periods by appropriate action taken by the authorized officer of the Department of Commerce prior to the date on which such advisory committee would otherwise terminate. TACs may be extended or terminated only after consultation with the committee.

(l) *Miscellaneous.* (1) TACs established in accordance with paragraph (b) of this supplement must conform to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), Office of Management and Budget Circular A–63 (Revision of March 1974), ''Advisory Committee Management,'' Department of Commerce Administrative Order 205–12, ''Public Information,'' the applicable provisions of the EAA, and any other applicable Department of Commerce regulations or procedures affecting the establishment or operation of advisory committees.

(2) Whenever the Department of Commerce desires the advice or assistance of a particular segment of an industry with respect to any export control problem for which the service of a TAC, as described in paragraph (b) of this supplement is either unavailable or impracticable, an advisory committee may be established pursuant to the provisions of section 9 of the Federal Advisory Committee Act. Such committees will be subject to the requirements of the Federal Advisory Committee Act, OMB Circular A–63 (Revision of March 1974), ''Advisory Committee Management,'' Department of Commerce Administrative Order 205–12, ''Public Information,'' and any other applicable Department of Commerce regulations or procedures affecting the establishment or operation of advisory committees.

(3) Nothing in the provisions of this supplement shall be construed to restrict in any manner the right of any person or firm to discuss any export control matter with the Department of Commerce or to offer advice or information on export control matters. Similarly, nothing in these provisions shall be construed to restrict the Department of Commerce in consulting any person or firm relative to any export control matter.

SUPPLEMENT NO. 3 TO PART 730—OTHER U.S. GOVERNMENT DEPARTMENTS AND AGENCIES WITH EXPORT CONTROL RESPONSIBILITIES

NOTE: The departments and agencies identified with an asterisk control exports for foreign policy or national security reasons and, in certain cases, such controls may overlap with the controls described in the EAR (see part 734 of the EAR).

Defense Services and Defense Articles

*Department of State, Office of Defense Trade Controls, Tel. (703) 875–6644, Fax: (703) 875–6647.

22 CFR parts 120 through 130.

Drugs, Chemicals and Precursors

Drug Enforcement Administration, International Chemical Control Unit, Tel. (202) 307–7202, Fax: (202) 307–8570.

21 CFR parts 1311 through 1313.

Controlled Substances: Drug Enforcement Administration, International Drug Unit, Tel. (202) 307–2414, Fax: (202) 307–8570.

21 CFR 1311 through 1313.

Drugs and Biologics: Food and Drug Administration, Import/Export, Tel. (301) 594–3150, Fax: (301) 594–0165.

21 U.S.C. 301 *et seq.*

Investigational drugs permitted: Food and Drug Administration, International Affairs, Tel. (301) 443–4480, Fax: (301) 443–0235.

21 CFR 312.1106.

Fish and Wildlife Controls; Endangered Species

Department of the Interior, Chief Office of Management Authority, Tel. (703) 358–2093, Fax: (703) 358–2280.

50 CFR 17.21, 17.22, 17.31, 17.32.

Foreign Assets and Transactions Controls

*Department of Treasury, Office of Foreign Assets Control, Licensing, Tel. (202) 622–2480, Fax: (202) 622–1657.
31 CFR parts 500 through 590.

Medical Devices

Food and Drug Administration, Office of Compliance, Tel. (301) 594–4699, Fax: (301) 594–4715.
21 U.S.C. 301 *et seq.*

Natural Gas and Electric Power

Department of Energy, Office of Fuels Programs, Tel. (202) 586–9482, Fax: (202) 586–6050.
10 CFR 205.300 through 205.379 and part 590.

Nuclear Materials and Equipment

*Nuclear Regulatory Commission, Office of International Programs, Tel. (301) 415–2344, Fax: (301) 415–2395.
10 CFR part 110.

Nuclear Technology; Technical Data for Nuclear Weapons/Special Nuclear Materials

*Department of Energy, Office of Arms Control and Non Proliferation, Export Control Division, Tel. (202) 586–2112, Fax: (202) 586–6977.
10 CFR part 810.

Ocean Freight Forwarders

Federal Maritime Commission, Office of Freight Forwarders, Tel. (202) 523–5843, Fax: (202) 523–5830.
46 CFR part 510.

Patent Filing Data Sent Abroad

*Department of Commerce, Patent and Trademark Office, Licensing and Review; Tel. (703) 308–1722, Fax: (703) 305–3603, 3604.
37 CFR part 5.

Prohibition of Movement of American Carriers and Prohibition on Transportation of Goods Destined for North Korea

Department of Transportation, Office of International Law, General Counsel, Tel. (202) 366–2972, Fax: (202) 366–9188.
44 CFR part 403.

U.S. Flagged or U.S. Manufactured Vessels Over 1,000 Gross Tons

U.S. Maritime Administration, Division of Vessel Transfer and Disposal, Tel. (202) 366–5821, Fax: (202) 366–3889.
46 CFR part 221.

PART 732—STEPS FOR USING THE EAR

Sec.

732.1 Steps overview.
732.2 Steps regarding scope of the EAR.
732.3 Steps regarding the ten general prohibitions.
732.4 Steps regarding License Exceptions.
732.5 Steps regarding Shipper's Export Declaration, Destination Control Statements, record keeping, license applications, and other requirements.
732.6 Steps for other requirements.
SUPPLEMENT NO. 1 TO PART 732—DECISION TREE
SUPPLEMENT NO. 2 TO PART 732—AM I SUBJECT TO THE EAR?
SUPPLEMENT NO. 3 TO PART 732—BXA'S ''KNOW YOUR CUSTOMER'' GUIDANCE AND RED FLAGS

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; Executive Order 13026 (November 15, 1996, 61 FR 58767) Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12740, Mar. 25, 1996, unless otherwise noted.

§ 732.1 Steps overview.

(a)(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part is intended to help you determine your obligations under the EAR by listing logical steps in § 732.2 through § 732.5 of this part that you can take in reviewing these regulations. A flow chart describing these steps is contained in Supplement No. 1 to part 732. By cross-references to the relevant provisions of the EAR, this part describes the suggested steps for you to determine applicability of the following:

(i) The scope of the EAR (part 734 of the EAR);

(ii) Each of the general prohibitions (part 736 of the EAR);

(iii) The License Exceptions (part 740 of the EAR); and

(iv) Other requirements such as clearing your export with the U.S. Customs Service, keeping records, and completing and documenting license applications.

(2) These steps describe the organization of the EAR, the relationship among the provisions of the EAR, and the appropriate order for you to consider the various provisions of the EAR.

(b) *Facts about your transaction.* The following five types of facts determine

your obligations under the EAR and will be of help to you in reviewing these steps:

(1) *What is it?* What an item is, for export control purposes, depends on its *classification,* which is its place on the Commerce Control List (see part 774 of the EAR).

(2) *Where is it going?* The *country of ultimate destination* for an export or reexport also determines licensing requirements (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List).

(3) *Who will receive it?* The *ultimate end-user* of your item cannot be a bad end-user. See General Prohibition Four (Denial Orders) in § 736.2(b)(4) and parts 744 and 764 of the EAR for a reference to the list of persons you may not deal with.

(4) *What will they do with it?* The *ultimate end-use* of your item cannot be a bad end-use. See General Prohibition Five (End-Use End-User) in § 736.2(b)(5) and part 744 of the EAR for general end-use and end-user restrictions.

(5) *What else do they do? Conduct* such as contracting, financing, and freight forwarding in support of a proliferation project (as described in § 744.6 of the EAR) may prevent you from dealing with someone.

(c) *Are your items and activities subject to the EAR?* You should first determine whether your commodity, software, or technology is subject to the EAR (see part 734 of the EAR concerning scope), and Steps 1 through 6 help you do that. For exports from the United States, only Steps 1 and 2 are relevant. If you already know that your item or activity is subject to the EAR, you should go on to consider the ten general prohibitions in part 736 of the EAR. If your item or activity is not subject to the EAR, you have no obligations under the EAR and may skip the remaining steps.

(d) *Does your item or activity require a license under one or more of the ten general prohibitions?* (1) *Brief summary of the ten general prohibitions.* The general prohibitions are found in part 736 of the EAR and referred to in these steps. They consist, very briefly, of the following:

(i) General Prohibition One (Exports and Reexports): Export and reexport of controlled items to listed countries.

(ii) General Prohibition Two (Parts and Components Reexports): Reexport and export from abroad of foreign-made items incorporating more than a *de minimis* amount of controlled U.S. content.

(iii) General Prohibition Three (Foreign-produced Direct Product Reexports): Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software.

(iv) General Prohibition Four (Denial Orders): Engaging in actions prohibited by a denial order.

(v) General Prohibition Five (End-Use End-User): Export or reexport to prohibited end-user or end-users.

(vi) General Prohibition Six (Embargo): Export or reexport to embargoed destinations.

(vii) General Prohibition Seven (U.S. Person Proliferation Activity): Support of proliferation activities.

(viii) General Prohibition Eight (In-Transit): In-transit shipments and items to be unladen from vessels and aircraft.

(ix) General Prohibition Nine (Orders, Terms and Conditions): Violation of any orders, terms, or conditions.

(x) General Prohibition Ten (Knowledge Violation to Occur): Proceeding with transactions with knowledge that a violation has occurred or is about to occur.

(2) *Controls on items on the Commerce Control List (CCL).* If your item or activity is subject to the EAR, you should determine whether any one or more of the ten general prohibitions require a license for your export, reexport, or activity. Steps 7 through 11 refer to classification of your item on the Commerce Control List (CCL) (part 774 of the EAR) and how to use the Country Chart (Supplement No. 1 to part 738 of the EAR) to determine whether a license is required based upon the classification of your item. These steps refer to General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports) for all countries except: Cuba, Iran, Iraq, Libya,

and North Korea. For these countries, you may skip Steps 7 through 11 and go directly to Step 12.

(3) *Controls on activities.* Steps 12 through 18 refer to General Prohibitions Four through Ten. Those general prohibitions apply to all items subject to the EAR, not merely those items listed on the CCL in part 774 of the EAR. For example, they refer to the general prohibitions for persons denied export privileges, prohibited end-uses and end-users, embargoed countries (e.g., Cuba, Iran, Iraq, Libya, and North Korea), prohibited activities of U.S. persons in support of proliferation of weapons of mass destruction, prohibited unlading of shipments, compliance with orders, terms and conditions, and activities when a violation has occurred or is about to occur.

(4) *General prohibitions.* If none of the ten general prohibitions applies, you should skip the steps concerning License Exceptions and for exports from the United States, review Steps 27 through 29 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents, and recordkeeping requirements.

(e) *Is a License Exception available to overcome the license requirement?* If you decide by reviewing the CCL in combination with the Country Chart that a license is required for your destination, you should determine whether a License Exception will except you from that requirement. Steps 20 through 24 help you determine whether a License Exception is available. Note that generally License Exceptions are not available to overcome General Prohibitions Four through Ten. However, selected License Exceptions for embargoed destinations are specified in part 746 of the EAR and License Exceptions for short supply controls are specified in part 754 of the EAR. If a License Exception is available and the export is from the United States, you should review Steps 26 through 28 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents and recordkeeping requirements. If a License Exception is not available, go on to Steps 25 through 29.

(f) *How do you apply for a license?* If you must file a license application, you should review the requirements of part 748 of the EAR as suggested by Step 26. Then you should review Steps 27 through 29 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents, and recordkeeping requirements.

[61 FR 12740, Mar. 25, 1996, as amended at 62 FR 25453, May 9, 1997]

§ 732.2 Steps regarding scope of the EAR.

Steps 1 though 6 are designed to aid you in determining the scope of the EAR. A flow chart describing these steps is contained in Supplement No. 2 to part 732.

(a) *Step 1: Items subject to the exclusive jurisdiction of another Federal agency.* This step is relevant for both exports and reexports. Determine whether your item is subject to the exclusive jurisdiction of another Federal Agency as provided in § 734.3 of the EAR.

(1) If your item is subject to the exclusive jurisdiction of another Federal agency, comply with the regulations of that agency. You need not comply with the EAR and may skip the remaining steps.

(2) If your item is not subject to the exclusive jurisdiction of another federal agency, then proceed to Step 2 in paragraph (b) of this section.

(b) *Step 2: Publicly available technology and software.* This step is relevant for both exports and reexports. Determine if your technology or software is publicly available as defined and explained at part 734 of the EAR. Supplement No. 1 to part 734 of the EAR contains several practical examples describing publicly available technology and software that is outside the scope of the EAR. The examples are illustrative, not comprehensive. Note that encryption software controlled for EI reasons under ECCN 5D002 on the Commerce Control List (refer to Supplement No.1 to part 774 of the EAR) shall be subject to the EAR even if publicly available. Accordingly, the provisions of the EAR concerning the public availability of items

are not applicable to encryption items controlled for ''EI'' reasons under ECCN 5D002.

(1) If your technology or software is publicly available, and therefore outside the scope of the EAR, you may proceed with the export or reexport if you are not a U.S. person subject to General Prohibition Seven. If you are a U.S. person, go to Step 15 at § 732.3(j) of this part. If you are a U.S. person and General Prohibition Seven concerning proliferation activity of U.S. persons does not apply, then you may proceed with the export or reexport of your publicly available technology or software. Note that all U.S. persons are subject to the provisions of General Prohibition Seven.

(2) If your technology or software is not publicly available and you are exporting from the United States, skip to Step 7 in § 732.3(b) of this part concerning the general prohibitions.

(3) If you are exporting items from a foreign country, you should then proceed to Step 3 in paragraph (c) of this section and the other steps concerning the scope of the EAR.

(c) *Step 3: Reexport of U.S.-origin items.* This step is appropriate only for reexporters. For an item in a foreign country, you should determine whether the item is of U.S. origin. If it is of U.S.-origin, skip to Step 7 in § 732.3(b) of this part. If it is not of U.S. origin, then proceed to Step 4 in paragraph (d) of this section.

(d) *Step 4: Foreign-made items incorporating less than the de minimis level of U.S. parts, components, and materials.* This step is appropriate only for items that are made outside the United States and not currently in the U.S. Note that encryption items controlled for EI reasons under ECCN 5A002 or ECCN 5D002 on the Commerce Control List (refer to Supplement No. 1 to part 774 of the EAR) shall be subject to the EAR even if they incorporate less than the de minimis level of U.S. content. Accordingly, the provisions of the EAR concerning de minimis levels are not applicable to encryption items controlled for ''EI'' reasons under ECCNs 5A002, 5D002, or 5E002.

(1) For an item made in a foreign country, you should determine whether controlled U.S.-origin parts, components, or materials are incorporated as provided in § 734.4 of the EAR. Also, determine the value of the U.S.-origin controlled content as provided in Supplement No. 2 to part 734 of the EAR.

(2) To determine the value of the U.S.-origin controlled content, you should classify the U.S.-origin content on the CCL, determine those items that would require a license from BXA for reexport to the ultimate destination of the foreign-made product if such parts, components, or materials were reexported to that destination in the form received, and divide the total value of the controlled U.S. parts, components, and materials incorporated into the foreign-made item by the sale price of the foreign-made item.

(3) If no U.S. parts, components, or materials are incorporated or if the incorporated U.S. parts, components, and materials are below the *de minimis* level described in § 734.4 of the EAR, then the foreign-made item is not subject to the EAR by reason of the parts and components rule, the classification of a foreign-made item is irrelevant in determining the scope of the EAR, and you should skip Step 4 and go on to consider Step 6 regarding the foreign-produced direct product rule.

(4) If controlled parts, components, or materials are incorporated and are above the *de minimis* level, then you should go on to Step 5.

(e) *Step 5: Foreign-made items incorporating more than the de minimis level of U.S. parts, components, or materials.* This step is appropriate only for foreign-made items incorporating certain U.S. parts. If the incorporated U.S. parts exceed the relevant *de minimis* level, then your export from abroad is subject to the EAR. You then should skip to Step 7 at § 732.3 of this part and consider the steps regarding all other general prohibitions, License Exceptions, and other requirements.

(f) *Step 6: Foreign-made items produced with certain U.S. technology for export to specified destinations.* This step is appropriate for foreign-made items in foreign countries.

(1) If your foreign-produced item is described in an entry on the CCL and the Country Chart requires a license to your export or reexport destination for national security reasons, you should

determine whether your item is subject to General Prohibition Three (Foreign-Produced Direct Product Reexports) (§ 736.2(b)(3) of the EAR). Your item is subject to the EAR if it is captured by General Prohibition Three (Foreign-Produced Direct Product Reexports), and that prohibition applies if your transaction meets each of the following conditions:

(i) *Country scope of prohibition.* Your export or reexport destination for the direct product is Cuba, North Korea, Libya, or a destination in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) (reexports of foreign-produced direct products exported to other destinations are not subject to General Prohibition Three);

(ii) *Scope of technology or software used to create direct products subject to the prohibition.* Technology or software that was used to create the foreign-produced direct product, and such technology or software that was subject to the EAR and required a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR in § 740.6 of the EAR (reexports of foreign-produced direct products created with other technology and software are not subject to General Prohibition Three); and

(iii) *Scope of direct products subject to the prohibition.* The foreign-produced direct products are subject to national security controls as designated on the proper ECCN of the Commerce Control List in part 774 of the EAR (reexports of foreign-produced direct products not subject to national security controls are not subject to General Prohibition Three).

(2) *License Exceptions.* Each License Exception described in part 740 of the EAR overcomes this General Prohibition Three if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(3) *Subject to the EAR.* If your item is captured by the foreign-produced direct product control at General Prohibition Three, then your export from abroad is subject to the EAR. You should next consider the steps regarding all other general prohibitions, License Exceptions, and other requirements. If your item is not captured by General Prohibition Three, then your export from abroad is not subject to the EAR. You have completed the steps necessary to determine whether your transaction is subject to the EAR, and you may skip the remaining steps. Note that in summary, items in foreign countries are subject to the EAR when they are:

(i) U.S.-origin commodities, software and technology unless controlled for export exclusively by another Federal agency or unless publicly available;

(ii) Foreign-origin commodities, software, and technology that are within the scope of General Prohibition Two (Parts and Components Reexports), or General Prohibition Three (Foreign-Produced Direct Product Reexports). (However, such foreign-made items are also outside the scope of the EAR if they are controlled for export exclusively by another Federal agency or publicly available.)

[61 FR 12740, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 61 FR 68577, Dec. 30, 1996; 62 FR 25453, May 9, 1997]

§ 732.3 Steps regarding the ten general prohibitions.

(a) *Introduction.* If your item or activity is subject to the scope of the EAR, you should then consider each of the ten general prohibitions listed in part 736 of the EAR. General Prohibitions One ((Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports) (§ 736.2(b) (1), (2), and (3) of the EAR) are product controls that are shaped and limited by parameters specified on the CCL and Country Chart. General Prohibitions Four through Ten are prohibitions on certain activities that are not allowed without authorization from BXA, and these prohibitions apply to all items subject to the EAR unless otherwise specified (§ 736.2(b) (4) through (10) of the EAR).

(b) *Step 7: Classification.* (1) You should classify your items in the relevant entry on the CCL, and you may do so on your own without the assistance of BXA. You are responsible for doing so correctly, and your failure to correctly classify your items does not relieve you of the obligation to obtain a license when one is required by the EAR.

(2) You have a right to request the applicable classification of your item from BXA, and BXA has a duty to provide that classification to you. For further information on how to obtain classification assistance from BXA, see part 748 of the EAR.

(3) For items subject to the EAR but not listed on the CCL, the proper classification is EAR99. This number is a ''basket'' for items not specified under any CCL entry and appears at the end of each Category on the CCL.

(c) *Step 8: Country of ultimate destination.* You should determine the country of ultimate destination. The country of destination determines the applicability of several general prohibitions, License Exceptions, and other requirements. Note that part 754 of the EAR concerning short supply controls is self-contained and is the only location in the EAR that contains both the prohibitions and exceptions applicable to short supply controls.

(d) *Step 9: Reason for control and the Country Chart.* (1) *Reason for control and column identifier within the Export Control Classification Number (ECCN).* Once you have determined that your item is controlled by a specific ECCN, you must use information contained in the ''License Requirements'' section of that ECCN in combination with the Country Chart to decide whether a license is required under General Prohibitions One, Two, or Three to a particular destination. The CCL and the Country Chart are taken together to define these license requirements. The applicable ECCN will indicate the reason or reasons for control for items within that ECCN. For example, ECCN 6A007 is controlled for national security, missile technology, and anti-terrorism reasons.

(2) *Reason for control within the Country Chart.* With each of the applicable Country Chart column identifiers noted in the correct ECCN, turn to the Country Chart. Locate the correct Country Chart column identifier on the horizontal axis, and determine whether an ''X'' is marked in the cell next to the destination in question. Consult § 738.4 of the EAR for comprehensive instructions on using the Country Chart and a detailed example.

(i) An ''X'' in the cell or cells for the relevant country and reason(s) for control column indicates that a license is required for General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports). (See § 736.2 (b)(1), (b)(2), and (b)(3) of the EAR).

(ii) If one or more cells have an ''X'' in the relevant column, a license is required unless you qualify for a License Exception described in part 740 of the EAR. If a cell does not contain an ''X'' for your destination in one or more relevant columns, a license is not required under the CCL and the Country Chart.

(iii) Additional controls may apply to your export. You must go on to steps 12 through 18 described in paragraphs (g) to (m) of this section to determine whether additional limits described in General Prohibition Two (Parts and Components Reexports) and General Prohibition Three (Foreign-Produced Direct Product Reexports) apply to your proposed transaction. If you are exporting an item from the United States, you should skip Step 10 and Step 11. Proceed directly to Step 12 in paragraph (g) of this section.

(3) *License requirements not on the Country Chart.* There are two instances where the Country Chart cannot be used to determine if a license is required. Items controlled for short supply reasons are not governed by the Country Chart. Part 754 of the EAR contains license requirements and License Exceptions for items subject to short supply controls. A limited number of ECCNs contained on the CCL do not identify a Country Chart column identifier. In these instances, the ECCN states whether a license is required and for which destinations. See § 738.3(a) of the EAR for a list of the ECCNs for which you do not need to consult the Country Chart to determine licensing requirements.

(4) *Destinations subject to embargo provisions.* The Country Chart does not apply to Cuba, Iran, Iraq, Libya, and North Korea; and for those countries you should review the embargo provisions at part 746 of the EAR and may skip this step concerning the Country

Chart. For Angola, Bosnia-Herzegovina, Croatia, Rwanda, and Serbia and Montenegro the Country Chart provides for certain license requirements, and part 746 of the EAR provides additional requirements.

(5) *Items subject to the EAR but not on the CCL.* Items subject to the EAR that are not on the CCL are properly classified EAR99. For such items, you may skip this step and proceed directly with Step 12 in paragraph (g) of this section.

(e) *Step 10: Foreign-made items incorporating U.S.-origin items and the de minimis rule.* (1) *Parts and components rule.* The following considerations are appropriate for items abroad and are the same steps necessary to determine whether a foreign-made item incorporating U.S. parts, components, or materials is subject to the EAR. If your foreign-made item is described in an entry on the CCL and the Country Chart requires a license to your export or reexport destination, you should determine whether the controlled U.S.-origin commodities, software, or technology incorporated into the foreign-made item exceeds the *de minimis* level applicable to the ultimate destination of the foreign-made item, as follows:

(i) A 10% *de minimis* level to embargoed and terrorist-supporting countries; or

(ii) A 25% *de minimis* level to all other countries.

(2) *Guidance for calculations.* For guidance on how to calculate the U.S.-controlled content, refer to Supplement No. 2 to part 734 of the EAR. Note that certain rules issued by the Office of Foreign Assets Control, certain exports from abroad by U.S.-owned or controlled entities may be prohibited notwithstanding the *de minimis* provisions of the EAR. In addition, the *de minimis* exclusions from the parts and components rule do not relieve U.S. persons of the obligation to refrain from supporting the proliferation of weapons of mass-destruction and missiles as provided in General Prohibition Seven (U.S. Person Proliferation Activity) described in § 736.2(b)(7) of the EAR. Note that encryption items controlled for EI reasons under ECCN 5A002 or ECCN 5D002 on the Commerce Control List (refer to Supplement No.1 to part 774 of the EAR) shall be subject to the EAR even if they incorporate less than the de minimis level of U.S. content. Accordingly, the provisions of the EAR concerning *de minimis* levels are not applicable to encryption items controlled for ''EI'' reasons under ECCN 5A002, ECCN 5D002, or ECCN 5E002.

(f) *Step 11: Foreign-produced direct product.* The following considerations are appropriate for items abroad and are the same considerations necessary to determine whether a foreign-produced direct product is subject to the EAR under Step 6 in § 732.2(f) of this part.

(1) If your foreign-produced item is described in an entry on the CCL and the Country Chart requires a license to your export or reexport destination for national security reasons, you must determine whether your item is subject to General Prohibition Three (Foreign-Produced Direct Product Reexports) (§ 736.2(b)(3) of the EAR). Your item is subject to this general prohibition if your transaction meets each of the following conditions:

(i) *Country scope of prohibition.* Your export or reexport destination for the direct product is Cuba, Libya, North Korea, or a destination in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) (reexports of foreign-produced direct products exported to other destinations are not subject to General Prohibition Three described in § 736.2(b)(3) of the EAR);

(ii) *Scope of technology or software used to create direct products subject to the prohibition.* Technology or software that was used to create the foreign-produced direct product, and such technology or software that was subject to the EAR and required a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR in § 740.6 of the EAR (reexports of foreign-produced direct products created with other technology and software are not subject to General Prohibition Three); and

(iii) *Scope of direct products subject to the prohibition.* The foreign-produced direct products are controlled for national security reasons indicated in an ECCN on the CCL (reexports of foreign-produced direct products not subject to national security controls are not subject to General Prohibition Three).

(2) *License Exceptions.* Each License Exception described in part 740 of the EAR overcomes General Prohibition Three (Foreign-Produced Direct Product Reexports) if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(g) *Step 12: Persons denied export privileges.* (1) Determine whether your transferee, ultimate end-user, any intermediate consignee, or any other party to a transaction is a person denied export privileges. (See part 764 of the EAR). While it is not a violation of General Prohibition Four (Denial Orders) (§ 736.2(b)(4) of the EAR) to fail to check the Denied Persons List prior to a transfer, it is nonetheless a violation of the EAR to engage in any activity that violates the terms or conditions of a denial order. General Prohibition Four (Denial Orders) applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99.

(2) There are no License Exceptions to General Prohibition Four (Denial Orders). The prohibition concerning persons denied export privileges may be overcome only by a specific authorization from BXA, something that is rarely granted.

(h) *STEP 13: Prohibited end-uses and end-users.* (1) Review the end-uses and end-users prohibited under General Prohibition Five (End-Use and End-User) (§ 736.2(b)(5) of the EAR) described in part 744 of the EAR. Part 744 of the EAR contains all the end-use and end-user license requirements, and those are in addition to the license requirements under General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-produced Direct Product Reexports). Unless otherwise indicated, the license requirements of General Prohibition Five (End-Use and End-User) described in part 744 of the EAR apply to all items subject to the EAR, i.e. both items on the CCL and within EAR99. Moreover, the requirements of General Prohibition Five (End-Use and End-User) are in addition to various end-use and end-user limitations placed on certain License Exceptions.

(2) Under License Exception TSU (§ 740.13 of the EAR), operational technology and software (OTS), sales technology (STS), and software updates (SUD) overcome General Prohibition Five (End-Use and End-User) (§ 736.2(b)(5) of the EAR) if all terms and conditions of these provisions are met by the exporter or reexporter.

(i) *Step 14: Embargoed countries and special destinations.* If your destination for any item is Bosnia-Herzegovina, Croatia, Cuba, Iran, Iraq, Libya, North Korea, Rwanda, or Serbia and Montenegro, you must consider the requirements of part 746 of the EAR. Unless otherwise indicated, General Prohibition Six (Embargo) applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99. You may not make an export or reexport contrary to the provisions of part 746 of the EAR without a license unless:

(1) You are exporting or reexporting only publicly available technology or software or other items outside the scope of the EAR, or

(2) You qualify for a License Exception referenced in part 746 of the EAR concerning embargoed destinations. You may not use a License Exception described in part 740 of the EAR to overcome General Prohibition Six (Embargo) (§ 736.2(b)(6) of the EAR) unless it is specifically authorized in part 746 of the EAR. Note that part 754 of the EAR concerning short supply controls is self-contained and is the only location in the EAR for both the prohibitions and exceptions applicable to short supply controls.

(j) *Step 15: Proliferation activity of U.S. persons unrelated to exports and reexports.* (1) Review the scope of activity prohibited by General Prohibition Seven (U.S. Person Proliferation Activity) (§ 736.2(b)(7) of the EAR) as that activity is described in § 744.6 of the EAR. Keep in mind that such activity is not limited to exports and reexports and is not limited to items subject to General Prohibition One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports). Moreover, such activity extends to services and dealing in wholly foreign-origin items in support of the specified proliferation activity and is not limited to items listed on the CCL or included in EAR99.

(2) Review the definition of U.S. Person in part 744 of the EAR.

(k) *Step 16: In-transit.* Shippers and operators of vessels or aircraft should review General Prohibition Eight (In-Transit) to determine the countries in which you may not unladen or ship certain items in-transit. General Prohibition Eight applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99.

(l) *Step 17: Review orders, terms, and conditions.* Review the orders, terms, and conditions applicable to your transaction. General Prohibition Nine (Orders, Terms, and Conditions) prohibits the violation of any orders, terms, and conditions imposed under the EAR. Terms and conditions are frequently contained in licenses. In addition, the ten general prohibitions (part 736 of the EAR) and the License Exceptions (part 740 of the EAR) impose terms and conditions or limitations on your proposed transactions and use of License Exceptions. A given license or License Exception may not be used unless each relevant term or condition is met.

(m) *Step 18: Review the ''Know Your Customer'' Guidance and General Prohibition Ten (Knowledge Violation to Occur).* License requirements under the EAR are determined solely by the classification, end-use, end-user, ultimate destination, and conduct of U.S. persons. Supplement No. 1 to part 732 of the EAR is intended to provide helpful guidance regarding the process for the evaluation of information about customers, end-uses, and end-users. General Prohibition Ten (Knowledge Violation to Occur) prohibits anyone from proceeding with a transaction with knowledge that a violation of the EAR has occurred or is about to occur. It also prohibits related shipping, financing, and other services. General Prohibition Ten applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99.

(n) *Step 19: Complete the review of the general prohibitions.* After completion of Steps described in this section and review of all ten general prohibitions in part 736 of the EAR, including cross-referenced regulations in the EAR, you will know which, if any, of the ten general prohibitions of the EAR apply to you and your contemplated transaction or activity.

(1) If none of the ten general prohibitions is applicable to your export from the United States, no license from BXA is required, you do not need to qualify for a License Exception under part 740 of the EAR. You should skip the Steps in § 732.4 of this part regarding License Exceptions and proceed directly to the Steps in § 732.5 of this part regarding recordkeeping, clearing the U.S. Customs Service with the appropriate Shipper's Export Declaration, and using the required Destination Control Statement.

(2) If none of the ten general prohibitions is applicable to your reexport or export from abroad, no license is required and you should skip all remaining Steps.

(3) If one or more of the ten general prohibitions are applicable, continue with the remaining steps.

[61 FR 12740, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 61 FR 68577, Dec. 30, 1996; 62 FR 25453, May 9, 1997]

§ 732.4 Steps regarding License Exceptions.

(a) *Introduction to Steps for License Exceptions.* If your export or reexport is subject to the EAR and is subject to General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), or Three (Foreign-Produced Direct Product Reexports), consider the steps listed in paragraph (b) of this section. If your export or reexport is subject to General Prohibitions Four (Denial Orders), Seven (U.S. Person Proliferation Activity), Eight (In-Transit), Nine (Orders, Terms, and Conditions), or Ten (Knowledge Violation to Occur), there are no License Exceptions available for your export or reexport. If your export is subject to General Prohibition Five (End-Use End-User), consult part 744 of the EAR. If your export or reexport is subject to General Prohibition Six (Embargo), consult part 746 of the EAR for applicable License Exceptions.

(b) *Steps for License Exceptions.* (1) *Step 20: Applicability of General Prohibitions.* Determine whether any one or more of the general prohibitions described in § 736.2(b) of the EAR apply to your export or reexport. If no general prohibition applies to your export or reexport, then you may proceed with

your export or reexport and need not review part 740 of the EAR regarding License Exceptions. You are reminded of your recordkeeping obligations related to the clearance of the U.S. Customs Service provided in parts 762 and 758 of the EAR.

(2) *Step 21: Applicability of restrictions on all License Exceptions.* Determine whether any one or more of the restrictions in § 740.2 of the EAR applies to your export or reexport. If any one or more of these restrictions apply, there are no License Exceptions available to you, and you must either obtain a license or refrain from the export or reexport.

(3) *Step 22: Terms and conditions of the License Exceptions.* (i) If none of the restrictions in § 740.2 of the EAR applies, then review each of the License Exceptions to determine whether any one of them authorizes your export or reexport. Eligibility for License Exceptions is based on the item, the country of ultimate destination, the end-use, and the end-user, along with any special conditions imposed within a specific License Exception.

(ii) You may meet the conditions for more than one License Exception. Moreover, although you may not qualify for some License Exceptions you may qualify for others. Review the broadest License Exceptions first, and use any License Exception available to you. You are not required to use the most restrictive applicable License Exception. If you fail to qualify for the License Exception that you first consider, you may consider any other License Exception until you have determined that no License Exception is available.

(iii) License Exceptions TMP, RPL, BAG, AVS, GOV, and TSU authorize exports notwithstanding the provisions of the CCL. List-based License Exceptions (LVS, GBS, CIV, TSR, and CTP) are available only to the extent specified on the CCL. Part 740 of the EAR provides authorization for reexports only to the extent each License Exception expressly authorizes reexports. License Exception APR authorizes reexports only.

(4) *Step 23: Scope of License Exceptions.* Some License Exceptions are limited by country or by type of item.

(i) Countries are arranged in country groups for ease of reference. For a listing of country groups, please refer to Supplement No. 1 to part 740 of the EAR. Unless otherwise indicated in a License Exception, License Exceptions do not apply to any exports or reexports to embargoed destinations. If your export or reexport is subject to General Prohibition Six (Embargo) for embargoed destinations, License Exceptions are only available to the extent specifically provided in part 746 of the EAR concerning embargoed destinations.

(ii) Special commodity controls apply to short supply items. No License Exceptions described in part 740 of the EAR may be used for items listed on the CCL as controlled for Short Supply reasons. License Exceptions for short supply items are found in part 754 of the EAR.

(5) *Step 24: Compliance with all terms and conditions.* If a License Exception is available, you may proceed with your export or reexport. However, you must meet all the terms and conditions required by the License Exception that you determined authorized your export or reexport. You must also consult part 758 and 762 of the EAR to determine your recordkeeping and documentation requirements.

(6) *Step 25: License requirements.* If no License Exception is available, then you must either obtain a license before proceeding with your export or reexport or you must refrain from the proposed export or reexport.

(7) *Step 26: License applications.* If you are going to file a license application with BXA, you should first review the requirements at part 748 of the EAR. Exporters, reexporters, and exporters from abroad should review the instructions concerning applications and required support documents prior to submitting an application for a license.

[61 FR 12740, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996]

§ 732.5 Steps regarding Shipper's Export Declaration, Destination Control Statements, record keeping, license applications, and other requirements.

(a) *Step 27—Shipper's Export Declaration.* You should review § 758.3 of the

EAR to determine what notations you must enter on the Shipper's Export Declaration (SED). These steps should be reviewed by exporters. Reexporters and firms exporting from abroad may skip Steps 27 through 29 and proceed directly to § 732.6 of this part.

(1) *NLR.* The term ''NLR'' represents exports of listed items when no license is required. Such exports do not require that you qualify for a License Exception. The symbol ''NLR'' is required on the SED under two circumstances. First, NLR is the correct symbol when exporting an item subject to the EAR not listed on the CCL. Such items are classified EAR99. Secondly, certain items are listed on the CCL but do not require a license to all destinations under General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), or Three (Foreign-Produced Direct Product Reexports) (§ 736.2 (b)(1), (b)(2), or (b)(3) of the EAR). Such items do not have an ''X'' in the appropriate cell on the Country Chart. If General Prohibitions Four through Ten (§ 736.2 (b)(4) of the EAR) through (b)(10) of the EAR) also do not apply, you must clear exports of such items by entering the symbol ''NLR'' in the appropriate place on the SED.

(2) *License Exception symbol.* You must enter on any required SED the letter code (e.g., LVS, TMP) of the License Exceptions under which you are exporting. In the case of License Exceptions LVS, GBS, and CIV, the ECCN of the item being exported must also be entered when an SED is required. Please refer to § 758.3 of the EAR for detailed information on use of SEDs.

(3) *License number.* If you are exporting under a license, enter the license number on the SED as required by § 758.3 of the EAR.

(b) *Step 28: Destination Control Statement.* You are required to enter an appropriate Destination Control Statement (DCS) on commercial documents in accordance with the DCS requirements of § 758.6 of the EAR. Exporters should review § 758.6 of the EAR and use the DCS as required. Reexporters and exporters from abroad should review § 752.6 for DCS requirements when using a Special Comprehensive License. Otherwise, DCS requirements do not apply to reexports and exports from abroad.

(c) *Step 29: Recordkeeping.* Records of transactions involving exports under any license or License Exception must be maintained in accordance with the recordkeeping requirements of part 762 of the EAR.

[61 FR 12740, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996]

§ 732.6 Steps for other requirements.

Sections 732.1 through 732.4 of this part are useful in determining the license requirements that apply to you. Other portions of the EAR impose other obligations and requirements. Some of them are:

(a) Requirements relating to the use of a license in § 758.2 of the EAR.

(b) Obligations of carriers, forwarders, exporters and others to take specific steps and prepare and deliver certain documents to assure that items subject to the EAR are delivered to the destination to which they are licensed or authorized by a License Exception or some other provision of the regulations in § 758.4 through § 758.6 of the EAR.

(c) Duty of carriers to return or unload shipments at the direction of U.S. Government officials (see § 758.8 of the EAR).

(d) Specific obligations imposed on parties to Special Comprehensive licenses in part 752 of the EAR.

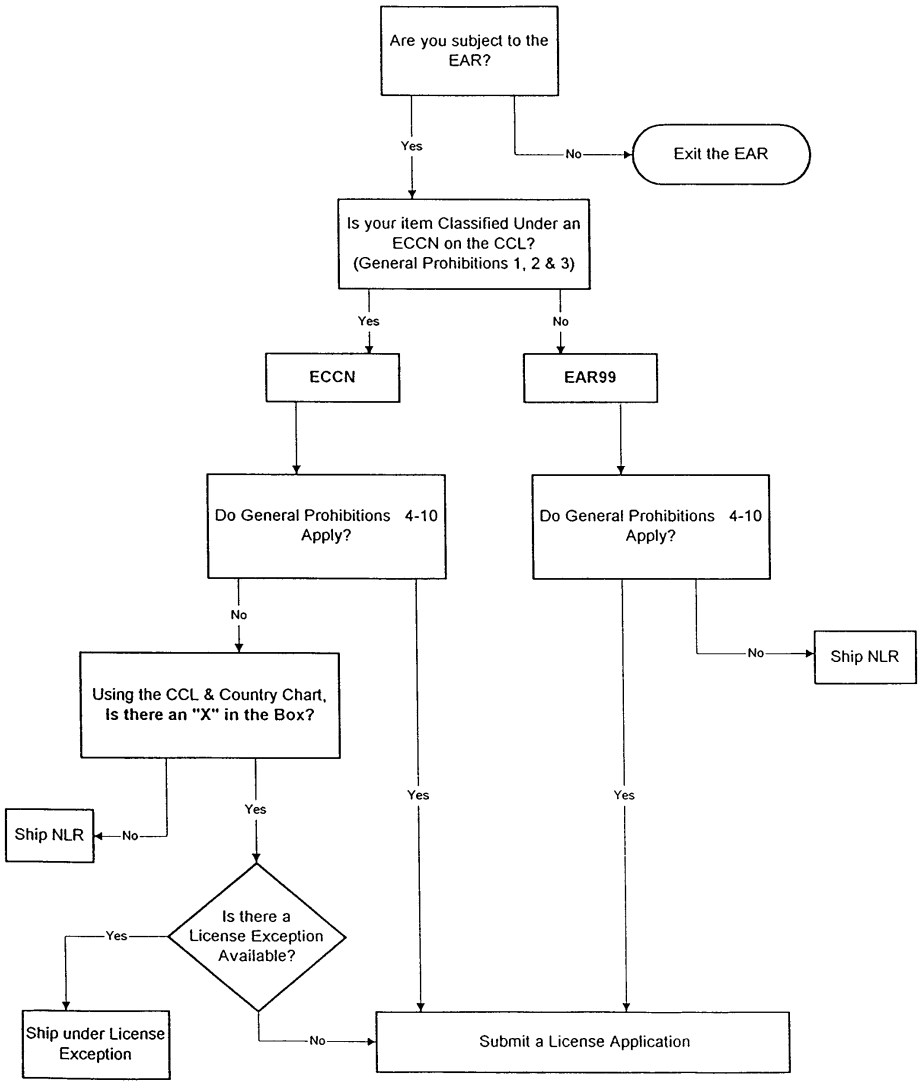
(e) Recordkeeping requirements imposed in part 762 of the EAR.

(f) Requirements of part 764 of the EAR to disclose facts that may come to your attention after you file a license application or make other statements to the government concerning a transaction or proposed transaction that is subject to the EAR.

(g) Certain obligations imposed by part 760 of the EAR on parties who receive requests to take actions related to foreign boycotts and prohibits certain actions relating to those boycotts.

Supplement No. 1 to part 732

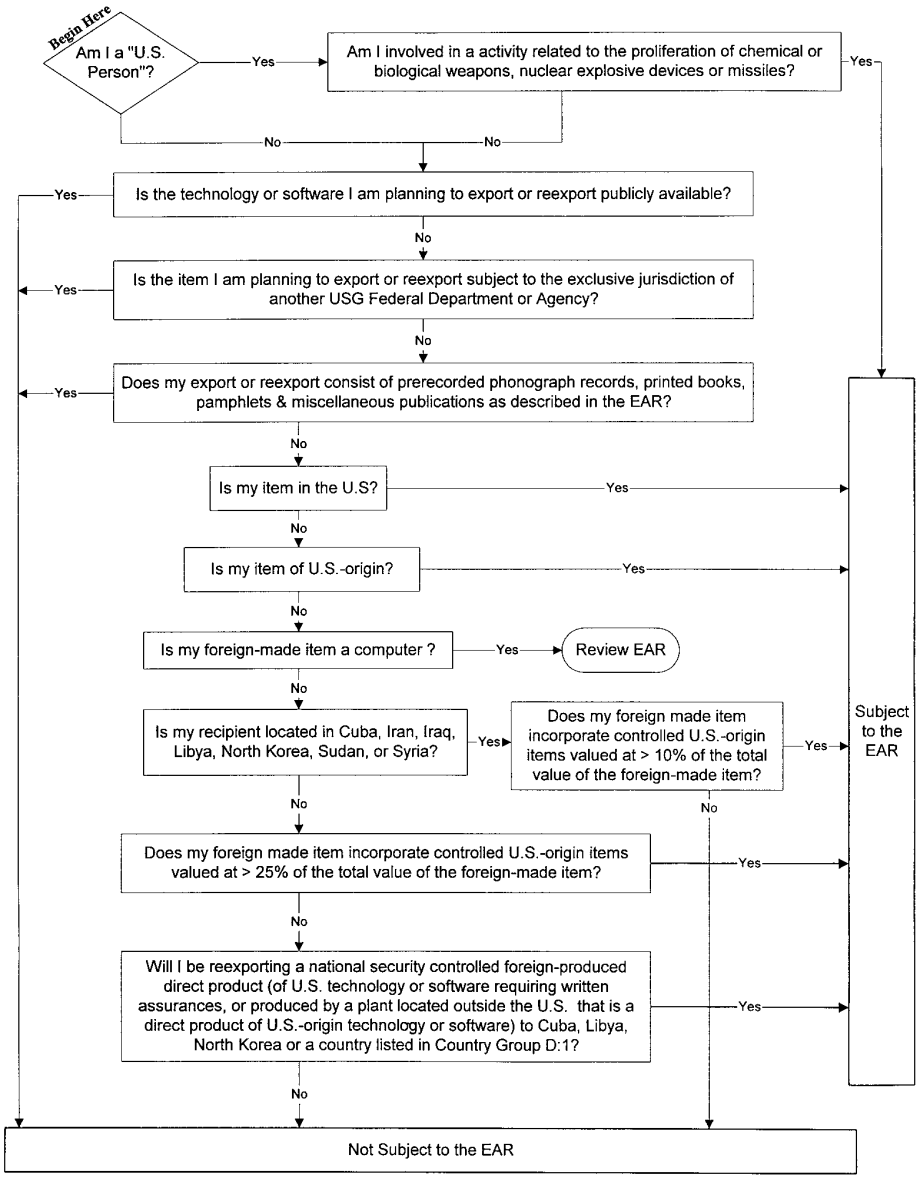
DECISION TREE



[62 FR 25454, May 9, 1997]

Supplement No. 2 to Part 732

Am I subject to the EAR?



[62 FR 25455, May 9, 1997]

SUPPLEMENT NO. 3 TO PART 732—BXA'S ''KNOW YOUR CUSTOMER'' GUIDANCE AND RED FLAGS

''Know Your Customer'' Guidance

Various requirements of the EAR are dependent upon a person's knowledge of the end-use, end-user, ultimate destination, or other facts relating to a transaction or activity. These provisions include the nonproliferation-related ''catch-all'' sections and the prohibition against proceeding with a transaction with knowledge that a violation of the EAR has occurred or is about to occur.

(a) BXA provides the following guidance on how individuals and firms should act under this knowledge standard. This guidance does not change or interpret the EAR.

(1) *Decide whether there are ''red flags''.* Take into account any abnormal circumstances in a transaction that indicate that the export may be destined for an inappropriate end-use, end-user, or destination. Such circumstances are referred to as ''red flags''. Included among examples of red flags are orders for items that are inconsistent with the needs of the purchaser, a customer declining installation and testing when included in the sales price or when normally requested, or requests for equipment configurations that are incompatible with the stated destination (e.g., 120 volts in a country with 220 volts). Commerce has developed lists of such red flags that are not all-inclusive but are intended to illustrate the types of circumstances that should cause reasonable suspicion that a transaction will violate the EAR.

(2) *If there are ''red flags'', inquire.* If there are no ''red flags'' in the information that comes to your firm, you should be able to proceed with a transaction in reliance on information you have received. That is, absent ''red flags'' (or an express requirement in the EAR), there is no affirmative duty upon exporters to inquire, verify, or otherwise ''go behind'' the customer's representations. However, when ''red flags'' are raised in information that comes to your firm, you have a duty to check out the suspicious circumstances and inquire about the end-use, end-user, or ultimate country of destination. The duty to check out ''red flags'' is not confined to the use of License Exceptions affected by the ''know'' or ''reason to know'' language in the EAR. Applicants for licenses are required by part 748 of the EAR to obtain documentary evidence concerning the transaction, and misrepresentation or concealment of material facts is prohibited, both in the licensing process and in all export control documents. You can rely upon representations from your customer and repeat them in the documents you file unless red flags oblige you to take verification steps.

(3) *Do not self-blind.* Do not cut off the flow of information that comes to your firm in the normal course of business. For example, do not instruct the sales force to tell potential customers to refrain from discussing the actual end-use, end-user, and ultimate country of destination for the product your firm is seeking to sell. Do not put on blinders that prevent the learning of relevant information. An affirmative policy of steps to avoid ''bad'' information would not insulate a company from liability, and it would usually be considered an aggravating factor in an enforcement proceeding.

(4) *Employees need to know how to handle ''red flags''.* Knowledge possessed by an employee of a company can be imputed to a firm so as to make it liable for a violation. This makes it important for firms to establish clear policies and effective compliance procedures to ensure that such knowledge about transactions can be evaluated by responsible senior officials. Failure to do so could be regarded as a form of self-blinding.

(5) *Reevaluate all the information after the inquiry.* The purpose of this inquiry and reevaluation is to determine whether the ''red flags'' can be explained or justified. If they can, you may proceed with the transaction. If the ''red flags'' cannot be explained or justified and you proceed, you run the risk of having had ''knowledge'' that would make your action a violation of the EAR.

(6) *Refrain from the transaction or advise BXA and wait.* If you continue to have reasons for concern after your inquiry, then you should either refrain from the transaction or submit all the relevant information to BXA in the form of an application for a license or in such other form as BXA may specify.

(b) Industry has an important role to play in preventing exports and reexports contrary to the national security and foreign policy interests of the United States. BXA will continue to work in partnership with industry to make this front line of defense effective, while minimizing the regulatory burden on exporters. If you have any question about whether you have encountered a ''red flag'', you may contact the Office of Export Enforcement at 1–800–424–2980 or the Office of Exporter Services at (202) 482–4532.

RED FLAGS

Possible indicators that an unlawful diversion might be planned by your customer include the following:

1. The customer or purchasing agent is reluctant to offer information about the end-use of a product.

2. The product's capabilities do not fit the buyer's line of business; for example, a small bakery places an order for several sophisticated lasers.

3. The product ordered is incompatible with the technical level of the country to which the product is being shipped. For example, semiconductor manufacturing equipment would be of little use in a country without an electronics industry.

4. The customer has little or no business background.

5. The customer is willing to pay cash for a very expensive item when the terms of the sale call for financing.

6. The customer is unfamiliar with the product's performance characteristics but still wants the product.

7. Routine installation, training or maintenance services are declined by the customer.

8. Delivery dates are vague, or deliveries are planned for out-of-the-way destinations.

9. A freight forwarding firm is listed as the product's final destination.

10. The shipping route is abnormal for the product and destination.

11. Packaging is inconsistent with the stated method of shipment or destination.

12. When questioned, the buyer is evasive or unclear about whether the purchased product is for domestic use, export or reexport.

[61 FR 12740, Mar. 25, 1996. Redesignated and amended at 62 FR 25453, 25456, May 9, 1997]

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

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SUPPLEMENT NO. 1 TO PART 734—QUESTIONS AND ANSWERS—TECHNOLOGY AND SOFTWARE SUBJECT TO THE EAR

SUPPLEMENT NO. 2 TO PART 734—CALCULATION OF VALUES FOR *De Minimus* Rules

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. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12746, Mar. 25, 1996, unless otherwise noted.

§ 734.1 Introduction.

(a) In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C. This part describes the scope of the Export Administration Regulations (EAR) and explains certain key terms and principles used in the EAR. This part provides the rules you need to use to determine whether items and activities are subject to the EAR. This part is the first step in determining your obligations under the EAR. If your item or activity is not subject to the EAR, then you do not have any obligations under the EAR and you do not need to review other parts of the EAR. If you already know that your item or activity is subject to the EAR, you do not need to review this part and you can go on to review other parts of the EAR to determine your obligations. This part also describes certain key terms and principles used in the EAR. Specifically, it includes the following terms: ''subject to the EAR,'' ''items subject to the EAR,'' ''export,'' and ''reexport.'' These and other terms are also included in part 772 of the EAR, Definitions of Terms, and you should consult part 772 of the EAR for the meaning of terms used in the EAR. Finally, this part makes clear that compliance with the EAR does not relieve any obligations imposed under foreign laws.

(b) This part does not address any of the provisions set forth in part 760 of the EAR, Restrictive Trade Practices or Boycotts.

(c) This part does not define the scope of legal authority to regulate exports, including reexports, or activities found in the Export Administration Act and other statutes. What this part does do is set forth the extent to which such legal authority has been exercised through the EAR.

§ 734.2 Important EAR terms and principles.

(a) *Subject to the EAR—Definition.* (1) ''Subject to the EAR'' is a term used in the EAR to describe those items and

activities over which BXA exercises regulatory jurisdiction under the EAR. Conversely, items and activities that are not subject to the EAR are outside the regulatory jurisdiction of the EAR and are not affected by these regulations. The items and activities subject to the EAR are described in § 734.2 through § 734.5 of this part. You should review the Commerce Control List (CCL) and any applicable parts of the EAR to determine whether an item or activity is subject to the EAR. However, if you need help in determining whether an item or activity is subject to the EAR, see § 734.6 of this part. Publicly available technology and software not subject to the EAR are described in § 734.7 through § 734.11 and Supplement No. 1 to this part.

(2) Items and activities subject to the EAR may also be controlled under export-related programs administered by other agencies. Items and activities subject to the EAR are not necessarily exempted from the control programs of other agencies. Although BXA and other agencies that maintain controls for national security and foreign policy reasons try to minimize overlapping jurisdiction, you should be aware that in some instances you may have to comply with more than one regulatory program.

(3) The term ''subject to the EAR'' should not be confused with licensing or other requirements imposed in other parts of the EAR. Just because an item or activity is subject to the EAR does not mean that a license or other requirement automatically applies. A license or other requirement applies only in those cases where other parts of the EAR impose a licensing or other requirement on such items or activities.

(b) *Export and reexport*—(1) *Definition of export.* ''Export'' means an actual shipment or transmission of items subject to the EAR out of the United States, or release of technology or software subject to the EAR to a foreign national in the United States, as described in paragraph (b)(2)(ii) of this section. See part 772 of the EAR for the definition that applies to exports of satellites subject to the EAR. See paragraph (b)(9) of this section for the definition that applies to exports of encryption source code and object code software subject to the EAR.

(2) *Export of technology or software.* (See paragraph (b)(9) for provisions that apply to encryption source code and object code software.) ''Export'' of technology or software, excluding encryption software subject to ''EI'' controls, includes:

(i) Any release of technology or software subject to the EAR in a foreign country; or

(ii) Any release of technology or source code subject to the EAR to a foreign national. Such release is deemed to be an export to the home country or countries of the foreign national. This deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Note that the release of any item to any party with knowledge a violation is about to occur is prohibited by § 736.2(b)(10) of the EAR.

(3) *Definition of ''release'' of technology or software.* Technology or software is ''released'' for export through:

(i) Visual inspection by foreign nationals of U.S.-origin equipment and facilities;

(ii) Oral exchanges of information in the United States or abroad; or

(iii) The application to situations abroad of personal knowledge or technical experience acquired in the United States.

(4) *Definition of reexport.* ''Reexport'' means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country; or release of technology or software subject to the EAR to a foreign national outside the United States, as described in paragraph (b)(5) of this section. See part 772 of the EAR for the definition that applies to reexports of satellites subject to the EAR.

(5) *Reexport of technology or software.* Any release of technology or source code subject to the EAR to a foreign national of another country is a deemed reexport to the home country or countries of the foreign national.

However, this deemed reexport definition does not apply to persons lawfully admitted for permanent residence. The term ''release'' is defined in paragraph (b)(3) of this section. Note that the release of any item to any party with knowledge or reason to know a violation is about to occur is prohibited by § 736.2(b)(10) of the EAR.

(6) For purposes of the EAR, the export or reexport of items subject to the EAR that will transit through a country or countries or be transshipped in a country or countries to a new country or are intended for reexport to the new country, are deemed to be exports to the new country.

(7) If a territory, possession, or department of a foreign country is not listed on the Country Chart in Supplement No. 1 to part 738 of the EAR, the export or reexport of items subject to the EAR to such destination is deemed under the EAR to be an export to the foreign country. For example, a shipment to the Cayman Islands, a dependent territory of the United Kingdom, is deemed to be a shipment to the United Kingdom.

(8) Export or reexport of items subject to the EAR does not include shipments among any of the states of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands or any territory, dependency, or possession of the United States. These destinations are listed in Schedules C & E, Classification of Country and Territory Designations for U.S. Export Statistics, issued by the Bureau of the Census.

(9) *Export of encryption source code and object code software.* (i) For purposes of the EAR, the export of encryption source code and object code software means:

(A) An actual shipment, transfer, or transmission out of the United States (see also paragraph (b)(9)(ii) of this section); or

(B) A transfer of such software in the United States to an embassy or affiliate of a foreign country.

(ii) The export of encryption source code and object code software controlled for EI reasons under ECCN 5D002 on the Commerce Control List (see Supplement No. 1 to part 774 of the EAR) includes downloading, or causing the downloading of, such software to locations (including electronic bulletin boards, Internet file transfer protocol, and World Wide Web sites) outside the U.S., or making such software available for transfer outside the United States, over wire, cable, radio, electromagnetic, photooptical, photoelectric or other comparable communications facilities accessible to persons outside the United States, including transfers from electronic bulletin boards, Internet file transfer protocol and World Wide Web sites, unless the person making the software available takes precautions adequate to prevent unauthorized transfer of such code outside the United States. Such precautions shall include:

(A) Ensuring that the facility from which the software is available controls the access to and transfers of such software through such measures as:

(*1*) The access control system, either through automated means or human intervention, checks the address of every system requesting or receiving a transfer and verifies that such systems are located within the United States;

(*2*) The access control system, provides every requesting or receiving party with notice that the transfer includes or would include cryptographic software subject to export controls under the Export Administration Act, and that anyone receiving such a transfer cannot export the software without a license; and

(*3*) Every party requesting or receiving a transfer of such software must acknowledge affirmatively that he or she understands that the cryptographic software is subject to export controls under the Export Administration Act and that anyone receiving the transfer cannot export the software without a license; or

(B) Taking other precautions, approved in writing by the Bureau of Export Administration, to prevent transfer of such software outside the U.S. without a license.

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 68578, Dec. 30, 1996]

§734.3 Items subject to the EAR.

(a) Except for items excluded in paragraph (b) of this section, the following items are subject to the EAR:

(1) All items in the United States, including in a U.S. Foreign Trade Zone or moving intransit through the United States from one foreign country to another;

(2) All U.S. origin items wherever located;

(3) U.S. origin parts, components, materials or other commodities incorporated abroad into foreign-made products, U.S. origin software commingled with foreign software, and U.S. origin technology commingled with foreign technology, in quantities exceeding *de minimis* levels as described in §734.4 and Supplement No. 2 of this part;

(4) Certain foreign-made direct products of U.S. origin technology or software, as described in §736.2(b)(3) of the EAR. The term ''direct product'' means the immediate product (including processes and services) produced directly by the use of technology or software; and

(5) Certain commodities produced by any plant or major component of a plant located outside the United States that is a direct product of U.S.-origin technology or software, as described in §736.2(b)(3) of the EAR.

(b) The following items are not subject to the EAR:

(1) Items that are exclusively controlled for export or reexport by the following departments and agencies of the U.S. Government which regulate exports or reexports for national security or foreign policy purposes:

(i) *Department of State.* The International Traffic in Arms Regulations (22 CFR part 121) administered by the Office of Defense Trade Controls relate to defense articles and defense services on the U.S. Munitions List. Section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(ii) *Treasury Department, Office of Foreign Assets Control (OFAC).* Regulations administered by OFAC implement broad controls and embargo transactions with certain foreign countries. These regulations include controls on exports and reexports to certain countries (31 CFR chapter V). Trading with the Enemy Act (50 U.S.C. app. section 1 *et seq.*), and International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*)

(iii) *U.S. Nuclear Regulatory Commission (NRC).* Regulations administered by NRC control the export and reexport of commodities related to nuclear reactor vessels (10 CFR part 110). Atomic Energy Act of 1954, as amended (42 U.S.C. part 2011 *et seq.*).

(iv) *Department of Energy (DOE).* Regulations administered by DOE control the export and reexport of technology related to the production of special nuclear materials (10 CFR part 810). Atomic Energy Act of 1954, as amended (42 U.S.C. section 2011 *et seq.*).

(v) *Patent and Trademark Office (PTO).* Regulations administered by PTO provide for the export to a foreign country of unclassified technology in the form of a patent application or an amendment, modification, or supplement thereto or division thereof (37 CFR part 5). BXA has delegated authority under the Export Administration Act to the PTO to approve exports and reexports of such technology which is subject to the EAR. Exports and reexports of such technology not approved under PTO regulations must comply with the EAR.

(2) Prerecorded phonograph records reproducing in whole or in part, the content of printed books, pamphlets, and miscellaneous publications, including newspapers and periodicals; printed books, pamphlets, and miscellaneous publications including bound newspapers and periodicals; children's picture and painting books; newspaper and periodicals, unbound, excluding waste; music books; sheet music; calendars and calendar blocks, paper; maps, hydrographical charts, atlases, gazetteers, globe covers, and globes (terrestrial and celestial); exposed and developed microfilm reproducing, in whole or in part, the content of any of the above; exposed and developed motion picture film and soundtrack; and advertising printed matter exclusively related thereto.

(3) Publicly available technology and software, except software controlled for EI reasons under ECCN 5D002 on the Commerce Control List, that:

(i) Are already published or will be published as described in §734.7 of this part;

(ii) Arise during, or result from, fundamental research, as described in § 734.8 of this part;

(iii) Are educational, as described in § 734.9 of this part;

(iv) Are included in certain patent applications, as described in § 734.10 of this part.

NOTE TO PARAGRAPHS (B)(2) AND (B)(3) OF THIS SECTION: A printed book or other printed material setting forth encryption source code is not itself subject to the EAR (see § 734.3(b)(2)). However, notwithstanding § 734.3(b)(2), encryption source code in electronic form or media (e.g., computer diskette or CD ROM) remains subject to the EAR (see § 734.3(b)(3)).

(4) Foreign made items that have greater than the *de minimis* U.S. content based on the principles described in § 734.4 of this part.

(c) ''Items subject to the EAR'' consist of the items listed on the Commerce Control List (CCL) in part 774 of the EAR and all other items which meet the definition of that term. For ease of reference and classification purposes, items subject to the EAR which are *not* listed on the CCL are designated as ''EAR99.''

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 65464, Dec. 13, 1996; 61 FR 68578, Dec. 30, 1996; 62 FR 25456, May 9, 1997]

§ 734.4 De minimis U.S. content.

(a) There is no *de minimis* level for the export from a foreign country of a foreign-made computer exceeding 7000 MTOPS containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 or high speed interconnect devices (ECCN 4A003.g) to Computer Tier 3 and 4 countries described in § 742.12 of the EAR.

(b) There is no *de minimis* level for the reexport of foreign-origin items that incorporate the following:

(1) Items controlled by ECCN 9A004.a; or

(2) ''Information security'' systems and equipment, cryptographic devices, software and components specifically designed or modified therefor, and related technology controlled for ''EI'' reasons under ECCN, 5A002 ECCN 5D002, and 5E002. Certain mass market encryption software may become eligible for *de minimis* only after a one-time BXA review (refer to § 742.15(b)(1)).

(c) Except as provided in paragraph (a) of this section for certain computers, the following reexports are not subject to the EAR when made to either an embargoed country listed in part 746 of the EAR or to a terrorist-supporting country as described in part 742 of the EAR:

(1) Reexports of a foreign-made commodity incorporating controlled U.S.-origin commodities valued at 10% or less of the total value of the foreign-made commodity;

(2) Reexports of foreign-made software incorporating controlled U.S.-origin software valued at 10% or less of the total value of the foreign-made software; or

(3) Reexports of foreign technology commingled with or drawn from controlled U.S.-origin technology valued at 10% or less of the total value of the foreign technology.

(d) Except as provided in paragraph (a) of this section for certain computers, for all other countries not included in paragraph (b) of this section the following reexports are *not* subject to the EAR:

(1) Reexports of a foreign-made commodity incorporating controlled U.S.-origin commodities valued at 25% or less of the total value of the foreign-made commodity;

(2) Reexports of foreign-made software incorporating controlled U.S.-origin software valued at 25% or less of the total value of the foreign-made software; or

(3) Reexports of foreign technology commingled with or drawn from controlled U.S.-origin technology valued at 25% or less of the total value of the foreign technology.

(e) For purposes of determining *de minimis* levels, technology and source code used to design or produce foreign-made commodities or software are not considered to be incorporated into such foreign-made commodities or software. Commodities subject only to short supply controls are not included in calculating U.S. content.

(f) You are responsible for making the necessary calculations to determine whether the *de minimis* provisions

apply to your situation. See Supplement No. 2 to part 734 for guidance regarding calculation of U.S. controlled content.

(g) See §770.3 of the EAR for principles that apply to commingled U.S.-origin technology and software.

(h) Notwithstanding the provisions of paragraphs (c) and (d) of this section, U.S.-origin technology controlled by ECCN 9E003a.1 through a.12, and .f, and related controls, and encryption software controlled for ''EI'' reasons under ECCN 5D002 or encryption technology controlled for ''EI'' reasons under ECCN 5E002 do not lose their U.S.-origin when redrawn, used, consulted, or otherwise commingled abroad in any respect with other software or technology of any other origin. Therefore, any subsequent or similar software or technology prepared or engineered abroad for the design, construction, operation, or maintenance of any plant or equipment, or part thereof, which is based on or uses any such U.S.-origin software or technology is subject to the EAR.

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 54543, Oct. 21, 1996; 61 FR 65464, Dec. 13, 1996; 61 FR 68578, Dec. 30, 1996; 62 FR 25456, May 9, 1997]

§734.5 Activities of U.S. and foreign persons subject to the EAR.

The following kinds of activities are subject to the EAR:

(a) Certain activities of U.S. persons related to the proliferation of chemical or biological weapons or of missile technology as described in §744.6 of the EAR.

(b) Activities of U.S. or foreign persons prohibited by any order issued under the EAR, including a Denial Order issued pursuant to part 766 of the EAR.

(c) Technical assistance by U.S. persons with respect to encryption commodities or software as described in §744.9 of the EAR.

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 68578, Dec. 30, 1996]

§734.6 Assistance available from BXA for determining licensing and other requirements.

(a) If you are not sure whether a commodity, software, technology, or activity is subject to the EAR, or is subject to licensing or other requirements under the EAR, you may ask BXA for an advisory opinion, classification, or a determination whether a particular item or activity is subject to the EAR. In many instances, including those where the item is specially designed, developed, configured, adapted, or modified for military application, the item may fall under the licensing jurisdiction of the Department of State and may be subject to the controls of the International Traffic in Arms Regulations (22 CFR parts 120 through 130) (ITAR). In order to determine if the Department of State has licensing jurisdiction over an item, you should submit a request for a commodity jurisdiction determination to the Department of State, Office of Defense Trade Controls. Exporters should note that in a very limited number of cases, the categories of items may be subject to both the ITAR and the EAR. The relevant departments are working to eliminate any unnecessary overlaps that may exist.

(b) As the agency responsible for administering the EAR, BXA is the only agency that has the responsibility for determining whether an item or activity is subject to the EAR and, if so, what licensing or other requirements apply under the EAR. Such a determination only affects EAR requirements, and does not affect the applicability of any other regulatory programs.

(c) If you need help in determining BXA licensing or other requirements you may ask BXA for help by following the procedures described in §748.3 of the EAR.

§734.7 Published information and software.

(a) Information is ''published'' when it becomes generally accessible to the interested public in any form, including:

(1) Publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed

the cost of reproduction and distribution (See Supplement No. 1 to this part, Questions A(1) through A(6));

(2) Ready availability at libraries open to the public or at university libraries (See Supplement No. 1 to this part, Question A(6));

(3) Patents and open (published) patent applications available at any patent office; and

(4) Release at an open conference, meeting, seminar, trade show, or other open gathering.

(i) A conference or gathering is ''open'' if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (not necessarily a recording) of the proceedings and presentations.

(ii) All technically qualified members of the public may be considered eligible to attend a conference or other gathering notwithstanding a registration fee reasonably related to cost and reflecting an intention that all interested and technically qualified persons be able to attend, or a limitation on actual attendance, as long as attendees either are the first who have applied or are selected on the basis of relevant scientific or technical competence, experience, or responsibility (See Supplement No. 1 to this part, Questions B(1) through B(6)).

(iii) ''Publication'' includes submission of papers to domestic or foreign editors or reviewers of journals, or to organizers of open conferences or other open gatherings, with the understanding that the papers will be made publicly available if favorably received. (See Supplement No. 1 to this part, Questions A(1) and A(3)).

(b) Software and information is published when it is available for general distribution either for free or at a price that does not exceed the cost of reproduction and distribution. See Supplement No. 1 to this part, Questions G(1) through G(3).

(c) Notwithstanding paragraphs (a) and (b) of this section, note that encryption software controlled under ECCN 5D002 for ''EI'' reasons on the Commerce Control List (refer to Supplement No. 1 to part 774 of the EAR) remains subject to the EAR even when publicly available.

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 65464, Dec. 13, 1996; 61 FR 68578, Dec. 30, 1996]

§ 734.8 Information resulting from fundamental research.

(a) *Fundamental research.* Paragraphs (b) through (d) of this section and § 734.11 of this part provide specific rules that will be used to determine whether research in particular institutional contexts qualifies as ''fundamental research''. The intent behind these rules is to identify as ''fundamental research'' basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons as defined in § 734.11(b) of this part. (See Supplement No. 1 to this part, Question D(8)). Note that the provisions of this section do not apply to encryption software controlled under ECCN 5D002 for ''EI'' reasons on the Commerce Control List (refer to Supplement No. 1 to part 774 of the EAR).

(b) *University based research.* (1) Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research, as described in paragraphs (b)(2) through (6) of this section. (''University'' means any accredited institution of higher education located in the United States.)

(2) Prepublication review by a sponsor of university research solely to insure that the publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers does not change the status of the research as fundamental research. However, release of information from a corporate sponsor to university researchers where the research results are subject to prepublication review, is subject to the EAR. (See Supplement No. 1 to this part, Questions D(7), D(9), and D(10).)

(3) Prepublication review by a sponsor of university research solely to ensure that publication would not compromise patent rights does not change the status of fundamental research, so long as the review causes no more than a temporary delay in publication of the research results.

(4) The initial transfer of information from an industry sponsor to university researchers is subject to the EAR where the parties have agreed that the sponsor may withhold from publication some or all of the information so provided. (See Supplement No. 1 to this part, Question D(2).)

(5) University based research is not considered ''fundamental research'' if the university or its researchers accept (at the request, for example, of an industrial sponsor) other restrictions on publication of scientific and technical information resulting from the project or activity. Scientific and technical information resulting from the research will nonetheless qualify as fundamental research once all such restrictions have expired or have been removed. (See Supplement No. 1 to this part, Question D(7) and D(9).)

(6) The provisions of §734.11 of this part will apply if a university or its researchers accept specific national security controls (as defined in §734.11 of this part) on a research project or activity sponsored by the U.S. Government. (See Supplement No. 1 to this part, Questions E(1) and E(2).)

(c) *Research based at Federal agencies or FFRDCs.* Research conducted by scientists or engineers working for a Federal agency or a Federally Funded Research and Development Center (FFRDC) may be designated as ''fundamental research'' within any appropriate system devised by the agency or the FFRDC to control the release of information by such scientists and engineers. (See Supplement No. 1 to this part, Questions D(8) and D(11).)

(d) *Corporate research.* (1) Research conducted by scientists or engineers working for a business entity will be considered ''fundamental research'' at such time and to the extent that the researchers are free to make scientific and technical information resulting from the research publicly available without restriction or delay based on proprietary concerns or specific national security controls as defined in §734.11(b) of this part.

(2) Prepublication review by the company solely to ensure that the publication would compromise no proprietary information provided by the company to the researchers is not considered to be a proprietary restriction under paragraph (d)(1) of this section. However, paragraph (d)(1) of this section does not authorize the release of information to university researchers where the research results are subject to prepublication review. (See Supplement No. 1 to this part, Questions D(8), D(9), and D(10).)

(3) Prepublication review by the company solely to ensure that prepublication would compromise no patent rights will not be considered a proprietary restriction for this purpose, so long as the review causes no more than a temporary delay in publication of the research results.

(4) However, the initial transfer of information from a business entity to researchers is not authorized under the ''fundamental research'' provision where the parties have agreed that the business entity may withhold from publication some or all of the information so provided.

(e) *Research based elsewhere.* Research conducted by scientists or engineers who are not working for any of the institutions described in paragraphs (b) through (d) of this section will be treated as corporate research, as described in paragraph (d) of this section. (See Supplement No. 1 to this part, Question D(8).)

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 68579, Dec. 30, 1996; 62 FR 25456, May 9, 1997]

§734.9 Educational information.

''Educational information'' referred to in §734.3(b)(3)(iii) of this part is not subject to the EAR if it is released by instruction in catalog courses and associated teaching laboratories of academic institutions. Dissertation research is discussed in §734.8(b) of this part. (Refer to Supplement No. 1 to this part, Question C(1) through C(6)). Note that the provisions of this section do not apply to encryption software controlled under ECCN 5D002 for ''EI''

reasons on the Commerce Control List (refer to Supplement No. 1 to part 774 of the EAR).

[61 FR 68579, Dec. 30, 1996]

§ 734.10 Patent applications.

The information referred to in § 734.3(b)(3)(iv) of this part is:

(a) Information contained in a patent application prepared wholly from foreign-origin technical data where the application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office;

(b) Information contained in a patent application, or an amendment, modification, supplement or division of an application, and authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR part 5;[1] or

(c) Information contained in a patent application when sent to a foreign country before or within six months after the filing of a United States patent application for the purpose of obtaining the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.

§ 734.11 Government-sponsored research covered by contract controls.

(a) If research is funded by the U.S. Government, and specific national security controls are agreed on to protect information resulting from the research, § 734.3(b)(3) of this part will not apply to any export or reexport of such information in violation of such controls. However, any export or reexport of information resulting from the research that is consistent with the specific controls may nonetheless be made under this provision.

(b) Examples of ''specific national security controls'' include requirements for prepublication review by the Government, with right to withhold permission for publication; restrictions on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research. A general reference to one or more export control laws or regulations or a general reminder that the Government retains the right to classify is not a ''specific national security control''. (See Supplement No. 1 to this part, Questions E(1) and E(2).)

§ 734.12 Effect on foreign laws and regulations.

Any person who complies with any of the license or other requirements of the EAR is not relieved of the responsibility of complying with applicable foreign laws and regulations. Conversely, any person who complies with the license or other requirements of a foreign law or regulation is not relieved of the responsibility of complying with U.S. laws and regulations, including the EAR.

SUPPLEMENT NO. 1 TO PART 734—QUESTIONS AND ANSWERS—TECHNOLOGY AND SOFTWARE SUBJECT TO THE EAR

This Supplement No. 1 contains explanatory questions and answers relating to technology and software that is subject to the EAR. It is intended to give the public guidance in understanding how BXA interprets this part, but is only illustrative, not comprehensive. In addition, facts or circumstances that differ in any material way from those set forth in the questions or answers will be considered under the applicable provisions of the EAR. Exporters should note that the provisions of this supplement do not apply to encryption software (including source code) transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. See § 742.15 of the EAR. This supplement is divided into nine sections according to topic as follows:

Section A: Publication of technology and exports and reexports of technology that has been or will be published.

Section B: Release of technology at conferences.

Section C: Educational instruction.

Section D: Research, correspondence, and informal scientific exchanges.

[1] Regulations issued by the Patent and Trademark Office in 37 CFR part 5 provide for the export to a foreign country of unclassified technical data in the form of a patent application or an amendment, modification, or supplement thereto or division thereof.

Section E: Federal contract controls.
Section F: Commercial consulting.
Section G: Software.
Section H: Availability in a public library.
Section I: Miscellaneous.

Section A: Publication

Question A(1): I plan to publish in a foreign journal a scientific paper describing the results of my research, which is in an area listed in the EAR as requiring a license to all countries except Canada. Do I need a license to send a copy to my publisher abroad?

Answer: No. This export transaction is not subject to the EAR. The EAR do not cover technology that is already publicly available, as well as technology that is made public by the transaction in question (§§734.3 and 734.7 of this part). Your research results would be made public by the planned publication. You would not need a license.

Question A(2): Would the answer differ depending on where I work or where I performed the research?

Answer: No. Of course, the result would be different if your employer or another sponsor of your research imposed restrictions on its publication (§734.8 of this part).

Question (A)3: Would I need a license to send the paper to the editors of a foreign journal for review to determine whether it will be accepted for publication?

Answer: No. This export transaction is not subject to the EAR because you are submitting the paper to the editors with the intention that the paper will be published if favorably received (§734.7(a)(4)(iii) of this part).

Question A(4): The research on which I will be reporting in my paper is supported by a grant from the Department of Energy (DOE). The grant requires prepublication clearance by DOE. Does that make any difference under the Export Administration Regulations?

Answer: No, the transaction is not subject to the EAR. But if you published in violation of any Department of Energy controls you have accepted in the grant, you may be subject to appropriate administrative, civil, or criminal sanctions under other laws.

Question A(5): We provide consulting services on the design, layout, and construction of integrated circuit plants and production lines. A major part of our business is the publication for sale to clients of detailed handbooks and reference manuals on key aspects on the design and manufacturing processes. A typical cost of publishing such a handbook and manual might be $500; the typical sales price is about $15,000. Is the publication and sale of such handbooks or manuals subject to the EAR?

Answer: Yes. The price is above the cost of reproduction and distribution (§734.7(a)(1) of this part). Thus, you would need to obtain a license or qualify for a License Exception before you could export or reexport any of these handbooks or manuals.

Question A(6): My Ph.D. thesis is on technology, listed in the EAR as requiring a license to all destinations except Canada, which has never been published for general distribution. However, the thesis is available at the institution from which I took the degree. Do I need a license to send another copy to a colleague overseas?

Answer: That may depend on where in the institution it is available. If it is not readily available in the university library (e.g., by filing in open stacks with a reference in the catalog), it is not ''publicly available'' and the export or reexport would be subject to the EAR on that ground. The export or reexport would not be subject to the EAR if your Ph.D. research qualified as ''fundamental research'' under §734.8 of this part. If not, however, you will need to obtain a license or qualify for a License Exception before you can send a copy out of the country.

Question A(7): We sell electronically recorded information, including software and databases, at wholesale and retail. Our products are available by mail order to any member of the public, though intended for specialists in various fields. They are priced to maximize sales to persons in those fields. Do we need a license to sell our products to foreign customers?

Answer: You would not need a license for otherwise controlled technology or software if the technology and software are made publicly available at a price that does not exceed the cost of production and distribution to the technical community. Even if priced at a higher level, the export or reexport of the technology or software source code in a library accessible to the public is not subject to the EAR (§734.7(a) of this part).

Section B: Conferences

Question B(1): I have been invited to give a paper at a prestigious international scientific conference on a subject listed as requiring a license under the EAR to all countries, except Canada. Scientists in the field are given an opportunity to submit applications to attend. Invitations are given to those judged to be the leading researchers in the field, and attendance is by invitation only. Attendees will be free to take notes, but not make electronic or verbatim recordings of the presentations or discussions. Some of the attendees will be foreigners. Do I need a license to give my paper?

Answer: No. Release of information at an open conference and information that has been released at an open conference is not subject to the EAR. The conference you describe fits the definition of an open conference (§734.7(a) of this part).

Question B(2): Would it make any difference if there were a prohibition on making any notes or other personal record of what transpires at the conference?

Answer: Yes. To qualify as an ''open'' conference, attendees must be permitted to take notes or otherwise make a personal record (although not necessarily a recording). If note taking or the making of personal records is altogether prohibited, the conference would not be considered ''open''.

Question B(3): Would it make any difference if there were also a registration fee?

Answer: That would depend on whether the fee is reasonably related to costs and reflects an intention that all interested and technically qualified persons should be able to attend (§734.7(a)(4)(ii) of this part).

Question B(4): Would it make any difference if the conference were to take place in another country?

Answer: No.

Question B(5): Must I have a license to send the paper I propose to present at such a foreign conference to the conference organizer for review?

Answer: No. A license is not required under the EAR to submit papers to foreign organizers of open conferences or other open gatherings with the intention that the papers will be delivered at the conference, and so made publicly available, if favorably received. The submission of the papers is not subject to the EAR (§734.7(a)(4)(iii) of this part).

Question B(6): Would the answers to any of the foregoing questions be different if my work were supported by the Federal Government?

Answer: No. You may export and reexport the papers, even if the release of the paper violates any agreements you have made with your government sponsor. However, nothing in the EAR relieves you of responsibility for conforming to any controls you have agreed to in your Federal grant or contract.

Section C: Educational Instruction

Question C(1): I teach a university graduate course on design and manufacture of very high-speed integrated circuitry. Many of the students are foreigners. Do I need a license to teach this course?

Answer: No. Release of information by instruction in catalog courses and associated teaching laboratories of academic institutions is not subject to the EAR (§734.9 of this part).

Question C(2): Would it make any difference if some of the students were from countries to which export licenses are required?

Answer: No.

Question C(3): Would it make any difference if I talk about recent and as yet unpublished results from my laboratory research?

Answer: No.

Question C(4): Even if that research is funded by the Government?

Answer: Even then, but you would not be released from any separate obligations you have accepted in your grant or contract.

Question C(5): Would it make any difference if I were teaching at a foreign university?

Answer: No.

Question C(6): We teach proprietary courses on design and manufacture of high-performance machine tools. Is the instruction in our classes subject to the EAR?

Answer: Yes. That instruction would not qualify as ''release of educational information'' under §734.9 of this part because your proprietary business does not qualify as an ''academic institution'' within the meaning of §734.9 of this part. Conceivably, however, the instruction might qualify as ''release at an open * * * seminar, * * * or other open gathering'' under §734.7(a) of this part. The conditions for qualification of such a seminar or gathering as ''open'', including a fee ''reasonably related to costs (of the conference, not of producing the data) and reflecting an intention that all interested and technically qualified persons be able to attend,'' would have to be satisfied.

Section D: Research, Correspondence, and Informal Scientific Exchanges

Question D(1): Do I need a license in order for a foreign graduate student to work in my laboratory?

Answer: Not if the research on which the foreign student is working qualifies as ''fundamental research'' under §734.8 of this part. In that case, the research is not subject to the EAR.

Question D(2): Our company has entered into a cooperative research arrangement with a research group at a university. One of the researchers in that group is a PRC national. We would like to share some of our proprietary information with the university research group. We have no way of guaranteeing that this information will not get into the hands of the PRC scientist. Do we need to obtain a license to protect against that possibility?

Answer: No. The EAR do not cover the disclosure of information to any scientists, engineers, or students at a U.S. university in the course of industry-university research collaboration under specific arrangements between the firm and the university, provided these arrangements do not permit the sponsor to withhold from publication any of the information that he provides to the researchers. However, if your company and the researchers have agreed to a prohibition on publication, then you must obtain a license or qualify for a License Exception before

transferring the information to the university. It is important that you as the corporate sponsor and the university get together to discuss whether foreign nationals will have access to the information, so that you may obtain any necessary authorization prior to transferring the information to the research team.

Question D(3): My university will host a prominent scientist from the PRC who is an expert on research in engineered ceramics and composite materials. Do I require a license before telling our visitor about my latest, as yet unpublished, research results in those fields?

Answer: Probably not. If you performed your research at the university, and you were subject to no contract controls on release of the research, your research would qualify as ''fundamental research'' (§734.8(a) of this part). Information arising during or resulting from such research is not subject to the EAR (§734.3(b)(3) of this part).

You should probably assume, however, that your visitor will be debriefed later about anything of potential military value he learns from you. If you are concerned that giving such information to him, even though permitted, could jeopardize U.S. security interests, the Commerce Department can put you in touch with appropriate Government scientists who can advise you. Write to Department of Commerce, Bureau of Export Administration, P.O. Box 273, Washington, DC 20044.

Question D(4): Would it make any difference if I were proposing to talk with a PRC expert in China?

Answer: No, if the information in question arose during or resulted from the same ''fundamental research.''

Question D(5): Could I properly do some work with him in his research laboratory inside China?

Answer: Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience, and such an export may be subject to the EAR. If any of the knowledge or experience you export in this way requires a license under the EAR, you must obtain such a license or qualify for a License Exception.

Question D(6): I would like to correspond and share research results with an Iranian expert in my field, which deals with technology that requires a license to all destinations except Canada. Do I need a license to do so?

Answer: Not as long as we are still talking about information that arose during or resulted from research that qualifies as ''fundamental'' under the rules spelled out in §734.8(a) of this part.

Question D(7): Suppose the research in question were funded by a corporate sponsor and I had agreed to prepublication review of any paper arising from the research?

Answer: Whether your research would still qualify as ''fundamental'' would depend on the nature and purpose of the prepublication review. If the review is intended solely to ensure that your publications will neither compromise patent rights nor inadvertently divulge proprietary information that the sponsor has furnished to you, the research could still qualify as ''fundamental.'' But if the sponsor will consider as part of its prepublication review whether it wants to hold your new research results as trade secrets or otherwise proprietary information (even if your voluntary cooperation would be needed for it to do so), your research would no longer qualify as ''fundamental.'' As used in these regulations it is the actual and intended openness of research results that primarily determines whether the research counts as ''fundamental'' and so is not subject to the EAR.

Question D(8): In determining whether research is thus open and therefore counts as ''fundamental,'' does it matter where or in what sort of institution the research is performed?

Answer: In principle, no. ''Fundamental research'' is performed in industry, Federal laboratories, or other types of institutions, as well as in universities. The regulations introduce some operational presumptions and procedures that can be used both by those subject to the regulations and by those who administer them to determine with some precision whether a particular research activity is covered. Recognizing that common and predictable norms operate in different types of institutions, the regulations use the institutional locus of the research as a starting point for these presumptions and procedures. Nonetheless, it remains the type of research, and particularly the intent and freedom to publish, that identifies ''fundamental research,'' not the institutional locus (§734.8(a) of this part).

Question D(9): I am doing research on high-powered lasers in the central basic-research laboratory of an industrial corporation. I am required to submit the results of my research for prepublication review before I can publish them or otherwise make them public. I would like to compare research results with a scientific colleague from Vietnam and discuss the results of the research with her when she visits the United States. Do I need a license to do so?

Answer: You probably do need a license (§734.8(d) of this part). However, if the only restriction on your publishing any of that information is a prepublication review solely to ensure that publication would compromise no patent rights or proprietary information provided by the company to the researcher your research may be considered ''fundamental research,'' in which case you

may be able to share information because it is not subject to the EAR. Note that the information will be subject to the EAR if the prepublication review is intended to withhold the results of the research from publication.

Question D(10): Suppose I have already cleared my company's review process and am free to publish all the information I intend to share with my colleague, though I have not yet published?

Answer: If the clearance from your company means that you are free to make all the information publicly available without restriction or delay, the information is not subject to the EAR. (§734.8(d) of this part)

Question D(11): I work as a researcher at a Government-owned, contractor-operated research center. May I share the results of my unpublished research with foreign nationals without concern for export controls under the EAR?

Answer: That is up to the sponsoring agency and the center's management. If your research is designated ''fundamental research'' within any appropriate system devised by them to control release of information by scientists and engineers at the center, it will be treated as such by the Commerce Department, and the research will not be subject to the EAR. Otherwise, you would need to obtain a license or qualify for a License Exception, except to publish or otherwise make the information public (§734.8(c) of this part).

Section E: Federal Contract Controls

Question E(1): In a contract for performance of research entered into with the Department of Defense (DOD), we have agreed to certain national security controls. DOD is to have ninety days to review any papers we proposed before they are published and must approve assignment of any foreign nationals to the project. The work in question would otherwise qualify as ''fundamental research'' section under §734.8 of this part. Is the information arising during or resulting from this sponsored research subject to the EAR?

Answer: Under §734.11 of this part, any export or reexport of information resulting from government-sponsored research that is inconsistent with contract controls you have agreed to will not qualify as ''fundamental research'' and any such export or reexport would be subject to the EAR. Any such export or reexport that is consistent with the controls will continue to be eligible for export and reexport under the ''fundamental research'' rule set forth in §734.8(a) of this part. Thus, if you abide by the specific controls you have agreed to, you need not be concerned about violating the EAR. If you violate those controls and export or reexport information as ''fundamental research'' under §734.8(a) of this part, you may subject yourself to the sanctions provided for under the EAR, including criminal sanctions, in addition to administrative and civil penalties for breach of contract under other law.

Question E(2): Do the Export Administration Regulations restrict my ability to publish the results of my research?

Answer: The Export Administration Regulations are not the means for enforcing the national security controls you have agreed to. If such a publication violates the contract, you would be subject to administrative, civil, and possible criminal penalties under other law.

Section F: Commercial Consulting

Question F(1): I am a professor at a U.S. university, with expertise in design and creation of submicron devices. I have been asked to be a consultant for a ''third-world'' company that wishes to manufacture such devices. Do I need a license to do so?

Answer: Quite possibly you do. Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience that is subject to the Export Administration Regulations. If any part of the knowledge or experience your export or reexport deals with technology that requires a license under the EAR, you will need to obtain a license or qualify for a License Exception.

Section G: Software[2]

Question G(1): Is the export or reexport of software in machine readable code subject to the EAR when the source code for such software is publicly available?

Answer: If the source code of a software program is publicly available, then the machine readable code compiled from the source code is software that is publicly available and therefore not subject to the EAR.

Question G(2): Is the export or reexport of software sold at a price that does not exceed the cost of reproduction and distribution subject to the EAR?

Answer: Software in machine readable code is publicly available if it is available to a community at a price that does not exceed the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or acquisition. In this case, the provider of the software does not receive a fee for the inherent value of the software.

[2] Exporters should note that these provisions do not apply to software controlled under the International Traffic in Arms Regulations (e.g., certain encryption software).

Question G(3): Is the export or reexport of software subject to the EAR if it is sold at a price BXA concludes in a classification letter to be sufficiently low so as not to subject it to the EAR?

Answer: In response to classification requests, BXA may choose to classify certain software as not subject to the EAR even though it is sold at a price above the costs of reproduction and distribution as long as the price is nonetheless sufficiently low to qualify for such a classification in the judgment of BXA.

Section H: Available in a Public Library

Question H(1): Is the export or reexport of information subject to the EAR if it is available in a library and sold through an electronic or print service?

Answer: Electronic and print services for the distribution of information may be relatively expensive in the marketplace because of the value vendors add in retrieving and organizing information in a useful way. If such information is also available in a library—itself accessible to the public—or has been published in any way, that information is ''publicly available'' for those reasons, and the information itself continues not to be subject to the EAR even though you access the information through an electronic or print service for which you or your employer pay a substantial fee.

Question H(2): Is the export or reexport of information subject to the EAR if the information is available in an electronic form in a library at no charge to the library patron?

Answer: Information available in an electronic form at no charge to the library patron in a library accessible to the public is information publicly available even though the library pays a substantial subscription fee for the electronic retrieval service.

Question H(3): Is the export or reexport of information subject to the EAR if the information is available in a library and sold for more than the cost of reproduction and distribution?

Answer: Information from books, magazines, dissertations, papers, electronic data bases, and other information available in a library that is accessible to the public is not subject to the EAR. This is true even if you purchase such a book at more than the cost of reproduction and distribution. In other words, such information is ''publicly available'' even though the author makes a profit on your particular purchase for the inherent value of the information.

Section I: Miscellaneous

Question I(1): The manufacturing plant that I work at is planning to begin admitting groups of the general public to tour the plant facilities. We are concerned that a license might be required if the tour groups include foreign nationals. Would such a tour constitute an export? If so, is the export subject to the EAR?

Answer: The EAR define exports and reexports of technology to include release through visual inspection by foreign nationals of U.S.-origin equipment and facilities. Such an export or reexport qualifies under the ''publicly available'' provision and would not be subject to the EAR so long as the tour is truly open to all members of the public, including your competitors, and you do not charge a fee that is not reasonably related to the cost of conducting the tours. Otherwise, you will have to obtain a license, or qualify for a License Exception, prior to permitting foreign nationals to tour your facilities (§734.7 of this part).

Question I(2): Is the export or reexport of information subject to the EAR if the information is not in a library or published, but sold at a price that does not exceed the cost of reproduction and distribution?

Answer: Information that is not in a library accessible to the public and that has not been published in any way, may nonetheless become ''publicly available'' if you make it both available to a community of persons and if you sell it at no more than the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed cost allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or acquisition costs of the technology or software. The reason for this conclusion is that the provider of the information receives nothing for the inherent value of the information.

Question I(3): Is the export or reexport of information contributed to an electronic bulletin board subject to the EAR?

Answer: Assume each of the following:

1. Information is uploaded to an electronic bulletin board by a person that is the owner or originator of the information;

2. That person does not charge a fee to the bulletin board administrator or the subscribers of the bulletin board; and

3. The bulletin board is available for subscription to any subscriber in a given community regardless of the cost of subscription.

Such information is ''publicly available'' and therefore not subject to the EAR even if it is not elsewhere published and is not in a library. The reason for this conclusion is that the bulletin board subscription charges or line charges are for distribution exclusively, and the provider of the information receives nothing for the inherent value of the information.

Question I(4): Is the export or reexport of patented information fully disclosed on the public record subject to the EAR?

Answer: Information to the extent it is disclosed on the patent record open to the public is not subject to the EAR even though you may use such information only after paying a fee in excess of the costs of reproduction and distribution. In this case the seller does receive a fee for the inherent value of the technical data; however, the export or reexport of the information is nonetheless not subject to the EAR because any person can obtain the technology from the public record and further disclose or publish the information. For that reason, it is impossible to impose export controls that deny access to the information.

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 68579, Dec. 30, 1996; 62 FR 25456, May 9, 1997]

SUPPLEMENT NO. 2 TO PART 734—CALCULATION OF VALUES FOR *De Minimis* RULES

(a) Use the following guidelines in determining values for establishing exemptions or for submission of a request for authorization:

(1) U.S. content value.

(i) U.S. content value is the delivered cost to the foreign manufacturer of the U.S. origin parts, components, or materials. (When affiliated firms have special arrangements that result in lower than normal pricing, the cost should reflect ''fair market'' prices that would normally be charged to similar, unaffiliated customers.)

(ii) In calculating the U.S. content value, do not include parts, components, or materials that could be exported from the United States to the new country of destination without a license (designated as ''NLR'') or under License Exception GBS (see part 740 of the EAR) or under NLR for items classified as EAR99.

(2) The foreign-made product value is the normal selling price f.o.b. factory (excluding value added taxes or excise taxes).

(3) To determine the value of the U.S.-origin controlled content, you should classify the U.S.-origin content on the Commerce Control List, determine those items that would require a license from BXA for reexport to the ultimate destination of the foreign-made product if such parts, components, or materials were reexported to that destination in the form received, and divide the total value of the controlled U.S. parts, components, and materials incorporated into the foreign-made item by the sale price of the foreign-made item.

(4) If no U.S. parts, components or materials are incorporated or if the incorporated U.S. parts, components, and materials are below the *de minimis* level, then the foreign-made item is not subject to the EAR by reason of §734.4 of this part, the classification of a foreign-made item is irrelevant in determining the scope of the EAR, and you should skip Step 4 in §732.2(d) and go on to consider Step 6 in §732.2(f) of the EAR regarding the foreign-produced direct product rule.

Note to paragraph (a)—U.S. origin peripheral or accessory devices that are merely rack mounted with or cable connected into foreign equipment are not deemed to be incorporated components even though intended for use with products made abroad. Rather, such items are treated as U.S. items that retain their identity and remain subject to the EAR.

(b) One-time report prior to reliance upon the *de minimis* exclusion. *Report requirement.* Before you may rely upon the *de minimis* exclusion for foreign software and technology commingled with U.S. software or technology, you must file a one-time report for the foreign software or technology. The report must include the percentage of U.S.-content by value and a description of your calculations including relevant values, assumptions, and the basis or methodologies for making the percentage calculation. The three criteria important to BXA in its review of your report will be the export price of the U.S.-content, the assumption regarding future sales of software, and the choice of the scope of foreign technology. Your methodologies must be based upon the accounting standards used in the operation of your business, and you must specify that standard in your report. Regardless of the accounting systems, standard, or conventions you use in the operation of your business, you may not depreciate the fair market values reported or otherwise reduce the fair market values by other accounting conventions such as depreciation. You may rely upon the *de minimis* exclusion from the commingled rule only to the extent you have reported the relevant calculations, values, assumptions, and the basis or methodologies for the calculations. These values may be historic or projected. You may rely on projected values only to the extent that and for so long as they remain consistent with your report or future values reduce the U.S.-content under your reported assumptions, basis, and methodologies. You are not required to file the above report if you do not choose to take advantage of the *de minimis* exclusion from the commingled rule.

(2) *Export price.* The report must include a description of the U.S.-content including its classification on the Commerce Control List, its performance characteristics and features, and the method of calculating its fair market value. The fair market value shall be the arms-length transaction price, if it is available. If an arms-length transaction price is unavailable, then the report will describe the

valuation method chosen to calculate or derive the fair market value. Such methods may include comparable market prices or costs of production and distribution. This rule does not require calculations based upon any one accounting system or U.S. accounting standards. However, you must specify the accepted accounting standards you have chosen, and cost-based methods of valuation must be based upon records you maintain in the normal course of business. You should also indicate whether reported values are actual arms-length market prices or derived from comparable transactions or costs of production, overhead, and profit. For example, if you chose to make calculations under the transfer pricing rules of the United States Internal Revenue Code at section 482, your report should indicate that this is the source for your methodology, and you should also indicate which of the several methodologies in these transfer pricing rules you have chosen.

(3) *Future software sales.* For calculations of U.S.-content in foreign software, you shall include your historic and estimated future software sales in units and value along with the rationale and basis for those estimates in the report. Unlike parts incorporated into commodities, the cost of U.S. software code will be attributed or allocated to the future sales of foreign-made software incorporating the U.S. code, to determine the percentage of U.S. controlled content. In making this calculation for foreign-made software, you must make an estimate of future software sales of that foreign software if it is commingled with or incorporated with the U.S. code. The value of the U.S. code commingled with or incorporated into the foreign made software shall be divided by the total selling price of all foreign-made software units already sold, plus the total selling price of all foreign-made software units estimated for future sales.

(4) *Foreign technology and software.* For calculations of U.S.-content in foreign technology and software, you shall include in the report a description of the foreign technology or software and a description of its fair market value along with the rationale and basis for the selection and valuation of such foreign software or technology. The report does not require information regarding destinations and end users for reexport. The purpose of the report is solely to permit the U.S. Government to evaluate the reasonableness of U.S.-content calculations.

(5) *Report and wait.* If you have not been contacted by BXA concerning your report within thirty days after filing the report with BXA, you may rely upon the calculations in your report and the *de minimis* exclusions for software and technology for so long as you are not contacted by BXA. BXA may contact you concerning your report to inquire of you further or to indicate that BXA does not accept the assumptions or rationale for your calculations. If you receive such a contact or communication from BXA, you may not rely upon the *de minimis* exclusions for software and technology in §734.4 of this part until BXA has indicated whether or not you may do so in the future. You must include in your report the name, title, address, telephone number, and facsimile number of the person BXA may contact concerning your report.

[61 FR 12746, Mar. 25, 1996, as amended at 62 FR 25456, May 9, 1997]

PART 736—GENERAL PROHIBITIONS

Sec.

736.1 Introduction.
736.2 General prohibitions and determination of applicability.
SUPPLEMENT NO. 1 TO PART 736—GENERAL ORDERS [RESERVED]
SUPPLEMENT NO. 2 TO PART 736—ADMINISTRATIVE ORDERS

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; Executive Order 13026 (November 15, 1996, 61 FR 58767) Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12754, Mar. 25, 1996, unless otherwise noted.

§736.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. A person may undertake transactions subject to the EAR without a license or other authorization, unless the regulations affirmatively state such a requirement. As such, if an export, reexport, or activity is subject to the EAR, the general prohibitions contained in this part and the License Exceptions specified in part 740 of the EAR must be reviewed to determine if a license is necessary. In the case of all exports from the United States, you must document your export as described in part 762 of the EAR regarding recordkeeping and clear your export through the U.S. Customs Service as described in part 758 of the EAR regarding export clearance requirements. Also note that for short supply controls all prohibitions and License Exceptions are in part 754 of the EAR.

(a) In this part we tell you:

(1) The facts that make your proposed export, reexport, or conduct subject to these general prohibitions, and

(2) The ten general prohibitions.

(b) Your obligations under the ten general prohibitions and under the EAR depend in large part upon the five types of information described in § 736.2(a) of this part and upon the general prohibitions described in § 736.2(b) of this part. The ten general prohibitions contain cross-references to other parts of the EAR that further define the breadth of the general prohibitions. For that reason, this part is not freestanding. In part 732, we provide certain steps you may follow in proper order to help you understand the general prohibitions and their relationship to other parts of the EAR.

(c) If you violate any of these ten general prohibitions, or engage in other conduct contrary to the Export Administration Act, the EAR, or any order, license, License Exception, or authorization issued thereunder, as described in part 764 of the EAR regarding enforcement, you will be subject to the sanctions described in that part.

§ 736.2 General prohibitions and determination of applicability.

(a) *Information or facts that determine the applicability of the general prohibitions.* The following five types of facts determine your obligations under the ten general prohibitions and the EAR generally:

(1) *Classification of the item.* The classification of the item on the Commerce Control List (see part 774 of the EAR);

(2) *Destination.* The country of ultimate destination for an export or reexport (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List);

(3) *End-user.* The ultimate end-user (see General Prohibition Four (paragraph (b)(4) of this section) and parts 744 and 764 of the EAR for a reference to the list of persons you may not deal with);

(4) *End-use.* The ultimate end-use (see General Prohibition Five (paragraph (b)(5) of this section) and part 744 of the EAR for general end-use restrictions); and

(5) *Conduct.* Conduct such as contracting, financing, and freight forwarding in support of a proliferation project as described in part 744 of the EAR.

(b) *General prohibitions.* The following ten general prohibitions describe certain exports, reexports, and other conduct, subject to the scope of the EAR, in which you may not engage unless you either have a license from the Bureau of Export Administration (BXA) or qualify under part 740 of the EAR for a License Exception from each applicable general prohibition in this paragraph. The License Exceptions at part 740 of the EAR apply only to General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports); however, selected License Exceptions are specifically referenced and authorized in part 746 of the EAR concerning embargo destinations and in § 744.2(c) of the EAR regarding nuclear end-uses.

(1) *General Prohibition One—Export and reexport of controlled items to listed countries (Exports and Reexports).* You may not, without a license or License Exception, export any item subject to the EAR to another country or reexport any item of U.S.-origin if each of the following is true:

(i) The item is controlled for a reason indicated in the applicable Export Control Classification Number (ECCN), and

(ii) Export to the country of destination requires a license for the control reason as indicated on the Country Chart at part 738 of the EAR. (The scope of this prohibition is determined by the correct classification of your item and the ultimate destination as that combination is reflected on the Country Chart.)[1] Note that each License Exception described at part 740 of the EAR supersedes General Prohibition One if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(2) *General Prohibition Two—Reexport and export from abroad of foreign-made items incorporating more than a de minimis amount of controlled U.S. content (Parts and Components Reexports).* (i)

[1] See part 738 of the EAR for selected controls that are not specified on the Country Chart.

You may not, without a license or License Exception, export, reexport or export from abroad any foreign-made commodity, software, or technology incorporating U.S.-origin commodities, software, or technology respectively that is controlled to the country of ultimate destination if the foreign-made item meets all three of the following conditions:

(A) It incorporates more than the *de minimis* amount of controlled U.S. content, as defined in §734.4 of the EAR concerning the scope of the EAR;

(B) It is controlled for a reason indicated in the applicable ECCN; and

(C) Its export to the country of destination requires a license for that control reason as indicated on the Country Chart. (The scope of this prohibition is determined by the correct classification of your foreign-made item and the ultimate destination, as that combination is reflected on the Country Chart.)

(ii) Each License Exception described in part 740 of the EAR supersedes General Prohibition Two if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(3) *General Prohibition Three—Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software (Foreign-Produced Direct Product Reexports).* (i) *Country scope of prohibition.* You may not export, reexport, or export from abroad items subject to the scope of this General Prohibition Three to Cuba, North Korea, Libya, or a destination in Country Group D:1 (See Supplement No. 1 to part 740 of the EAR).

(ii) *Product scope of foreign-made items subject to prohibition.* This General Prohibition 3 applies if an item meets either the Conditions defining the direct product of technology or the Conditions defining the direct product of a plant in paragraph (b)(3)(ii)(A) of this section:

(A) *Conditions defining direct product of technology.* Foreign-made items are subject to this General Prohibition 3 if they meet both of the following conditions:

(*1*) They are the direct product of technology or software that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR in §740.6 of the EAR, and

(*2*) They are subject to national security controls as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR.

(B) *Conditions defining direct product of a plant.* Foreign-made items are also subject to this General Prohibition 3 if they are the direct product of a complete plant or any major component of a plant if both of the following conditions are met:

(*1*) Such plant or component is the direct product of technology that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR in §740.6 of the EAR, and

(*2*) Such foreign-made direct products of the plant or component are subject to national security controls as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR.

(iii) *License Exceptions.* Each License Exception described at part 740 of the EAR supersedes this General Prohibition Three if all terms and conditions of a given exception are met by the exporter or reexporter.

(4) *General Prohibition Four (Denial Orders)—Engaging in actions prohibited by a denial order.* (i) You may not take any action that is prohibited by a denial order issued under part 766 of the EAR, Administrative Enforcement Proceedings. These orders prohibit many actions in addition to direct exports by the person denied export privileges, including some transfers within a single country either in the United States or abroad by other persons. You are responsible for ensuring that any of your transactions in which a person who is denied export privileges is involved do not violate the terms of the order. The names of persons denied export privileges are published in the FEDERAL REGISTER and are also included on the Denied Persons List, which is referenced in Supplement No. 2 to part 764 of the EAR, Enforcement. The terms of the standard denial order are set forth in Supplement No. 1 to part 764. You should note that some denial orders differ from the standard denial order. BXA may, on an exceptional basis, authorize activity otherwise prohibited

by a denial order. See § 764.3(a)(3) of the EAR.

(ii) There are no License Exceptions described in part 740 of the EAR that authorize conduct prohibited by this General Prohibition Four.

(5) *General Prohibition Five—Export or reexport to prohibited end-uses or end-users (End-Use End-User).* You may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user of end-use that is prohibited by part 744 of the EAR.

(6) *General Prohibition Six—Export or reexport to embargoed destinations (Embargo).* (i) You may not, without a license or License Exception authorized under part 746, export or reexport any item subject to the EAR to a country that is embargoed by the United States or otherwise made subject to controls as both are described at part 746 of the EAR.

(ii) License Exceptions to General Prohibition Six are described in part 746 of the EAR, on Embargoes and Other Special Controls. Unless a License Exception or other authorization is authorized in part 746 of the EAR, the License Exceptions described in part 740 of the EAR are not available to overcome this general prohibition.

(7) *General Prohibition Seven—Support of Certain Activities by U.S. persons*—(i) *Support of Proliferation Activities (U.S. Person Proliferation Activity).* If you are a U.S. Person as that term is defined in § 744.6(c) of the EAR, you may not engage in any activities prohibited by § 744.6 (a) or (b) of the EAR which prohibits the performance, without a license from BXA, of certain financing, contracting, service, support, transportation, freight forwarding, or employment that you know will assist in certain proliferation activities described further in part 744 of the EAR. There are no License Exceptions to this General Prohibition Seven in part 740 of the EAR unless specifically authorized in that part.

(ii) You may not, without a license from BXA, provide certain technical assistance to foreign persons with respect to encryption items, as described in § 744.9 of the EAR.

(8) *General Prohibition Eight—In transit shipments and items to be unladen from vessels or aircraft (Intransit).*

(i) *Unlading and shipping in transit.* You may not export or reexport an item through or transit through a country listed in paragraph (b)(8)(ii) of this section unless a License Exception or license authorizes such an export or reexport directly to such a country of transit.

(ii) *Country scope.* This General Prohibition Eight applies to Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lithuania, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

(9) *General Prohibition Nine—Violation of any order, terms, and conditions (Orders, Terms, and Conditions).* You may not violate terms or conditions of a license or of a License Exception issued under or made a part of the EAR, and you may not violate any order issued under or made a part of the EAR. There are no License Exceptions to this General Prohibition Nine in part 740 of the EAR. Supplements Nos. 1 and 2 to this part provide for certain General Orders and Administrative Orders.

(10) *General Prohibition Ten—Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur).* You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transfer, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR.

[61 FR 12754, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 61 FR 68579, Dec. 30, 1996; 62 FR 25456, May 9, 1997]

SUPPLEMENT NO. 1 TO PART 736—GENERAL ORDERS [RESERVED]

SUPPLEMENT NO. 2 TO PART 736—ADMINISTRATIVE ORDERS

Administrative Order One: Disclosure of License Issuance and Other Information. Consistent with section 12(c) of the Export Administration Act of 1979, as amended, information obtained by the U.S. Department of Commerce for the purpose of consideration of or concerning license applications, as well as related information, will not be publicly disclosed without the approval of the Secretary of Commerce. Shipper's Export Declarations also are exempt from public disclosure, except with the approval of the Secretary of Commerce, in accordance with §301(g) of Title 13, United States Code.

Administrative Order Two: Conduct of Business and Practice in Connection with Export Control Matters.

(a) Conduct of business and practice in connection with export control matters.

(1) Exclusion of persons guilty of unethical conduct or not possessing required integrity and ethical standards.

(i) *Who may be excluded.* Any person, whether acting on his own behalf or on behalf of another, who shall be found guilty of engaging in any unethical activity or who shall be demonstrated not to possess the required integrity and ethical standards, may be excluded from (denied) export privileges on his own behalf, or may be excluded from practice before BXA on behalf of another, in connection with any export control matter, or both, as provided in part 764 of the EAR.

(ii) *Grounds for exclusion.* Among the grounds for exclusion are the following:

(A) Inducing or attempting to induce by gifts, promises, bribes, or otherwise, any officer or employee of BXA or any customs or post office official, to take any action with respect to the issuance of licenses or any other aspects of the administration of the Export Administration Act, whether or not in violation of any regulation;

(B) Offering or making gifts or promises thereof to any such officer or employee for any other reason;

(C) Soliciting by advertisement or otherwise the handling of business before BXA on the representation, express or implied, that such person, through personal acquaintance or otherwise, possesses special influence over any officer or employee of BXA;

(D) Charging, or proposing to charge, for any service performed in connection with the issuance of any license, any fee wholly contingent upon the granting of such license and the amount or value thereof. This provision will not be construed to prohibit the charge of any fee agreed to by the parties; provided that the out-of-pocket expenditures and the reasonable value of the services performed, whether or not the license is issued and regardless of the amount thereof, are fairly compensated; and

(E) Knowingly violating or participating in the violation of, or an attempt to violate, any regulation with respect to the export of commodities or technical data, including the making of or inducing another to make any false representations to facilitate any export in violation of the Export Administration Act or any order or regulation issued thereunder.

(iii) *Definition.* As used in this Administration Order, the terms ''practice before BXA'' and ''appear before BXA'' include:

(A) The submission on behalf of another of applications for export licenses or other documents required to be filed with BXA, or the execution of the same;

(B) Conferences or other communications on behalf of another with officers or employees of BXA for the purpose of soliciting or expediting approval by BXA of applications for export licenses or other documents, or with respect to quotas, allocations, requirements or other export control actions, pertaining to matters within the jurisdiction of BXA;

(C) Participating on behalf of another in any proceeding pending before BXA; and

(D) Submission to a customs official on behalf of another of a license or Shipper's Export Declaration or other export control document.

(iv) *Proceedings.* All proceedings under this Administrative Order shall be conducted in the same manner as provided in part 766 of the EAR.

(2) *Employees and former employees.* Persons who are or at any time have been employed on a full-time or part-time, compensated or uncompensated, basis by the U.S. Government are subject to the provisions of 18 U.S.C. 203, 205, and 207 (Pub. L. 87–849, 87th Congress) in connection with representing a private party or interest before the U.S. Department of Commerce in connection with any export control matter.

PART 738—COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART

Sec.

738.1 Introduction.
738.2 Commerce Control List (CCL) structure.
738.3 Commerce Country Chart structure.
738.4 Determining whether a license is required.
SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22

U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12756, Mar. 25, 1996, unless otherwise noted.

§ 738.1 Introduction.

(a) *Commerce Control List scope.* (1) In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL) within the Export Administration Regulations (EAR), which includes items (i.e., commodities, software, and technology) subject to the export licensing authority of BXA. The CCL does not include those items exclusively controlled for export or reexport by another department or agency of the U.S. Government. In instances where agencies other than the Department of Commerce administer controls over related items, entries in the CCL contain a reference to these controls.

(2) The CCL is contained in Supplement No. 1 to part 774 of the EAR. Supplement No. 2 to part 774 of the EAR contains the General Technology and Software Notes relevant to entries contained in the CCL.

(b) *Commerce Country Chart scope.* BXA also maintains the Commerce Country Chart. The Commerce Country Chart, located in Supplement No. 1 to part 738, contains licensing requirements based on destination and Reason for Control. In combination with the CCL, the Commerce Country Chart allows you to determine whether a license is required for items on the CCL to any country in the world.

§ 738.2 Commerce Control List (CCL) structure.

(a) *Categories.* The CCL is divided into 10 categories, numbered as follows:

0—Nuclear Materials, Facilities and Equipment and Miscellaneous
1—Materials, Chemicals, ''Microorganisms,'' and Toxins
2—Materials Processing
3—Electronics
4—Computers
5—Telecommunications and Information Security
6—Lasers and Sensors
7—Navigation and Avionics
8—Marine
9—Propulsion Systems, Space Vehicles and Related Equipment

(b) *Groups.* Within each category, items are arranged by group. Each category contains the same five groups. Each Group is identified by the letters A through E, as follows:

A—Equipment, Assemblies and Components
B—Test, Inspection and Production Equipment
C—Materials
D—Software
E—Technology

(c) *Order of review.* In order to classify your item against the CCL, you should begin with a review of the general characteristics of your item. This will usually guide you to the appropriate category on the CCL. Once the appropriate category is identified, you should match the particular characteristics and functions of your item to a specific ECCN. If the ECCN contains a list under the ''*Items*'' heading, you should review the list to determine within which subparagraph(s) your items are identified.

(d) *Entries.* (1) *Composition of an entry.* Within each group, individual items are identified by an Export Control Classification Number (ECCN). Each number consists of a set of digits and a letter. The first digit identifies the general category within which the entry falls (e.g., 3*A*001). The letter immediately following this first digit identifies under which of the five groups the item is listed (e.g., *3* A001). The second digit differentiates individual entries by identifying the type of controls associated with the items contained in the entry (e.g., 3A*0*01). Listed below are the Reasons for Control associated with this second digit.

0: National Security reasons (including Dual Use and International Munitions List) and Items on the NSG Dual Use Annex and Trigger List
1: Missile Technology reasons
2: Nuclear Nonproliferation reasons
3: Chemical & Biological Weapons reasons
9: Anti-terrorism, Crime Control, Regional Stability, Short Supply, UN Sanctions, etc.

(i) Since Reasons for Control are not mutually exclusive, numbers are assigned in order of precedence. As an example, if an item is controlled for both National Security and Missile Technology reasons, the entry's third digit will be a ''0''. If the item is controlled only for Missile Technology the third digit will be ''1''.

(ii) The numbers in either the second or third digit (e.g., 3A*00*1) serve to differentiate between multilateral and unilateral entries. An entry with the number ''9'' as the second digit, identifies the entire entry as controlled for a unilateral concern (e.g., 2B991 for anti-terrorism reasons). If the number ''9'' appears as the third digit, the item is controlled for unilateral purposes based on a proliferation concern (e.g., 2A292 is controlled for unilateral purposes based on nuclear nonproliferation concerns).

(iii) The last digit within each entry (e.g., 3A001) is used for the sequential numbering of ECCNs to differentiate between entries on the CCL.

(2) *Reading an ECCN.* A brief description is provided next to each ECCN. Following this description is the actual entry containing ''License Requirements,'' ''License Exceptions,'' and ''List of Items Controlled'' sections. A brief description of each section and its use follows:

(i) *License Requirements.* This section contains a separate line identifying all possible Reasons for Control in order of precedence, and two columns entitled ''Control(s)'' and ''Country Chart''.

(A) The ''Controls'' header identifies all applicable Reasons for Control, in order of restrictiveness, and to what extent each applies (e.g., to the entire entry or only to certain subparagraphs). Those requiring licenses for a larger number of countries and/or items are listed first. As you read down the list the number of countries and/or items requiring a license declines. Since Reasons for Control are not mutually exclusive, items controlled within a particular ECCN may be controlled for more than one reason. The following is a list of all possible Reasons for Control:

AT Anti-Terrorism
CB Chemical & Biological Weapons
CC Crime Control
EI Encryption Items
MT Missile Technology
NS National Security
NP Nuclear Nonproliferation
RS Regional Stability
SS Short Supply
XP Computers
SI Significant Items

(B) The ''Country Chart'' header identifies, for each applicable Reason for Control, a column name and number (e.g., CB Column 1). These column identifiers are used to direct you from the CCL to the appropriate column identifying the countries requiring a license. Consult part 742 of the EAR for an indepth discussion of the licensing requirements and policies applicable to each Country Chart column.

(ii) *License Exceptions.* This section provides a brief eligibility statement for each ECCN-driven License Exception that may be applicable to your transaction, and should be consulted only AFTER you have determined a license is required based on an analysis of the entry and the Country Chart. The brief eligibility statement in this section is provided to assist you in deciding which ECCN-driven License Exception related to your particular item and destination you should explore prior to submitting an application. The term ''Yes'' (followed in some instances by the scope of Yes) appears next to each available ECCN-driven License Exception. The term ''N/A'' will be noted for License Exceptions that are not available within a particular entry. If one or more License Exceptions appear to apply to your transaction, you must consult part 740 of the EAR to review the conditions and restrictions applicable to each available License Exception. The list of License Exceptions contained within each ECCN is not an all-exclusive list. Other License Exceptions, not based on particular ECCNs, may be available. Consult part 740 of the EAR to determine eligibility for non-ECCN-driven License Exceptions.

(iii) *List of Items Controlled*—(A) *Units.* The unit of measure applicable to each entry is identified in the ''Units'' header. Most measurements used in the CCL are expressed in metric units with an inch-pound conversion where appropriate. Note that in some ECCNs the inch-pound unit will be listed first. In

instances where other units are in general usage or specified by law, these will be used instead of metric. Generally, when there is a difference between the metric and inch-pound figures, the metric standard will be used for classification and licensing purposes.

(B) *Related definitions.* This header identifies, where appropriate, definitions or parameters that apply to all items controlled by the entry. The information provided in this section is unique to the entry, and hence not listed in the definitions contained in part 772 of the EAR.

(C) *Related controls.* If another U.S. government agency or department has export licensing authority over items related to those controlled by an entry, a statement is included identifying the agency or department along with the applicable regulatory cite. An additional cross-reference may be included in instances where the scope of controls differs between a CCL entry and its corresponding entry on list maintained by the European Union. This information is provided to assist readers who use both lists.

(D) *Items.* This header contains a positive list of all items controlled by a particular entry and must be reviewed to determine whether your item is controlled by that entry. In some entries, the list is contained within the entry heading. In these entries a note is included to direct you to the entry heading.

[61 FR 112756, Mar. 25, 1996, as amended at 61 FR 68579, Dec. 30, 1996; 62 FR 25456, May 9, 1997]

§ 738.3 Commerce Country Chart structure.

(a) *Scope.* The Commerce Country Chart (Country Chart) allows you to determine, based on the Reason(s) for Control associated with your item, if you need a license to export or reexport your item to a particular destination. There are only two instances where the chart cannot be used for this purpose:

(1) *Items controlled for short supply reasons.* Due to the unique nature of these controls, entries controlled for Short Supply reasons will send you directly to part 754 of the EAR. Part 754 of the EAR is self-contained and includes information on licensing requirements, licensing policies, and all available License Exceptions, for items controlled for Short Supply reasons.

(2) *Unique entries.* The following are unique entries where you do not need to consult the Country Chart to determine whether a license is required.

(A) *ECCNs 0A983 and 5A980.* A license is required for all destinations of items controlled under these entries. No License Exceptions apply. If your item is controlled by 0A983 or 5A980 you should proceed directly to part 748 of the EAR for license application instructions and § 742.11 or § 742.13 of the EAR for information on the licensing policy relevant to these types of applications.

(B) *ECCNs 0A986, 0A988, 1A988, 2A994, 2D994, 2E994 and 2B985.* A license is required for items controlled under these entries only to the specific countries identified within each entry.

(b) *Countries.* The first column of the Country Chart lists all countries in alphabetical order. There are a number of destinations that are not listed in the Country Chart contained in Supplement No. 1 to part 738. If your destination is not listed on the Country Chart and such destination is a territory, possession, or department of a country included on the Country Chart, the EAR accords your destination the same licensing treatment as the country of which it is a territory, possession, or department. For example, if your destination is the Cayman Islands, a dependent territory of the United Kingdom, consult the United Kingdom on the Country Chart for licensing requirements.

(c) *Columns.* Stretching out to the right are horizontal headers identifying the various Reasons for Control. Under each Reason for Control header are diagonal column identifiers capping individual columns. Each column identifier consists of the two letter Reason for Control and a column number. (e.g., CB Column 1). The column identifiers correspond to those listed in the ''Country Chart'' header within the ''License Requirements'' section of each ECCN.

(d) *Cells.* The symbol ''X'' is used to denote licensing requirements on the Country Chart. If an ''X'' appears in a

particular cell, transactions subject to that particular Reason for Control/Destination combination require a license. There is a direct correlation between the number of ''X''s applicable to your transaction and the number of licensing reviews your application will undergo.

§738.4 Determining whether a license is required.

(a) *Using the CCL and the Country Chart*—(1) *Overview.* Once you have determined that your item is controlled by a specific ECCN, you must use information contained in the ''License Requirements'' section of that ECCN in combination with the Country Chart to decide whether a license is required.

(2) *License decision making process.* The following decision making process must be followed in order to determine whether a license is required to export or reexport a particular item to a specific destination:

(i) *Examine the appropriate ECCN in the CCL.* Is the item you intend to export or reexport controlled for a single Reason for Control?

(A) If yes, identify the single Reason for Control and the relevant Country Chart column identifier (e.g., CB Column 1).

(B) If no, identify the Country Chart column identifier for each applicable Reason for Control (e.g., NS Column 1, NP Column 1, etc.).

(ii) *Review the Country Chart.* With each of the applicable Country Chart Column identifiers noted, turn to the Country Chart (Supplement No. 1 to part 738). Locate the correct Country Chart column identifier on the diagonal headings, and determine whether an ''X'' is marked in the cell next to the country in question for each Country Chart column identified in the applicable ECCN. If your item is subject to more than one reason for control, repeat this step using each unique Country Chart column identifier.

(A) If yes, a license application must be submitted based on the particular reason for control and destination, unless a License Exception applies. If ''Yes'' is noted next to any of the listed License Exceptions, you should consult part 740 of the EAR to determine whether you can use any of the available ECCN-drvien License Exceptions to effect your shipment, rather than applying for a license. Each affirmative license requirement must be overcome by a License Exception. If you are unable to qualify for a License Exception based on each license requirement noted on the Country Chart, you must apply for a license. Note that other License Exceptions, not related to the CCL, may also apply to your transaction (See part 740 of the EAR).

(B) If no, a license is not required based on the particular reason for control and destination. Provided General Prohibitions Four through Ten do not apply to your proposed transaction, you may effect your shipment using the symbol ''NLR''. Proceed to parts 758 and 762 of the EAR for information on export clearance procedures and recordkeeping requirements. Note that although you may stop after determining a license is required based on the first Reason for Control, it is best to work through each applicable Reason for Control. A full analysis of every possible licensing requirement based on each applicable Reason for Control is required to determine the most advantageous License Exception available for your particular transaction and, if a license is required, ascertain the scope of review conducted by BXA on your license application.

(b) *Sample analysis using the CCL and Country Chart*—(1) *Scope.* The following sample entry and related analysis is provided to illustrate the type of thought process you must complete in order to determine whether a license is required to export or reexport a particular item to a specific destination using the CCL in combination with the Country Chart.

(2) *Sample CCL entry.*

2A000: Entry heading.

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	Country Chart
NS applies to entire entry	NS Column 2
NP applies to 2A000.b	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5,000
GBS: Yes
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Definition: N/A
Related Controls: N/A
Items:

a. Having x.
b. Having z.

(3) *Sample analysis.* After consulting the CCL, I determine my item, valued at $10,000, is classified under ECCN 2A000.a. I read that the entire entry is controlled for national security, and anti-terrorism reasons. Since my item is classified under paragraph .a, and not .b, I understand that though nuclear nonproliferation controls apply to a portion the entry, they do not apply to my item. I note that the appropriate Country Chart column identifiers are NS Column 2 and AT Column 1. Turning to the Country Chart, I locate my specific destination, India, and see that an ''X'' appears in the NS Column 2 cell for India, but not in the AT Column 1 cell. I understand that a license is required, unless my transaction qualifies for a License Exception or Special Comprehensive License. From the License Exception LVS value listed in the entry, I know immediately that my proposed transaction exceeds the value limitation associated with LVS. Noting that License Exception GBS is ''Yes'' for this entry, I turn to part 740 of the EAR to review the provisions related to use of GBS.

COMMERCE COUNTRY CHART

Reason for Control

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Crime control			Anti-terrorism	
	CB column 1	CB column 2	CB column 3	NP column 1	NP column 2	NS column 1	NS column 2	MT column 1	RS column 1	RS column 2	CC column 1	CC column 2	CC column 3	AT column 1	AT column 2
Afghanistan	X	X	X	X		X	X	X	X	X	X		X		
Albania	X	X		X		X	X	X	X	X	X	X			
Algeria	X	X		X		X	X	X	X	X	X		X		
Andorra	X	X		X		X	X	X	X	X	X		X		
Angola [1]	X	X		X		X	X	X	X	X	X		X		
Antigua & Barbuda	X	X		X		X	X	X	X	X	X		X		
Argentina	X					X	X	X	X	X	X		X		
Armenia	X	X	X	X		X	X	X	X	X	X	X			
Australia	X					X		X	X						
Austria	X					X		X	X	X	X		X		
Azerbaijan	X	X	X	X		X	X	X	X	X	X	X			
Bahamas, The	X	X		X		X	X	X	X	X	X		X		
Bahrain	X	X	X	X		X	X	X	X	X	X		X		
Bangladesh	X	X		X		X	X	X	X	X	X		X		
Barbados	X	X		X		X	X	X	X	X	X		X		
Belarus	X	X	X	X		X	X	X	X	X	X	X			
Belgium	X					X		X	X						
Belize	X	X		X		X	X	X	X	X	X		X		
Benin	X	X		X		X	X	X	X	X	X		X		
Bhutan	X	X		X		X	X	X	X	X	X		X		
Bolivia	X	X		X		X	X	X	X	X	X		X		
Bosnia & Herzegovina	X	X		X		X	X	X	X	X	X		X		
Botswana	X	X		X		X	X	X	X	X	X		X		
Brazil	X	X				X	X	X	X	X	X		X		
Brunei	X	X		X		X	X	X	X	X	X		X		
Bulgaria	X	X	X			X	X	X	X	X	X	X			
Burkina Faso	X	X		X		X	X	X	X	X	X		X		
Burma	X	X	X	X		X	X	X	X	X	X		X		
Burundi	X	X		X		X	X	X	X	X	X		X		
Cambodia	X	X		X		X	X	X	X	X	X	X			
Cameroon	X	X		X		X	X	X	X	X	X		X		
Canada															
Cape Verde	X	X		X		X	X	X	X	X	X		X		

COMMERCE COUNTRY CHART—Continued

Reason for Control

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Crime control			Anti-terrorism	
	CB column 1	CB column 2	CB column 3	NP column 1	NP column 2	NS column 1	NS column 2	MT column 1	RS column 1	RS column 2	CC column 1	CC column 2	CC column 3	AT column 1	AT column 2
Central African Republic	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Chad	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Chile	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
China	X	X	X	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Colombia	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Comoros	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Congo	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Costa Rica	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Cote d'Ivoire	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Croatia	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Cuba	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.														
Cyprus	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Czech Republic	X	.....	.....	.....	.....	X	X	X	X	X	X	.....	X	.....	.....
Denmark	X	.....	.....	.....	.....	X	.....	X	X	.....	.....	.....	.....	.....	.....
Djibouti	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Dominica	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Dominican Republic	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Ecuador	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Egypt	X	X	X	X	.....	X	X	X	X	X	X	.....	X	.....	.....
El Salvador	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Equatorial Guinea	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Eritrea	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Estonia	X	X	.....	X	.....	X	X	X	X	X	X	X	.....	.....	.....
Ethiopia	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Fiji	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Finland	X	.....	.....	.....	.....	X	.....	X	X	X	X	.....	X	.....	.....
France	X	.....	.....	.....	.....	X	.....	X	X	.....	.....	.....	.....	.....	.....
Gabon	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Gambia, The	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Georgia	X	X	X	X	.....	X	X	X	X	X	X	X	.....	.....	.....
Germany	X	.....	.....	.....	.....	X	.....	X	X	.....	.....	.....	.....	.....	.....
Ghana	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Greece	X	.....	.....	.....	.....	X	.....	X	X	.....	.....	.....	.....	.....	.....

Grenada	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Guatemala	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Guinea	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Guinea-Bissau	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Guyana	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Haiti	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Honduras	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Hong Kong	X	X	.....	X	.....	X	X [2]	X	X	X	X	.....	X	.....	.....
Hungary	X	.....	.....	.....	.....	X	X	X	X	X	X	.....	X	.....	.....
Iceland	X	.....	.....	X	.....	X	X	X	X	.....	.....	.....	.....	.....	.....
India	X	X	X	X	X	X	X	X	X	X	X	.....	X	.....	.....
Indonesia	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Iran	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.														
Iraq [1]	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.														
Ireland	X	.....	.....	.....	.....	X	.....	X	X	X	X	.....	X	.....	
Israel	X	X	X	X	X	X	X	X	X	X	X	.....	X	.....	.....
Italy	X	.....	.....	.....	.....	X	.....	X	X	.....	.....	.....	.....	.....	.....
Jamaica	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Japan	X	.....	.....	.....	.....	X	.....	X	X	.....	.....	.....	.....	.....	.....
Jordan	X	X	X	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Kazakhstan	X	X	X	X	.....	X	X	X	X	X	X	X	.....	.....	.....
Kenya	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Kiribati	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Korea, North	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.														
Korea, South	X	.....	.....	.....	.....	X	X [2]	X	X	X	X	.....	X	.....	.....
Kuwait	X	X	X	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Kyrgyzstan	X	X	X	X	.....	X	X	X	X	X	X	X	.....	.....	.....
Laos	X	X	.....	X	.....	X	X	X	X	X	X	X	.....	.....	.....
Latvia	X	X	.....	X	.....	X	X	X	X	X	X	X	.....	.....	.....
Lebanon	X	X	X	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Lesotho	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Liberia	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Libya	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.														
Liechtenstein	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Lithuania	X	X	.....	X	.....	X	X	X	X	X	X	X	.....	.....	.....
Luxembourg	X	.....	.....	.....	.....	X	.....	X	X	.....	.....	.....	.....	.....	.....
FYROM (Macedonia)	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Madagascar	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Malawi	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Malaysia	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Maldives	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Mali	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Malta	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Marshall Islands	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....

COMMERCE COUNTRY CHART—Continued

Reason for Control

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Crime control			Anti-terrorism	
	CB column 1	CB column 2	CB column 3	NP column 1	NP column 2	NS column 1	NS column 2	MT column 1	RS column 1	RS column 2	CC column 1	CC column 2	CC column 3	AT column 1	AT column 2
Mauritania	X	X		X		X	X	X	X	X	X		X		
Mauritius	X	X		X		X	X	X	X	X	X		X		
Mexico	X	X		X		X	X	X	X	X	X		X		
Micronesia	X	X		X		X	X	X	X	X	X		X		
Moldova	X	X	X	X		X	X	X	X	X	X	X			
Monaco	X	X		X		X	X	X	X	X	X		X		
Mongolia	X	X	X	X		X	X	X	X	X	X	X			
Morocco	X	X		X		X	X	X	X	X	X		X		
Mozambique	X	X		X		X	X	X	X	X	X		X		
Namibia	X	X		X		X	X	X	X	X	X		X		
Nauru	X	X		X		X	X	X	X	X	X		X		
Nepal	X	X		X		X	X	X	X	X	X		X		
Netherlands	X					X		X	X						
New Zealand	X					X		X	X						
Nicaragua	X	X		X		X	X	X	X	X	X		X		
Niger	X	X		X		X	X	X	X	X	X		X		
Nigeria	X	X		X		X	X	X	X	X	X		X		
Norway	X					X		X	X						
Oman	X	X	X	X		X	X	X	X	X	X		X		
Pakistan	X	X	X	X	X	X	X	X	X	X	X		X		
Palau	X	X		X		X	X	X	X	X	X		X		
Panama	X	X		X		X	X	X	X	X	X		X		
Papua New Guinea	X	X		X		X	X	X	X	X	X		X		
Paraguay	X	X		X		X	X	X	X	X	X		X		
Peru	X	X		X		X	X	X	X	X	X		X		
Philippines	X	X		X		X	X	X	X	X	X		X		
Poland	X					X	X	X	X	X	X		X		
Portugal	X					X		X	X						
Qatar	X	X	X	X		X	X	X	X	X	X		X		
Romania	X					X	X	X	X	X	X	X			
Russia	X	X	X			X	X	X	X	X	X	X			
Rwanda [1]	X	X		X		X	X	X	X	X	X	X	X		
St. Kitts & Nevis	X	X	X	X		X	X	X	X	X	X		X		

St. Lucia	X	X		X		X	X	X	X	X	X		X		
St. Vincent & Grenadines	X	X		X		X	X	X	X	X	X		X		
San Marino	X	X		X		X	X	X	X	X	X		X		
Sao Tome & Principe	X	X		X		X	X	X	X	X	X		X		
Saudi Arabia	X	X	X	X		X	X	X	X	X	X		X		
Senegal	X	X		X		X	X	X	X	X	X		X		
Serbia & Montenegro	X	X		X		X	X	X	X	X	X		X		
Seychelles	X	X		X		X	X	X	X	X	X		X		
Sierra Leone	X	X		X		X	X	X	X	X	X		X		
Singapore	X	X		X		X	X	X	X	X	X		X		
Slovakia	X					X	X	X	X	X	X		X		
Slovenia	X	X		X		X	X	X	X	X	X		X		
Solomon Islands	X	X		X		X	X	X	X	X	X		X		
Somalia	X	X		X		X	X	X	X	X	X		X		
South Africa	X	X				X	X	X	X	X	X		X		
Spain	X					X		X	X						
Sri Lanka	X	X		X		X	X	X	X	X	X		X		
Sudan	X	X		X		X	X	X	X	X	X		X	X	X
Surinam	X	X		X		X	X	X	X	X	X		X		
Swaziland	X	X		X		X	X	X	X	X	X		X		
Sweden	X					X		X	X	X	X		X		
Switzerland	X					X		X	X	X	X		X		
Syria	X	X	X	X		X	X	X	X	X	X		X	X	
Taiwan	X	X	X	X		X	X	X	X	X	X		X		
Tajikistan	X	X	X	X		X	X	X	X	X	X	X			
Tanzania	X	X		X		X	X	X	X	X	X		X		
Thailand	X	X		X		X	X	X	X	X	X		X		
Togo	X	X		X		X	X	X	X	X	X		X		
Tonga	X	X		X		X	X	X	X	X	X		X		
Trinidad & Tobago	X	X		X		X	X	X	X	X	X		X		
Tunisia	X	X		X		X	X	X	X	X	X		X		
Turkey	X	X		X		X		X	X						
Turkmenistan	X	X	X	X		X	X	X	X	X	X	X			
Tuvalu	X	X		X		X	X	X	X	X	X		X		
Uganda	X	X		X		X	X	X	X	X	X		X		
Ukraine	X	X	X			X	X	X	X	X	X	X			
United Arab Emirates	X	X	X	X		X	X	X	X	X	X		X		
United Kingdom	X					X		X	X						
Uruguay	X	X		X		X	X	X	X	X	X		X		
Uzbekistan	X	X	X	X		X	X	X	X	X	X	X			
Vanuatu	X	X		X		X	X	X	X	X	X		X		
Vatican City	X	X		X		X	X	X	X	X	X		X		
Venezuela	X	X		X		X	X	X	X	X	X		X		
Vietnam	X	X	X	X		X	X	X	X	X	X	X			

COMMERCE COUNTRY CHART—Continued

Reason for Control

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Crime control			Anti-terrorism	
	CB column 1	CB column 2	CB column 3	NP column 1	NP column 2	NS column 1	NS column 2	MT column 1	RS column 1	RS column 2	CC column 1	CC column 2	CC column 3	AT column 1	AT column 2
Western Sahara	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Western Samoa	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Yemen	X	X	X	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Zaire	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	.....
Zambia	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	
Zimbabwe	X	X	.....	X	.....	X	X	X	X	X	X	.....	X	.....	

[1] This country is subject to United Nations Sanctions. See part 746 of the EAR for additional OFAC licensing requirements that may apply to your proposed transaction.

[2] A license is required only for computers controlled by 4A001, 4A002, & 4A003 if the CTP is greater than 10,000 Mtops. A license is NOT required for any other items subject to NS Column 2.

[62 FR 6683, Feb. 12, 1997; 62 FR 31473, June 9, 1997, as amended at 62 FR 42048, Aug. 5, 1997]

PART 740—LICENSE EXCEPTIONS

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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; Executive Order 13026 (November 15, 1996, 61 FR 58767) Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12768, Mar. 25, 1996, unless otherwise noted.

§740.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Scope.* A ''License Exception'' is an authorization contained in this part that allows you to export or reexport under stated conditions, items subject to the Export Administration Regulations (EAR) that would otherwise require a license under General Prohibition One, Two, or Three, as indicated under one or more of the Export Control Classification Numbers (ECCNs) in the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR. If your export or reexport is subject to General Prohibitions Six for embargoed destinations, refer to part 746 of the EAR to determine the availability of any License Exceptions. Special commodity controls apply to short supply items. License Exceptions for items listed on the CCL as controlled for Short Supply reasons are found in part 754 of the EAR. If your export or reexport is subject to General Prohibition Five, consult part 744 of the EAR. If your export or reexport is subject to General Prohibitions Four, Seven, Eight, Nine, or Ten, then no License Exceptions apply.

(b) *Certification.* By using any of the License Exceptions you are certifying that the terms, provisions, and conditions for the use of the License Exception described in the EAR have been met. Please refer to part 758 of the EAR for clearance of shipments and documenting the use of License Exceptions.

(c) *License Exception symbols.* Each License Exception bears a three letter symbol that will be used for export clearance purposes (see paragraph (d) of this section).

(d) *Shipper's Export Declaration*—(1) *Clearing exports under License Exceptions.* You must enter on any required Shipper's Export Declaration (SED) the letter code (e.g., LVS, TMP) of the License Exception(s) under which you are exporting. In the case of License Exceptions LVS, GBS, and CIV, the ECCN of the item being exported must also be entered. Please refer to §758.3 of the EAR for the use of SEDs.

(2) *Clearing exports when no license is required (NLR).* Certain items are listed on the CCL but do not require a license to certain destinations under General Prohibitions One, (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), or Three (Foreign Produced Direct Product Reexports) (§736.2 (b)(1), (b)(2), or (b)(3) of the EAR). (You will have determined this by consulting the Country Chart and finding no ''X'' in the box(es) at the intersection(s) of your country of destination and the column headings assigned to your item by the CCL.) If General Prohibitions Four through Ten (§736.2 (b)(4) through (b)(10) of the EAR) also do not apply, you must clear exports of such items by entering the symbol ''NLR'' in the

appropriate place on the Shippers Export Declaration. The term ''NLR'' represents exports of listed items when no license is required. Such exports do not require that you qualify for a License Exception.

(e) *Destination Control Statement.* You may be required to enter an appropriate Destination Control Statement on commercial documents in accordance with Destination Control Statement requirements of § 758.5 and § 758.6 of the EAR.

(f) *Recordkeeping.* Records of transactions involving exports under any of the License Exceptions must be maintained in accordance with the recordkeeping requirements of part 762 of the EAR.

[61 FR 12768, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 62 FR 25457, May 9, 1997]

§ 740.2 Restrictions on all License Exceptions.

(a) You may not use *any* License Exception if *any* one or more of the following apply:

(1) Your authorization to use a License Exception has been suspended or revoked, or your intended export does not qualify for a License Exception.

(2) The export or reexport is subject to one of the ten General Prohibitions, is not eligible for a License Exception, and has not been authorized by BXA.

(3) The item is for surreptitious interception of wire or oral communications, controlled under ECCN 5A980, unless you are a U.S. Government agency (see § 740.11(b)(2)(ii) of this part, Governments (GOV)).

(4) The commodity you are shipping is a specially designed crime control and detection instrument or equipment described in § 742.7 of the EAR and you are not shipping to Iceland, New Zealand, or countries listed in Country Group A:1 (see Supplement No. 1 to part 740), unless the shipment is authorized under License Exception BAG, § 740.14(e) of this part (shotguns and shotgun shells).

(b) All License Exceptions are subject to revision, suspension, or revocation, in whole or in part, without notice. It may be necessary for BXA to stop a shipment or an export transaction at any stage of its progress, e.g., in order to prevent an unauthorized export or reexport. If a shipment is already en route, it may be further necessary to order the return or unloading of the shipment at any port of call.

[61 FR 12768, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 62 FR 25457, May 9, 1997]

§ 740.3 Shipments of limited value (LVS).

(a) *Scope.* License Exception LVS authorizes the export and reexport in a single shipment of eligible commodities as identified by ''LVS - $(value limit)'' on the CCL.

(b) *Eligible Destinations.* This License Exception is available for all destinations in Country Group B (see Supplement No. 1 to part 740), provided that the net value of the commodities included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified in the LVS paragraph for that entry.

(c) *Definitions*—(1) *Order.* The term *order* as used in this § 740.3 means a communication from a person in a foreign country, or that person's representative, expressing an intent to import commodities from the exporter. Although all of the details of the order need not be finally determined at the time of export, terms relating to the kinds and quantities of the commodities to be exported, as well as the selling prices of these commodities, must be finalized before the goods can be exported under License Exception LVS.

(2) *Net value: for LVS shipments.* The actual selling price of the commodities that are included in the same order and are controlled under the same entry on the CCL, less shipping charges, or the current market price of the commodities to the same type of purchaser in the United States, whichever is the larger. In determining the actual selling price or the current market price of the commodity, the value of containers in which the commodity is being exported may be excluded. The value for LVS purposes is that of the controlled commodity that is being exported, and may not be reduced by subtracting the value of any content that would not, if shipped separately, be subject to licensing. Where the total value of the containers and their contents must be

shown on Shipper's Export Declarations under one Schedule B Number, the exporter, in effecting a shipment under this License Exception, must indicate the ''net value'' of the contained commodity immediately below the description of the commodity.

(3) *Single shipment.* All commodities moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even though these commodities will be forwarded to one or more ultimate consignees. Commodities being transported in this manner will be treated as a single shipment even if the commodities represent more than one order or are in separate containers.

(d) *Additional eligibility requirements and restrictions*—(1) *Eligible orders.* To be eligible for this License Exception, orders must meet the following criteria:

(i) *Orders must not exceed the applicable ''LVS'' dollar value limits.* An order is eligible for shipment under LVS when the ''net value'' of the commodities controlled under the same entry on the CCL does not exceed the amount specified in the ''LVS'' paragraph for that entry. An LVS shipment may include more than one eligible order.

(ii) *Orders may not be split to meet the applicable LVS dollar limits.* An order that exceeds the applicable LVS dollar value limit may not be misrepresented as two or more orders, or split among two or more shipments, to give the appearance of meeting the applicable LVS dollar value limit. However an order that meets all the LVS eligibility requirements, including the applicable LVS dollar value limit, may be split among two or more shipments.

(iii) *Orders must be legitimate.* Exporters and consignees may not, either collectively or individually, structure or adjust orders to meet the applicable LVS dollar value limits.

(2) *Restriction on annual value of LVS orders.* The total value of exports per calendar year to the same ultimate or intermediate consignee of commodities classified under a single ECCN may not exceed 12 times the LVS value limit for that ECCN; however, there is no restriction on the number of shipments provided that value is not exceeded. This annual value limit applies to shipments to the same ultimate consignee even though the shipments are made through more than one intermediate consignee. There is no restriction on the number of orders that may be included in a shipment, except that the annual value limit per ECCN must not be exceeded.

(3) *Orders where two or more LVS dollar value limits apply.* An order may include commodities that are controlled under more than one entry on the CCL. In this case, the net value of the entire order may exceed the LVS dollar value for any single entry on the CCL. However, the net value of the commodities controlled under each ECCN entry shall not exceed the LVS dollar value limit specified for that entry.

EXAMPLE TO PARAGRAPH (d)(3): An order includes commodities valued at $8,000. The order consists of commodities controlled under two ECCN entries, each having an LVS value limit of $5000. Commodities in the order controlled under one ECCN are valued at $3,500 while those controlled under the other ECCN are valued at $4,500. Since the net value of the commodities controlled under each entry falls within the LVS dollar value limits applicable to that entry, the order may be shipped under this License Exception.

(4) *Prohibition against evasion of license requirements.* Any activity involving the use of this License Exception to evade license requirements is prohibited. Such devices include, but are not limited to, the splitting or structuring of orders to meet applicable LVS dollar value limits, as prohibited by paragraphs (d)(1) (ii) and (iii) of this section.

(e) *Reexports.* Commodities may be reexported under this License Exception, provided that they could be exported from the United States to the new country of destination under LVS.

[61 FR 64274, Dec. 4, 1996]

§ 740.4 Shipments to Country Group B countries (GBS).

License Exception GBS authorizes exports and reexports to Country Group B (see Supplement No. 1 to part 740) of those commodities controlled to the ultimate destination for national security reasons and identified by ''GBS—Yes'' on the CCL. License Exception GBS may be used to export or

reexport to eligible countries any commodity (but not software) eligible for License Exception CIV.

[62 FR 25457, May 9, 1997]

§ 740.5 Civil end-users (CIV).

License Exception CIV authorizes exports and reexports controlled to the ultimate destination for national security reasons only and identified by ''CIV—Yes'' on the CCL, provided the items are destined to civil end-users for civil end-uses in Country Group D:1. (See Supplement No. 1 to part 740.) CIV may not be used for exports and reexports to military end-users or to known military uses. Such exports and reexports will continue to require a license. In addition to conventional military activities, military uses include any proliferation activities described and prohibited by part 744 of the EAR. A license is also required for transfer to military end-users or end-uses in eligible countries of items exported under CIV.

[61 FR 64275, Dec. 4, 1996]

§ 740.6 Technology and software under restriction (TSR).

(a) *Scope.* License Exception TSR permits exports and reexports of technology and software controlled to the ultimate destination for national security reasons only and identified by ''TSR—Yes'' in entries on the CCL, provided the software or technology is destined to Country Group B. (See Supplement No. 1 to part 740.) A written assurance is required from the consignee before exporting or reexporting under this License Exception.

(1) *Required assurance for export of technology.* You may not export or reexport technology under this License Exception until you have received from the importer a written assurance that, without a BXA license or License Exception, the importer will not:

(i) Reexport or release the technology to a national of a country in Country Groups D:1 or E:2; or

(ii) Export to Country Groups D:1 or E:2 the direct product of the technology, if such foreign produced direct product is subject to national security controls as identified on the CCL (See General Prohibition Three, § 736.2(b)(3) of the EAR); or

(iii) If the direct product of the technology is a complete plant or any major component of a plant, export to Country Groups D:1 or E:2 the direct product of the plant or major component thereof, if such foreign produced direct product is subject to national security controls as identified on the CCL or is subject to State Department controls under the U.S. Munitions List (22 CFR part 121).

(2) *Required assurance for export of software.* You may not export or reexport software under this License Exception until you have received from the importer a written assurance that, without a BXA license or License Exception, the importer will neither:

(i) Reexport or release the software or the source code for the software to a national of a country in Country Groups D:1 or E:2; nor

(ii) Export to Country Groups D:1 or E:2 the direct product of the software, if such foreign produced direct product is subject to national security controls as identified on the CCL. (See General Prohibition Three, § 736.2(b)(3) of the EAR).

(3) *Form of written assurance.* The required assurance may be made in the form of a letter or any other written communication from the importer, or the assurance may be incorporated into a licensing agreement that specifically includes the assurances. An assurance included in a licensing agreement is acceptable only if the agreement specifies that the assurance will be honored even after the expiration date of the licensing agreement. If such a written assurance is not received, License Exception TSR is not applicable and a license is required. The license application must include a statement explaining why assurances could not be obtained.

(4) *Other License Exceptions.* The requirements in this License Exception do not apply to the export of technology or software under other License Exceptions, or to the export of technology or software included in an application for the foreign filing of a patent, provided the filing is in accordance with the regulations of the U.S. Patent Office.

(b) [Reserved]

[61 FR 64275, Dec. 4, 1996]

§740.7 Computers (CTP).

(a) *Scope.* License Exception CTP authorizes exports and reexports of digital computers and specially designed components therefor, exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. (Related equipment controlled under 4A003.d, .f, and .g is authorized under this License Exception, only when exported or reexported with these computers as part of a system.) You may not use this License Exception to export or reexport items that you know will be used to enhance the CTP beyond the eligibility limit allowed to your country of destination. When evaluating your computer to determine License Exception CTP eligibility, use the CTP parameter to the exclusion of other technical parameters for computers classified under ECCN 4A003.a, .b and .c, except for parameters specified as Missile Technology (MT) concerns or 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a). This License Exception does not authorize the export or reexport of graphic accelerators or coprocessors, or computers controlled for MT reasons.

(b) *Computer Tier 1*—(1) *Eligible countries.* The countries that are eligible to receive exports and reexports under this License Exception are Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, the Holy See, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 1 destinations are those with a CTP greater than 2,000 Mtops.

(c) *Computer Tier 2*—(1) *Eligible countries.* The countries that are eligible to receive exports under this License Exception include Antigua and Barbuda, Argentina, Bahamas, Barbados, Bangladesh, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central Africa, Chad, Chile, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia (The), Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Indonesia, Jamaica, Kenya, Kiribati, Korea (Republic of), Lesotho, Liberia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Micronesia (Federated States of), Mozambique, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and Grenadines, Sao Tome & Principe, Senegal, Seychelles, Sierra Leone, Singapore, Slovak Republic, Slovenia, Solomon Islands, Somalia, South Africa, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Tuvalu, Uganda, Uruguay, Venezuela, Western Sahara, Western Samoa, Zaire, Zambia, and Zimbabwe.

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 2 destinations are those having a Composite Theoretical Performance (CTP) greater than 2000, but equal to or less than 10,000 Millions of Theoretical Operations Per Second (Mtops).

(d) *Computer Tier 3*—(1) *Eligible countries.* The countries that are eligible to receive exports and reexports under this License Exception are Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Estonia, Georgia, India, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lithuania, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Romania, Russia, Saudi Arabia, Serbia & Montenegro, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.

(2) *Eligible computers.* The computers eligible for License Exception CTP to

Tier 3 destinations are those having a Composite Theoretical Performance (CTP) greater than 2,000 Millions of Theoretical Operations Per Second (Mtops), but less than or equal to 7,000 Mtops.

(3) *Eligible exports.* Only exports and reexports to permitted end-users and end-uses located in countries in Computer Tier 3. License Exception CTP does not authorize exports and reexports to Computer Tier 3 for military end-users and end-uses and nuclear, chemical, biological, or missile end-users and end-uses defined in part 744 of the EAR. Exports and reexports under this License Exception may not be made to known military end-users or to known military end-uses or known proliferation end-uses or end-users defined in part 744 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Retransfers to military end-users or end-uses and defined proliferation end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(e) *Restrictions.* (1) Computers eligible for License Exception CTP may not be accessed either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria, except commercial consignees described in Supplement No. 3 to part 742 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(2) Computers eligible for License Exception CTP may not be reexported/retransferred without prior authorization from BXA i.e., a license, a permissive reexport, another License Exception, or ''No License Required''. This restriction must be conveyed to the consignee, via the Destination Control Statement, see § 758.6(a)(ii) of the EAR.

(f) *Recordkeeping requirements.* In addition to the recordkeeping requirements in part 762 of the EAR, you must keep records of each export under License Exception CTP. These records will be made available to the U.S. Government on request. The records must include the following information:

(1) Date of shipment;

(2) Name and address of the end-user and each intermediate consignee;

(3) CTP of each computer in shipment;

(4) Volume of computers in shipment;

(5) Dollar value of shipment; and

(6) End-use.

[61 FR 64276, Dec. 4, 1996, as amended at 61 FR 67449, Dec. 23, 1996]

§ 740.8 Key management infrastructure.

(a) *Scope.* License Exception KMI authorizes the export and reexport of certain encryption software and equipment.

(b) *Eligible software and equipment*—(1) *Recovery encryption items.* Eligible items are recovery encryption software and equipment controlled under ECCNs 5D002 or 5A002 made eligible as a result of a one-time BXA review. You may initiate this review by submitting a classification request for your product in accordance with paragraph (d)(1) of this section.

(2) *Non-recoverable encryption items.* Eligible items are 56-bit DES or equivalent strength non-key recovery software and equipment controlled under ECCNs 5D002 or 5A002 made eligible as a result of a one-time BXA review. You may initiate this review by submitting a classification request for your product in accordance with paragraph (d)(2) of this section.

(c) *Eligible destinations.* License Exception KMI is available for all destinations, except Cuba, Libya, North Korea, Iraq, Iran, Syria, and Sudan.

(d) *Additional eligibility requirements*—(1) *Recovery encryption items.* Classification requests for recovery encryption software and equipment must meet the following criteria:

(i) *Key escrow and key recovery products.* (A) Key escrow and key recovery products must meet the criteria identified in Supplement No. 4 to part 742 of the EAR;

(B) Key recovery agents must meet the criteria identified in Supplement No. 5 to part 742 of the EAR;

(C) Key recovery agents must implement the security policies and key escrow/key recovery procedures identified in Supplement No. 5 to part 742 of the EAR;

(D) Key recovery agents must comply with all applicable EAR Record keeping requirements, including record retention requirements; and

(E) Key recovery agents must carry out the key holding obligations as approved by BXA, and any violation of any of the key holding obligations shall also constitute a violation of the EAR. Note that the key recovery agent's continuing compliance with key recovery agent requirements and key safeguard procedures is a condition for use of License Exception KMI. The exporter or reexporter, whether that person is the key recovery agent or not, must submit a new classification request to BXA if there are any changes (e.g., termination, replacement, additions) to the previously approved key recovery agent.

(ii) *Other recoverable encryption items.* Requests for one-time review of recoverable products which allow government officials to obtain, under proper legal authority and without the cooperation or knowledge of the user, the plaintext of the encrypted data and communications will receive favorable consideration.

(2) *Non-recoverable encryption items.* Upon approval of your classification request submitted in accordance with this paragraph (d)(2), you will become eligible to use License Exception KMI for six months. In order to continue using this License Exception, you must renew your eligibility by submitting the progress report described in paragraph (d)(2)(ii) of this section. Classification requests for 56-bit DES or equivalent strength non-key recovery software and equipment must meet the following criteria:

(i) Initial request must be submitted with a business plan that explains in detail the steps the applicant will take during the two-year transition period according to the criteria identified in Supplement No. 7 to part 742 of the EAR;

(ii) Renewal for use of this License Exception is contingent upon progress reports sent to BXA every six months and the applicant's adherence to benchmarks and milestones as set forth in the plan submitted for the initial classification request.

(iii) Applicants may inform their authorized distributors that an approved classification and plan has been granted to them and the distributors' authority to so export or reexport will be for a time period ending on the same day the applicant's authority to export or reexport ends.

(e) *Reporting requirements.* (1) You must provide semiannual reports to BXA identifying:

(i) Ultimate consignee; specific end-user name and address, if available; and country of ultimate destination; and

(ii) Quantities of each encryption item shipped.

(2) You must submit reports no later than March 1 and no later than September 1 of any given year.

[61 FR 68579, Dec. 30, 1996]

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

This License Exception authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software.

(a) *Temporary exports and reexports*—(1) *Scope.* You may export and reexport commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exclusions described in paragraph (a)(4) of this section. Commodities and software shipped as temporary exports or reexports under the provisions of this paragraph (a) must be returned to the country from which they were exported as soon as practicable but, except in circumstances described in this section, no later than one year from the date of export. This requirement does not apply if the commodities and software are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the EAR or in writing by BXA.

(2) *Eligible commodities and software.* The following commodities and software are eligible to be shipped under this paragraph (a):

(i) *Tools of trade.* Usual and reasonable kinds and quantities of commodities and software for use by employees

of the exporter in a lawful enterprise or undertaking of the exporter. Eligible commodities and software may include, but are not limited to, such equipment as is necessary to commission or service goods, provided that the equipment 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. The commodities and software must remain under the effective control of the exporter or the exporter's employee. The shipment of commodities and software 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. No tools of trade may be taken to Country Group E:2 and Sudan, only the equipment necessary to commission or service goods may be taken as tools of trade to Country Group D:1. (See Supplement No. 1 to part 740.)

(ii) *Kits consisting of replacement parts.* Kits consisting of replacement parts may be exported or reexported to all destinations, except Country Group E:2 (see Supplement No. 1 to part 740), provided that:

(A) The parts would qualify for shipment under paragraph (a)(2)(ii)(C) of this section if exported as one-for-one replacements;

(B) The kits remain under effective control of the exporter or an employee of the exporter; and

(C) All parts in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception RPL and the defective parts returned (see ''parts'', § 740.9(a) of this part).

(iii) *Exhibition and demonstration in Country Group B.* Commodities and software for exhibition or demonstration in Country Group B (see Supplement No. 1 to part 740) may be exported or reexported under this provision provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains effective control over the commodities and software while they are abroad. The commodities and software may not be used for their intended purpose while abroad, except to the minimum extent required for effective demonstration. The commodities and software may not be exhibited or demonstrated at any one site more than 120 days after installation and debugging, unless authorized by BXA. However, before or after an exhibition or demonstration, pending movement to another site, return to the United States or the foreign reexporter, or BXA approval for other disposition, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains effective control over their disposition. The export documentation for this type of transaction must show the U.S. exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(iv) *Inspection and calibration.* Commodities to be inspected, tested, calibrated or repaired abroad may be exported or reexported to all destinations under this section, except Country Group E:2, Sudan or Syria.

(v) *Containers.* Containers for which another License Exception is not available and that are necessary for export of commodities. However, this ''containers'' provision does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export under either a License Exception or a license.

(vi) *Broadcast material.* (A) Video tape containing program material recorded in the country of export to be publicly broadcast in another country.

(B) Blank video tape (raw stock) for use in recording program material abroad.

(vii) *Assembly in Mexico.* Commodities to be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquiladora), provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(viii) *News media.* (A) Commodities necessary for news-gathering purposes (and software necessary to use such commodities) may accompany ''accredited'' news media personnel (i.e., persons with credentials from a news gathering or reporting firm) to Country Groups D:1 or E:2, or Sudan (see Supplement No. 1 to part 740) if the commodities:

(*1*) Are retained under ''effective control'' of the exporting news gathering firm;

(*2*) Remain in the physical possession of the news media personnel. The term physical possession for purposes of this paragraph (a)(2)(viii), news media, is defined as maintaining effective measures to prevent unauthorized access (e.g., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(*3*) Are removed with the news media personnel at the end of the trip.

(B) When exporting under this paragraph (a)(2)(viii) from the United States, the exporter must send a copy of the packing list or similar identification of the exported commodities, to: U.S. Department of Commerce, Bureau of Export Administration, Office of Enforcement Support, Room H4069, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, or any of its field offices, specifying the destination and estimated dates of departure and return. The Office of Export Enforcement (OEE) may spot check returns to assure that the temporary exports and reexports provisions of this License Exception are being used properly.

(C) Commodities or software necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported or reexported under paragraph (a)(2)(i), tools of trade, of this section if owned by the news gathering firm, or if they are personal property of the individual news media personnel. Note that paragraphs (a)(2)(i), tools of trade and (a)(2)(viii), news media, of this section do not preclude independent ''accredited'' contract personnel, who are under control of news gathering firms while on assignment, from utilizing these provisions, provided that the news gathering firm designate an employee of the contract firm to be responsible for the equipment.)

(3) *Special restrictions*—(i) *Destinations.* (A) No commodity or software may be exported to Country Group E:2 (see Supplement No. 1 to part 740) except as permitted by paragraph (a)(2)(viii), news media, of this section;

(B) No commodity or software may be exported to Country Group D:1 (see Supplement No. 1 to part 740) except:

(*1*) Commodities and software exported under paragraph (a)(2)(viii), news media, of this section;

(*2*) Commodities and software exported under paragraph (a)(2)(i), tools of trade, of this section; and

(*3*) Commodities exported as kits of replacement parts, consistent with the requirements of paragraph (a)(2)(ii) of this section.

(C) These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country in Country Group D:1 or E:2, or any national thereof. (See Supplement No. 1 to part 740.)

(ii) *Ineligible commodities or software.* Commodities or software that will be used outside of Country Group A:1 (see Supplement No. 1 to part 740), Iceland, or New Zealand, either directly or indirectly in any sensitive nuclear activity as described in § 744.2 of the EAR may not be exported or reexported to any destination under the temporary exports and reexports provisions of this License Exception.

(iii) *Use or disposition.* No commodity or software may be exported or reexported under this paragraph (a) if:

(A) An order to acquire the commodity or software has been received before shipment;

(B) The exporter has prior knowledge that the commodity or software will stay abroad beyond the terms described in this paragraph (a); or

(C) The commodity or software is for lease or rental abroad.

(4) *Return or disposal of commodities and software.* All commodities and software exported or reexported under these provisions must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of

export, to the United States or other country from which the commodities and software were so exported, or shall be disposed of or retained in one of the following ways:

(i) *Permanent export or reexport.* If the exporter or the reexporter wishes to sell or otherwise dispose of the commodities or software abroad, except as permitted by this or other applicable License Exception, the exporter must request authorization by submitting a license application to BXA at the address listed in part 748 of the EAR. (See part 748 of the EAR for more information on license applications.) The request should comply with all applicable provisions of the EAR covering export directly from the United States to the proposed destination. The request must also be supported by any documents that would be required in support of an application for export license for shipment of the same commodities or software directly from the United States to the proposed destination. BXA will advise the exporter of its decision.

(ii) *Use of a license.* An outstanding license may also be used to dispose of commodities or software covered by the provisions of this paragraph (a), provided that the outstanding license authorizes direct shipment of the same commodity or software to the same new ultimate consignee in the new country of destination.

(iii) *Authorization to retain abroad beyond one year.* If the exporter wishes to retain a commodity or software abroad beyond the 12 months authorized by paragraph (a) of this section, the exporter must request authorization by submitting Form BXA–748P, Multipurpose Application, 90 days prior to the expiration of the 12 month period. The request must be sent to BXA at the address listed in part 748 of the EAR and should include the name and address of the exporter, the date the commodities or software were exported, a brief product description, and the justification for the extension. If BXA approves the extension request, the exporter will receive authorization for a one-time extension not to exceed six months. BXA normally will not allow an extension for commodities or software that have been abroad more than 12 months, nor will a second six month extension be authorized. Any request for retaining the commodities or software abroad for a period exceeding 18 months must be made in accordance with the requirements of paragraph (a)(4)(i) of this section.

(5) *Reexports.* Commodities and software legally exported from the United States may be reexported to a new country(ies) of destination under 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.

(b) *Exports of items temporarily in the United States: Scope.* The provisions of this paragraph (b) describe the conditions for exporting foreign-origin items temporarily in the United States. The provisions include the export of items moving in transit through the United States, imported for display at a U.S. exhibition or trade fair, returned because unwanted, or returned because refused entry.

NOTE 1 to paragraph (b) of this section:

A commodity withdrawn from a bonded warehouse in the United States under a ''withdrawal for export'' customs entry is considered as ''moving in transit''. It is not considered as ''moving in transit'' if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.

NOTE 2 to paragraph (b) of this section: Items shipped on board a vessel or aircraft and passing through the United States from one foreign country to another may be exported without a license provided that (a) while passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, and (b) they are not originally manifested to the United States.)

(1) *Items moving in transit through the United States.* Subject to the following conditions, the provisions of paragraph (b)(1) of this section authorize export of items moving in transit through the United States under a Transportation and Exportation (T.& E.) customs entry or an Immediate Exportation (I.E.) customs entry made at a U.S. Customs Office.

(i) Items controlled for national security, nuclear proliferation, missile technology, or chemical and biological

weapons reasons may not be exported to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740), respectively, under this paragraph (b)(1).

(ii) Items may not be exported to Country Group E:2 or Sudan under this section.

(iii) The following may not be exported in transit from the United States under § 740.8(b)(1):

(A) Commodities shipped to the United States under an International Import Certificate, Form BXA–645P;

(B) Chemicals controlled under ECCN 1C350; or

(C) Horses for export by sea (refer to short supply controls in part 754 of the EAR).

(iv) The provisions of paragraph (b)(1) apply to all shipments from Canada moving in transit through the United States to any foreign destination, regardless of the nature of the commodities or software or their origin. For such shipments the customs office at the U.S. port of export will require a copy of Form B–13, Canadian Customs Entry, certified or stamped by Canadian customs authorities, except where the shipment is valued at less than $50.00. (In transit shipments originating in Canada that are exempt from U.S. licensing, or made under a U.S. license or other applicable U.S. License Exception do not require this form.) The commodity or software description, quantity, ultimate consignee, country of ultimate destination, and all other pertinent details of the shipment must be the same on a required Form B–13, as on Commerce Form 7513, or when Form 7513 is not required, must be the same as on Customs Form 7512. When there is a material difference, a corrected Form B–13 authorizing the shipment is required.

(2) *Items imported for display at U.S. exhibitions or trade fairs.* Subject to the following conditions, the provisions of this paragraph (b)(2) authorize the export of items that were imported into the United States for display at an exhibition or trade fair and were either entered under bond or permitted temporary free import under bond providing for their export and are being exported in accordance with the terms of that bond.

(i) Items may be exported to the country from which imported into the United States. However, items originally imported from Cuba or North Korea may not be exported unless the U.S. Government had licensed the import from that country.

(ii) Items may be exported to any destination other than the country from which imported except:

(A) Items imported into the United States under an International Import Certificate;

(B) Exports to Country Group E:2 or Sudan (see Supplement No. 1 to part 740); or

(C) Exports to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740) of items controlled for national security, missile technology, chemical and biological weapons reasons, or nuclear proliferation, respectively.

(3) *Return of unwanted shipments.* A foreign-origin item may be returned to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States. No foreign-origin items may be returned to Cuba, Libya, or North Korea.

(4) *Return of shipments refused entry.* Shipments of items refused entry by the U.S. Customs Service, the Food and Drug Administration, or other U.S. Government agency may be returned to the country of origin, except to:

(i) A destination in Cuba, Libya, or North Korea; or

(ii) A destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department, unless such return is licensed or otherwise authorized by the Treasury Department, Office of Foreign Assets Control (31 CFR part 500).

(c) *Exports of beta test software*—(1) *Scope.* The provisions of paragraph (c) authorize exports and reexports to eligible countries of beta test software intended for distribution to the general public.

(2) *Eligible countries.* The countries that are eligible to receive exports and reexports are all countries except those in Country Group E:2.

(3) *Exports of beta test software.* All software that is controlled by the Commerce Control List (Supplement No. 1

to part 774 of the EAR), and under Commerce licensing jurisdiction, is eligible for export and reexport, subject to the restrictions of this paragraph, except encryption software controlled for EI reasons under ECCN 5D002. Certain encryption software may become eligible after a one-time BXA review (refer to § 742.15(b)(1) of the EAR).

(4) *Conditions for use.* Any beta test software program may be exported or reexported to eligible countries if all of the conditions under this section are met:

(i) The software producer intends to market the software to the general public after completion of the beta testing, as described in the General Software Note found in Supplement No. 2 to part 774 of the EAR;

(ii) The software producer provides the software to the testing consignee free-of-charge or at a price that does not exceed the cost of reproduction and distribution; and

(iii) The software is designed for installation by the end-user without further substantial support from the supplier.

(5) *Importer Statement.* Prior to shipping any eligible software, the exporter or reexporter must obtain the following statement from the testing consignee, which may be included in a contract, non-disclosure agreement, or other document that identifies the importer, the software to be exported, the country of destination, and the testing consignee.

We certify that this beta test software will only be used for beta testing purposes, and will not be rented, leased, sold, sublicensed, assigned, or otherwise transferred. Further, we certify that we will not transfer or export any product, process, or service that is the direct product of the beta test software.

(6) *Use limitations.* Only testing consignees that provide the importer statement required by paragraph (c)(5) of this section may execute any software received.

(7) *Return or disposal of software.* All beta test software exported must be destroyed abroad or returned to the exporter within 30 days of the end of the beta test period as defined by the software producer or, if the software producer does not define a test period, within 30 days of completion of the consignee's role in the test. Among other methods, this requirement may be satisfied by a software module that will destroy the software and all its copies at or before the end of the beta test period.

[61 FR 64277, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, as amended at 61 FR 68580, Dec. 30, 1996; 62 FR 25457, May 9, 1997]

§ 740.10 Servicing and replacement of parts and equipment (RPL).

This License Exception authorizes exports and reexports associated with one-for-one replacement of parts or servicing and replacement of equipment.

(a) *Parts*—(1) *Scope.* The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts for previously exported equipment.

(2) *One-for-one replacement of parts.* (i) The term *replacement parts* as used in this section means parts needed for the immediate repair of equipment, including replacement of defective or worn parts. (It includes subassemblies but does not include test instruments or operating supplies). (The term *subassembly* means a number of components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as those composed of a number of subassemblies.) Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment upon which they are installed, are not deemed to be replacement parts. For kits consisting of replacement parts, consult § 740.8(a)(2)(ii) of this part.

(ii) Parts may be exported only to replace, on a one-for-one basis, parts contained in commodities that were: legally exported from the United States; legally reexported; or made in a foreign country incorporating authorized U.S.-origin parts. The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has

confirmed the appropriate authority for the original transaction.

(iii) The parts to be replaced must either be destroyed abroad or returned promptly to the person who supplied the replacement parts, or to a foreign firm that is under the effective control of that person.

(3) *Exclusions.* (i) No replacement parts may be exported to repair a commodity exported under a license if that license included a condition that any subsequent replacement parts must be exported only under a license.

(ii) No parts may be exported to be held abroad as spare parts or equipment for future use. Replacement parts may be exported to replace spare parts that were authorized to accompany the export of equipment, as those spare parts are utilized in the repair of the equipment. This will allow maintenance of the stock of spares at a consistent level as parts are used.

(iii) No parts may be exported to any destination except Iceland, New Zealand, or the countries listed in Country Group A:1 (see Supplement No. 1 to part 740) if the item is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing related to activities described in § 744.2(a) of the EAR, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 744.2(a) of the EAR.

(iv) No replacement parts may be exported to Cuba, Iran, Iraq, Sudan, Syria, Libya, or North Korea (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an ''aircraft'' (as defined in part 772 of the EAR) or national security controlled commodity.

(v) The conditions described in this paragraph (a)(3) relating to replacement of parts do not apply to reexports to a foreign country of parts as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the exceptions in § 734.4 of the EAR.

(4) *Reexports.* Parts exported from the United States may be reexported to a new country of destination, provided that the restrictions described in paragraphs (a)(2) and (3) of this section are met. A party reexporting U.S.-origin one-for-one replacement parts shall ensure that the commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be legally used, and that either before or promptly after reexport of the replacement parts, the replaced parts are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to part 740) that shipped the replacement parts.

(b) *Servicing and replacement*—(1) *Scope.* The provisions of this paragraph (b) authorize the export and reexport of items that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(2) Commodities and software sent to a United States or foreign party for servicing.

(i) *Definition. Servicing* as used in this section means inspection, testing, calibration or repair, including overhaul and reconditioning. The servicing shall not have improved or changed the basic characteristics, e.g., as to accuracy, capability, performance, or productivity of the commodity or software as originally authorized for export or reexport.

(ii) *Return of serviced commodities and software.* When the serviced commodity or software is returned, it may include any replacement or rebuilt parts necessary to its repair and may be accompanied by any spare part, tool, accessory, or other item that was sent with it for servicing.

(iii) *Commodities and software imported from Country Group D:1 except the PRC.* Commodities and software legally exported or reexported to a consignee in Country Group D:1 (except the People's Republic of China (PRC)) (see Supplement No. 1 to part 740) that are sent to the United States or a foreign party for servicing may be returned to the country from which it was sent, provided that both of the following conditions are met:

(A) The exporter making the shipment is the same person or firm to whom the original license was issued; and

(B) The end-use and the end-user of the serviced commodities or software and other particulars of the transaction, as set forth in the application and supporting documentation that formed the basis for issuance of the license have not changed.

(iv) Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. No repaired commodity or software may be exported or reexported to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(3) *Replacements for defective or unacceptable U.S.-origin equipment.* (i) Subject to the following conditions, commodities or software may be exported or reexported to replace defective or otherwise unusable (e.g., erroneously supplied) items.

(A) The commodity or software to be replaced must have been previously exported or reexported in its present form under a license or authorization granted by BXA.

(B) No commodity or software may be exported or reexported to replace equipment that is worn out from normal use, nor may any commodity or software be exported to be held in stock abroad as spare equipment for future use.

(C) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the equipment as originally approved for export or reexport under a license issued by BXA.

(D) No shipment may be made to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, or to any other destination to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any of those countries.

(ii) *Special conditions applicable to exports to Country Group B and Country Group D:1.* (See Supplement No. 1 to part 740.) In addition to the general conditions in paragraph (b)(3)(i) of this section, the following conditions apply to exports or reexports of replacements for defective or unacceptable U.S.-origin commodities or software to a destination in Country Group B or Country Group D:1:

(A) By making such an export or reexport, the exporter represents that all the requirements of this paragraph (b) have been met and undertakes to destroy or return the replaced parts as provided in paragraph (b)(3)(ii)(C) of this section.

(B) The defective or otherwise unusable equipment must be replaced free of charge, except for transportation and labor charges. If exporting to the countries listed in Country Group D:1 (except the PRC), the exporter shall replace the commodity or software within the warranty period or within 12 months of its shipment to the ultimate consignee in the country of destination, whichever is shorter.

(C) The commodity or software to be replaced must either be destroyed abroad or returned to the United States, or to a foreign firm in Country Group B that is under the effective control of the U.S. exporter, or to the foreign firm that is providing the replacement part or equipment. The destruction or return must be effected before, or promptly after, the replacement item is exported from the United States.

(D) A party reexporting replacements for defective or unacceptable U.S.-origin equipment must ensure that the commodities or software being replaced were shipped to their present location in accordance with U.S. law and continue to be legally used.

[61 FR 64279, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996]

§ 740.11 Governments and international organizations (GOV).

This Licenses Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel, and agencies of cooperating governments.

(a) *International safeguards*—(1) *Scope.* You may export and reexport commodities or software to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (Euratom), and reexports by IAEA and Euratom for official international safeguard use, as follows:

(i) Commodities or software consigned to the IAEA at its headquarters

in Vienna, Austria, or field offices in Toronto, Ontario, Canada or Tokyo, Japan for official international safeguards use. The IAEA is an international organization that establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

(ii) Commodities or software consigned to the Euratom Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use. Euratom is an international organization of European countries with headquarters in Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

(iii) Commodities consigned to IAEA or Euratom may be reexported to any country for IAEA or Euratom international safeguards use provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities and returns the commodities to the locations described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section when they become obsolete, are no longer required, or are replaced.

(iv) Commodity or software shipments may be made by commercial companies under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(v) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited safeguarded nuclear activities described in § 744.2(a)(3) of the EAR.

(vi) When commodities or software originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may only be disposed of in accordance with the regulations in the EAR.

(2) *Exclusions.* No computers with a CTP greater than 10,000 MTOPS may be exported or reexported to countries listed in Computer Tiers 3 or 4. See § 742.12 of the EAR for a complete list of the countries within Computer Tiers 3 and 4.

(b) *Governments*—(1) *Scope.* The provisions of paragraph (b) authorize exports and reexports of the items listed in paragraph (b)(2) of this section to personnel and agencies of the U.S. Government or agencies of cooperating governments.

(2) *Eligibility*—(i) *Items for personal use by personnel and agencies of the U.S. Government.* This provision is available for items in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to public international organizations), and their immediate families and servants. Items for personal use include household effects, food, beverages, and other daily necessities.

(ii) *Items for official use by personnel and agencies of the U.S. Government.* This provision is available for items consigned to and for the official use of any agency of the U.S. Government.

(iii) *Items for official use within national territory by agencies of cooperating governments.* This provision is available for all items consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, except:

(A) Commercial communications satellites controlled under 9A004 and hot section technology for the development, production or overhaul of commercial aircraft engines controlled under 9E003.a.1 through a.12, and .f, and related controls;

(B) Computers with a CTP greater than 10,000 MTOPS when destined for Argentina, Hong Kong, South Korea, Singapore or Taiwan;

(C) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(D) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6D102, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101 as described in § 742.6(a)(1) of the EAR; or

(E) Encryption items controlled for EI reasons as described in the Commerce Control List.

(iv) *Diplomatic and consular missions of a cooperating government.* This provision is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to part 740), except:

(A) Commercial communications satellites controlled under 9A004 and hot section technology for the development, production or overhaul of commercial aircraft engines controlled under 9E003.a.1 through a.12, and .f, and related controls;

(B) Computers with a CTP greater than 10,000 MTOPS when destined for Argentina, Hong Kong, South Korea, Singapore or Taiwan;

(C) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(D) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6D102, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101 as described in § 742.6(a)(1) of the EAR; or

(E) Encryption items controlled for EI reasons as described in the Commerce Control List.

(3) *Definitions.* (i) *Agency of the U.S. Government* includes all civilian and military departments, branches, missions, government-owned corporations, and other agencies of the U.S. Government, but does not include such national agencies as the American Red Cross or international organizations in which the United States participates such as the Organization of American States. Therefore, shipments may not be made to these non-government national or international agencies, except as provided in paragraph (b)(2)(i) of this section for U.S. representatives to these organizations.

(ii) *Agency of a cooperating government* includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. Cooperating governments are the national governments of countries listed in Country Group A:1 (see Supplement No. 1 to part 740) and the national governments of Argentina, Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Singapore, Sweden, Switzerland, and Taiwan.

[61 FR 64281, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, as amended at 61 FR 68580, Dec. 30, 1996; 62 FR 25457, May 9, 1997]

§ 740.12 Gift parcels and humanitarian donations (GFT).

(a) *Gift parcels*—(1) *Scope.* The provisions of paragraph (a) authorize exports and reexports of gift parcels by an individual (donor) addressed to an individual, or a religious, charitable or educational organization (donee) located in any destination for the use of the donee or the donee's immediate family (and not for resale). The gift parcel must be provided free of charge to the donee. However, payment by the donee of any handling charges or of any fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the donee for purposes of this definition of ''gift parcel.''

NOTE TO PARAGRAPH (a) OF THIS SECTION: A gift parcel, within the context of this paragraph (a), does not include multiple parcels exported in a single shipment for delivery to individuals residing in a foreign country. Such multiple gift parcels, if subject to the General Prohibitions described in § 734.2(b) of the EAR, must be licensed by BXA. (See Supplement No. 2 to part 748 of the EAR for licensing of multiple gift parcels).

(2) *Commodity, value and other limitations*—(i) *Eligible commodities.* The eligible commodities are as follows:

(A) The commodity must not be controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), or nuclear proliferation (NP) (see Commerce Control List, part 774 of the EAR); and

(B) The commodity must be of a type and in quantities normally given as gifts between individuals.

(*1*) For Cuba, the only commodities that may be included in a gift parcel are the following items: food, vitamins, seeds, medicines, medical supplies and devices, hospital supplies and equipment, equipment for the handicapped, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, and in addition receive-only radio equipment for reception of commercial/civil AM/FM and short

wave publicly available frequency bands, and batteries for such equipment.

(*2*) For all other destinations, eligible commodities include all items described in paragraph (a)(2)(i)(B)(*1*) of this section as well as all other items normally sent as gifts. Gold bullion, gold taels, and gold bars are prohibited as are items intended for resale or reexport.

Example to paragraph (a) of this section. A watch or piece of jewelry is normally sent as a gift. However, multiple watches, either in one package or in subsequent shipments, would not quality for such gift parcels because the quantity exceeds that normally given between individuals. Similarly, a sewing machine or bicycle, within the dollar limits of this License Exception, may be an appropriate gift. However, subsequent shipments of the same item to the same donee would not be a gift normally given between individuals.

(*3*) For purposes of paragraph (a)(2)(i)(B) of this section, clothing is appropriate, except that export of military wearing apparel to Country Group D:1 or E:2 under this License Exception is specifically prohibited, regardless of whether all distinctive U.S. military insignia, buttons, and other markings are removed.

(ii) *Import requirements.* The commodities must be acceptable in type and quantity by the recipient country for import as gifts. Commodities exceeding the import limits may not be included in gift parcels.

(iii) *Frequency.* Except for gift parcels of food to Cuba, not more than one gift parcel may be sent from the same donor to the same donee in any one calendar month. Parties seeking authorization to exceed this limit due to compelling humanitarian concerns (e.g., gifts of medicine to relatives) should submit a license application (BXA–748P) with complete justification.

(iv) *Value.* The combined total domestic retail value of all commodities included in a gift parcel may not exceed $400, except for gift parcels to Cuba where the value of non-food items may not exceed $200. There is no dollar value limit on food contained in a gift parcel to Cuba.

(3) *How to export gift parcels.* (i) A gift parcel must be sent directly to the donee by the individual donor, or for such donor by a commercial or other gift-forwarding service or organization. Each gift parcel must show, on the outside wrapper, the name and address of the donor, as well as the name and address of the donee, regardless of whether sent by the donor or by a forwarding service.

(ii) Each parcel must have the notation ''GIFT—Export License Not Required'' written on the addressee side of the package and the symbol ''GFT'' written on any required customs declaration.

(b) *Humanitarian donations*—(1) *Scope.* The provisions of paragraph (b) authorize exports or reexports by groups or organizations of donations to meet basic human needs when those groups or organizations have experience in maintaining a verifiable system of distribution that ensures delivery to the intended beneficiaries.

(2) *Basic human needs.* Basic human needs are defined as those requirements essential to individual well-being: health, food, clothing, shelter, and education. These needs are considered to extend beyond those of an emergency nature and those that meet direct needs for mere subsistence.

(3) *Eligible donors.* Eligible donors are U.S. charitable organizations that have an established record of involvement in donative programs and experience in maintaining and verifying a system of distribution to ensure delivery of commodities and software to the intended beneficiaries. Eligible distribution arrangements may consist of any one or more of the following:

(i) A permanent staff maintained in the recipient country to monitor the receipt and distribution of the donations to the intended beneficiaries;

(ii) Periodic spot-checks in the recipient country by members of the exporter's staff; or

(iii) An agreement to utilize the services of a charitable organization that has a monitoring system in place.

(4) *Donations.* To qualify for export under the provisions of this paragraph (b), the items must be provided free of charge to the beneficiary. The payment by the beneficiary, however, of normal handling charges or fees levied by the importing country (e.g., import duties,

taxes, etc.) is not considered to be a cost to the beneficiary for purposes of this paragraph (b).

(5) *Ineligible commodities and software.* The following commodities and software are not eligible:

(i) Commodities and software controlled for national security, chemical or biological weapons, and nuclear nonproliferation, missile technology or crime control reasons (see Supplement No. 1 to part 774 of the EAR);

(ii) Exports for large-scale projects of the kind associated with comprehensive economic growth, such as dams and hydroelectric plants; or

(iii) Exports to Cuba of medical items excluded by § 746.2(a)(3) of the EAR.

(6) *Eligible items.* Eligible commodities and software are those listed in Supplement No. 2 to part 740.

(7) *Additional recordkeeping requirements.* In addition to the recordkeeping requirements in part 762 of the EAR, donors must keep records containing the following information:

(i) The donor organization's identity and past experience as an exporter of goods to meet basic human needs;

(ii) Past and current countries to which the donative programs have been and are being directed, with particular reference to donative programs in embargoed destinations;

(iii) Types of projects and commodities involved in the donative programs;

(iv) Specific class(es) of beneficiaries of particular donated goods intended to be exported under this License Exception; and

(v) Information concerning the source of funding for the donative programs and the projected annual value of exports of humanitarian donations.

[61 FR 64282, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996; 62 FR 25458, May 9, 1997]

§ 740.13 Technology and software—unrestricted (TSU).

This License Exception authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); and ''mass market'' software subject to the General Software Note.

(a) *Operation technology and software*—(1) *Scope.* The provisions of paragraph (a) permit exports and reexports of operation technology and software. ''Operation technology'' is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those products that are lawfully exported or reexported under a license, a License Exception, or NLR. The ''minimum necessary'' operation technology does not include technology for development or production and includes use technology only to the extent required to ensure safe and efficient use of the product. Individual entries in the software and technology subcategories of the CCL may further restrict the export or reexport of operation technology.

(2) *Provisions and destinations*—(i) *Provisions.* Operation software may be exported or reexported provided that both of the following conditions are met:

(A) The operation software is the minimum necessary to operate equipment authorized for export or reexport; and

(B) The operation software is in object code.

(ii) *Destinations.* Operation software and technology may be exported or reexported to any destination to which the equipment for which it is required has been or is being legally exported or reexported.

(b) *Sales technology*—(1) *Scope.* The provisions of paragraph (b) authorize exports and reexports of sales technology. ''Sales technology'' is data supporting a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any item.

(2) *Provisions and destinations*—(i) *Provisions.* Sales technology may be exported or reexported provided that:

(A) The technology is a type customarily transmitted with a prospective or actual quotation, bid, or offer in accordance with established business practice; and

(B) Neither the export nor the reexport will disclose the detailed design, production, or manufacture technology, or the means of reconstruction, of either the quoted item or its product. The purpose of this limitation is to prevent disclosure of technology so

detailed that the consignee could reduce the technology to production.

(ii) *Destinations.* Sales technology may be exported or reexported to any destination.

NOTE: Neither this section nor its use means that the U.S. Government intends, or is committed, to approve a license application for any commodity, plant, software, or technology that may be the subject of the transaction to which such quotation, bid, or offer relates. Exporters are advised to include in any quotations, bids, or offers, and in any contracts entered into pursuant to such quotations, bids, or offers, a provision relieving themselves of liability in the event that a license (when required) is not approved by the Bureau of Export Administration.

(c) *Software updates.* The provisions of paragraph (c) authorize exports and reexports of software updates that are intended for and are limited to correction of errors (''fixes'' to ''bugs'') in software lawfully exported or reexported (original software). Such software updates may be exported or reexported only to the same consignee to whom the original software was exported or reexported, and such software updates may not enhance the functional capacities of the original software. Such software updates may be exported or reexported to any destination to which the software for which they are required has been legally exported or reexported.

(d) *General Software Note: ''mass market'' software*—(1) *Scope.* The provisions of paragraph (d) authorize exports and reexports of ''mass market'' software subject to the General Software Note (see Supplement No. 2 to part 774 of the EAR; also referenced in this section).

(2) *Software not eligible for this License Exception.* This License Exception is not available for encryption software controlled for ''EI'' reasons under ECCN 5D002. (Refer to §§ 742.15(b)(1) and 748.3(b) of the EAR for information on item classifications regarding a one-time BXA review for release from EI controls.)

(3) *Provisions and destinations*—

(i) *Destinations.* ''Mass market'' software is available to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(ii) *Provisions.* ''Mass market'' treatment is available for software that is generally available to the public by being:

(A) Sold from stock at retail selling points, without restriction, by means of:

(*1*) Over the counter transactions;

(*2*) Mail order transactions; or

(*3*) Telephone call transactions; and

(B) Designed for installation by the user without further substantial support by the supplier.

[61 FR 64283, Dec. 4, 1996, as amended at 61 FR 65464, Dec. 13, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, as amended at 61 FR 68580, Dec. 30, 1996; 62 FR 25458, May 9, 1997]

§ 740.14 Baggage (BAG).

(a) *Scope.* This License Exception authorizes individuals leaving the United States and crew members of exporting or reexporting carriers to take to any destination, as personal baggage, the classes of commodities and software described in this section.

(b) *Eligibility.* Individuals leaving the United States may export or reexport any of the following commodities or software to any destination or series of destinations. Crew members may export or reexport only commodities and software described in paragraphs (b)(1) and (b)(2) of this section to any destination.

(1) *Personal effects.* Usual and reasonable kinds and quantities for personal use of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects, and their containers.

(2) *Household effects.* Usual and reasonable kinds and quantities for personal use of furniture, household effects, household furnishings, and their containers.

(3) *Vehicles.* Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, trailers, motorcycles, bicycles, tricycles, perambulators, and their containers.

(4) *Tools of trade.* Usual and reasonable kinds and quantities of tools, instruments, or equipment and their containers for use in the trade, occupation, employment, vocation, or hobby of the traveler.

(c) *Limits on eligibility.* The export of any commodity or software may be

limited or prohibited, if the kind or quantity is in excess of the limits described in this section. In addition, the commodities or software must be:

(1) Owned by the individuals (or by members of their immediate families) or by crew members of exporting carriers on the dates they depart from the United States;

(2) Intended for and necessary and appropriate for the use of the individuals or members of their immediate families, or by the crew members of exporting carriers;

(3) Not intended for sale; and

(4) Not exported under a bill of lading as cargo if exported by crew members.

(d) *Special provision: unaccompanied baggage.* Individuals departing the United States may ship unaccompanied baggage, which is baggage sent from the United States on a carrier other than that on which an individual departs. Crew members of exporting carriers may not ship unaccompanied baggage. Unaccompanied shipments under this License Exception shall be clearly marked ''BAGGAGE.'' Shipments of unaccompanied baggage may be made at the time of, or within a reasonable time before or after departure of the consignee or owner from the United States. Personal baggage controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS) or nuclear nonproliferation (NP) must be shipped within 3 months before or after the month in which the consignee or owner departs the United States. However, commodities controlled for CB, MT, NS, or NP may not be exported under this License Exception to Country Groups D:1, D:2, D:3, D:4, E:2, or Sudan. (See Supplement No. 1 to part 740.)

(e) *Special provisions: shotguns and shotgun shells.* (1) A United States citizen or a permanent resident alien leaving the United States may export or reexport shotguns with a barrel length of 18 inches or over and shotgun shells under this License Exception, subject to the following limitations:

(i) Not more than three shotguns may be taken on any one trip.

(ii) The shotguns and shotgun shells must be with the person's baggage but they may not be mailed.

(iii) The shotguns and shotgun shells must be for the person's exclusive use for legitimate hunting or lawful sporting purposes, scientific purposes, or personal protection, and not for resale or other transfer of ownership or control. Accordingly, except as provided in (e)(2) of this section, shotguns may not be exported permanently under this License Exception. All shotguns and unused shotgun shells must be returned to the United States.

(2) A nonresident alien leaving the United States may export or reexport under this License Exception only such shotguns and shotgun shells as he or she brought into the United States under the provisions of Department of Treasury Regulations (27 CFR 178.115(d)).

[61 FR 12768, Mar. 25, 1996. Redesignated at 61 FR 64274, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996; 62 FR 25458, May 9, 1997]

§ 740.15 Aircraft and vessels (AVS).

This License Exception authorizes departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. civil aircraft for temporary sojourn abroad; the export of equipment and spare parts for permanent use on a vessel or aircraft; and exports to vessels or planes of U.S. or Canadian registry and U.S. or Canadian Airlines' installations or agents. Generally, no License Exception symbol is necessary for export clearance purposes; however, when necessary, the symbol ''AVS'' may be used.

(a) *Aircraft on temporary sojourn*—(1) *Foreign registered aircraft.* An operating civil aircraft of foreign registry that has been in the United States on a temporary sojourn may depart from the United States under its own power for any destination, provided that:

(i) No sale or transfer of operational control of the aircraft to nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria has occurred while in the United States;

(ii) The aircraft is not departing for the purpose of sale or transfer of operational control to nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria; and

(iii) It does not carry from the United States any item for which an export license is required and has not been granted by the U.S. Government.

(2) *U.S. registered aircraft.* (i) A civil aircraft of U.S. registry operating under an Air Carrier Operating Certificate, Commercial Operating Certificate, or Air Taxi Operating Certificate issued by the Federal Aviation Administration or conducting flights under operating specifications approved by the Federal Aviation Administration pursuant to 14 CFR part 129 of the regulations of the Federal Aviation Administration, may depart from the United States under its own power for any destination, provided that:

(A) The aircraft does not depart for the purpose of sale, lease or other disposition of operational control of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(B) The aircraft's U.S. registration will not be changed while abroad;

(C) The aircraft is not to be used in any foreign military activity while abroad; and

(D) The aircraft does not carry from the United States any item for which a license is required and has not been granted by the U.S. Government.

(ii) Any other operating civil aircraft of U.S. registry may depart from the United States under its own power for any destination, except to Cuba, Iran, Iraq, Sudan, Syria, Libya, and North Korea (flights to these destinations require a license), provided that:

(A) The aircraft does not depart for the purpose of sale, lease or other disposition of operational control of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(B) The aircraft's U.S. registration will not be changed while abroad;

(C) The aircraft is not to be used in any foreign military activity while abroad;

(D) The aircraft does not carry from the United States any item for which an export license is required and has not been granted by the U.S. Government; and

(E) The aircraft will be operated while abroad by a U.S. licensed pilot, except that during domestic flights within a foreign country, the aircraft may be operated by a pilot currently licensed by that foreign country.

(3) *Criteria.* The following nine criteria each must be met if the flight is to qualify as a temporary sojourn. To be considered a temporary sojourn, the flight must not be for the purpose of sale or transfer of operational control. An export is for the transfer of operational control unless the exporter retains each of the following indicia of control:

(i) *Hiring of cockpit crew.* Right to hire and fire the cockpit crew.

(ii) *Dispatch of aircraft.* Right to dispatch the aircraft.

(iii) *Selection of routes.* Right to determine the aircraft's routes (except for contractual commitments entered into by the exporter for specifically designated routes).

(iv) *Place of maintenance.* Right to perform or obtain the principal maintenance on the aircraft, which principal maintenance is conducted outside Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, under the control of a party who is not a national of any of these countries. (The minimum necessary in-transit maintenance may be performed in any country).

(v) *Location of spares.* Spares are not located in Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(vi) *Place of registration.* The place of registration is not changed to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(vii) No transfer of technology. No technology is transferred to a national of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, except the minimum necessary in transit maintenance to perform flight line servicing required to depart safely.

(viii) *Color and logos.* The aircraft does not bear the livery, colors, or logos of a national of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(ix) *Flight number.* The aircraft does not fly under a flight number issued to a national of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria as such a number appears in the Official Airline Guide.

(4) *Reexports.* Civil aircraft legally exported from the United States may be reexported under this section, provided

the restrictions described in this paragraph (a) are met.

(b) *Equipment and spare parts for permanent use on a vessel or aircraft, and ship and plane stores*—(1) *Vessel.* Equipment and spare parts for permanent use on a vessel, when necessary for the proper operation of such vessel, may be exported or reexported for use on board a vessel of any registry, except a vessel registered in Country Group D:1 (see Supplement No. 1 to part 740), Cuba, or North Korea, or owned or controlled by, or under charter or lease to any of these countries or their nationals. In addition, other equipment and services for necessary repair to fishing and fishery support vessels of Country Group D:1 or North Korea may be exported for use on board such vessels when admitted into the United States under governing international fishery agreements.

(2) *Aircraft.* Equipment and spare parts for permanent use on an aircraft, when necessary for the proper operation of such aircraft, may be exported or reexported for use on board an aircraft of any registry, except an aircraft registered in, owned or controlled by, or under charter or lease to a country included in Country Group D:1, Cuba, Libya, or North Korea, or a national of any of these countries.

(3) *Ship and plane stores.* Usual and reasonable kinds and quantities of the following commodities may be exported for use or consumption on board an aircraft or vessel of any registry during the outgoing and immediate return flight or voyage. (Note that fuel and related commodities that qualify as ship or plane stores as described in this License Exception must be exported under the short supply License Exception SPR (see § 754.2(h) of the EAR.)

(i) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements;

(ii) Medical and surgical supplies;

(iii) Food stores;

(iv) Slop chest articles;

(v) Saloon stores or supplies.

(c) *Shipments to U.S. or Canadian vessels, planes and airline installations or agents*—(1) *Exports to vessels or planes of U.S. or Canadian registry.* Export may be made of the commodities set forth in paragraph (c)(3) of this section, for use by or on a specific vessel or plane of U.S. or Canadian registry located at any seaport or airport outside the United States or Canada except a port in Cuba, North Korea or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided that such commodities are all of the following:[6]

(i) Ordered by the person in command or the owner or agent of the vessel or plane to which they are consigned;

(ii) Intended to be used or consumed on board such vessel or plane and necessary for its proper operation;

(iii) In usual and reasonable kinds and quantities during times of extreme need; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) is filed with the carrier, except that an SED is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their use.

(2) *Exports to U.S. or Canadian airline's installation or agent.* Exports of the commodities set forth in paragraph (c)(3) of this section, except fuel, may be made to a U.S. or Canadian airline's[7] installation or agent in any foreign destination except Cuba, North Korea, or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided such commodities are all of the following:

(i) Ordered by a U.S. or Canadian airline and consigned to its own installation or agent abroad;

(ii) Intended for maintenance, repair, or operation of aircraft registered in either the United States or Canada, and necessary for the aircraft's proper operation, except where such aircraft is located in, or owned, operated or controlled by, or leased or chartered to, Cuba, North Korea or Country Group D:1 (excluding the PRC) (see Supplement No. 1 to part 740) or a national of such country;

(iii) In usual and reasonable kinds and quantities; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) is

[6] Where a validated license is required, see §§ 748.2 and 748.4(g) of the EAR.

[7] See Part 772 of the EAR for definitions of United States and Canadian airlines.

filed with the carrier, except that an SED is not required when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations.

(3) *Applicable commodities.* This paragraph (c) applies to the following commodities, subject to the provisions in paragraph (c)(1) and (c)(2) of this section:

NOTE TO PARAGRAPH (C)(3) OF THIS SECTION: Fuel and related commodities for shipment to vessels or planes of U.S. or Canadian registry as described in this License Exception must be shipped under the short supply License Exception SPR (see §754.2(h) of the EAR);

(i) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements;

(ii) Medical and surgical supplies;

(iii) Food stores;

(iv) Slop chest articles;

(v) Saloon stores or supplies; and

(vi) Equipment and spare parts.

[61 FR 12678, Mar. 25, 1996. Redesignated and amended at 61 FR 64274, 64283, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996]

§740.16 Additional permissive reexports (APR).

This License Exception allows the following reexports:

(a) *Reexports from Country Group A:1 and cooperating countries.* Reexports may be made from Country Group A:1 or from cooperating countries, provided that:

(1) The reexport is made in accordance with the conditions of an export authorization from the government of the reexporting country;

(2) The commodities being reexported are not controlled for NP, CB, MT, SI, or CC reasons; and

(3) The reexport is destined to *either:*

(i) A country in Country Group B *that is not also included in Country Group D:2, D:3, or D:4;* Cambodia; or Laos; and the commodity being reexported is both controlled for national security reasons and not controlled for export to Country Group A:1; or

(ii) A country in Country Group D:1 (National Security) (see Supplement No. 1 to part 740), other than Cambodia or Laos, and the commodity being reexported is controlled for national security reasons.

(b) *Reexports to and among Country Group A:1 and cooperating countries.* Reexports may be made to and among Country Group A:1 and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (see Supplement No. 1 to part 740) or cooperating country, or for reexport from such country in accordance with other provisions of the EAR. All commodities except the following are eligible for reexport to and among Country Group A:1 and cooperating countries:

(1) Computers with a CTP greater than 10,000 MTOPS to Hong Kong and South Korea;

(2) Commodities controlled for nuclear nonproliferation reasons.

(c) Reexports to a destination to which direct shipment from the United States is authorized under an unused outstanding license may be made under the terms of that license. Such reexports shall be recorded in the same manner as exports are recorded, regardless of whether the license is partially or wholly used for reexport purposes. (See part 762 of the EAR for recordkeeping requirements.)

(d) Reexports of any item from Canada that, at the time of reexport, may be exported directly from the United States to the new country of destination under any License Exception.

(e) Reexports (return) to the United States of any item. If the reexporting party requests written authorization because the government of the country from which the reexport will take place requires formal U.S. Government approval, such authorization will generally be given.

(f) Reexports from a foreign destination to Canada of any item if the item could be exported to Canada without a license.

(g) Reexports between Switzerland and Liechtenstein.

(h) Shipments of foreign-made products that incorporate U.S.-origin components may be accompanied by U.S.-origin controlled spare parts, provided that they do not exceed 10 percent of the value of the foreign-made product, subject to the restrictions in §734.4 of the EAR.

(i) Reexport to Sudan of items controlled by ECCNs 2A994, 3A993, 5A992,

5A995, 6A990, 6A994, 7A994, 8A992, 8A994, 9A990, 9A992, and 9A994. In addition, items in these ECCNs are not counted as controlled U.S. content for purposes of determining license requirements for U.S. parts, components, and materials incorporated into foreign-made products.

(j) Reexports of items controlled by NP Column 1 (see Supplement No. 1 to part 774 of the EAR) to, among, and from countries described in Country Group A:4 (see Supplement No. 1 to part 740), except:

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(1) Reexports from countries that are not identified in Country Group A:1 of items that are controlled for NS reasons to destinations in Country Group D:1; and

(2) Reexports to destinations in Country Group E:2 and Country Group D:2.

[61 FR 12768, Mar. 25, 1996. Redesignated at 61 FR 64274, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996; 62 FR 25458, May 9, 1997]

COUNTRY GROUP A

Country	[A:1]	Missile technology control regime [A:2]	Australia group [A:3]	Nuclear suppliers group [A:4]
Argentina		X	X	X
Australia	X	X	X	X
Austria [1]		X	X	X
Belgium	X	X	X	X
Brazil		X		
Bulgaria				X
Canada	X	X	X	X
Czech Republic			X	X
Denmark	X	X	X	X
Finland [1]		X	X	X
France	X	X	X	X
Germany	X	X	X	X
Greece	X	X	X	X
Hong Kong [1]				
Hungary		X	X	X
Iceland		X	X	
Ireland [1]		X	X	X
Italy	X	X	X	X
Japan	X	X	X	X
Korea, South [1]			X	X
Luxembourg	X	X	X	X
Netherlands	X	X	X	X
New Zealand [1]		X	X	X
Norway	X	X	X	X
Poland			X	X
Portugal	X	X	X	X
Romania			X	X
Russia		X		X
Slovakia			X	X
South Africa		X		X
Spain	X	X	X	X
Sweden [1]		X	X	X
Switzerland [1]		X	X	X
Turkey	X			
United Kingdom	X	X	X	X
United States	X	X	X	X

[1] Cooperating Countries.

Country Group B

Countries

Afghanistan
Algeria
Andorra
Angola
Antiqua
Argentina
Australia
Austria
Bahamas
Bahrain
Bangladesh
Barbados
Barbuda
Belgium
Belize
Benin
Bhutan
Bolivia
Bosnia & Herzegovina
Botswana
Brazil
Brunei
Burkina Faso
Burma
Burundi
Cameroon
Canada
Cape Verde
Central African Republic
Chad
Chile
Colombia
Comoros
Congo
Costa Rica
Cote d'Ivoire
Croatia
Cyprus
Czech Republic
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Eritrea
Ethiopia
Fiji
Finland
France
Gabon
Gambia, The
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kenya
Kiribati
Korea, South
Kuwait
Lebanon
Lesotho
Liberia
Liechtenstein
Luxembourg
Macedonia, the Former Yugoslav Republic of
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Marshall Islands
Mauritania
Mauritius
Mexico
Micronesia, Federated States of
Monaco
Morocco
Mozambique
Namibia
Nauru
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Palau
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Rwanda
Saint Kitts & Nevis
Saint Lucia
Saint Vincent
San Marino
Sao Tome & Principe
Saudi Arabia
Senegal
Serbia and Montengro
Seychelles
Sierra Leone
Singapore
Slovakia
Slovenia
Solomon Islands
Somalia
South Africa
Spain
Sri Lanka
Surinam
Swaziland
Sweden
Switzerland
Taiwan
Tanzania
Thailand
Togo
Tonga
Trinidad & Tobago
Tunisia
Turkey
Tuvalu
Uganda
United Arab Emirates
United Kingdom
United States
Uruguay
Vanuatu
Vatican City
Venezuela
Western Sahara
Western Samoa
Yemen
Zaire
Zambia
Zimbabwe

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Country Group C

[Reserved]

• COUNTRY GROUP D

Country	[D: 1] National Security	[D: 2] Nuclear	[D: 3] Chemical & Biological	[D: 4] Missile Technology
Afghanistan			X	
Albania	X			
Algeria				
Andorra				
Angola				
Armenia	X		X	
Azerbaijan	X		X	
Bahrain			X	X
Belarus	X		X	
Bulgaria	X		X	
Burma			X	
Cambodia	X			
China (PRC)	X		X	X[1]
Comoros				
Cuba		X	X	
Djibouti				
Egypt			X	X
Estonia	X			
Georgia	X		X	
India		X	X	X[1]
Iran		X	X	X[1]
Iraq		X	X	X
Israel		X	X	X
Jordan			X	X
Kazakhstan	X		X	
Korea, North		X	X	X[1]
Kuwait			X	X
Kyrgyzstan	X		X	
Laos	X			
Latvia	X			
Lebanon			X	X
Libya		X	X	X
Lithuania	X			
Micronesia, Federated States of				
Moldova	X		X	
Mongolia	X		X	
Oman			X	X
Pakistan		X	X	X[1]
Qatar			X	X
Romania	X			
Russia	X		X	
Saudi Arabia			X	X
Syria			X	X
Taiwan			X	
Tajikstan	X		X	
Turkmenistan	X		X	
Ukraine	X		X	
United Arab Emirates			X	X
Uzbekistan	X		X	
Vanuatu				
Vietnam	X		X	
Yemen			X	X

[1] Certain Missile Technology projects have been identified in the following countries:
China—M Series Missiles CSS–2.
India—Agni, Prithvi, SLV–3 Satellite Launch Vehicle, Augmented Satellite Launch Vehicle (ASLV), Polar Satellite Launch Vehicle (PSLV), Geostationary Satellite Launch Vehicle (GSLV).

Iran—Surface-to-Surface Missile Project, Scud Development Project.
Korea, North—No Dong I, Scud Development Project.
Pakistan—Half Series Missiles.

Supplement No. 1 to Part 740

Country Group E

Country	[E:1] UN Embargo	[E:2] Unilateral Embargo
Angola	X	
Bosnia & Herzegovina	X	
Cuba		X
Iraq	X	
Korea, North		X
Libya	X	X
Rwanda	X	

[61 FR 12768, Mar. 25, 1996, as amended at 62 FR 6686, Feb. 12, 1997; 62 FR 25458, May 9, 1997; 62 FR 42048, Aug. 5, 1997]

SUPPLEMENT NO. 2 TO PART 740—ITEMS THAT MAY BE DONATED TO MEET BASIC HUMAN NEEDS UNDER THE HUMANITARIAN LICENSE EXCEPTION

(a) Health
Equipment for the Handicapped
Hospital Supplies and Equipment
Laboratory Supplies and Equipment
Medical Supplies and Devices
Medicine-Processing Equipment
Medicines
Vitamins
Water Resources Equipment
Food
Agricultural Materials and Machinery Suited to Small-Scale Farming Operations
Agricultural Research and Testing Equipment
Fertilizers
Fishing Equipment and Supplies Suited to Small-Scale Fishing Operations
(b) Food
Insecticides
Pesticides
Seeds
Small-Scale Irrigation Equipment
Veterinary Medicines and Supplies
(c) Clothes and Household Goods
Bedding
Clothes
Cooking Utensils
Fabric
Personal Hygiene Items
Soap-Making Equipment
Weaving and Sewing Equipment
(d) Shelter
Building Materials
Hand Tools
(e) Education
Books
Individual School Supplies
School Furniture
Special Education Supplies and Equipment for the Handicapped
(f) Basic Support Equipment and Supplies Necessary To Operate and Administer the Donative Program
Audio-Visual Aids for Training
Generators
Office Supplies and Equipment

PART 742—CONTROL POLICY—CCL BASED CONTROLS

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742.15 Encryption items.

SUPPLEMENT NO. 1 TO PART 742—NONPROLIFERATION OF CHEMICAL AND BIOLOGICAL WEAPONS
SUPPLEMENT NO. 2 TO PART 742—ANTI-TERRORISM CONTROLS; IRAN, SYRIA AND SUDAN CONTRACT SANCTITY DATES AND RELATED POLICIES
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SUPPLEMENT NO. 4 TO PART 742—KEY ESCROW OR KEY RECOVERY PRODUCTS CRITERIA
SUPPLEMENT NO. 5 TO PART 742—KEY ESCROW OR KEY RECOVERY AGENT CRITERIA, SECURITY POLICIES, AND KEY ESCROW OR KEY RECOVERY PROCEDURES
SUPPLEMENT NO. 6 TO PART 742—GUIDELINES FOR SUBMITTING A CLASSIFICATION REQUEST FOR A MASS MARKET SOFTWARE PRODUCT THAT CONTAINS ENCRYPTION
SUPPLEMENT NO. 7 TO PART 742—REVIEW CRITERIA FOR EXPORTER KEY ESCROW OR KEY RECOVERY DEVELOPMENT PLANS

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; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12786, Mar. 25, 1996, unless otherwise noted.

§ 742.1 Introduction.

In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C.

(a) *Scope.* This part describes all the reasons for control reflected in the Country Chart in Supplement No. 1 to part 738 of the EAR. In addition, it includes licensing requirements and licensing policies for the following items that are not reflected on the Country Chart: specially designed implements of torture, high performance computers, and communications intercepting devices. This part is organized so that it lists each reason for control in the order (reading left to right) in which the control appears on the Country Chart. In addition to describing the reasons for control and licensing requirements and policies, this part describes any applicable contract sanctity provisions that may apply to specific controls and includes a description of any multilateral regime under which specific controls are maintained.

(b) *Reasons for control listed on the CCL not covered by this part.* This part describes the license requirements and the licensing policies for all the ''Reasons for Control'' that are listed on the Commerce Control List (CCL) except ''Short Supply'' and ''U.N. Sanctions,'' which do not appear on the Country Chart.

(1) *Short Supply.* ECCNs containing items subject to short supply controls (''SS'') refer the exporter to part 754 of the EAR. These ECCNs are: 0A980 (Horses for export by sea); 1C980 (certain inorganic chemicals); 1C981 (Crude petroleum, including reconstituted crude petroleum, tar sands, and crude shale oil); 1C982 (certain other petroleum products); 1C983 (Natural gas liquids and other natural gas derivatives); 1C984 (certain manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy); and 1C988 (Western red cedar (thuja plicata) logs and timber, and rough, dressed and worked lumber containing wane).

(2) *U.N. Sanctions.* The United Nations imposes sanctions, short of complete embargoes, against certain countries which may result in controls that supplement those otherwise maintained under the EAR for that particular country. This part does not address license requirements and licensing policies for controls implementing U.N. sanctions. CCL entries containing items subject to U.N. sanctions will

refer the exporter to part 746 of the EAR, Embargoes and Other Special Controls, for any supplemental controls that may apply to exports and reexports involving these countries.

(c) *Exports and reexports involving Cuba, Libya, North Korea, Iraq, Iran, and the Bosnian Serb-controlled areas of Bosnia-Herzegovina.* This part does not cover license requirements and licensing policies that apply to exports and reexports to embargoed destinations (Cuba, Libya, North Korea, Iraq, Iran and the Bosnian-Serb controlled areas of Bosnia-Herzegovina). These comprehensive embargoes cover a broader range of items than those reflected in the CCL. If you are exporting or reexporting to any of these destinations, you should first review part 746 of the EAR, Embargoes and Other Special Controls.

(d) *Anti-terrorism Controls on Cuba, Libya, Iran, Iraq, North Korea, Sudan and Syria.* Commerce maintains anti-terrorism controls on Iran, Syria and Sudan under section 6(a) of the Export Administration Act. Items controlled under section 6(a) to these three countries are described in Supplement No. 2 to part 742. Commerce also maintains controls under section 6(j) of the EAA to Cuba, Libya, Iraq, Iran, North Korea, Sudan and Syria. Items controlled to these seven countries under EAA section 6(j) are also described in Supplement 2 to part 742. The Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days before issuing a license for an item controlled under section 6(j) to Cuba, Libya, North Korea, Iran, Iraq, Sudan or Syria. As noted in paragraph (c) of this section, if you are exporting or reexporting to Cuba, Libya, Iran, Iraq and North Korea, you should review Part 746 of the EAR, Embargoes and Other Special Controls.

(e) *End-user and end-use based controls.* This part does not cover prohibitions and licensing requirements for exports of items not included on the CCL that are subject to end-use and end-user controls: certain nuclear end-uses; certain missile end-uses; certain chemical and biological weapons end-uses; certain naval nuclear propulsion end-uses; certain activities of U.S. persons; certain exports to and for the use of certain foreign vessels or aircraft; and certain exports to all countries for Libyan aircraft. Licensing requirements and policies for these exports are contained in part 744 of the EAR.

(f) *Overlapping license policies.* Many items on the CCL are subject to more than one type of control (e.g., national security (NS), missile technology (MT), nuclear nonproliferation (NP), regional stability (RS)). In addition, applications for all items on the CCL, other than those controlled for short supply reasons, may be reviewed for missile technology (see §742.5(b)(3) of this part), nuclear nonproliferation (see §742.3(b)(2) of this part), or chemical and biological weapons (see §742.2(b)(3) of this part), if the end-use or end-user may be involved in certain proliferation activities. Finally, many multilaterally controlled items are reviewed for anti-terrorism reasons if they are destined for a terrorism-supporting country (see paragraph (d) of this section). Your application for a license will be reviewed under all applicable licensing policies. A license will be issued only if an application can be approved under all applicable licensing policies.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25458, May 9, 1997]

§742.2 Proliferation of chemical and biological weapons.

(a) *License requirements.* The following controls are maintained in support of the U.S. foreign policy of opposing the proliferation and illegal use of chemical and biological weapons:

(1) If CB Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to all destinations except Canada for the following:

(i) Human pathogens, zoonoses, toxins, animal pathogens, genetically modified microorganisms and plant pathogens identified in ECCNs 1C351, 1C352, 1C353 and 1C354; and

(ii) Technology (ECCNs 1E001 and 1E391) for the production and/or disposal of microbiological commodities described in paragraph (a)(1)(i) of this section.

(2) If CB Column 2 of the Country Chart (Supplement No. 1 to part 738 of

the EAR) is indicated in the appropriate ECCN, a license is required to all destinations except countries in Country Group A:3 (see Supplement No. 1 to part 740 of the EAR) (Australia Group members) for the following:

(i) Chemicals identified in ECCN 1C350 (precursor and intermediate chemicals used in the production of chemical warfare agents).

(A) This licensing requirement includes chemical mixtures containing any chemicals identified in ECCN 1C350, except as specified in Note 2 to that ECCN.

(B) This licensing requirement does not include chemical compounds created with any chemicals identified in ECCN 1C350, unless those compounds are also identified in ECCN 1C350.

(ii) Software (ECCN 1D390) for process control that is specifically configured to control or initiate production of the chemical precursors controlled by ECCN 1C350.

(iii) Technology (ECCNs 1E001 and 1E391) for the production and/or disposal of chemical precursors described in ECCN 1C350, and technology (ECCNs 1E001 and 1E350) involving the following for facilities designed or intended to produce chemicals described in 1C350:

(A) Overall plant design;

(B) Design, specification, or procurement of equipment;

(C) Supervision of construction, installation, or operation of complete plant or components thereof;

(D) Training of personnel; or

(E) Consultation on specific problems involving such facilities.

(3) If CB Column 3 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to Country Group D:3 (see Supplement No. 1 to part 740 of the EAR) for the following:

(i) Equipment and materials identified in ECCNs 2B350 and 2B351 on the CCL, which can be used in the production of chemical weapons precursors or chemical warfare agents, and equipment and materials identified in ECCN 2B352, which can be used in the production of biological agents; and

(ii) Technology (ECCNs 2E001, 2E002 and 2E301) for development, production, or use of the commodities covered in ECCNs 2B350, 2B351 and 2B352.

(b) *Licensing policy.* (1) License applications for the items described in paragraph (a) of this section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export or reexport is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on license applications:

(i) The specific nature of the end-use;

(ii) The significance of the export and reexport in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The nonproliferation credentials of the importing country;

(iv) The types of assurances or guarantees against design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case; and

(v) The existence of a pre-existing contract.

(3) BXA will review license applications in accordance with the licensing policy described in paragraph (b)(2) of this section for items not described in paragraph (a) of this section that:

(i) Require a license for reasons other than short supply;

(ii) Are destined to any country except countries in Country Group A:3 (see Supplement No. 1 to part 740 of the EAR) (Australia Group members); and

(iii) Could be destined for the design, development, production, stockpiling, or use of chemical or biological weapons, or for a facility engaged in such activities.

(c) *Contract sanctity.* Contract sanctity dates are set forth in Supplement No. 1 to part 742. Applicants who wish that a preexisting contract be considered in reviewing their license applications must submit documentation sufficient to establish the existence of such a contract.

(d) *Australia Group.* The Australia Group, a multilateral body that works

to halt the spread of chemical and biological weapons, has developed common control lists of items specifically related to chemical and biological weapons. Australia Group members are listed in Country Group A:3 (see Supplement No. 1 to part 740 of the EAR). Controls on items listed in paragraph (a) of this section are consistent with lists agreed to in the Australia Group.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25458, May 9, 1997]

§742.3 Nuclear nonproliferation.

(a) *License requirements.* Section 309(c) of the Nuclear Non-Proliferation Act of 1978 requires BXA to identify items subject to the EAR that could be of significance for nuclear explosive purposes if used for activities other than those authorized at the time of export or reexport. ECCNs on the CCL that include the symbol ''NP 1'' or ''NP 2'' in the ''Country Chart'' column of the ''License Requirements'' section identify items that could be of significance for nuclear explosive purposes and are therefore subject to licensing requirements under this part and under section 309(c) of the Nuclear Non-Proliferation Act of 1978. These items are referred to as ''The Nuclear Referral List'' and are subject to the following licensing requirements:

(1) If NP Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to all destinations except Nuclear Suppliers Group (NSG) member countries (Country Group A:4) (see Supplement No. 1 to part 740 of the EAR).

(2) If NP Column 2 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the applicable ECCN, a license is required to Country Group D:2 (see Supplement No. 1 to part 740 of the EAR).

(3) Other nuclear-related license requirements are described in §§744.2 and 744.5 of the EAR.

(b) *Licensing policy.* (1) To implement the controls in paragraph (a) of this section, the following factors are among those used to determine what action should be taken on individual applications:

(i) Whether the items to be transferred are appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;

(ii) The significance for nuclear purposes of the particular item;

(iii) Whether the items to be exported or reexported are to be used in research on, or for the development, design, manufacture, construction, operation, or maintenance of, any reprocessing or enrichment facility;

(iv) The types of assurances or guarantees given against use for nuclear explosive purposes or proliferation in the particular case;

(v) Whether any party to the transaction has been engaged in clandestine or illegal procurement activities;

(vi) Whether an application for a license to export or reexport to the end-user has previously been denied, or whether the end-user has previously diverted items received under a general license, a License Exception, or a validated license to unauthorized activities;

(vii) Whether the export or reexport would present an unacceptable risk of diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity described in §744.2(a) of the EAR; and

(viii) The nonproliferation credentials of the importing country, based on consideration of the following factors:

(A) Whether the importing country is a party to the Nuclear Non-Proliferation Treaty (NPT) or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) or to a similar international legally-binding nuclear nonproliferation agreement;

(B) Whether the importing country has all of its nuclear activities, facilities, or installations that are operational, being designed, or under construction under International Atomic Energy Agency (IAEA) safeguards or equivalent full scope safeguards;

(C) Whether there is an agreement for cooperation in the civil uses of atomic energy between the U.S. and the importing country;

(D) Whether the actions, statements, and policies of the government of the importing country are in support of nuclear nonproliferation and whether that government is in compliance with

its international obligations in the field of non-proliferation;

(E) The degree to which the government of the importing country cooperates in non-proliferation policy generally (e.g., willingness to consult on international nonproliferation issues); and

(F) Information on the importing country's nuclear intentions and activities.

(2) In addition, BXA will review license applications in accordance with the licensing policy described in paragraph (b) of this section for items *not* on the Nuclear Referral List that:

(i) Require a license on the CCL for reasons other than ''short supply;'' and

(ii) Are intended for a nuclear related end-use or end-user.

(3) For the People's Republic of China, the general licensing policy for applications for those items that would make a direct and significant contribution to nuclear weapons and their delivery systems is extended review or denial.

(c) *Contract sanctity*. Contract sanctity provisions are not available for license applications reviewed under this section.

(d) *Nuclear Suppliers Group*. Most items on the Nuclear Referral List that require a license under NP Column No. 1 on the Country Chart (see Supplement No. 1 to part 738 of the EAR) are contained in the Annex to the ''Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology'' (the Annex), as published by the International Atomic Energy Agency in INFCIRC/254/Revision 1/Part 2. The adherents to INFCIRC/254/Revision 1/Part 2, which includes the Nuclear Suppliers Guidelines, have agreed to establish export licensing procedures for the transfer of items identified in the Annex. Items that are listed as requiring a license under NP Column No. 2 on the Country Chart (see Supplement No. 1 to part 738 of the EAR) are not included in the Annex and are controlled only by the United States.

§ 742.4 National security.

(a) *License requirements.* It is the policy of the United States to restrict the export and reexport of items that would make a significant contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States. Accordingly, a license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include NS Column 1 in the Country Chart column of the ''License Requirements'' section. A license is required to all destinations except Country Group A:1 and cooperating countries (see Supplement No. 1 to part 740) for all items in ECCNs on the CCL that include NS Column 2 in the Country Chart column of the ''License Requirements'' section. The purpose of the controls is to ensure that these items do not make a contribution to the military potential of countries in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) that would prove detrimental to the national security of the United States. License Exception GBS is available for the export and reexport of certain national security controlled items to Country Group B (see § 740.4 and Supplement No. 1 to part 740 of the EAR).

(b) *Licensing policy*. (1) The policy for national security controlled items exported or reexported to any country except a country in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) is to approve applications unless there is a significant risk that the items will be diverted to a country in Country Group D:1.

(2) Except for those countries described in paragraphs (b)(5) through (b)(7) of this section, the general policy for exports and reexports of items to Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) is to approve applications when BXA determines, on a case-by-case basis, that the items are for civilian use or would otherwise not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States.

(3) To permit such policy judgments to be made, each application is reviewed in the light of prevailing policies with full consideration of all aspects of the proposed transaction. The review generally includes:

(i) An analysis of the kinds and quantities of items to be shipped;

(ii) Their military or civilian uses;

(iii) The unrestricted availability abroad of the same or comparable items;

(iv) The country of destination;

(v) The ultimate end-users in the country of destination; and

(vi) The intended end-use.

(4) Although each proposed transaction is considered individually, items described in Advisory Notes on the Commerce Control List are more likely to be approved than others.

(5) In recognition of efforts made to adopt safeguard measures for exports and reexports, Bulgaria, Latvia, Kazakhstan, Lithuania, Mongolia, and Russia are accorded enhanced favorable consideration licensing treatment.

(6) The general policy for Cambodia and Laos is to approve license applications when BXA determines, on a case-by-case basis, that the items are for an authorized use in Cambodia or Laos and are not likely to be diverted to another country or use contrary to the national security or foreign policy controls of the United States.

(7) For the People's Republic of China, the general licensing policy is to approve applications, except that those items that would make a direct and significant contribution to electronic and anti-submarine warfare, intelligence gathering, power projection, and air superiority receive extended review or denial. Each application will be considered individually. Items may be approved even though they may contribute to Chinese military development or the end-user or end-use is military. Note that the Advisory Notes in the CCL headed ''Note for the People's Republic of China'' provide guidance on equipment likely to be approved more rapidly for China.

(c) *Contract sanctity*. Contract sanctity provisions are not available for license applications reviewed under this section.

(d) [Reserved]

[61 FR 12786, Mar. 25, 1996, as amended at 61 FR 64283, Dec. 4, 1996]

§742.5 Missile technology.

(a) *License requirements*. (1) In support of U.S. foreign policy to limit the proliferation of missiles, a license is required to export and reexport items related to the design, development, production, or use of missiles. These items are identified in ECCNs on the CCL as MT Column No. 1 in the Country Chart column of the ''License Requirements'' section. Licenses for these items are required to all destinations, except Canada, as indicated by MT Column 1 of the Country Chart (see Supplement No. 1 to part 738 of the EAR).

(2) The term ''missiles'' is defined as rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least 500 kilograms (kg) payload to a range of at least 300 kilometers (km).

(b) *Licensing policy*. (1) Applications to export and reexport items identified in ECCNs on the CCL as MT Column No. 1 in the Country Chart column of the ''License Requirements'' section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the proliferation of missiles. Applications for exports and reexports of such items contained in Category 7A or described by ECCN 9A101 on the CCL will be considered more favorably if such exports or reexports are determined to be destined to a manned aircraft, satellite, land vehicle, or marine vessel, in quantities appropriate for replacement parts for such applications. When an export or reexport is deemed to make a material contribution to the proliferation of missiles, the license will be denied.

(2) The following factors are among those that will be considered in reviewing individual applications.

(i) The specific nature of the end-use;

(ii) The significance of the export and reexport in terms of its contribution to the design, development, production, or use of missiles;

(iii) The capabilities and objectives of the missile and space programs of the recipient country;

(iv) The nonproliferation credentials of the importing country;

(v) The types of assurances or guarantees against design, development,

production, or use of missiles that are given in a particular case; and

(vi) The existence of a preexisting contract.

(3) *Controls on other items.* BXA will review license applications, in accordance with the licensing policy described in paragraph (b)(1) of this section, for items not described in paragraph (a) of this section that:

(i) Require a validated license for reasons other than short supply; and

(ii) Could be destined for the design, development, production, or use of missiles, or for a facility engaged in such activities.

(c) *Contract sanctity.* The following contract sanctity dates have been established:

(1) License applications for batch mixers specified in ECCN 1B115.a involving contracts that were entered into prior to January 19, 1990, will be considered on a case-by-case basis.

(2) License applications subject to ECCN 1B115.b or .c that involve a contract entered into prior to March 7, 1991, will be considered on a case-by-case basis.

(3) Applicants who wish that a preexisting contract be considered in reviewing their license applications must submit documentation sufficient to establish the existence of a contract.

(d) *Missile Technology Control Regime.* Missile Technology Control Regime (MTCR) members are listed in Country Group A:2 (see Supplement No. 1 to part 740 of the EAR). Controls on items identified in paragraph (a) of this section are consistent with the list agreed to in the MTCR and included in the MTCR Annex.

§ 742.6 Regional stability.

(a) *License requirements.* The following controls are maintained in support of U.S. foreign policy to maintain regional stability:

(1) As indicated in the CCL and in RS Column 1 of the Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 6A002.a.1, a.2, a.3, or .c; 6A003.b.3 and b.4; 6D102 (only software for development of items in 6A002.a.1, a.2, a.3 or .c); 6E001 (only technology for development of items in 6A002.a.1, a.2, a.3, and .c, or 6A003.b.3 and b.4); 6E002 (only technology for production of items in 6A002.a.1, a.2, a.3, or .c, or 6A003.b.3 or b.4); 7D001 (only software for development or production of items in 7A001, 7A002, or 7A003); 7E001 (only technology for the development of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only technology for the production of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft).

(2) As indicated in the CCL and in RS Column 2 of the Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except countries in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), Iceland and New Zealand for military vehicles and certain commodities (specially designed) used to manufacture military equipment, described on the CCL in ECCNs 0A018.c, 1B018.a, 2B018, and 9A018.a and .b.

(b) *Licensing policy.* (1) Applications to export and reexport items described in paragraph (a)(1) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States.

(2) Applications to export and reexport commodities described in paragraph (a)(2) of this section will generally be considered favorably on a case-by-case basis unless there is evidence that the export or reexport would contribute significantly to the destabilization of the region to which the equipment is destined.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining regional stability controls, at this time these controls are maintained only by the United States.

§742.7 Crime control.

(a) *License requirements.* In support of U.S. foreign policy to promote the observance of human rights throughout the world, a license is required to export and reexport crime control and detection equipment, related technology and software as follows:

(1) Crime control and detection instruments and equipment and related technology and software identified in the appropriate ECCNs on the CCL under CC Column 1 in the Country Chart column of the ''License Requirements'' section. A license is required to countries listed in CC Column 1 (Supplement No. 1 to part 738 of the EAR). Items affected by this requirement are identified on the CCL under the following ECCNs: 0A982, 0A983, 0A984, 0A985, 0E984, 1A984, 3A980, 3A981, 3D980, 3E980, 4A003 (for fingerprint computers only), 4A980, 4D001 (for fingerprint computers only), 4D980, 4E001 (for fingerprint computers only), 4E980, 6A002 (for police-model infrared viewers only), 6E001 (for police-model infrared viewers only), and 9A980.

(2) Shotguns with a barrel length greater than or equal to 24 inches, identified in ECCN 0A984 on the CCL under CC Column 2 in the Country Chart column of the ''License Requirements'' section regardless of end-user to countries listed in CC Column 2 (Supplement No. 1 part 738 of the EAR).

(3) Shotguns with a barrel length greater than or equal to 24 inches, identified in ECCN 0A984 on the CCL under CC Column 3 in the Country Chart column of the ''License Requirements'' section only if for sale or resale to police or law enforcement entities in countries listed in CC Column 3 (Supplement No. 1 part 738 of the EAR).

(b) *Licensing policy.* Applications for items controlled under this section will generally be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining controls on crime control and detection items, at this time these controls are maintained only by the United States.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25458, May 9, 1997]

§742.8 Anti-terrorism: Iran.

(a) *License requirements.* (1) If AT column 1 or AT column 2 of the Country Chart (Supplement No. 1 to Part 738 of the EAR) is indicated in the appropriate ECCN, a license is required for export to Iran for anti-terrorism purposes. In addition, portable electric power generators and related software and technology (ECCNs 2A994, 2D994 and 2E994) are controlled for export to Iran for anti-terrorism purposes. See paragraph (a)(5) of this section for controls maintained by the Department of the Treasury.

(2) If AT column 1 or AT column 2 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required for reexport to Iran for anti-terrorism purposes, except for ECCNs 2A994, 3A993, 5A992, 5A995, 6A990, 6A994, 7A994, 8A992, 8A994, 9A990, 9A992 and 9A994. In addition, items in these ECCNs are not counted as controlled U.S. content for the purpose of determining license requirements for U.S. parts, components or materials incorporated into foreign-made products. However, the export from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Iran is prohibited without a license. See §740.9 of the EAR for additional information. See paragraph (a)(5) of this section for controls maintained by the Department of the Treasury.

(3) The Secretary of State has designated Iran as a country whose Government has repeatedly provided support for acts of international terrorism.

(4) In support of U.S. foreign policy on terrorism-supporting countries,

BXA maintains two types of anti-terrorism controls on the export and reexport of items described in Supplement 2 to part 742.

(i) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 are controlled under section 6(j) of the Export Administration Act, as amended (EAA), if destined to military, police, intelligence or other sensitive end-users.

(ii) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to non-sensitive end-users, as well as items described in paragraphs (c)(6) through (c)(39) to all end-users, are controlled to Iran under section 6(a) of the EAA. (See Supplement No. 2 to part 742 for more information on items controlled under sections 6(a) and 6(j) of the EAA and § 750.6 of the EAR for procedures for processing license applications for items controlled under EAA section 6(j).)

(5) Exports and certain reexports to Iran are subject to a comprehensive embargo administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC). If you wish to export or reexport to Iran, the Government of Iran or any entity owned or controlled by that Government, you should review part 746 of the EAR and consult with OFAC. Please note that authorization from OFAC constitutes authorization under the EAR and no separate license or authorization from BXA is required.

(b) *Licensing policy*. (1) The Iran-Iraq Arms Non-Proliferation Act of October 23, 1992, requires BXA to deny licenses for items controlled to Iran for national security (section 5 of the 1979 EAA) or foreign policy reasons (section 6 of the 1979 EAA), absent contract sanctity or a Presidential waiver. License applications for which contract sanctity is established may be considered under policies in effect prior to the enactment of that Act. Otherwise, licenses for such items to Iran are subject to a general policy of denial.

(2) License applications for items controlled under section 6(a) of the EAA will also be reviewed to determine whether requirements of section 6(j) apply. Whenever the Secretary of State determines that an export or reexport could make a significant contribution to the military potential of Iran, including its military logistics capability, or could enhance Iran's ability to support acts of international terrorism, the Secretaries of State and Commerce will notify the Congress 30 days prior to the issuance of a license.

(c) *Contract sanctity*. Contract sanctity dates and related policies for Iran are listed in Supplement No. 2 to part 742. Applicants who wish a pre-existing contract to be considered must submit sufficient evidence to establish the existence of a contract.

(d) *U.S. controls*. Although the United States seeks cooperation from like-minded countries in maintaining anti-terrorism controls, at this time these controls are maintained only by the United States.

§ 742.9 Anti-terrorism: Syria.

(a) *License requirements*. (1) If AT Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required for export and reexport to Syria for anti-terrorism purposes.

(2) The Secretary of State has designated Syria as a country whose government has repeatedly provided support for acts of international terrorism.

(3) In support of U.S. foreign policy against terrorism, BXA maintains two types of anti-terrorism controls on the export and reexport to Syria of items described in Supplement No. 2 to part 742.

(i) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742, if destined to military, police, intelligence or other end-users in Syria, are controlled under section 6(j) of the Export Administration Act, as amended (EAA).

(ii) Items listed in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to other end-users in Syria, as well as items to all end-users listed in (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through (c)(19), and (c)(22) through (c)(39) of Supplement No. 2 to part 742, are controlled to Syria under section 6(a) of the EAA.

(b) *Licensing policy*. (1) Applications for export and reexport to all end-users

in Syria of the following items will generally be denied:

(i) Items that are controlled for chemical and biological weapons proliferation reasons to any destination. These are items that contain CB Column 1, CB Column 2, or CB Column 3 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(ii) Military-related items controlled for national security reasons to any destination. These are items that contain NS Column 1 in the Country Chart column of the ''License Requirements'' section in an ECCN on the CCL *and* is controlled by equipment or material entries ending in the number ''18.''

(iii) Items that are controlled for missile proliferation reasons to any destination. These are items that have an MT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(iv) All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components. These are items controlled to any destination for national security reasons and items controlled to Syria for anti-terrorism purposes. Such items contain an NS Column 1, NS Column 2, or AT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL. Note that, consistent with the general rule that applies to computing U.S. parts and components content incorporated in foreign made products, all aircraft-related items that require a license to Syria will be included as controlled U.S. content, except for ECCNs 6A990, 7A994, and 9A994, for purposes of such licensing requirements.

(v) Cryptographic, cryptoanalytic, and cryptologic items controlled to any destination for national security reasons. Such items contain an AT Column 1 and an NS Column 1 or NS Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(vi) Explosive device detectors controlled under ECCN 2A993.

(2) Applications for export and reexport to Syria of all other items described in paragraph (a) of this section, and not described by paragraph (b)(1) of this section, will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2), of this section, applications for Syria will be considered on a case-by-case basis if:

(i) The transaction involves the reexport to Syria of items where Syria was not the intended ultimate destination at the time of original export from the United States, provided that the exports from the U.S. occurred prior to the applicable contract sanctity date (or, where the contract sanctity date is December 16, 1986, prior to June 18, 1987).

(ii) The U.S. content of foreign-produced commodities is 20% or less by value; or

(iii) The commodities are medical items.

NOTE TO PARAGRAPH (B) OF THIS SECTION: Applicants who wish any of the factors described in paragraph (b) of this section to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content, the specifications and medical use of the equipment, or the date of export from the United States.

(4) License applications for items reviewed under 6(a) controls will also be reviewed to determine the applicability of 6(j) controls to the transaction. When it is determined that an export or reexport could make a significant contribution to the military potential of Syria, including its military logistics capability, or could enhance Syria's ability to support acts of international terrorism, the Secretaries of State and Commerce will notify the Congress 30 days prior to issuance of a license.

(c) *Contract sanctity.* Contract sanctity dates and related licensing policies for Syria are set forth in Supplement No. 2 to part 742. Applicants who wish a pre-existing contract to be considered must submit sufficient documentation to establish the existence of a contract.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining anti-terrorism controls, at this time these

controls are maintained only by the United States.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997]

§ 742.10 Anti-terrorism: Sudan.

(a) *License requirements.* (1) If AT column 1 or AT column 2[1] of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required for export to Sudan for anti-terrorism purposes.

(2) If AT column 1 or AT column 2 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required for reexport to Sudan for anti-terrorism purposes, except for ECCNs 2A994, 3A993, 5A992, 5A995, 6A990, 6A994, 7A994, 8A992, 8A994, 9A990, 9A992 and 9A994. In addition, items in these ECCNs are not counted as controlled U.S. content for the purpose of determining license requirements for U.S. parts, components or materials incorporated into foreign made products. However, the export from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Sudan is prohibited without a license. See § 740.9 of the EAR for additional information.

(3) The Secretary of State has designated Sudan as a country whose government has repeatedly provided support for acts of international terrorism.

(4) In support of U.S. foreign policy against terrorism, BXA maintains anti-terrorism controls on the export and reexport to Sudan of items described in Supplement No. 2 to part 742.

(i) Items described in paragraph (c)(1) through (c)(5) of Supplement No. 2 to part 742 if destined to military, police, intelligence or other sensitive end-users in Sudan are controlled under section 6(j) of the Export Administration Act, as amended (EAA).

(ii) Items listed in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to other end-users in Sudan, as well as items to all end-users listed in (c)(6) through (c)(14) and (c)(16) through (c)(39) of Supplement No. 2 to part 742 are controlled to Sudan under section 6(a) of the EAA.

(b) *Licensing policy.* (1) Applications for export and reexport to all end-users in Sudan of the following items will generally be denied:

(i) Items that are controlled for chemical and biological weapons proliferation reasons to any destination. These are items that contain CB Column 1, CB Column 2, or CB Column 3 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(ii) Military-related items controlled for national security reasons to any destination. These are items that contain NS Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL and is controlled by equipment or material entries ending in the number ''18.''

(iii) Items that are controlled for missile proliferation reasons to any destination. These are items that contain a MT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(iv) All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components. These are items controlled to any destination for national security reasons and items controlled to Sudan for anti-terrorism reasons. Such items contain an NS Column 1, NS Column 2, or AT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL. Note that, consistent with the general rule that applies to computing U.S. parts and components content incorporated in foreign made products, all aircraft-related items that require a license to Sudan will be included as controlled US content for purposes of such license requirements.

(v) Cryptographic, cryptoanalytic, and cryptologic items controlled to any destination. These are items that contain an NS Column 1, NS Column 2,

[1] AT column 1 refers to items controlled to Iran, Sudan, and Syria for anti-terrorism purposes. AT column 2 refers to additional items controlled to Iran and Sudan for anti-terrorism purposes. In addition, items included in ECCNs 2A994, 2D994 and 2E994 are controlled to Iran for anti-terrorism purposes.

AT Column 1 or AT Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(vi) Explosive device detectors controlled under ECCN 2A993.

(2) Applications for the export and reexport of all other items described in paragraph (a) of this section, and not described in paragraph (b)(1) of this section, will be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section, applications for Sudan will be considered on a case-by-case basis if:

(i) The transaction involves the reexport to Sudan of items where Sudan was not the intended ultimate destination at the time of original export from the United States, provided that the exports from the U.S. occurred prior to the applicable contract sanctity date.

(ii) The U.S. content of foreign-produced commodities is 20% or less by value; or

(iii) The commodities are medical items.

NOTE TO PARAGRAPH (B) OF THIS SECTION: Applicants who wish any of the factors described in paragraph (b)(4) of this section to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content, the specifications and medical use of the equipment, or the date of export from the United States.

(4) License applications for items reviewed under 6(a) controls will also be reviewed to determine the applicability of 6(j) controls to the transaction. When it is determined that an export or reexport could make a significant contribution to the military potential of Sudan, including its military logistics capability, or could enhance Sudan's ability to support acts of international terrorism, the appropriate committees of the Congress will be notified 30 days before issuance of a license to export or reexport such items.

(c) *Contract sanctity*. Contract sanctity dates and related licensing information for Sudan are set forth in Supplement No. 2 to part 742. Applicants who wish a pre-existing contract to be considered must submit sufficient documentation to establish the existence of a contract.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining anti-terrorism controls, at this time these controls are maintained only by the United States.

§ 742.11 Specially designed implements of torture.

(a) *License requirements.* In support of U.S. foreign policy to promote the observance of human rights throughout the world, a license is required to export specially designed implements of torture controlled by 0A983 to all destinations, including Canada.

(b) *Licensing policy*. Applications for such licenses will generally be denied to all destinations.

(c) *Contract sanctity*. The contract sanctity date is November 9, 1995. Contract sanctity will be a factor in considering only applications for export to the NATO countries, Japan, Australia, and New Zealand.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining controls on implements of torture, at this time these controls are maintained only by the United States.

§ 742.12 High performance computers.

(a) *License and recordkeeping requirements.* (1) This section contains special provisions for exports, reexports, and certain intra-country transfers of high performance computers, including software, and technology. This section affects the following ECCNs: 4A001, 4A002, 4A003, 4D001, 4D002, and 4E001. It applies to computers with a Composite Theoretical Performance (CTP) greater than 2000, stated in Million Theoretical Operations Per Second (MTOPS). Licenses are required under this section for ECCN's having an ''XP'' under ''Reason for Control'' when License Exception CTP is not available (see § 740.7 of the EAR). License requirements reflected in this section are based on particular destinations, end-users, or end-uses. For the calculation of CTP, see the Technical Note that follows the Advisory Notes for Category 4 in the

Commerce Control List. Note that License Exception CTP contains restrictions on access by nationals of certain countries, and on reexports and transfers of computers.

(2) In recognition of the strategic and proliferation significance of high performance computers, a license is required for the export or reexport of high performance computers to destinations, end-users, and end-uses, as specified in this section and on the CCL. These license requirements supplement requirements that apply for other control reasons, such as nuclear nonproliferation provided in § 742.3 of the EAR. The license requirements described in this § 742.12 are not reflected on the Country Chart (Supplement No. 1 to part 738 of the EAR). Four Computer Country Tiers have been established for the purposes of these controls. Countries included in Computer Tiers 1, 2, and 3 are listed in License Exception CTP in § 740.7 of the EAR. Computer Tier 4 consists of Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) Exporters must keep accurate records of each export to any destination of a computer with a CTP equal to or greater than 2,000 MTOPS, irrespective of whether the export is made under License Exception or otherwise. These records will be made available to the U.S. Government upon request. The records will include the following information:

(i) Date of shipment;

(ii) Name and address of the end-user and each intermediate consignee;

(iii) CTP of each computer in shipment;

(iv) Volume of computers in shipment;

(v) Dollar value of shipment; and

(vi) End-Use.

(4) Exporters are hereby notified that consistent with the commitments reached with the Wassenaar Arrangement, exporters will be required to submit to BXA consolidated reports on exports to certain destinations every six months of computers with a CTP equal to or greater than 2,000 MTOPS. These reports will include for each such export all the information required to be kept pursuant to paragraph (3) of § 742.12(a). Exports of computers above 2,000 MTOPS to certain destinations will be subject to the reporting requirement once the initial elements of the Wassenaar Arrangement are adopted, and the first report will be due thereafter.

(b) *Licensing policy*. Licensing policies described in this section vary according to the country of destination, and the end-use or end-user involved in the transaction. Note that in addition, license applications for items covered by § 742.12 will also be reviewed under the nuclear nonproliferation licensing policy in § 742.3(b). In certain cases, licenses may be subject to safeguard conditions. The specific conditions that may be imposed by BXA will depend on the country of destination, and the end-use or end-user of the export. BXA may also require end-use certification which, in appropriate cases, is certified by the government of the importing country. The range of possible safeguard conditions and related information are provided in Supplement No. 3 to part 742.

(1) *Computer Tier 1*—(i) *License requirement*. No license is required under this § 742.12 for exports or reexports of computers to and among countries listed in Computer Tier 1, for consumption in such countries or other disposition in accordance with the EAR.

(ii) *Licensing policy*. A license is not required under this § 742.12.

(2) *Computer Tier 2*—(i) *License requirement*. A license is required to export or reexport a computer having a Composite Theoretical Performance (CTP) greater than 10,000 Millions of Theoretical Operations Per Second (MTOPS) to a country in Computer Tier 2.

(ii) *Licensing policy*. License applications for a country in Computer Tier 2 will generally be approved.

(3) *Computer Tier 3*—(i) *License requirement*. (A) A license is required to export or reexport computers with a CTP greater than 2,000 MTOPS to countries in Computer Tier 3 to military end-users and end-uses and to nuclear, chemical, biological, or missile end-users and end-uses defined in part 744 of the EAR in Computer Tier 3 countries.

(B) A license is required to export or reexport computers with a CTP greater

than 7,000 MTOPS to all end-users and end-uses located in countries in Computer Tier 3.

(ii) *Licensing policy*. License applications for exports and reexports to military end-users and end-uses and nuclear, chemical, biological, or missile end-users and end-uses defined in part 744 of the EAR in countries in Computer Tier 3 will be reviewed on a case-by-case basis using the following criteria:

(A) The presence and activities of countries and end-users of national security and proliferation concern and the relationships that exist between the government of the importing country and such countries and end-users;

(B) The ultimate consignee's participation in, or support of, any of the following:

(*1*) Activities that involve national security concerns; or

(*2*) Nuclear, chemical, biological or missile proliferation activities described in part 744 of the EAR;

(C) The extent to which the importing country is involved in nuclear, chemical, biological, or missile proliferation activities described in part 744 of the EAR;

(D) The end-user, whether the end-use is single-purpose or multiple-purpose.

(iii) *Licensing policy for other end-uses and end-users.* License applications for exports and reexports to other end-users and end-uses located in countries in Computer Tier 3 will generally be approved.

(4) *Computer Tier 4*—(i) *License requirement.* A license is required to export or reexport any items covered by this section to a country in Country Tier 4.

(ii) *Licensing policy*. The licensing policies for countries in Computer Tier 4 are the same as described in the following EAR sections: for Sudan see §742.10(b); for Syria see §742.9(b); for Cuba see §746.2; for Iran see §746.7; for Iraq see §746.3; for Libya see §746.4; and for North Korea see §746.5.

(c) *Contract sanctity*. Contract sanctity provisions are not available for license applications involving exports and reexports of high performance computers.

(d) *High performance computer regime.* The United States and Japan participate in a high performance computer regime. Other countries are expected to join. The regime provides uniform and effective safeguards to protect high performance computers from unauthorized destinations, end-users and end-uses.

[61 FR 12786, Mar. 25, 1996, as amended at 61 FR 64283, Dec. 4, 1996]

§742.13 Communications intercepting devices.

(a) *License requirement.* (1) As set forth in ECCN 5A980, a license is required for the export or reexport to any destination, including Canada, of any electronic, mechanical, or other device primarily useful for surreptitious interception of wire or oral communications. This control implements a provision of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90–361). This license requirement is not reflected on the Country Chart (Supplement No. 1 to part 738 of the EAR).

(2) Communications intercepting devices are electronic, mechanical, or other devices that can be used for interception of wire or oral communications if their design renders them primarily useful for surreptitious listening even though they may also have innocent uses. A device is not restricted merely because it is small or may be adapted to wiretapping or eavesdropping. Some examples of devices to which these restrictions apply are: the martini olive transmitter; the infinity transmitter; the spike mike; and the disguised microphone appearing as a wristwatch, cufflink, or cigarette pack; etc. The restrictions do not apply to devices such as the parabolic microphone or other directional microphones ordinarily used by broadcasters at sports events, since these devices are not primarily useful for surreptitious listening.

(b) *Licensing policy*. (1) License applications will generally be approved for:

(i) A provider of wire or electronic communication services or an officer, agent, or employee of, or person under contract with, such a provider in the normal course of the business of providing that wire or electronic communication service; and

(ii) Officers, agents, or employees of, or person under contract with the United States, one of the 50 States, or a political subdivision thereof, when engaged in the normal course of government activities.

(2) Other applications will generally be denied.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications involving exports and reexports of communications interception devices.

(d) *U.S. controls.* Controls on this equipment are maintained by the United States government in accordance with the Omnibus Crime Control and Safe Streets Act of 1968.

§ 742.14 Significant items: commercial communications satellites; hot section technology for the development, production or overhaul of commercial aircraft engines, components, and systems.

(a) *License requirements.* Licenses are required for all destinations, except Canada, for ECCNs having an ''SI'' under the ''Reason for Control'' paragraph. These items include commercial communications satellites controlled by ECCN 9A004.a., and hot section technology for the development, production or overhaul of commercial aircraft engines controlled under ECCN 9E003.a.1. through a.12., .f, and related controls.

(b) *Licensing policy.* Pursuant to section 6 of the Export Administration Act of 1979, as amended (EAA), foreign policy controls apply to commercial communications satellites controlled under 9A004.a. and technology required for the development, production or overhaul of commercial aircraft engines controlled by ECCN 9E003.a.1. through a.12, .f, and related controls. These controls supplement the national security controls that apply to those items. Applications for export and reexport to all destinations will be reviewed on a case-by-case basis to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. The following factors are among those that will be considered to determine what action will be taken on license applications:

(1) The country of destination;

(2) The ultimate end-user(s);

(3) The technology involved;

(4) The specific nature of the end-use(s); and

(5) The types of assurance against unauthorized use or diversion that are given in a particular case.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this § 742.14.

(d) [Reserved]

[61 FR 54543, Oct. 21, 1996]

§ 742.15 Encryption items.

Encryption items can be used to maintain the secrecy of information, and thereby may be used by persons abroad to harm national security, foreign policy and law enforcement interests. As the President indicated in E.O. 13026 and in his Memorandum of November 15, 1996, export of encryption software, like export of encryption hardware, is controlled because of this functional capacity to encrypt information on a computer system, and not because of any informational or theoretical value that such software may reflect, contain, or represent, or that its export may convey to others abroad. For this reason, export controls on encryption software are distinguished from controls on other software regulated under the EAR.

(a) *License requirements.* Licenses are required for all destinations, except Canada, for ECCNs having an ''EI'' (for ''encryption items'') under the ''Control(s)'' paragraph. Such items include: encryption commodities controlled under ECCN 5A002; encryption software controlled under ECCN 5D002; and encryption technology controlled under ECCN 5E002. (Refer to part 772 of the EAR for the definition of ''encryption items'). For encryption items previously on the U.S. Munitions List and currently authorized for export or reexport under a State Department license, distribution arrangement or any other authority of the State Department, U.S. persons holding valid USML licenses and other approvals issued by the Department of State prior to December 30, 1996 may ship remaining balances authorized by such licenses or approvals under the authority of the EAR by filing Shippers Export Declarations (SEDs) with District

Directors of Customs, citing the provisions of this section effective on December 30, 1996 and the State Department license number. Such shipments shall be in accordance with the terms and conditions, including the expiration date, existing at the time of issuance of the State license. Violations of such authorizations, terms and conditions constitute violations of the EAR. Any reports required for distribution and other types of agreements previously authorized by the Department of State, valid prior to December 30, 1996, should be henceforth submitted to BXA at the following address: Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylvania Ave., N.W., Room 2705, Washington, D.C. 20230.

(b) *Licensing policy.* The following licensing policies apply to items identified in paragraph (a) of this section. This section refers you to Supplements No. 4, No. 5, and No. 7 to this part 742. For purposes of these supplements, ''products'' refers to commodities and software. Except as otherwise noted, applications will be reviewed on a case-by-case basis by BXA, in conjunction with other agencies, to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests.

(1) *Certain mass-market encryption software.* Consistent with E.O. 13026 of November 15, 1996 (61 FR 58767), certain encryption software that was transferred from the U.S. Munitions List to the Commerce Control List pursuant to the Presidential Memorandum of November 15, 1996 may be released from ''EI'' controls and thereby made eligible for mass market treatment after a one-time review. To determine eligibility for mass market treatment, exporters must submit a classification request to BXA. 40-bit mass market encryption software may be eligible for a 7-day review process, and company proprietary software may be eligible for 15-day processing. Refer to Supplement No. 6 to part 742 and § 748.3(b)(3) of the EAR for additional information. Note that the one-time review is for a determination to release encryption software in object code only unless otherwise specifically requested. Exporters requesting release of the source code should refer to paragraph (b)(3)(v)(E) of Supplement No. 6 to part 742. If, after a one-time review, BXA determines that the software is released from EI controls, such software is eligible for all provisions of the EAR applicable to other software, such as License Exception TSU for mass-market software. If BXA determines that the software is not released from EI controls, a license is required for export and reexport to all destinations, except Canada, and license applications will be considered on a case-by-case basis.

(2) *Key Escrow, Key Recovery and Recoverable encryption software and commodities.* Recovery encryption software and equipment controlled for EI reasons under ECCN 5D002 or under ECCN 5A002, including encryption equipment designed or modified to use recovery encryption software, may be made eligible for license exception KMI after a one-time BXA review. License Exception KMI is available for all destinations except Cuba, Iran, Iraq, Libya, North Korea, Syria and Sudan. To determine eligibility, exporters must submit a classification request to BXA. Requests for one-time review of key escrow and key recovery encryption items will receive favorable consideration provided that, prior to the export or reexport, a key recovery agent satisfactory to BXA has been identified (refer to Supplement No. 5 to part 742) and security policies for safeguarding the key(s) or other material/information required to decrypt ciphertext as described in Supplement No. 5 to part 742 are established to the satisfaction of BXA and are maintained after export or reexport as required by the EAR. If the exporter or reexporter intends to be the key recovery agent, then the exporter or reexporter must meet all of the requirements of a key recovery agent identified in Supplement No. 5 to part 742. In addition, the key escrow or key recovery system must meet the criteria identified in Supplement No. 4 to part 742. Note that eligibility is dependent on continued fulfilment of the requirements of a key

recovery agent identified in Supplement No. 5 to part 742. Since the establishment of a key management infrastructure and key recovery agents may take some time, BXA will, while the infrastructure is being built, consider requests for eligibility to export key recovery encryption products which facilitate establishment of the key management infrastructure before a key recovery agent is named, consistent with national security and foreign policy. When BXA approves such cases, exporters of products described in Supplement No. 4 to part 742 are required to furnish the name of an agent by December 31, 1998. Requests for one-time review of recoverable products which allow government officials to obtain, under proper legal authority and without the cooperation or knowledge of the user, the plaintext of the encrypted data and communications will receive favorable consideration.

(3) *Non-recovery encryption items up to 56-bit key length DES or equivalent strength supported by a satisfactory business and marketing plan for exporting recoverable items and services.* (i) Manufacturers of non-recovery encryption items up to 56-bit key length DES or equivalent strength will be permitted to export and reexport under the authority of License Exception KMI provided that the requirements and conditions of the License Exception are met. Exporters must submit a classification request for an initial BXA review of the item and a satisfactory business and marketing plan that explains in detail the steps the applicant will take during the two-year transition period beginning January 1, 1997 to develop, produce, and/or market encryption items and services with recoverable features. Manufacturers would commit to produce key recovery products. Others would commit to incorporate such products into their own products or services. Such efforts can include: the scale of key recovery research and development, product development, and marketing plans; significant steps to reflect potential customer demand for key recovery products in the firm's encryption-related business; and how soon a key recovery agent will be identified. Note that BXA will accept requests for classification of non-recoverable encryption items up to 56-bit key length DES or equivalent strength under this paragraph from distributors, re-sellers, integrators, and other entities that are not manufacturers of the encryption items. The use of License Exception KMI is not automatic; eligibility must be renewed every six months. Renewal after each six-month period will depend on the applicant's adherence to explicit benchmarks and milestones as set forth in the plan approved with the initial license classification and amendments as approved by BXA. This relaxation of controls and use of License Exception KMI will last through December 31, 1998. The plan submitted with classifications for the export of non-recoverable encryption items up to 56-bit key length DES or equivalent strength must include the elements in Supplement No. 7 to part 742.

(ii) BXA will make a determination on such classification requests within 15 days of receipt. Exports and reexports of non-recoverable encryption items up to 56-bit key length DES or equivalent strength will be authorized under the provisions of License Exception KMI, contingent upon BXA's review and approval of a satisfactory progress report related to the ongoing plan submitted by the applicant. The applicant must submit a letter to BXA every six months requesting approval of the progress report. Note that distributors, re-sellers, integrators, or other entities that are not manufacturers of the encryption items are permitted to use License Exception KMI for exports and reexports of such items only in instances where a classification has been granted to the manufacturer of the encryption items or a classification has been granted to the distributors, re-sellers, integrators, or other entities. The authority to so export or reexport will be for a time period ending on the same day the producer's authority to export or reexport ends.

(4) *All other encryption items*—(i) *Encryption licensing arrangement.* Applicants may submit license applications for exports and reexports of certain encryption commodities and software in unlimited quantities for all destinations except, Cuba, Iran, Iraq, Libya,

North Korea, Syria, and Sudan. Applications will be reviewed on a case-by-case basis. Encryption licensing arrangements may be approved with extended validity periods specified by the applicant in block #24 on Form BXA–748P. In addition, the applicant must specify the sales territory and classes of end-users. Such licenses may require the license holder to report to BXA certain information such as item description, quantity, value, and end-user name and address.

(ii) *Applications for encryption items not authorized under an encryption licensing arrangement.* Applications for the export and reexport of all other encryption items will be considered on a case-by-case basis.

(5) *Applications for encryption technology.* Applications for the export and reexport of encryption technology will be considered on a case-by-case basis.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(d) [Reserved]

[61 FR 68580, Dec. 30, 1996]

SUPPLEMENT NO. 1 TO PART 742—NONPROLIFERATION OF CHEMICAL AND BIOLOGICAL WEAPONS

NOTE: Exports and reexports of items in performance of contracts entered into before the applicable contract sanctity date(s) will be eligible for review on a case-by-case basis or other applicable licensing policies that were in effect prior to the contract sanctity date. The contract sanctity dates set forth in this supplement are for the guidance of exporters. Contract sanctity dates are established in the course of the imposition of foreign policy controls on specific items and are the relevant dates for the purpose of licensing determinations involving such items. If you believe that a specific contract sanctity date is applicable to your transaction, you should include all relevant information with your license application.

(1) The contract sanctity date for exports to Iran or Syria of dimethyl methylphosphonate, methyl phosphonyldifluoride, phosphorous oxychloride, thiodiglycol, dimethylamine hydrochloride, dimethylamine, ethylene chlorohydrin (2-chloroethanol), and potassium fluoride is April 28, 1986.

(2) The contract sanctity date for exports to Iran or Syria of dimethyl phosphite (dimethyl hydrogen phosphite), methyl phosphonyldichloride, 3-quinuclidinol, N,N-diisopropylamino-ethane-2-thiol, N,N-diisopropylaminoethyl-2-chloride, 3-hydroxy-1-methylpiperidine, trimethyl phosphite, phosphorous trichloride, and thionyl chloride is July 6, 1987.

(3) The contract sanctity date for exports to Iran or Syria of items in ECCNs 1C351, 1C352, 1C353 and 1C354 is February 22, 1989.

(4) The contract sanctity date for exports to Iran of dimethyl methylphosphonate, methylphosphonyl difluoride, phosphorus oxychloride, and thiodiglycol is February 22, 1989.

(5) The contract sanctity date for exports to Iran, Libya or Syria of potassium hydrogen fluoride, ammonium hydrogen fluoride, sodium fluoride, sodium bifluoride, phosphorus pentasulfide, sodium cyanide, triethanolamine, diisopropylamine, sodium sulfide, and N,N -diethylethanolamine is December 12, 1989.

(6) The contract sanctity date for exports to all destinations (except Iran or Syria) of phosphorus trichloride, trimethyl phosphite, and thionyl chloride is December 12, 1989. For exports to Iran or Syria, paragraph (2) of this supplement applies.

(7) The contract sanctity date for exports to all destinations (except Iran, Libya or Syria) of 2-chloroethanol and triethanolamine is January 15, 1991. For exports of 2-chloroethanol to Iran or Syria, paragraph (1) of this supplement applies. For exports of triethanolamine to Iran, Libya or Syria, paragraph (5) of this supplement applies.

(8) The contract sanctity date for exports to all destinations (except Iran, Libya or Syria) of chemicals controlled by ECCN 1C350 is March 7, 1991, except for applications to export the following chemicals: 2-chloroethanol, dimethyl methylphosphonate, dimethyl phosphite (dimethyl hydrogen phosphite), methylphosphonyl dichloride, methylphosphonyl difluoride, phosphorus oxychloride, phosphorous trichloride, thiodiglycol, thionyl chloride triethanolamine, and trimethyl phosphite. (See also paragraphs (6) and (7) of this supplement.) For exports to Iran, Libya or Syria, see paragraphs (1) through (6) of this supplement.

(9) The contract sanctity date for exports and reexports of the following commodities and technical data is March 7, 1991:

(i) Equipment (for producing chemical weapon precursors and chemical warfare agents) described in ECCNs 2B350 and 2B351;

(ii) Equipment and materials (for producing biological agents) described in ECCNs 1C351, 1C352, 1C353, 1C354, and 2B352; and

(iii) Technology (for the development, production, and use of equipment described in ECCNs 1C351, 1C352, 1C353, 1C354, 2B350, 2B351, and 2B352) described in ECCNs 2E001, 2E002, and 2E301.

(10) The contract sanctity date for license applications subject to §742.2(b)(3) of this part is March 7, 1991.

(11) The contract sanctity date for reexports of chemicals controlled under ECCN 1C350 is March 7, 1991, except that the contract sanctity date for reexports of these chemicals to Iran, Libya or Syria is December 12, 1989.

(12) The contract sanctity date for reexports of human pathogens, zoonoses, toxins, animal pathogens, genetically modified microorganisms and plant pathogens controlled by ECCNs 1C351, 1C352, 1C353 and 1C354 is March 7, 1991.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997]

SUPPLEMENT NO. 2 TO PART 742—ANTI-TERRORISM CONTROLS; IRAN, SYRIA, AND SUDAN CONTRACT SANCTITY DATES AND RELATED POLICIES

NOTE: Exports and reexports of items in performance of contracts entered into before the applicable contract sanctity date(s) will be eligible for review on a case-by-case basis or other applicable licensing policies that were in effect prior to the contract sanctity date. The contract sanctity dates set forth in this supplement are for the guidance of exporters. Contract sanctity dates are established in the course of the imposition of foreign policy controls on specific items and are the relevant dates for the purpose of licensing determinations involving such items. If you believe that a specific contract sanctity date is applicable to your transaction, you should include all relevant information with your license application. BXA will determine any applicable contract sanctity date at the time an application with relevant supporting documents is submitted.

(a) *Terrorist-supporting countries.* The Secretary of State has designated Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria as countries whose governments have repeatedly provided support for acts of international terrorism under section 6(j) of the Export Administration Act (EAA).

(b) *Items controlled under EAA sections 6(j) and 6(a).* Whenever the Secretary of State determines that an export or reexport to any of these countries could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism, the item is subject to mandatory control under section EAA 6(j) and the Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days before a license for such an item may be issued.

(1) On December 28, 1993, the Secretary of State determined that the export to Cuba, Libya, Iran, Iraq, North Korea, Sudan or Syria of items described in paragraphs (c)(1) through (c)(5) of this supplement, if destined to military, police, intelligence or other sensitive end-users, are controlled under EAA section 6(j). Therefore, the 30-day advance Congressional notification requirement applies to the export or reexport of these items to sensitive end-users in any of these countries.

(2) License applications for items controlled to designated terrorist-supporting countries under EAA section 6(a) will also be reviewed to determine whether the Congressional notification requirements of EAA section 6(j) apply.

(3) Items controlled for anti-terrorism reasons under section 6(a) to Iran, Sudan and Syria are:

(i) items described in paragraphs (c)(1) through (c)(5) to non-sensitive end-users, and

(ii) the following items to all end-users: for Iran, items in paragraphs (c)(6) through (c)(39) of this supplement; for Sudan, items in paragraphs (c)(6) through (c)(14), and (c)(16) through (c)(39) of this supplement; for Syria, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through (c)(19), and (c)(22) through (c)(39) of this supplement.

(c) The license requirements and licensing policies for items controlled for anti-terrorism reasons to Iran, Syria and Sudan are generally described in §§742.8, 742.9 and 742.10 of this part. This supplement provides guidance on licensing policies for Syria and Sudan and related contract sanctity dates that may be available for transactions benefitting from pre-existing contracts involving Syria and Sudan. This supplement also provides information on licensing policies and contract sanctity dates for Iran. Exporters are advised that the Treasury Department's Office of Foreign Assets Control administers a comprehensive trade and investment embargo against Iran (See Executive Orders 12957 and 12959 of March 15, 1995 and May 6, 1995, respectively.) Exporters are further advised that exports and reexports to Iran of items that are listed on the CCL as requiring a license for national security or foreign policy reasons are subject to a policy of denial under the Iran-Iraq Arms Non-Proliferation Act of October 23, 1992 (50 U.S.C. 1701 note (1994)). Transactions involving Iran and benefitting from a contract that pre-dates October 23, 1992 may be considered under the applicable licensing policy in effect prior to that date.

(1) *All items subject to national security controls*—(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of items valued at $7 million or more: January 23, 1984.

(B) Contract sanctity date for military end-users or end-uses of all other national

security controlled items: September 28, 1984.

(C) Contract sanctity date for non-military end-users or end-uses: August 28, 1991, unless otherwise specified in paragraphs (c)(2) through (c)(39) of this supplement.

(ii) *Syria.* Applications for military end-users or military end-uses in Syria will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis, unless otherwise specified in paragraphs (c)(2) through (c)(39) of this supplement. No contract sanctity date is available for items valued at $7 million or more to military end-users or end-uses. The contract sanctity date for all other items for all end-users: December 16, 1986.

(iii) *Sudan.* Applications for military end-users or military end-uses in Sudan will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(2) *All items subject to chemical and biological weapons proliferation controls.* Applications for all end-users in Iran, Syria or Sudan of these items will generally be denied. See Supplement No. 1 to part 742 for contract sanctity dates for Iran and Syria. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993), or unless an earlier date for any item is listed in Supplement 1 to part 742.

(3) *All items subject to missile proliferation controls (MTCR).* Applications for all end-users in Iran, Syria or Sudan will generally be denied. Contract sanctity provisions for Iran and Syria are not available. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(4) *All items subject to nuclear weapons proliferation controls (NRL)*—(i) *Iran.* Applications for all end-users in Iran will generally be denied. No contract sanctity date is available.

(ii) *Syria.* Applications for military end-users or end-uses to Syria will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis. No contract sanctity date is available.

(iii) *Sudan.* Applications for military end-users or end-uses in Sudan will generally be denied. Applications for export and reexport to non-military end-users or end-uses will be considered on a case-by-case basis. No contract sanctity date is available.

(5) *All military-related items, i.e., applications for export and reexport of items controlled by CCL entries ending with the number ''18''*—(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: see paragraph (c)(1)(i) of this supplement.

(ii) *Syria.* Applications for all end-users in Syria will generally be denied. Contract sanctity date: see paragraph (c)(1)(ii) of this supplement.

(iii) *Sudan.* Applications for all end-users in Sudan will generally be denied. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(6) *All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components*—(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for helicopters exceeding 10,000 lbs. empty weight or fixed wing aircraft valued at $3 million or more: January 23, 1984.

(B) Contract sanctity date for other helicopters and aircraft and gas turbine engines therefor: September 28, 1984.

(C) Contract sanctity date for helicopter or aircraft parts and components controlled by 9A994: October 22, 1987.

(ii) *Syria.* Applications for all end-users in Syria will generally be denied.

(A) There is no contract sanctity for helicopters exceeding 10,000 lbs. empty weight or fixed wing aircraft valued at $3 million or more; except that passenger aircraft, regardless of value, have a contract sanctity date of December 16, 1986, if destined for a regularly scheduled airline with assurance against military use.

(B) Contract sanctity date for helicopters with 10,000 lbs. empty weight or less: April 28, 1986.

(C) Contract sanctity date for other aircraft and gas turbine engines therefor: December 16, 1986.

(D) Contract sanctity date for helicopter or aircraft parts and components controlled by 9A994: August 28, 1991.

(iii) *Sudan.* Applications for all end-users in Sudan will generally be denied. Contract sanctity date: January 19, 1996.

(7) *Heavy duty, on-highway tractors*—(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-

case basis. Contract sanctity date: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(8) *Off-highway wheel tractors of carriage capacity 9t (10 tons) or more*—(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(9) *Large diesel engines (greater than 400 horsepower) and parts to power tank transporters*—(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(10) *Cryptographic, cryptoanalytic, and cryptologic equipment*—(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of cryptographic, cryptoanalytic, and cryptologic equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity date for all other cryptographic, cryptoanalytic, and cryptologic equipment for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for all national security-controlled cryptographic, cryptoanalytic, and cryptologic equipment to all end-users. Applications for all end-users in Syria will generally be denied. Contract sanctity date for cryptographic, cryptoanalytic, and cryptologic equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this supplement.

(iii) *Sudan.* Applications for all end-users in Sudan of any such equipment will generally be denied. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(11) *Navigation, direction finding, and radar equipment*—(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of navigation, direction finding, and radar equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity date for all other navigation, direction finding, and radar equipment for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for exports of navigation, direction finding, and radar equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other navigation, direction finding, and radar equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(12) *Electronic test equipment*—(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of electronic test equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity date for all other electronic test equipment for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for electronic test equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other electronic test equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of

such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(13) *Mobile communications equipment*—(i) *Iran*. Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of mobile communications equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity date for all end-users of all other mobile communications equipment: October 22, 1987.

(ii) *Syria*. Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for mobile communications equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for exports of all other mobile communications equipment: August 28, 1991.

(iii) *Sudan*. Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(14) *Acoustic underwater detection equipment*—(i) *Iran*. Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of acoustic underwater detection equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity date for all other acoustic underwater detection equipment for all end-users: October 22, 1987.

(ii) *Syria*. A license is required for acoustic underwater detection equipment that was subject to national security controls on August 28, 1991, to all end-users. Applications for military end-users or for military end-uses in Syria will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for acoustic underwater detection equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this supplement.

(iii) *Sudan*. Applications for military end-users or for military end-uses to Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(15) *Portable electric power generators*—(i) *Iran*. Applications for all end-users in Iran of such equipment will generally be denied. Contract sanctity date: October 22, 1987.

(ii) [Reserved]

(16) *Vessels and boats, including inflatable boats*—(i) *Iran*. Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of vessels and boats that were subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity date for all other vessels and boats for all end-users: October 22, 1987.

(ii) *Syria*. A license is required for national security-controlled vessels and boats. Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for vessels and boats that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this supplement.

(iii) *Sudan*. Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(17) *Marine and submarine engines (outboard/inboard, regardless of horsepower)*—(i) *Iran*. Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of marine and submarine engines that were subject to national security controls on October 22, 1987: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity date for outboard engines of 45 HP or more for all end-users: September 28, 1984.

(C) Contract sanctity date for all other marine and submarine engines for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for all marine and submarine engines subject to national security controls to all end-users. Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for marine and submarine engines that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(18) *Underwater photographic equipment*—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of underwater photographic equipment that was subject to national security controls on October 22, 1987: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity date for all other underwater photographic equipment for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for underwater photographic equipment that was subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other underwater photographic equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(19) *Submersible systems*—(i) *Iran.* Applications for all end-users in Iran of such systems will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of submersible systems that were subject to national security controls on October 22, 1987: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity date for all other submersible systems for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such systems will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for submersible systems that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other submersible systems: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such systems will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(20) *Scuba gear and related equipment*—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied. No contract sanctity is available for such items to Iran.

(ii) *Sudan.* Applications for military end-users and end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(21) *Pressurized aircraft breathing equipment*—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(22) *Computer numerically controlled machine tools*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of computer numerically controlled machine tools that were

subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other computer numerically controlled machine tools for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for computer numerically controlled machine tools that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for exports of all other computer numerically controlled machine tools: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(23) *Vibration test equipment*—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of vibration test equipment that was subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other vibration test equipment for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for vibration test equipment that was subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for exports of all other vibration test equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(24) *Digital computers with a CTP of 6 or above, assemblies, related equipment, equipment for development or production of magnetic and optical storage equipment, and materials for fabrication of head/disk assemblies*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity dates for military end-users and end-uses of items that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity date for all other items for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity dates for items that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other items: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(25) *Telecommunications equipment*—(i) A license is required for the following telecommunications equipment:

(A) Radio relay systems or equipment operating at a frequency equal to or greater than 19.7 GHz or ''spectral efficiency'' greater than 3 bit/s/Hz;

(B) Fiber optic systems or equipment operating at a wavelength greater than 1000 nm;

(C) ''Telecommunications transmission systems'' or equipment with a ''digital transfer rate'' at the highest multiplex level exceeding 45 Mb/s.

(ii) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of telecommunications equipment that was subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other vibration test equipment for all end-users: August 28, 1991.

(iii) *Syria.* Applications for military end-users or for military end-uses in Syria of

such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for exports of telecommunications equipment that was subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for exports of all other telecommunications equipment: August 28, 1991.

(iv) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(26) *Microprocessors operating at a clock speed over 25 MHz*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of microprocessors that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other microprocessors for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for microprocessors that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other microprocessors: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(27) *Semiconductor manufacturing equipment.* For Iran, Syria or Sudan, a license is required for all such equipment described in ECCNs 3B001 and 3B991—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of semiconductor manufacturing equipment that was subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other microprocessors for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such semiconductor manufacturing equipment that was subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other semiconductor manufacturing equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(28) *Software specially designed for the computer-aided design and manufacture of integrated circuits*—(i) *Iran.* Applications for all end-users in Iran of such software will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such software that was subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other such software for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such software that was subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other such software: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such software will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract

sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(29) *Packet switches.* Equipment described in ECCNs 5A001.c and 5A994—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses in Iran of packet switches that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other packet switches for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for packet switches that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other packet switches: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(30) *Specially designed software for air traffic control applications that uses any digital signal processing techniques for automatic target tracking or that has a facility for electronic tracking*—(i) *Iran.* Applications for all end-users in Iran of such software will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such software that was subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other such software for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such software that was subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for exports of such software: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such software will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(31) *Gravity meters having static accuracy of less (better) than 100 microgal, or gravity meters of the quartz element (worden) type*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of gravity meters that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other such gravity meters for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for gravity meters that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for exports of all other such gravity meters: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(32) *Magnetometers with a sensitivity lower (better) than 1.0 nt rms per square root Hertz*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such magnetometers that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other such magnetometers for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of

these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such magnetometers that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other such magnetometers: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(33) *Fluorocarbon compounds described in ECCN 1C994 for cooling fluids for radar*—(i) *Iran.* Applications for all end-users in Iran of such compounds will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such fluorocarbon compounds that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other such fluorocarbon compounds for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such compounds will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such fluorocarbon compounds that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other such fluorocarbon compounds: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such compounds will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(34) *High strength organic and inorganic fibers (kevlar) described in ECCN 1C210*—(i) *Iran.* Applications for all end-users in Iran of such fibers will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of high strength organic and inorganic fibers (kevlar) described in 1C210 that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other high strength organic and inorganic fibers (kevlar) described in 1C210 for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such fibers will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for high strength organic and inorganic fibers (kevlar) described in 1C210 that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other high strength organic and inorganic fibers (kevlar) described in 1C210: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such fibers will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(35) *Machines described in ECCNs 2B003 and 2B993 for cutting gears up to 1.25 meters in diameter*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such machines that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other such machines for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for machines that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other machines: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j)

have a contract sanctity date of December 28, 1993).

(36) *Aircraft skin and spar milling machines*—(i) *Iran*. Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of aircraft skin and spar milling machines that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity dates for all other aircraft skin and spar milling machines to all end-users: August 28, 1991.

(ii) *Syria*. Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for aircraft skin and spar milling machines that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other aircraft skin and spar milling machines: August 28, 1991.

(iii) *Sudan*. Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(37) *Manual dimensional inspection machines described in ECCN 2B992*—(i) *Iran*. Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of manual dimensional inspection machines that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity date for all other manual dimensional inspection machines for all end-users: August 28, 1991.

(ii) *Syria*. Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for such manual dimensional inspection machines that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other such manual dimensional inspection machines: August 28, 1991.

(iii) *Sudan*. Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(38) *Robots capable of employing feedback information in real time processing to generate or modify programs*—(i) *Iran*. Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of such robots that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(i) of this supplement.

(B) Contract sanctity date for all other such robots: August 28, 1991.

(ii) *Syria*. Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for such robots that were subject to national security controls on August 28, 1991: See paragraph (c)(1)(ii) of this supplement.

(B) Contract sanctity date for all other such robots: August 28, 1991.

(iii) *Sudan*. Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(39) *Explosive device detectors*—(i) *Iran*. Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date: January 19, 1996.

(ii) *Syria*. Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: January 19, 1996.

(iii) *Sudan*. Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date: January 19, 1996.

SUPPLEMENT NO. 3 TO PART 742—HIGH PERFORMANCE COMPUTERS; SAFEGUARD CONDITIONS AND RELATED INFORMATION

This supplement sets forth the security conditions and safeguard plans for the export, reexport, or in-country transfer of high performance computers that may be imposed

by BXA to certain destinations. The licensing policies for the export, reexport, or in-country transfer of high performance computers are set forth in §742.12 of this part.

(a) *Safeguard conditions.* Following interagency review of the application, the Bureau of Export Administration (BXA) will instruct the exporter to submit a safeguard plan signed by the ultimate consignee and certified by the export control authorities of the importing country (see *Certification by export control authorities of importing country* in this supplement). The safeguard plan must indicate that the ultimate consignee agrees to implement those safeguards required by the BXA as a condition of issuing the license. BXA will inform exporters concerning which of the following safeguards will be imposed as license conditions:

(1) The applicant will assume responsibility for providing adequate security against physical diversion of the computer during shipment (e.g., delivery by either attended or monitored shipment, using the most secure route possible—this precludes using the services or facilities of any country in Computer Tier 4).

(2) There will be *no* reexport or intra-country transfer of the computer without prior written authorization from BXA.

(3) The computer systems will be used only for those activities approved on the license or reexport authorization.

(4) There will be no changes either in the end-users or the end-uses indicated on the license without prior written authorization by BXA.

(5) Only software that supports the approved end-uses will be shipped with the computer system.

(6) The end-user will station security personnel at the computer using facility to ensure that the appropriate security measures are implemented.

(7) The exporter will station representatives at the computer using facility, or make such individuals readily available, to guide the security personnel in the implementation and operation of the security measures.

(8) The security personnel will undertake the following measures under the guidance of the exporter's representatives:

(i) The physical security of the computer using facility;

(ii) The establishment of a system to ensure the round-the-clock supervision of computer security;

(iii) The inspection, if necessary, of any program or software to be run on the computer system in order to ensure that all usage conforms to the conditions of the license;

(iv) The suspension, if necessary, of any run in progress and the inspection of any output generated by the computer to determine whether the program runs or output conform with the conditions of the license;

(v) The inspection of usage logs daily to ensure conformity with the conditions of the license and the retention of records of these logs for at least a year;

(vi) The determination of the acceptability of computer users to ensure conformity with the conditions of the license;

(vii) The immediate reporting of any security breaches or suspected security breaches to the government of the importing country and to the exporter's representatives;

(viii) The execution of the following key tasks:

(A) Establishment of new accounts;

(B) Assignment of passwords;

(C) Random sampling of data;

(D) Generation of daily logs;

(ix) The maintenance of the integrity and security of tapes and data files containing archived user files, log data, or system backups.

(9) The exporter's representatives will be present when certain key functions are being carried out (e.g., the establishment of new accounts, the assignment of passwords, the random sampling of data, the generating of daily logs, the setting of limits to computer resources available to users in the development mode, the certification of programs for conformity to the approved end-uses before they are allowed to run in the production mode, and the modification to previously certified production programs).

(10) The security personnel and the exporter's representatives will provide monthly reports on the usage of the computer system and on the implementation of the safeguards.

(11) The computer system will be housed in one secure building and protected against theft and unauthorized entry at all times.

(12) Restricted nationals, i.e., nationals of Computer Tier 4 countries, will not be allowed access to computers:

(i) No physical or computational access to computers may be granted to restricted nationals without prior written authorization from BXA, except that commercial consignees as described in this supplement are prohibited only from giving such nationals user-accessible programmability without prior written authorization;

(ii) No passwords or IDs may be issued to restricted nationals;

(iii) No work may be performed on the computer on behalf of restricted nationals; and

(iv) No conscious or direct ties may be established to networks (including their subscribers) operated by restricted nationals.

(13) Physical access to the computer, the operator consoles, and sensitive storage areas of the computer using facility will be controlled by the security personnel, under the guidance and monitoring of the exporter's representatives, and will be limited to

the fewest number of people needed to maintain and run the computer system.

(14) The computer will be equipped with the necessary software to: Permit access to authorized persons only, detect attempts to gain unauthorized access, set and maintain limits on usage, establish accountability for usage, and generate logs and other records of usage. This software will also maintain the integrity of data and program files, the accounting and audit system, the password or computational access control system, and the operating system itself.

(i) The operating system will be configured so that all jobs can be designated and tracked as either program development jobs or as production jobs.

(ii) In the program development mode, users will be free, following verification that their application conforms to the agreed end-use, to create, edit, or modify programs, to use utilities such as editors, debuggers, or compilers and to verify program operation. Programs in the development mode will be subject to inspection as provided by paragraph (a)(8)(iii) of this supplement.

(iii) In the production mode, users will have access to the full range of computer resources, but will be prohibited from modifying any program or using utilities that could modify any program. Before being allowed to run in the production mode, a program will have to be certified for conformity to approved end-uses by the security personnel and the exporter's representatives.

(iv) Programs certified for execution in the production mode will be protected from unauthorized modification by appropriate software and physical security measures. Any modifications to previously certified production programs will be approved by the security personnel under the guidance and monitoring of the exporter's representatives.

(v) The computer will be provided with accounting and audit software to ensure that detailed logs are maintained to record all computer usage. A separate log of security-related events will also be kept.

(vi) For each job executed in the production mode, the operating system will record execution characteristics in order to permit generation of a statistical profile of the program executed.

(15) The source code of the operating system will be accessible only to the exporter's representatives. Only those individuals will make changes in this source code.

(16) The security personnel, under the guidance of the exporter's representatives, will change passwords for individuals frequently and at unpredictable intervals.

(17) The security personnel, under the guidance of the exporter's representatives, will have the right to deny passwords to anyone. Passwords will be denied to anyone whose activity does not conform to the conditions of the license.

(18) Misuse of passwords by users will result in denial of further access to the computer.

(19) The exporter's representatives will install a strict password system and provide guidance on its implementation.

(20) Only the exporter's representatives will be trained in making changes in the password system and only they will make such changes.

(21) No computer will be networked to other computers outside the computer center without prior authorization from BXA.

(22) Generally, remote terminals will not be allowed outside the computer using facility without prior authorization by BXA. If remote terminals are specifically authorized by the license:

(i) The terminals will have physical security equivalent to the safeguards at the computer using facility;

(ii) The terminals will be constrained to minimal amounts of computer resources (CPU time, memory access, number of input-output operations, and other resources);

(iii) The terminals will not be allowed direct computational access to the computer (i.e., the security personnel, under the guidance of the exporter's representatives, will validate the password and identity of the user of any remote terminals before any such user is permitted to access the computer); all terminals will be connected to the computer system by a dedicated access line and a network access controller.

(23) There will be no direct input to the computer from remote terminals. Any data originating from outside the computer using facility, except for direct input from terminals within the same compound as the computer using facility, will first be processed by a separate processor or network access controller in order to permit examination of the data prior to its entry into the computer.

(24) The exporter will perform all maintenance of the computer system.

(25) Spare parts kept on site will be limited to the minimum amount. Spares will be kept in an area accessible only to the exporter's representatives. These representatives will maintain a strict audit system to account for all spare parts.

(26) No development or production technology on the computer system will be sent with the computer to the ultimate consignee.

(27) The end-user must immediately report any suspicions or facts concerning possible violations of the safeguards to the exporter and to the export control authorities of the importing country.

(28) The exporter must immediately report any information concerning possible violations of the safeguards to BXA. A violation of the safeguards might constitute grounds for suspension or termination of the license, preventing the shipment of unshipped spare

parts, or the denial of additional licenses for spare parts, etc.

(29) The end-user will be audited quarterly by an independent consultant who has been approved by the export control authorities of the importing and exporting countries, but is employed at the expense of the end-user. The consultant will audit the computer usage and the implementation of the safeguards.

(30) The installation and operation of the computer will be coordinated and controlled by the following management structure:

(i) *Steering Committee.* The Steering Committee will comprise nationals of the importing country who will oversee the management and operation of the computer.

(ii) *Security Staff.* The Security Staff will be selected by the end-user or the government of the importing country to ensure that the required safeguards are implemented. This staff will be responsible for conducting an annual audit to evaluate physical security, administrative procedures, and technical controls.

(iii) *Technical Consultative Committee.* This committee will comprise technical experts from the importing country and the exporting company who will provide guidance in operating and maintaining the computer. At least one member of the committee will be an employee of the exporter. The committee will approve all accounts and maintain an accurate list of all users. In addition, the committee will advise the Steering Committee and the Security Staff concerning the security measures needed to ensure compliance with the safeguards required by the license.

(31) An ultimate consignee who is a multiple-purpose end-user, such as a university, will establish a peer review group comprising experts who represent each department or application area authorized for use on the computer under the conditions of the license. This group shall have the following responsibilities:

(i) Review all requests for computer usage and make recommendations concerning the acceptability of all projects and users;

(ii) Submit these recommendations to the Security Staff and Technical Consultative Committee for review and approval (see paragraph (a)(28) of this supplement);

(iii) Establish acceptable computer resource parameters for each project and review the results to verify their conformity with the authorized end-uses, restrictions, and parameters; and

(iv) Prepare monthly reports that would include a description of any runs exceeding the established parameters and submit them to the security staff.

(32) The end-user will also cooperate with any post-shipment inquiries or inspections by the U.S. Government or exporting company officials to verify the disposition and/or use of the computer, including access to the following:

(i) Usage logs, which should include, at a minimum, computer users, dates, times of use, and amount of system time used;

(ii) Computer access authorization logs, which should include, at a minimum, computer users, project names, and purpose of projects.

(33) The end-user will also cooperate with the U.S. Government or exporting company officials concerning the physical inspection of the computer using facility, on short notice, at least once a year and will provide access to all data relevant to computer usage. This inspection will include:

(i) Analyzing any programs or software run on the computer to ensure that all usage complies with the authorized end-uses on the license. This will be done by examining user files (e.g., source codes, machine codes, input/output data) that are either on-line at the time of the inspection or that have been previously sampled and securely stored.

(ii) Checking current and archived usage logs for conformity with the authorized end-uses and the restrictions imposed by the license.

(iii) Verifying the acceptability of all computer users in conformity with the authorized end-uses and the restrictions imposed by the license.

(34) Usage requests that exceed the quantity of monthly CPU time specified on the license shall not be approved without prior written authorization from the BXA. Requests for computational access approval shall include a description of the intended purpose for which access is sought.

(35) In addition to, or in lieu of, the normal access by on-site exporting company staff or its representatives, the company, when required by the exporting government, will provide a separate remote electronic access capability to the computer for the purposes of maintenance, troubleshooting, inspection of work in progress, and auditing of all work performed on the computer. On-site and central exporting company hardware and software maintenance facilities, at the direction of the exporting company staff or its representatives, to gather information such as:

(i) Statistical profiles of production jobs;

(ii) Logs of jobs run in both production and development mode;

(iii) Logs and reports of security related events.

If such method is used, the remote maintenance facilities will be considered part of the operating system and protected accordingly, and will be available only to exporting company operational staff or its representatives. The maintenance hardware and software and associated communication links will be protected to ensure the integrity and authenticity of data and programs and to prevent tampering with hardware.

(36) The export company staff or its representatives will be required to provide personnel for a specified period of time at the computer facility for management, operation, and safeguarding of the computer.

(b) *Certification by export control authorities of importing country*. (1) The following importing government certification may be required under § 742.12 of this part:

This is to certify that (*name of ultimate consignee*) has declared to (*name of appropriate foreign government agency*) that the computer (*model name*) will be used only for the purposes specified in the end-use statement and that the ultimate consignee will establish and adhere to all the safeguard conditions and perform all other undertakings described in the end-use statement.

The (*name of appropriate foreign government agency*) will advise the United States Government of any evidence that might reasonably indicate the existence of circumstances (e.g., transfer of ownership) that could affect the objectives of the security safeguard conditions.

(2) Other importing government assurances regarding prohibited activities may also be required on a case-by-case basis.

(c) *Commercial consignees.* Exports or reexports of computers that are solely dedicated to the following non-scientific and non-technical commercial business uses will usually be eligible for a reduced set of security safeguard conditions:

(1) Financial services (e.g., banking, securities and commodity exchanges);

(2) Insurance;

(3) Reservation systems;

(4) Point-of-sales systems;

(5) Mailing list maintenance for marketing purposes;

(6) Inventory control for retail/wholesale distribution.

SUPPLEMENT NO. 4 TO PART 742—KEY ESCROW OR KEY RECOVERY PRODUCTS CRITERIA

Key Recovery Feature

(1) The key(s) or other material/information required to decrypt ciphertext shall be accessible through a key recovery feature.

(2) The product's cryptographic functions shall be inoperable until the key(s) or other material/information required to decrypt ciphertext is recoverable by government officials under proper legal authority and without the cooperation or knowledge of the user.

(3) The output of the product shall automatically include, in an accessible format and with a reasonable frequency, the identity of the key recovery agent(s) and information sufficient for the key recovery agent(s) to identify the key(s) or other material/information required to decrypt the ciphertext.

(4) The product's key recovery functions shall allow access to the key(s) or other material/information needed to decrypt the ciphertext regardless of whether the product generated or received the ciphertext.

(5) The product's key recovery functions shall allow for the recovery of all required decryption key(s) or other material/information required to decrypt ciphertext during a period of authorized access without requiring repeated presentations of access authorization to the key recovery agent(s).

Interoperability Feature

(6) The product's cryptographic functions may interoperate with:

(i) Other key recovery products that meet these criteria, and shall not interoperate with products whose key recovery feature has been altered, bypassed, disabled, or otherwise rendered inoperative; and

(ii) Non-key recovery products only when the key recovery product permits access to the key(s) or other material/information needed to decrypt ciphertext generated or received (i.e., one direction at a minimum) by the key recovery product.

Design, Implementation and Operational Assurance

(7) The product shall be resistant to efforts to disable or circumvent the attributes described in criteria one through six.

(8) The product's cryptographic function's key(s) or other material/information required to decrypt ciphertext shall be escrowed with a key recovery agent(s) (who may be a key recovery agent(s) internal to the user's organization) acceptable to BXA, pursuant to the criteria in Supplement No. 5 to part 742. Since the establishment of a key management infrastructure and key recovery agents may take some time, BXA will, while the infrastructure is being built, consider exports of key recovery encryption products which facilitate establishment of the key management infrastructure before a key recovery agent is named.

Exporters of products described in this Supplement No. 4 to part 742 are required to furnish the name of an agent by December 31, 1998.

[61 FR 68582, Dec. 30, 1996]

SUPPLEMENT NO. 5 TO PART 742—KEY ESCROW OR KEY RECOVERY AGENT CRITERIA, SECURITY POLICIES, AND KEY ESCROW OR KEY RECOVERY PROCEDURES

KEY ESCROW OR KEY RECOVERY AGENT REQUIREMENTS; SECURITY POLICIES; KEY ESCROW OR KEY RECOVERY PROCEDURES

This supplement sets forth criteria that the Department of Commerce will use to approve key recovery agents to support approval of the export or reexport of key recovery encryption items controlled for EI reasons under ECCNs 5A002 and 5D002. Any arrangements between the exporter or reexporter and the key recovery agent must reflect the provisions contained in this supplement in a manner satisfactory to BXA, in conjunction with other agencies. This supplement outlines the criteria for employing key recovery agent personnel for key recovery procedures. An applicant for eligibility to export or reexport key recovery items shall provide, or cause the proposed key recovery agent to provide, to BXA sufficient information concerning any proposed key recovery agent arrangements to permit BXA's evaluation of the key recovery agent's security policies, key recovery procedures, and suitability and trustworthiness to maintain the confidentiality of the key(s) or other material/information required to decrypt ciphertext. The key recovery agent, who must be approved by BXA, may be the applicant for the classification request. When there is no key recovery agent involved, or the customer will self-escrow abroad, with or without a legal obligation to the exporter, the customer must be approved by BXA. BXA retains the right, in addition to any other remedies, to revoke eligibility for License Exception KMI if BXA determines that a key recovery agent no longer meets these criteria. The requirements related to the suitability and trustworthiness, security policies, and key recovery procedures of the key recovery agent shall be made terms and conditions of the License Exception for key recovery items. BXA shall require the key recovery agent to provide a representation that it will comply with such terms and conditions.

NOTE: Use of key recovery agents located outside the U.S. is permitted if acceptable to BXA in consultation with the host government, as appropriate.

I. Key Recovery Agent Requirements

(1)(a) A key recovery agent must identify by name, date and place of birth, and social security number, individual(s) who:

(i) Is/are directly involved in the escrowing of key(s) or other material/information required to decrypt ciphertext; or

(ii) Have access to key(s) or other material/information required to decrypt ciphertext, or

(iii) Have access to information concerning requests for key(s) or other material/information required to decrypt ciphertext; or

(iv) Respond to requests for key(s) or other material/information required to decrypt ciphertext; or

(v) Is/are in control of the key recovery agent and have access or authority to obtain key(s) or other material/information required to decrypt ciphertext, and

(b) Must certify that such individual(s) meet the requirements of the following paragraphs (b)(i) or (b)(ii). BXA reserves the right to determine at any time the suitability and trustworthiness of such individual(s). Evidence of an individual's suitability and trustworthiness shall include:

(i) Information indicating that the individual(s):

(A) Has no criminal convictions of any kind or pending criminal charges of any kind;

(B) Has not breached fiduciary responsibilities (e.g., has not violated any surety or performance bonds); and

(C) Has favorable results of a credit check; or,

(ii) Information that the individual(s) has an active U.S. government security clearance of Secret or higher issued or updated within the last five years.

(2) The key recovery agent shall timely disclose to BXA when an individual no longer meets the requirements of paragraphs I.(1)(b)(i) or (ii).

(3) A key recovery agent must, to remain eligible for License Exception KMI, identify to BXA by name, date and place of birth, and social security number any new individual(s) who will assume the responsibilities set forth in paragraph I.(1)(a) of this supplement. Before that individual(s) assumes such responsibilities, the key recovery agent must certify to BXA that the individual(s) meets the criteria set forth in subparagraphs I.(1)(b)(i) or (b)(ii) of this supplement. BXA reserves the right to determine at any time the suitability and trustworthiness of such personnel.

(4) If ownership or control of a key recovery agent is transferred, no export may take place under previously issued approvals until the successor key recovery agent complies with the criteria of this supplement.

(5) Key recovery agents shall submit suitable evidence of the key recovery agent's corporate viability and financial responsibility (e.g., a certificate of good standing from the state of incorporation, credit reports, and errors/omissions insurance).

(6) Key recovery agents shall disclose to BXA any of the following which have occurred within the ten years prior to the application:

(a) Federal or state felony convictions of the business;

(b) Material adverse civil fraud judgments or settlements; and

(c) Debarments from federal, state, or local government contracting.

The applicant shall also timely disclose to BXA the occurrence of any of the foregoing during the use of License Exception KMI.

(7) Key recovery agent(s) shall designate an individual(s) to be the security and operations officer(s).

(8) A key recovery agent may be internal to a user's organization and may consist of one or more individuals. BXA may approve such key recovery agents if sufficient information is provided to demonstrate that appropriate safeguards will be employed in handling key recovery requests from government entities. These safeguards should ensure: the key recovery agent's structural independence from the rest of the organization; security; and confidentiality.

II. Security Policies

(1) Key recovery agents must implement security policies that assure the confidentiality, integrity, and availability of the key(s) or other material/information required for decryption of the ciphertext.

(a) Procedures to assure confidentiality shall include:

(i) Encrypting all key(s) or other material/information required to decrypt ciphertext while in storage, transmission, or transfer; or

(ii) Applying reasonable measures to limit access to the database (e.g. using keyed or combination locks on the entrances to escrow facilities and limiting the personnel with knowledge of or access to the keys/combinations).

(b) Procedures to assure the integrity of the database (i.e. assuring the key(s) and other material/information required to decrypt ciphertext are protected against unauthorized changes) shall include the use of access controls such as database password controls, digital signatures, system auditing, and physical access restrictions.

(c) Procedures to assure the availability of the database (i.e. assuring that key(s) and other material/information required to decrypt ciphertext are retrievable at any time) shall include system redundance, physical security, and the use of cryptography to control access.

(2) Policies and procedures shall be designed and operated so that a failure by a single person, procedure, or mechanism does not compromise the confidentiality, integrity and availability of key(s)or other material/information required to decrypt ciphertext. Security policies and procedures may include, but are not limited to, multi-person control of access to recoverable keys, split keys, and back-up capabilities.

(3) Key recovery agents shall implement policies that protect against unauthorized disclosure of information regarding whose encryption material is stored, the fact that key(s) or other material/information required to decrypt ciphertext was requested or provided, and the identity of a requester. Procedures to assure the confidentiality of this information shall include those described in paragraph II.(1)(a) of this supplement.

(4) Key recovery agents shall provide to BXA prompt notice of a compromise of a security policy or of the confidentiality of key(s) or other material/information required to decrypt ciphertext.

III. Key Recovery Procedures

(1) Key recovery agents shall maintain the ability to make the key(s) or other material/information required to decrypt ciphertext available until notified otherwise by BXA. Key recovery agents shall make requested key(s) or other material/information required to decrypt ciphertext available, to the extent required by the request, within two hours from the time they receive a request from a government agency acting under appropriate legal authority.

(2) Key recovery agents shall maintain data regarding key recovery requests received, release of key(s) or other material/information required to decrypt ciphertext, database changes, system administration access, and dates of such events for purposes of audits by BXA.

(3) The key recovery agent must transfer all key recovery equipment, key(s) and/or other material/information required to decrypt ciphertext, key recovery database, and all administrative information necessary to its key recovery operations to another key recovery agent approved by BXA in the event that:

(a) The key recovery agent dissolves or otherwise terminates escrowing operations, or

(b) BXA determines that there is a risk of such dissolution or termination, or

(c) BXA determines that the key recovery agent is no longer suitable or trustworthy.

[61 FR 68582, Dec. 30, 1996]

SUPPLEMENT NO. 6 TO PART 742—GUIDELINES FOR SUBMITTING A CLASSIFICATION REQUEST FOR A MASS MARKET SOFTWARE PRODUCT THAT CONTAINS ENCRYPTION

Classification requests for release of certain mass market encryption software from EI controls must be submitted on Form BXA-748P, in accordance with §748.3 of the EAR. To expedite review of the request,

clearly mark the envelope ''Attn.: Mass Market Encryption Software Classification Request''. In Block 9: Special Purpose of the Form BXA-748P, you must insert the phrase ''Mass Market Encryption Software. Failure to insert this phrase will delay processing. In addition, the Bureau of Export Administration recommends that such requests be delivered via courier service to: Bureau of Export Administration, Office of Exporter Services, Room 2705, 14th Street and Pennsylvania Ave., N.W., Washington, D.C. 20230.

(a) Requests for mass market encryption software that meet the criteria in paragraph (a)(2) of this supplement will be processed in seven (7) working days from receipt of a properly completed request. Those requests for mass market encryption software that meet the criteria of paragraph (a)(1) of this supplement only will be processed in fifteen (15) working days from receipt of a properly completed request. When additional information is requested, the request will be processed within 15 working days of the receipt of the requested information.

(1) A mass market software product that meets *all* the criteria established in this paragraph will be processed in fifteen (15) working days from receipt of the properly completed request:

(i) The commodity must be mass market software. Mass market software is computer software that is available to the public via sales from stock at retail selling points by means of over-the-counter transactions, mail order transactions, or telephone call transactions;

(ii) The software must be designed for installation by the user without further substantial support by the supplier. Substantial support does not include telephone (voice only) help line services for installation or basic operation, or basic operation training provided by the supplier; and

(iii) The software includes encryption for data confidentiality.

(2) A mass market software product that meets *all* the criteria established in this paragraph will be processed in seven working days from receipt of the properly completed request:

(i) The software meets all the criteria established in paragraph (a)(1) (i) through (iii) of this supplement;

(ii) The data encryption algorithm must be RC4 and/or RC2 with a key space no longer than 40 bits. The RC4 and RC2 algorithms are proprietary to RSA Data Security, Inc. To ensure that the subject software is properly licensed and correctly implemented, contact RSA Data Security, (415) 595–8782;

(iii) If both RC4 and RC2 are used in the same software, their functionality must be separate. That is, no data can be operated sequentially on by both routines or multiply by either routine;

(iv) The software must not allow the alteration of the data encryption mechanism and its associated key spaces by the user or any other program;

(v) The key exchange used in data encryption must be:

(A) A public key algorithm with a key space less than or equal to a 512 bit modulus and/or;

(B) A symmetrical algorithm with a key space less than or equal to 64 bits; and

(vi) The software must not allow the alteration of the key management mechanism and its associated key space by the user or any other program.

(b) Instructions for the preparation and submission of a classification request that is eligible for seven day handling are as follows:

(1) If the software product meets the criteria in paragraph (a)(2) of this supplement, you must call the Department of Commerce on (202) 482–0092 to obtain a test vector. This test vector must be used in the classification process to confirm that the software has properly implemented the approved encryption algorithms.

(2) Upon receipt of the test vector, the applicant must encrypt the test plain text input provided using the commodity's encryption routine (RC2 and/or RC4) with the given key value. The applicant should not pre-process the test vector by any compression or any other routine that changes its format. Place the resultant test cipher text output in hexadecimal format on an attachment to form BXA–748P.

(3) You must provide the following information in a cover letter to the classification request:

(i) Clearly state at the top of the page ''Mass Market Encryption Software—7 Day Expedited Review Requested'';

(ii) State that you have reviewed and determined that the software subject to the classification request meets the criteria of paragraph (a)(2) of this supplement;

(iii) State the name of the single software product being submitted for review. A separate classification request is required for each product;

(iv) State how the software has been written to preclude user modification of the encryption algorithm, key management mechanism, and key space;

(v) Provide the following information for the software product:

(A) Whether the software uses the RC2 and/or the RC4 algorithm and how the algorithm(s) is used. If both of these algorithms are used in the same product, also state how the functionality of each is separated to assure that no data is operated on by both algorithms;

(B) Pre-processing information of plain text data before encryption (e.g. the addition

of clear text header information or compression of the data);

(C) Post-processing information of cipher text data after encryption (e.g. the addition of clear text header information or packetization of the encrypted data);

(D) Whether a public key algorithm or a symmetric key algorithm is used to encrypt keys and the applicable key space;

(E) For classification requests regarding source code:

(*1*) Reference the applicable executable product that has already received a one-time review;

(*2*) Include whether the source code has been modified by deleting the encryption algorithm, its associated key management routine(s), and all calls to the algorithm from the source code, or by providing the encryption algorithm and associated key management routine(s) in object code with all calls to the algorithm hidden. You must provide the technical details on how you have modified the source code;

(3) Include a copy of the sections of the source code that contain the encryption algorithm, key management routines, and their related calls; and

(F) Provide any additional information which you believe would assist in the review process.

(c) Instructions for the preparation and submission of a classification request that is eligible for 15 day handling are as follows:

(1) If the software product meets only the criteria in paragraph (a)(1) of this supplement, you must prepare a classification request. Send the original to the Bureau of Export Administration. Send a copy by Express Mail to:

Attn.: 15 day Encryption Request Coordinator P.O. Box 246 Annapolis Junction, MD 20701-0246.

(2) You must provide the following information in a cover letter to the classification request:

(i) Clearly state at the top of the page ''Mass Market Software and Encryption—15 Day Expedited Review Requested'';

(ii) State that you have reviewed and determined that the software subject of the classification request, meets the criteria of paragraph (a)(1) of this supplement;

(iii) State the name of the single software product being submitted for review. A separate classification request is required for each product;

(iv) State that a duplicate copy, in accordance with paragraph (c)(1) of this supplement, has been sent to the 15 day Encryption Request Coordinator; and

(v) Ensure that the information provided includes brochures or other documentation or specifications relating to the software, as well as any additional information which you believe would assist in the review process.

(3) Contact the Bureau of Export Administration on (202) 482–0092 prior to submission of the classification to facilitate the submission of proper documentation.

[61 FR 68583, Dec. 30, 1996]

SUPPLEMENT NO. 7 TO PART 742—REVIEW CRITERIA FOR EXPORTER KEY ESCROW OR KEY RECOVERY DEVELOPMENT PLANS

Exporter Key Recovery Plan

(1) Export of 56-bit digital encryption standard (DES) or equivalent strength encryption products, without key recovery, will be permitted, in exchange for specific commitments to key recovery products and services and a key management infrastructure. After a one-time review of the strength of the product, the 56-bit DES or equivalent strength products will be eligible for export License Exception KMI, provided that the exporter submits an acceptable plan.

(2) Acceptable plans include: export licenses issued for, and demonstrations of, key recovery products to appropriate U.S. agencies; plans describing products under development with key recovery features (see paragraph (3) of this supplement), and for distributors, a plan describing intentions to offer for distribution key recovery products.

(3) Following are topical areas to include in the plan, which should be submitted to the Department of Commerce, Bureau of Export Administration, in the form of a letter from senior corporate management:

(i) Steps the applicant has taken or will take (depending on its line of business) to develop, produce, distribute, market, and/or transition to encryption products with key recovery features. The plan should include benchmarks and milestones for incorporating key recovery features into products and services, and for the supporting key management infrastructure, including key recovery agent(s); and

(ii) Provision, at the applicant's discretion, of other information to indicate commitment to the development of a key management infrastructure, such as participation in U.S. Government pilot programs, current key recovery products or services provided, role in NIST's Technical Advisory Committee on a Key Management Infrastructure, participation in other encryption policy committees or groups, or other support for the key management infrastructure.

(4) Renewal of License Exception KMI must be sought by sending a letter to BXA every six months reporting progress in meeting milestones set forth in the exporter's plan for key recovery products and services.

[61 FR 68584, Dec. 30, 1996]

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

Sec.
744.1 General provisions.
744.2 Restrictions on certain nuclear end-uses.
744.3 Restrictions on certain missile end-uses.
744.4 Restrictions on certain chemical and biological weapons end-uses.
744.5 Restrictions on certain maritime nuclear propulsion end-uses.
744.6 Restrictions on certain activities of U.S. persons.
744.7 Restrictions on certain exports to and for the use of certain foreign vessels or aircraft.
744.8 Restrictions on certain exports to all countries for Libyan aircraft.
744.9 Restrictions on technical assistance by U.S. persons with respect to encryption items.

SUPPLEMENT NO. 1 TO PART 744 [Reserved]
SUPPLEMENT NO. 2 TO PART 744 [Reserved]
SUPPLEMENT NO. 3 TO PART 744—Countries Not Subject to Certain Nuclear End-Use Restrictions in §744.2(a)
SUPPLEMENT NO. 4 TO PART 744—Entity List

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *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 (November 15, 1996, 61 FR 58767); Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12802, Mar. 25, 1996, unless otherwise noted.

§744.1 General provisions.

(a) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part contains prohibitions against exports, reexports, and selected transfers to certain end-users and end-uses as introduced under General Prohibition Four (Denial Orders) and prohibitions against exports or reexports to certain end-uses as introduced, under General Prohibition Five (End-use/End-users). Sections 744.2, 744.3, 744.4, and 744.5 prohibit exports and reexports of items subject to the EAR to defined nuclear, missile, chemical and biological weapons, and nuclear maritime end-uses. Section 744.6 prohibits certain activities by U.S. persons in support of certain nuclear, missile, chemical, or biological end-uses regardless of whether that support involves the export or reexport of items subject to the EAR. Sections 744.7 and 744.8 prohibit exports and reexports of certain items for certain aircraft and vessels. In addition, these sections include license review standards for export license applications submitted as required by these sections. It should also be noted that part 764 of the EAR prohibits exports, reexports and certain in-country transfers of items subject to the EAR to denied parties.

(b) *Steps.* The following are steps you should follow in using the provisions of this part:

(1) *Review end-use and end-user prohibitions.* First, review each end-use and end-user prohibition described in this part to learn the scope of these prohibitions.

(2) *Determine applicability.* Second, determine whether any of the end-use and end-user prohibitions described in this part are applicable to your planned export, reexport, or other activity. See Supplement No. 1 to part 732 for guidance.

(c) A list of entities is included in Supplement No. 4 to this part 744 of the EAR (Entity List). Exporters are hereby informed that these entities are ineligible to receive any items subject to the EAR without a license to the extent specified in the supplement. License applications will be reviewed under the license review standards set forth in this part 744. No License Exceptions are available for exports or reexports to listed entities of specified items.

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 51370, Oct. 1, 1997]

§744.2 Restrictions on certain nuclear end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport to any destination, other than countries in the Supplement No. 3 to this part, any item subject to the EAR without a license if at the time of the export or reexport you

know[1] the item will be used directly or indirectly in any one or more of the following activities described in paragraphs (a)(1), (a)(2), and (a)(3) of this section:

(1) *Nuclear explosive activities.* Nuclear explosive activities, including research on or development, design, manufacture, construction, testing or maintenance of any nuclear explosive device, or components or subsystems of such a device.[2][3]

(2) *Unsafeguarded nuclear activities.* Activities including research on, or development, design, manufacture, construction, operation, or maintenance of any nuclear reactor, critical facility, facility for the fabrication of nuclear fuel, facility for the conversion of nuclear material from one chemical form to another, or separate storage installation, where there is no obligation to accept International Atomic Energy Agency (IAEA) safeguards at the relevant facility or installation when it contains any source or special fissionable material (regardless of whether or not it contains such material at the time of export), or where any such obligation is not met.

(3) *Safeguarded and unsafeguarded nuclear activities.* Safeguarded and unsafeguarded nuclear fuel cycle activities, including research on or development, design, manufacture, construction, operation or maintenance of any of the following facilities, or components for such facilities:[4]

(i) Facilities for the chemical processing of irradiated special nuclear or source material;

(ii) Facilities for the production of heavy water;

(iii) Facilities for the separation of isotopes of source and special nuclear material; or

(iv) Facilities for the fabrication of nuclear reactor fuel containing plutonium.

(b) *Additional prohibition on exporters or reexporters informed by BXA.* BXA may inform an exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for export or reexport of specified items to specified end-users, because BXA has determined that there is an unacceptable risk of use in, or diversion to, any of the activities described in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. The absence of any such notification does not excuse the exporter or reexporter from compliance with the license requirements of paragraph (a) of this section.

(c) *Exceptions.* Despite the prohibitions described in paragraphs (a) and (b) of this section, you may export technology subject to the EAR under the operation technology and software or sales technology and software provisions of License Exception TSU (see § 740.13 (a) and (b)), but only to and for use in countries listed in Country Group A:1 (see Supplement No. 1 to

[1] Part 772 of the EAR defines ''knowledge'' for all of the EAR except part 760, Restrictive Trade Practices and Boycotts. The definition, which includes variants such as ''know'' and ''reason to know'', encompasses more than positive knowledge. Thus, the use of ''know'' in this section in place of the former wording ''know or have reason to know'' does not lessen or otherwise change the responsibilities of persons subject to the EAR.

[2] Nuclear explosive devices and any article, material, equipment, or device specifically designed or specially modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices are subject to export licensing or other requirements of the Office of Defense Trade Controls, U.S. Department of State, or the licensing or other restrictions specified in the Atomic Energy Act of 1954, as amended. Similarly, items specifically designed or specifically modified for use in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions (except such items as are in normal commercial use for other purposes) are subject to the same requirements.

[3] Also see §§ 744.5 and 748.4 of the EAR for special provisions relating to technical data for maritime nuclear propulsion plants and other commodities.

[4] Such activities may also require a specific authorization from the Secretary of Energy pursuant to § 57.b.(2) of the Atomic Energy Act of 1954, as amended, as implemented by the Department of Energy's regulations published in 10 CFR 810.

part 740 of the EAR), Iceland and New Zealand. Notwithstanding the provisions of part 740 of the EAR, the provisions of § 740.13 (a) and (b) will only overcome general prohibition five for countries listed in Country Group A:1, Iceland and New Zealand.

(d) *License review standards.* The following factors are among those used by the United States to determine whether to grant or deny license applications required under this section:

(1) Whether the commodities, software, or technology to be transferred are appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;

(2) The significance for nuclear purposes of the particular commodity, software, or technology;

(3) Whether the commodities, software, or technology to be exported are to be used in research on or for the development, design, manufacture, construction, operation, or maintenance of any reprocessing or enrichment facility;

(4) The types of assurances or guarantees given against use for nuclear explosive purposes or proliferation in the particular case;

(5) Whether the end-user has been engaged in clandestine or illegal procurement activities;

(6) Whether an application for a license to export to the end-user has previously been denied, or whether the end-use has previously diverted items received under a license, License Exception, or NLR to unauthorized activities;

(7) Whether the export would present an unacceptable risk of diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity described in § 744.2 of this part; and

(8) The nonproliferation credentials of the importing country, based on consideration of the following factors:

(i) Whether the importing country is a party to the Nuclear Non-Proliferation Treaty (NPT) or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) (see Supplement No. 2 to part 742 of the EAR), or to a similar international legally-binding nuclear nonproliferation agreement;

(ii) Whether the importing country has all of its nuclear activities, facilities or installations that are operational, being designed, or under construction, under International Atomic Energy Agency (IAEA) safeguards or equivalent full scope safeguards;

(iii) Whether there is an agreement for cooperation in the civil uses of atomic energy between the U.S. and the importing country;

(iv) Whether the actions, statements, and policies of the government of the importing country are in support of nuclear nonproliferation and whether that government is in compliance with its international obligations in the field of nonproliferation;

(v) The degree to which the government of the importing country cooperates in nonproliferation policy generally (e.g., willingness to consult on international nonproliferation issues);

(vi) Intelligence data on the importing country's nuclear intentions and activities.

[61 FR 12802, Mar. 25, 1996, as amended at 61 FR 64284, Dec. 4, 1996; 62 FR 25459, May 9, 1997]

§ 744.3 Restrictions on certain missile end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR without a license if at the time of the export or reexport you know the item:

(1) Is destined to or for a project listed in the footnote to Country Group D:4 (see Supplement No. 1 to part 740 of the EAR); or

(2) Will be used in the design, development, production or use of missiles in or by a country listed in Country Group D:4, whether or not that use involves a listed project.

(b) *Additional prohibition on exporters informed by BXA.* BXA may inform the exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export or reexport, or for exports or reexports of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to activities described in paragraph (a) of this section,

anywhere in the world. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section. An illustrative list of projects is included in a footnote to Country Group D:4. Exporters and reexporters are deemed to have been informed that an individual license is required to export or reexport to these projects. Exporters should be aware that the list of projects in Country Group D:4 is not comprehensive; extra caution should be exercised when making any shipments to a country listed in Country Group D:4.

(c) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraph (a) and (b) of this section.

(d) *License review standards for certain missile end-uses.* (1) Applications to export the items subject to this section will be considered on a case-by-case basis to determine whether the export would make a material contribution to the proliferation of missiles. When an export is deemed to make a material contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required by this section:

(i) The specific nature of the end-use;

(ii) The significance of the export in terms of its contribution to the design, development, production, or use of missiles;

(iii) The capabilities and objectives of the missile and space programs of the recipient country;

(iv) The non-proliferation credentials of the importing country;

(v) The types of assurances or guarantees against design, development, production or use for missiles delivery purposes that are given in a particular case; and

(vi) The existence of a pre-existing contract.

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997]

§744.4 Restrictions on certain chemical and biological weapons end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR without a license if at the time of the export or reexport you know the item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3 (see Supplement No. 1 to part 740 of the EAR).

(b) *Additional prohibition on exporters informed by BXA.* BXA may inform the exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export or reexport, or for export or reexport of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to such activities, anywhere in the world. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(c) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

(d) *License review standards.* (1) Applications to export or reexport items subject to this section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required under this section:

(i) The specific nature of the end-use;

(ii) The significance of the export in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The non-proliferation credentials of the importing country;

(iv) The types of assurances or guarantees against design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case; and

(v) The existence of a pre-existing contract.[5]

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997]

§ 744.5 Restrictions on certain maritime nuclear propulsion end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport certain technology subject to the EAR without a license if at the time of the export or reexport you know the item is for use in connection with a foreign maritime nuclear propulsion project. This prohibition applies to any technology relating to maritime nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, or maintenance, including any machinery, devices, components, or equipment specifically developed or designed for use in such plants or facilities.

(b) *Exceptions.* The exceptions provided in part 740 of the EAR do not apply to the prohibitions described in paragraph (a) of this section.

(c) *License review standards.* It is the policy of the United States Government not to participate in and not to authorize United States firms or individuals to participate in foreign naval nuclear propulsion plant projects, except under an Agreement for Cooperation on naval nuclear propulsion executed in accordance with § 123(d) of the Atomic Energy Act of 1954. However, it is the policy of the United States Government to encourage United States firms and individuals to participate in maritime (civil) nuclear propulsion plant projects in friendly foreign countries provided that United States naval nuclear propulsion information is not disclosed.

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997]

§ 744.6 Restrictions on certain activities of U.S. persons.

(a) *General prohibitions*—(1) *Activities related to exports.* (i) No U.S. person as defined in paragraph (c) of this section may, without a license from BXA, export, reexport, or transfer to or in any country any item where that person knows that such items:

(A) Will be used in the design, development, production, or use of nuclear explosive devices in or by a country listed in Country Group D:2 (see Supplement No. 1 to part 740 of the EAR).

(B) Will be used in the design, development, production, or use of missiles in or by a country listed in Country Group D:4 (see Supplement No. 1 to part 740 of the EAR); or

(C) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3 (see Supplement No. 1 to part 740 of the EAR).

(ii) No U.S. person shall, without a license from BXA, knowingly support an export, reexport, or transfer that does not have a license as required by this section. Support means any action, including financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer without being the actual exporter or reexporter.

(2) *Other activities unrelated to exports.* No U.S. person shall, without a license from BXA:

(i) Perform any contract, service, or employment that the U.S. person knows will directly assist in the design, development, production, or use of missiles in or by a country listed in Country Group D:4 (see Supplement No. 1 to part 740 of the EAR); or

(ii) Perform any contract, service, or employment that the U.S. person knows directly will directly assist in

[5] See Supplement No. 1 to part 742 of the EAR for relevant contract sanctity dates.

the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3 (see Supplement No. 1 to part 740 of the EAR).

(3) *Whole plant requirement.* No U.S. person shall, without a license from BXA, participate in the design, construction, export, or reexport of a whole plant to make chemical weapons precursors identified in ECCN 1C350, in countries other than those listed in Country Group A:3 (Australia Group) (See Supplement No. 1 to part 740 of the EAR).

(b) *Additional prohibitions on U.S. persons informed by BXA.* BXA may inform U.S. persons, either individually or through amendment to the EAR, that a license is required because an activity could involve the types of participation and support described in paragraph (a) of this section anywhere in the world.

Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(c) *Definition of U.S. person.* For purposes of this section, the term U.S. person includes:

(1) Any individual who is a citizen of the United States, a permanent resident alien of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3);

(2) Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and

(3) Any person in the United States.

(d) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

(e) *License review standards.* Applications to engage in activities otherwise prohibited by this section will be denied if the activities would make a material contribution to the design, development, production, stockpiling, or use of nuclear explosive devices, chemical or biological weapons, or of missiles.

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997]

§744.7 Restrictions on certain exports to and for the use of certain foreign vessels or aircraft.

(a) *General end-use prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR to, or for the use of, a foreign vessel or aircraft, whether an operating vessel or aircraft or one under construction, located in any port including a Canadian port, unless a License Exception or NLR permits the shipment to be made:

(1) To the country in which the vessel or aircraft is located, and

(2) To the country in which the vessel or aircraft is registered, or will be registered in the case of a vessel or aircraft under construction, and

(3) To the country, including a national thereof, which is currently controlling, leasing, or chartering the vessel or aircraft.

(b) *Exception for U.S. and Canadian carriers.* (1) Notwithstanding the general end-use prohibition in paragraph (a) of this section, export and reexport may be made of the commodities described in paragraph (b)(3) of this section, for use by or on a specific vessel or plane of U.S. or Canadian registry located at any seaport or airport outside the United States or Canada except a port in North Korea or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided that such commodities are[6] all of the following:

(i) Ordered by the person in command or the owner or agent of the vessel or plane to which they are consigned;

(ii) Intended to be used or consumed on board such vessel or plane and necessary for its proper operation;

(iii) In usual and reasonable kinds and quantities during times of extreme need, except that usual and reasonable quantities of ship's bunkers or aviation fuel are considered to be only that

[6] Where a license is required, see §§748.2 and 748.4(g) of the EAR.

quantity necessary for a single onward voyage or flight; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) is filed with the carrier, except that an SED is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their use.

(2) *Exports to U.S. or Canadian Airline's Installation or Agent.* Exports and reexports of the commodities described in paragraph (e) of this section, except fuel, may be made to a U.S. or Canadian airline's installation or agent in any foreign destination except North Korea or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided such commodities are all of the following:

(i) Ordered by a U.S. or Canadian airline and consigned to its own installation or agent abroad;

(ii) Intended for maintenance, repair, or operation of aircraft registered in either the United States or Canada, and necessary for the aircraft's proper operation, except where such aircraft is located in, or owned, operated or controlled by, or leased or chartered to, North Korea or Country Group D:1 (excluding the PRC) (see Supplement No. 1 to part 740) or a national of such country;

(iii) In usual and reasonable kinds and quantities; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) is filed with the carrier, except that an SED is not required when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations.

(3) *Applicable commodities.* This § 744.7 applies to the commodities listed subject to the provisions in paragraph (b) of this section:

(i) Fuel, except crude petroleum and blends of unrefined crude petroleum with petroleum products, which is of non-Naval Petroleum Reserves origin or derivation (refer to short supply controls in part 754 of the EAR);

(ii) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements, except crude petroleum, provided that any commodities which are listed in Supplement No. 2 to part 754 of the EAR are of non-Naval Petroleum Reserves origin or derivation (refer to short supply controls in part 754 of the EAR);

(iii) Medical and surgical supplies;

(iv) Food stores;

(v) Slop chest articles;

(vi) Saloon stores or supplies; and

(vii) Equipment and spare parts.

§ 744.8 Restrictions on certain exports to all countries for Libyan aircraft.

(a) *General end-use prohibition for Libyan aircraft.* In addition to the license requirements for items specified on the CCL, you may not export or reexport to any destination such parts and accessories specified in paragraph (b) of this section if intended for use in the manufacture, overhaul, or rehabilitation in any country of aircraft that will be exported or reexported to Libya or Libyan nationals.

(b) *Scope of products subject to end-use prohibition for Libyan aircraft.* The general end-use prohibition in paragraph (a) of this section applies to items controlled by ECCNs 6A008, 6A108, 6A990, 7A001, 7A101, 7A002, 7A102, 7A003, 7A103, 7A004, 7A104, 7A006, 7A106, 7A115, 7A994, 9A001, 9A101, 9A003, 9A018.a, 9A991, and 9A994.

§ 744.9 Restrictions on technical assistance by U.S. persons with respect to encryption items.

(a) *General prohibition.* No U.S. person may, without a license from BXA, provide technical assistance (including training) to foreign persons with the intent to aid a foreign person in the development or manufacture outside the United States of encryption commodities and software that, if of United States origin, would be controlled for ''EI'' reasons under ECCN 5A002 or 5D002. Note that this prohibition does not apply if the U.S. person providing the assistance has a license or is otherwise entitled to export the encryption commodities and software in question to the foreign person(s) receiving the assistance. Note in addition that the mere teaching or discussion of information about cryptography, including, for example, in an academic setting, by

itself would not establish the intent described in this section, even where foreign persons are present.

(b) *Definition of U.S. person.* For purposes of this section, the term U.S. person includes:

(1) Any individual who is a citizen or permanent resident alien of the United States;

(2) Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and

(3) Any person in the United States.

(c) *License review standards.* Applications involving activities described in this section will be reviewed on a case-by-case basis to determine whether the activity is consistent with U.S. national security and foreign policy interests.

[61 FR 68584, Dec. 30, 1996]

SUPPLEMENT NO. 1 TO PART 744 [RESERVED]

SUPPLEMENT NO. 2 TO PART 744 [RESERVED]

SUPPLEMENT NO. 3 TO PART 744—COUNTRIES NOT SUBJECT TO CERTAIN NUCLEAR END-USE RESTRICTIONS IN § 744.2(A)

Australia
Belgium
Canada
Denmark
France
Germany
Greece
Iceland
Italy (includes San Marino and Holy See)
Japan
Luxembourg
Netherlands
New Zealand
Norway
Portugal
Spain
Turkey
United Kingdom

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997]

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

This Supplement lists certain entities subject to license requirements for specified items under this part 744 of the EAR. This list of entities is revised and updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.

All-Russian Scientific Research Institute of Technical Physics, (aka VNIITF, Chelyabinsk-70, All-Russian Research Institute of Technical Physics, ARITP, Russian Federal Nuclear Center), the All-Union Scientific Research Institute of Experimental Physics, (aka VNIIEF, Arzamas-16, Russian Federal Nuclear Center, All Russian Research Institute of Experimental Physics, ARIEP, Khariton Institute) and any other entities, institutes, or centers associated with the Ministry for Atomic Power of Russia located in either Snezhinsk or Kremlev, Russia, for all items subject to the EAR.

Ben Gurion University, Israel for computers between 2,000 and 7,000 Mtops.

Bhaba Atomic Research Center (BARC), Trombay, India, for all items subject to the EAR.

Bharat Electronics Limited (BEL) in Bangalore, India; and Bharat Electronics Limited (BEL) in Hyderabad, India; for all items subject to the EAR having a classification other than EAR99. In addition, exporters are reminded to follow ''BXA's Know Your Customer Guidance and Red Flags'', see Supplement No. 3 to part 732 of the EAR, with regard to the specific end-use of any item subject to the EAR destined to any Bharat Electronics Limited located in India.

Chinese Academy of Engineering Physics (aka Ninth Academy, including the Southwest Institutes of: Applied Electronics, Chemical Materials, Electronic Engineering, Explosives and Chemical Engineering, Environmental Testing, Fluid Physics, General Designing and Assembly, Machining Technology, Materials, Nuclear Physics and Chemistry, Structural Mechanics; Research and Applications of Special Materials Factory; Southwest Computing Center (all of preceding located in or near Mianyang, Sichuan Province); Institute of Applied Physics and Computational Mathematics, Beijing; and High Power Laser Laboratory, Shanghai, People's Republic of China), for all items subject to the EAR.

Indian Rare Earths, Ltd., India, for all items subject to the EAR.

Indira Gandhi Center for Atomic Research, Khalpakham, India, for all items subject to the EAR.

Khan Research Laboratory, Kahuta, Pakistan, for all items subject to the EAR.

National Development Centre, Pakistan, for all items subject to the EAR.

Nuclear Research Center at Negev, Dimona, Israel, for all items subject to the EAR.

Pakistan Institute for Nuclear Science and Technology, Rawalpindi, Pakistan, (including New Labs Rawalpindi) for all items subject to the EAR.

[62 FR 4910, Feb. 3, 1997, as amended at 62 FR 26923, May 16, 1997; 62 FR 35334, 35335, June 30, 1997; 62 FR 51370, Oct. 1, 1997]

PART 746—EMBARGOES AND OTHER SPECIAL CONTROLS

Sec.
746.1 Introduction.
746.2 Cuba.
746.3 Iraq.
746.4 Libya.
746.5 North Korea.
746.6 [Reserved]
746.7 Iran.
746.8 Rwanda.

SUPPLEMENT NO. 1 TO PART 746—SPECIAL SANCTIONS ON ANGOLA ADMINISTERED BY THE OFFICE OF FOREIGN ASSETS CONTROL

SUPPLEMENT NO. 2 TO PART 746—UNITED NATIONS ARMS EMBARGOES ADMINISTERED BY THE DEPARTMENT OF STATE: LIBERIA, SOMALIA AND COUNTRIES OF THE FORMER YUGOSLAVIA (BOSNIA-HERZEGOVINA, CROATIA, FORMER YUGOSLAV REPUBLIC OF MACEDONIA, SERBIA AND MONTENEGRO, SLOVENIA)

SUPPLEMENT NO. 3 TO PART 746—CONTROLS ON THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO), BOSNIA-HERZEGOVINA, CROATIA ADMINISTERED BY THE OFFICE OF FOREIGN ASSETS CONTROL

AUTHORITY: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 287c; 22 U.S.C. 6004; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

SOURCE: 61 FR 12806, Mar. 25, 1996, unless otherwise noted.

§ 746.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part implements broad based controls for items and activities subject to the EAR imposed to implement U.S. government policies. Two categories of controls are included in this part.

(a) *Comprehensive controls.* This part contains or refers to all the BXA licensing requirements, licensing policies, and License Exceptions for countries subject to general embargoes, currently Cuba, Libya, North Korea, Iran and Iraq. This part is the focal point for all the EAR requirements for transactions involving these countries.

(1) *Cuba, Libya, North Korea.* All the items on the Commerce Control List (CCL) require a license to Cuba, Libya, or North Korea. In addition, most other items subject to the EAR, but not included on the CCL, designated by the Number ''EAR99'', require a license to Cuba, Libya, and North Korea. Most items requiring a license to these destinations are subject to a general policy of denial. Because these controls extend to virtually all exports, they do not appear in the Country Chart in part 738 of the EAR, nor are they reflected in the Commerce Control List in part 774 of the EAR.

(2) *Iran and Iraq.* While BXA maintains controls on exports and reexports to Iran and Iraq, comprehensive embargoes on transactions involving these countries are administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC).

(b) *Rwanda.* The second category of controls that apply to Rwanda are supplemental to the controls described in the Country Chart in part 738 of the EAR. Such controls are listed under each affected ECCN on the CCL in part 774 of the EAR.

(c) This part also contains descriptions of controls maintained by the Office of Foreign Assets Control in the Treasury Department and by the Office of Defense Trade Controls in the Department of State. Comprehensive embargoes and supplemental controls implemented by BXA under the EAR usually also involve controls on items and activities maintained by these agencies. This part sets forth the allocation of licensing responsibilities between BXA and these other agencies. References to the requirements of other agencies are informational; for current, complete, and authoritative requirements, you should consult the appropriate agency's regulations.

(d) Supplement No. 1 to this part provides you with general information on United Nations sanctions administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC) (31 CFR part 590) on UNITA in Angola.

(e) Supplement No. 2 to this part provides you with general information on

United Nations arms embargoes administered by the Department of State (22 CFR parts 120 through 130) on all the countries of the former Yugoslavia (Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Serbia, Montenegro, and Slovenia), Liberia and Somalia.

(f) Supplement No. 3 to this part provides you with information on embargoes on the Federal Republic of Yugoslavia (Serbia and Montenegro) and certain areas of Croatia and Bosnia-Herzegovina administered by OFAC (31 CFR part 585).

[61 FR 12806, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1996]

§746.2 Cuba.

(a) *License requirements.* As authorized by section 6 of the Export Administration Act of 1979, as amended (EAA) and by the Trading with the Enemy Act of 1917, as amended, you will need a license to export or reexport all items subject to the EAR (see part 734 of the EAR for the scope of items subject to the EAR) to Cuba, except as follows.

(1) *License Exceptions.* You may export or reexport without a license if your transaction meets all the applicable terms and conditions of any of the following License Exceptions. To determine the scope and eligibility requirements, you will need to turn to the sections or specific paragraphs of part 740 of the EAR (License Exceptions). Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Temporary exports and reexports (TMP) by the news media (see §740.9(a)(2)(viii) of the EAR).

(ii) Operation technology and software (TSU) for legally exported commodities (see §740.13(a) of the EAR).

(iii) Sales technology (TSU) (see §740.13(b) of the EAR).

(iv) Software updates (TSU) for legally exported software (see §740.13(c) of the EAR).

(v) Parts (RPL) for one-for-one replacement in certain legally exported commodities (see §740.10(a) of the EAR).

(vi) Baggage (BAG) (see §740.14 of the EAR).

(vii) Governments and international organizations (GOV) (see §740.11 of the EAR).

(viii) Gift parcels and humanitarian donations (GFT) (see §740.12 of the EAR).

(ix) Items in transit (TMP) from Canada through the U.S. (see §740.9(b)(1)(iv) of the EAR).

(x) Aircraft and vessels (AVS) for certain aircraft on temporary sojourn (see §740.15(a) of the EAR).

(xi) Permissive reexports of certain spare parts in foreign-made equipment (see §740.16(h) of the EAR).

(2) [Reserved]

(b) *Licensing policy.* Items requiring a license are subject to a general policy of denial, except as follows:

(1) *Medicines, medical supplies, instruments and equipment.* Applications to export medicines, medical supplies, instruments and equipment will generally be approved, except:

(i) To the extent restrictions would be permitted under section 5(m) of the Export Administration Act of 1979, as amended (EAA), or section 203(b)(2) of the International Emergency Economic Powers Act;

(ii) If there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;

(iii) If there is a reasonable likelihood that the item to be exported will be reexported;

(iv) If the item to be exported could be used in the production of any biotechnological product; or

(v) If it is determined that the United States government is unable to verify, by on-site inspection or other means, that the item to be exported will be used for the purpose for which it was intended and only for the use and benefit of the Cuban people, but this exception shall not apply to donations of medicines for humanitarian purposes to a nongovernmental organization in Cuba.

(2) Telecommunications commodities may be authorized on a case-by-case basis, provided the commodities are part of an FCC-approved project and are necessary to provide efficient and adequate telecommunications services between the United States and Cuba.

(3) Exports from third countries to Cuba of non-strategic foreign-made products that contain an insubstantial proportion of U.S.-origin materials, parts, or components will generally be considered favorably on a case-by-case basis, provided all of the following conditions are satisfied:

(i) The local law requires, or policy favors, trade with Cuba;

(ii) The U.S.-origin content does not exceed 20 percent of the value of the product to be exported from the third country. Requests where the U.S.-origin parts, components, or materials represent more than 20 percent by value of the foreign-made product will generally be denied. See Supplement No. 2 to part 734 of the EAR for instructions on how to calculate value; and

(iii) You are not a U.S.-owned or -controlled entity in a third country as defined by OFAC regulations, 31 CFR part 515, or you are a U.S.-owned or controlled entity in a third country and one or more of the following situations applies:

(A) You have a contract for the proposed export that was entered into prior to October 23, 1992.

(B) Your transaction involves the export of foreign-produced medicine, or medical supplies, instruments, or equipment incorporating U.S.-origin parts, components or materials, in which case the application will be reviewed according to the provisions of paragraph (b)(1) of this section.

(C) Your transaction is for the export of foreign-produced telecommunications commodities incorporating U.S.-origin parts, components and materials, in which case the application will be reviewed under the licensing policy set forth in paragraph (b)(2) of this section.

(D) Your transaction is for the export of donated food to individuals or non-governmental organizations in Cuba and does not qualify for the humanitarian License Exception.

(4) Applications for licenses may be approved, on a case-by-case basis, for certain exports to Cuba intended to provide support for the Cuban people, as follows:

(i) Applications for licenses for exports of certain commodities and software may be approved to human rights organizations, or to individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba when such exports do not give rise to U.S. national security or counter-terrorism concerns. Examples of such commodities include fax machines, copiers, computers (e.g., 486-level/CTP of 24.8 MTOPS or less), business/office software, document scanning equipment, printers, typewriters, and other office or office communications equipment. Applicants may donate or sell the commodities or software to be exported. Reexport to other end-users or end-uses is not authorized.

(ii) Commodities and software may be approved for export to U.S. news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public. In addition to the examples of commodities and software listed in paragraph (b)(4)(i) of this section, certain telecommunications equipment necessary for the operation of news organizations (e.g., 33M bit/s data signaling rate or less) may be approved for export to U.S. news bureaus.

(c) Cuba has been designated by the Secretary of State as a country whose government has repeatedly provided support for acts of international terrorism. For anti-terrorism controls, see Supplement 2 to part 742 of the EAR.

(d) *Related controls.* OFAC maintains controls on the activities of persons subject to U.S. jurisdiction, wherever located, involving transactions with Cuba or any specially designated Cuban national, as provided in 31 CFR part 515.

[61 FR 12802, Mar. 25, 1996, as amended at 61 FR 64284, Dec. 4, 1996; 62 FR 9364, Mar. 3, 1997; 62 FR 25459, May 9, 1997]

§ 746.3 Iraq.

(a) *License requirements.* OFAC administers an embargo against Iraq under the authority of the International Emergency Economic Powers Act of 1977, as amended, and the United Nations Participation Act of 1945, as amended, and in conformance with United Nations Security Council Resolutions. The applicable OFAC regulations, the Iraqi Sanctions Regulations,

are found in 31 CFR part 575. You should consult with OFAC for authorization to export or reexport items subject to U.S. jurisdiction to Iraq, or to any entity owned or controlled by, or specially designated as acting for or on behalf of, the Government of Iraq. Under the EAR, you need a license to export or reexport to Iraq any item on the CCL containing a CB Column 1, CB Column 2, CB Column 3, NP Column 1, NP Column 2, NS Column 1, NS Column 2, MT Column 1, RS Column 1, RS Column 2, CC Column 1, CC Column 2, CC Column 3 in the Country Chart Column of the License Requirements section of an ECCN, or classified under ECCNs 1C980, 1C981, 1C982, 1C983, 1C984, 5A980, 0A980, and 0A983; however, to avoid duplication, an authorization from OFAC constitutes authorization under the EAR, and no separate BXA authorization is necessary. Except as noted in §746.3(a)(1) of this part, you may not use any BXA License Exception or other BXA authorization to export or reexport to Iraq.

(1) *License Exceptions.* You may export or reexport without a license if your transaction meets all the applicable terms and conditions of one of the following License Exceptions. Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Baggage (BAG) (see §740.14 of the EAR).

(ii) Governments and international organizations (GOV) (see §740.11 of the EAR).

(2) *Exports for the official use of the United Nations, its personnel or agencies (excluding its relief or developmental agencies).* You must consult with OFAC to determine what transactions are eligible.

(b) Iraq has been designated by the Secretary of State as a country that has repeatedly provided support for acts of international terrorism. For anti-terrorism controls, see Supplement 2 to part 742 of the EAR.

(c) *Related controls.* OFAC maintains controls on the activities of U.S. persons, wherever located, involving transactions with Iraq or any specially designated Iraqi national, as provided in 31 CFR part 575.

[61 FR 12806, Mar. 25, 1996, as amended at 61 FR 64284, Dec. 4, 1996; 62 FR 25460, May 9, 1997]

§746.4 Libya.

(a) *Introduction.* The Department of the Treasury and the Department of Commerce maintain comprehensive controls on exports and reexports to Libya. OFAC maintains comprehensive controls on exports and transshipments to Libya under the Libyan Sanctions Regulations (31 CFR part 550). To avoid duplicate licensing procedures, OFAC and BXA have allocated licensing responsibility as follows: OFAC licenses direct exports and transshipments to Libya; BXA licenses reexports, exports of foreign-manufactured items containing U.S.-origin parts, components or materials, and exports of foreign-produced direct product of U.S. technology or software. Issuance of an OFAC license also constitutes authorization under the EAR, and no license from BXA is necessary. Exports and reexports subject to the EAR that are not subject to the Libyan Sanctions Regulations continue to require authorization from BXA.

(b) *License requirements.*

(1) *Exports.* OFAC and BXA both require a license for virtually all exports (including transshipments) to Libya. Except as noted in paragraph (b) of this section or specified in OFAC regulation, you may not use any BXA License Exception or other BXA authorization to export or transship to Libya. You will need a license from OFAC for all direct exports and transshipments to Libya except those eligible for the following BXA License Exceptions:

(i) Baggage (BAG) (see §740.14 of the EAR).

(ii) Governments and international organizations (GOV) (see §740.11 of the EAR).

(iii) Gift parcels (GFT) (see §740.12(a) of the EAR).

(2) *Reexports.* You will need a license from BXA to reexport any U.S.-origin item from a third country to Libya, any foreign-manufactured item containing U.S.-origin parts, components or materials, as defined in §734.2(b)(2) of the EAR, or any national security-

controlled foreign-produced direct product of U.S. technology or software, as defined in § 734.2(b)(3) of the EAR, exported from the U.S. after March 12, 1982. You will need a license from BXA to reexport all items subject to the EAR (see part 734 of the EAR) to Libya, except:

(i) Food, medicines, medical supplies, and agricultural commodities;

(ii) Reexports eligible for the following License Exceptions (read each License Exception carefully, as the provisions available for embargoed countries are generally narrow):

(A) Temporary exports and reexports (TMP): reexports by the news media (see § 740.9(a)(2)(viii) of the EAR).

(B) Operation technology and software (TSU) for legally exported commodities (see § 740.13(a) of the EAR).

(C) Sales technology (TSU) (see § 740.13(b) of the EAR).

(D) Software updates (TSU) for legally exported software (see § 740.13(c) of the EAR).

(E) Parts (RPL) for one-for-one replacement in certain legally exported commodities (§ 740.10(a) of the EAR).

(F) Baggage (BAG) (§ 740.14 of the EAR).

(G) Aircraft and vessels (AVS) for vessels only (see § 740.15(c)(1) of the EAR).

(H) Governments and international organizations (GOV) (see § 740.11 of the EAR).

(I) Gift parcels and humanitarian donations (GFT) (see § 740.12 of the EAR).

(J) Permissive reexports of certain spare parts in foreign-made equipment (see § 740.16(h) of the EAR).

(c) *Licensing policy*. (1) You should consult with OFAC regarding licensing policy for transactions subject to OFAC regulation.

(2) The licensing policy for BXA controls is as follows. Licenses will generally be denied for:

(i) Items controlled for national security purposes and related technology and software, including controlled foreign produced products of U.S. technology and software exported from the United States after March 12, 1982; and

(ii) Oil and gas equipment and technology and software, if listed in paragraph (c)(2)(vii) of this section, or if determined by BXA not to be readily available from sources outside the United States; and

(iii) Commodities, software, and technology destined for the petrochemical processing complex at Ras Lanuf, if listed in paragraph (c)(2)(vii) of this section, or where such items would contribute directly to the development or construction of that complex (items destined for the township at Ras Lanuf, or for the public utilities or harbor facilities associated with that township, generally will not be regarded as making such a contribution where their functions will be primarily related to the township, utilities or harbor);

(iv) Aircraft (including helicopters) or aircraft parts, components, or accessories to Libya or the provision of engineering and maintenance servicing of Libyan aircraft or aircraft components;

(v) Arms and related material of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment, spare parts for the aforementioned, and equipment or supplies for the manufacture or maintenance of the aforementioned.

(vi) Materials destined for the construction, improvement or maintenance of Libyan civilian or military airfields and associated facilities and equipment or any engineering or other services or components destined for the maintenance of any Libyan civil or military airfields or associated facilities and equipment, except emergency equipment and equipment and services directly related to civilian air traffic control; and

(vii) Items listed in paragraphs (c)(2)(vii) (A) through (E) and equipment and supplies for the manufacture or maintenance of such items:

(A) Pumps of medium or large capacity (equal to or larger than 3500 cubic meters per hour) and drivers (gas turbines and electric motors) designed for use in the transportation of crude oil and natural gas.

(B) Equipment designed for use in crude oil export terminals, as follows:

(*1*) Loading buoys or single point moorings;

(*2*) Flexible hoses for connection between underwater manifolds (plem) and

single point mooring and floating loading hoses of large sizes (from 12–16 inches); or

(*3*) Anchor chains.

(C) Equipment not specially designed for use in crude oil export terminals, but which because of its large capacity can be used for this purpose, as follows:

(*1*) Loading pumps of large capacity (4000 m^3/h) and small head (10 bars);

(*2*) Boosting pumps within the same range of flow rates;

(*3*) Inline pipe line inspection tools and cleaning devices (i.e., pigging tools) (16 inches and above); or

(*4*) Metering equipment of large capacity (1000 m^3/h and above).

(D) Refinery equipment, as follows:

(*1*) Boilers meeting American Society of Mechanical Engineers 1 standards;

(*2*) Furnaces meeting American Society of Mechanical Engineers 8 standards;

(*3*) Fractionation columns meeting American Society of Mechanical Engineers 8 standards;

(*4*) Pumps meeting American Petroleum Institute 610 standards;

(*5*) Catalytic reactors meeting American Society of Mechanical Engineers 8 standards; or

(*6*) Prepared catalysts, including catalysts containing platinum and catalysts containing molybdenum.

(E) Spare parts for any of the items described in paragraph (c)(2)(vii) of this section.

(3) Notwithstanding the presumptions of denial in paragraphs (c)(2) (i) through (iii) of this section, licenses will generally be issued for items not included in paragraphs (c)(2) (iv) through (vii) of this section when the transaction involves:

(i) The export or reexport of commodities or technology and software under a contract in effect prior to March 12, 1982, where failure to obtain a license would not excuse performance under the contract;

(ii) Reexport of items not controlled for national security purposes that had been exported from the United States prior to March 12, 1982 or exports of foreign products incorporating such items as components; or

(iii) Incorporation of U.S.-origin parts, components, or materials in foreign-manufactured products destined for Libya, where the U.S. content is 20 percent or less by value.

(4) Notwithstanding the presumption of denial in paragraph (c)(2) (iv) through (vii), applications for reexports under a contract pre-dating January 18, 1994, will be reviewed under the licensing policy in effect prior to that date.

(5) Licenses will generally be considered favorably on a case-by-case basis when the transaction involves the following items, provided such items are not included in paragraph (c)(2) (iv) through (vii):

(i) Reexports of items subject to national security controls that were exported prior to March 12, 1982 and exports of foreign products incorporating such U.S.-origin components, where the particular authorization would not be contrary to specific foreign policy objectives of the United States; or

(ii) Items destined for use in the development or construction of the petrochemical processing complex at Ras Lanuf, where the transaction could be approved but for the general policy of denial set out in paragraph (c)(2)(iii), and where either:

(A) The transaction involves a contract in effect before December 20, 1983 that requires export or reexport of the items in question; or

(B) The items had been exported from the U.S. before that date.

(iii) Other unusual situations such as transactions involving firms with contractual commitments in effect before March 12, 1982.

(6) Licenses will generally be considered favorably on a case-by-case basis for the reexport of reasonable quantities for civil use of off-highway wheel tractors of carriage capacity of 9t (10 tons) or more, as defined in ECCN 9A992, provided such tractors are not for uses described in paragraph (c)(2) (iv) through (vi) of this section.

(7) All other reexports not covered by United Nations resolutions will generally be approved, subject to any other licensing policies applicable to a particular transaction.

(d) Libya has been designated by the Secretary of State as a country whose government has repeatedly provided support for acts of international terrorism. For anti-terrorism controls,

see Supplement 2 to part 742 of the EAR.

(e) *Related controls.* OFAC administers broad economic sanctions on Libya, and restricts participation by U.S. persons in transactions with Libya or specially designated Libyan nationals. The applicable OFAC regulations, the Libyan Sanctions Regulations, are found in 31 CFR part 550.

[61 FR 12806, Mar. 25, 1996, as amended at 61 FR 64284, Dec. 4, 1996; 62 FR 25460, May 9, 1997]

§ 746.5 North Korea.

(a) *License requirements.* As authorized by section 6 of the Export Administration Act of 1979, as amended (EAA) and by the Trading with the Enemy Act of 1917, as amended, you will need a license to export or reexport items subject to the EAR (see part 734 of the EAR) to North Korea, except as follows:

(1) *License Exceptions.* You may export without a license if your transaction meets all the applicable terms and conditions of any of the License Exceptions specified in this paragraph. To determine scope and eligibility requirements, you will need to turn to the sections or specific paragraphs of part 740 of the EAR (License Exceptions). Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Temporary exports and reexports (TMP) by the news media (see § 740.9(a)(2)(viii) of the EAR).

(ii) Operation technology and software (TSU) for legally exported commodities (see § 740.13(a) of the EAR).

(iii) Sales technology (TSU) (see § 740.13(b) of the EAR).

(iv) Software updates (TSU) for legally exported software (see § 740.13(c) of the EAR).

(v) Parts (RPL) for one-for-one replacement in certain legally exported commodities (§ 740.10(a) of the EAR).

(vi) Baggage (BAG) (§ 740.14 of the EAR).

(vii) Aircraft and vessels (AVS) for fishing vessels under governing international fishery agreements and foreign-registered aircraft on temporary sojourn in the U.S.[1] (see § 740.15(a) and (b)(1) of the EAR).

(viii) Governments and international organizations (GOV) (see § 740.11 of the EAR).

(ix) Gift parcels and humanitarian donations (GFT) (see § 740.12 of the EAR).

(x) Permissive reexports of certain spare parts in foreign-made equipment (see § 740.16(h) of the EAR).

(2) [Reserved]

(b) *Licensing policy.* Items requiring a license are subject to a general policy of denial. Exceptions to the policy of denial are as follows:

(1) BXA will review on a case-by-case basis applications for export of donated human-needs items listed in Supplement No. 2 to part 740 of the EAR that do not qualify for the humanitarian donation provisions of License Exception GFT (see § 740.12(b) of the EAR). Such applications include single transactions involving exports to meet emergency needs.

(2) BXA will review on a case-by-case basis applications for commercial sales of human-needs items. Such applications must be for items listed in Supplement No. 2 to part 740 of the EAR, but are not limited solely to small scale projects at the local level.

(c) North Korea has been designated by the Secretary of State as a country whose government has repeatedly provided support for acts of international terrorism. For anti-terrorism controls, see Supplement 2 to part 742 of the EAR.

(d) *Related controls.* OFAC maintains controls on the activities of persons subject to U.S. jurisdiction, wherever located, involving transactions with North Korea or any specially designated North Korean national.

[61 FR 12806, Mar. 25, 1996, as amended at 61 FR 64284, Dec. 4, 1996; 62 FR 25460, May 9, 1997]

[1] Export of U.S. aircraft on temporary sojourn or vessels is prohibited, 44 CFR Ch. IV, Part 403 ''Shipping restrictions: North Korea (T–2).''

§746.6 [Reserved]

§746.7 Iran.

The Treasury Department's Office of Foreign Assets Control (OFAC) administers a comprehensive trade and investment embargo against Iran under the authority of the International Emergency Economic Powers Act of 1977, as amended, section 505 of the International Security and Development Cooperation Act of 1985, and Executive Orders 12957 and 12959 of March 15, 1995 and May 6, 1995, respectively. This embargo includes prohibitions on export and certain reexport transactions involving Iran, including transactions dealing with items subject to the EAR. (See OFAC's Iranian Transactions Regulations, 31 CFR part 560.) BXA continues to maintain licensing requirements on exports and reexports to Iran under the EAR as described in paragraph (a)(2) of this section. No person may export or reexport items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization.

(a) *License requirements*—(1) *OFAC administered embargo.* You should consult with OFAC if:

(i) You seek authorization to export from the United States; or

(ii) You are a United States person (as defined in OFAC's Iranian Transactions Regulations, 31 CFR part 560) and seek authorization to export or reexport from a third country; or

(iii) You seek authorization to reexport U.S.-origin items that were subject to any export license application requirements prior to Executive Order 12959 of May 6, 1995.

(2) *BXA license requirements.* A license is required under the EAR:

(i) To export to Iran any item on the CCL containing a CB Column 1, CB Column 2, CB Column 3, NP Column 1, NP Column 2, NS Column 1, NS Column 2, MT Column 1, RS Column 1, RS Column 2, CC Column 1, CC Column 2, CC Column 3, AT Column 1 or AT Column 2 in the Country Chart Column of the License Requirements section of an ECCN, or classified under ECCNs 1C980, 1C981, 1C982, 1C983, 1C984, 5A980, 0A980, and 0A983; or

(ii) To reexport to Iran any of the items identified in §746.7(a)(2)(i), except for ECCNs 2A994, 3A993, 5A992, 5A995, 6A990, 6A994, 7A994, 8A992, 8A994, 9A990, 9A992, or 9A994. However, the export of these items from the United States to any destination with knowledge that they will be reexported, in whole or in part, to Iran, is prohibited without a license; or

(iii) To export or reexport items subject to the general prohibitions, including proliferation end-use prohibitions (see part 736 of the EAR).

(3) *BXA authorization.* To avoid duplication, exporters or reexporters are not required to seek separate authorization from BXA for an export or reexport subject both to the EAR and to OFAC's Iranian Transactions Regulations. Therefore, if OFAC authorizes an export or reexport, no separate authorization from BXA is necessary.

(4) *Definitions.* For purposes of this section, the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; the term ''foreign person'' means those not defined as United States persons.

(b) Iran has been designated by the Secretary of State as a country that has repeatedly provided support for acts of international terrorism. For anti-terrorism controls, see §742.8 of the EAR and Supplement 2 to part 742.

§746.8 Rwanda.

(a) *Introduction.* In addition to the controls on Rwanda reflected on the Country Chart in Supplement 1 to part 738 of the EAR, there are special controls on items that fall within the scope of a United Nations Security Council arms embargo.

(b) *License requirements.* (1) Under Executive Order 12918 of May 26, 1994, and in conformity with United Nations Security Council (UNSC) Resolution 918 of May 17, 1994, an embargo applies to the sale or supply to Rwanda of arms and related matériel of all types and regardless of origin, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for such items. You will therefore need a license for the sale, supply or export to Rwanda of

embargoed items, as listed in paragraph (b)(1)(i) and (ii) of this section, from the territory of the United States by any person. You will also need a license for the export, reexport, sale or supply to Rwanda of such items by any United States person in any foreign country or other location. (Reexport controls imposed by this embargo apply only to reexports by U.S. persons.) You will also need a license for the use of any U.S.-registered aircraft or vessel to supply or transport to Rwanda any such items. These requirements apply to embargoed items, regardless of origin.

(i) Crime Control and Detection Equipment as identified on the CCL under CC Columns No. 1, 2 or 3 in the Country Chart column of the ''License Requirements'' section of the applicable ECCN.

(ii) Items described by any ECCN ending in ''18,'' and items described by ECCNs 1A988, 2B985, 5A980, 6A002.a.1,a.2,a.3 and c, 6A003.b.3 and b.4, 6D102, 6E001, 6E002, 9A115, 9A991.a, 09A84, 0A986, and 0A988.

(2) This embargo became effective at 11:59 p.m. EDT on May 26, 1994.

(3) *Definitions.* For the purposes of this section, the term:

(i) *Person* means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities; and

(ii) *United States person* means any citizen or national of the United States, any lawful permanent resident of the United States, or any corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities, organized under the laws of the United States (including foreign branches).

(c) *Licensing policy.* Applications for export or reexport of all items listed in paragraphs (b)(1)(i) and (ii) of this section are subject to a general policy of denial. Consistent with United Nations Security Council Resolution 918 and the United Nations Participation Act, this embargo is effective notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to that date, except to the extent provided in regulations, orders, directives or licenses that may be issued in the future under Executive Order 12918 or under the EAR.

(d) *Related controls.* The Department of State, Office of Defense Trade Controls, maintains controls on arms and military equipment under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

SUPPLEMENT 1 TO PART 746—SPECIAL SANCTIONS ON ANGOLA ADMINISTERED BY THE OFFICE OF FOREIGN ASSETS CONTROL

(a) *Angola.* BXA maintains controls on Angola as reflected on the Country Chart in Supplement 1 to part 738 of the EAR. (See also §746.7 of this part.) In addition, OFAC administers sanctions against the National Union for the Total Independence of Angola (UNITA). Under Executive Order 12865 of September 26, 1993, and consistent with United Nations Security Council Resolution 864 of September 15, 1993, OFAC administers an embargo on the sale or supply of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment and spare parts, and petroleum and petroleum products to:

(1) UNITA; or

(2) The territory of Angola, other than through points of entry designated by the Secretary of the Treasury, in the following schedule:

(i) Airports:

(A) Luanda; or

(B) Katumbela, Benguela Province.

(ii) Ports:

(A) Luanda;

(B) Lobito, Benguela Province; or

(C) Namibe, Namibe Province.

(iii) Entry Points:

(A) Malongo, Cabinda.

(B) [Reserved]

(b) Exporters should apply to OFAC for authorization to export embargoed items to UNITA or to points of entry not designated by the Secretary of the Treasury. Exports of embargoed items that are also controlled on the CCL to end-users other than UNITA and to points of entry designated by the Secretary of the Treasury continue to require a license from BXA. In addition, all other items controlled on the CCL to Angola continue to require a license from BXA.

SUPPLEMENT 2 TO PART 746—UNITED NATIONS ARMS EMBARGOES ADMINISTERED BY THE DEPARTMENT OF STATE: LIBERIA, SOMALIA, AND COUNTRIES OF THE FORMER YUGOSLAVIA (BOSNIA-HERZEGOVINA, CROATIA, FORMER YUGOSLAV REPUBLIC OF MACEDONIA, SERBIA AND MONTENEGRO, SLOVENIA)

(a) *Former Socialist Federal Republic of Yugoslavia (Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Serbia and Montenegro, and Slovenia).* The Department of State administers an embargo on all weapons and military equipment, consistent with United Nations Security Council Resolution 713 of September 25, 1991, to the countries of the former Socialist Federal Republic of Yugoslavia (Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Serbia and Montenegro, and Slovenia). Exporters are advised to consult with the Department of State, Office of Defense Trade Controls (22 CFR parts 120 through 130), regarding exports of weapons and military equipment to these destinations.

(b) *Liberia.* The Department of State administers an embargo on all weapons and military equipment to Liberia, consistent with United Nations Security Council Resolution 788 of November 19, 1992. Exporters are advised to consult with the Department of State, Office of Defense Trade Controls (22 CFR parts 120 through 130), regarding exports of weapons and military equipment.

(c) *Somalia.* The Department of State administers an embargo on all weapons and military equipment to Somalia, consistent with United Nations Security Council Resolution 733 of February 23, 1992. Exporters are advised to consult with the Department of State, Office of Defense Trade Controls (22 CFR parts 120 through 130), regarding exports of weapons and military equipment.

SUPPLEMENT NO. 3 TO PART 746—CONTROLS ON THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO), BOSNIA-HERZEGOVINA, CROATIA ADMINISTERED BY THE OFFICE OF FOREIGN ASSETS CONTROL

NOTE: OFAC administers a comprehensive embargo on the Federal Republic of Yugoslavia (Serbia and Montenegro), certain areas of Croatia, and Bosnian Serb-controlled areas of the Republic of Bosnia-Herzegovina. Effective January 16, 1996, OFAC suspended the application of sanctions on Croatia and Serbia and Montenegro. Therefore, exporters should consult the Country Chart in Supplement No. 1 to part 738 of the EAR for BXA controls. OFAC controls on Bosnian Serb-controlled area of Bosnia-Herzegovina remain in effect. (See amendment to the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations in the FEDERAL REGISTER of January 19, 1996 (61 FR 1282) (31 CFR part 585).) This suspension affects paragraphs (a) and (c) of this supplement.

(a) *Federal Republic of Yugoslavia (Serbia & Montenegro).* OFAC administers an embargo on exports and reexports to the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY(S & M)). OFAC administers this embargo under Executive Orders 12808 of May 30, 1992, 12810 of June 5, 1992, 12831 of January 15, 1993, 12846 of April 25, 1993, and 12934 of October 25, 1994, and consistent with United Nations Security Council Resolutions 757 of May 30, 1992, 787 of November 16, 1992, 820 of April 17, 1993, and 942 of September 23, 1994. Under this embargo, no items subject to U.S. jurisdiction may be exported, directly or indirectly, to the FRY (S & M), or to any entity operated from the FRY (S & M), or owned or controlled by, or specially designated as acting for or on behalf of the Government of the FRY (S & M). The applicable OFAC regulations, the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, are found in 31 CFR part 585. Exporters should apply to OFAC for authorization to export or reexport items subject to the EAR to the FRY (S & M). An authorization from OFAC constitutes authorization under the EAR, and no BXA license is necessary.

(b) *Bosnia-Herzegovina.* (1) BXA maintains the controls reflected on the Country Chart in Supplement 1 to part 738 of the EAR on Bosnia-Herzegovina, except to the extent OFAC maintains controls on exports or reexports to that country.

(2) OFAC maintains a comprehensive embargo on trade, including exports from the United States or by U.S. persons to, or through, those areas of the Republic of Bosnia-Herzegovina under the control of the Bosnian Serb forces, or activity of any kind that promotes or is intended to promote such dealing. OFAC maintains this embargo under Executive Orders 12846 of April 25, 1993 and 12934 of October 25, 1994, and consistent with United Nations Security Council Resolutions 820 of April 17, 1993 and 942 of September 23, 1994. The applicable OFAC regulations, the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, are found in 31 CFR part 585. U.S. persons should apply to OFAC for authorization to engage in trade-related transactions involving those areas of the Republic of Bosnia-Herzegovina under the control of the Bosnian Serb forces. An authorization from OFAC constitutes authorization under the EAR, and no BXA license is necessary. You

will need a license from BXA for items controlled on the CCL to Bosnia-Herzegovina when the export or reexport is destined to areas in the Republic of Bosnia-Herzegovina not controlled by the Bosnian Serb forces. You may need a license from BXA to reexport U.S.-origin items from third countries to areas of the Republic of Bosnia-Herzegovina under the control of the Bosnian Serb forces.

(c) *Croatia.* (1) BXA maintains the controls reflected on the Country Chart in Supplement 1 to part 738 of the EAR on Croatia, except to the extent OFAC maintains controls on exports or reexports to that country.

(2) OFAC prohibits any dealing by a U.S. person relating to the export to, or transshipment through, the United Nations Protected Areas in the Republic of Croatia. OFAC maintains this embargo under Executive Order 12846 of April 25, 1993, and consistent with United Nations Security Council Resolution 820 of April 17, 1993. The applicable OFAC regulations, the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, are found in 31 CFR part 585. U.S. persons should apply to OFAC for authorization to engage in trade-related transactions involving the United Nations Protected Areas in the Republic of Croatia. An authorization from OFAC constitutes authorization under the EAR, and no BXA license is necessary. You will need a license from BXA for items controlled on the CCL to Croatia when the export or reexport is destined to areas other than the United Nations Protected Areas in the Republic of Croatia. Foreign persons may need a license from BXA to reexport U.S.-origin items from third countries to the United Nations Protected Areas in the Republic of Croatia.

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

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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; Executive Order 13026 (November 15, 1996, 61 FR 58767) Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12812, Mar. 25, 1996, unless otherwise noted.

§ 748.1 General provisions.

(a) *Scope.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. The provisions of this part involve applications, whether submitted in writing or electronically, for classifications, advisory opinions or licenses subject to the Export Administration Regulations (EAR). All terms, conditions, provisions, and instructions, including the applicant and consignee certifications, contained in such form(s) are incorporated as part of the EAR. For the purposes of this part, the term ''application'' refers to the Form BXA–748P: Multipurpose Application or its electronic equivalent. If a provision contained in this part relates solely to a license application the term ''license application'' will appear.

(b) *BXA responses.* BXA will give a formal classification, advisory opinion or licensing decision only through the review of a properly completed application supported by all relevant facts and required documentation submitted in writing or electronically to BXA.

(c) *Confidentiality.* Consistent with section 12(c) of the Export Administration Act, as amended, information obtained for the purposes of considering

license applications, and other information obtained by the U.S. Department of Commerce concerning license applications, will not be made available to the public without the approval of the Secretary of Commerce.

§748.2 Obtaining forms; mailing addresses.

(a) You may obtain the forms required by the EAR from any U.S. Department of Commerce District Office; or in person or by telephone or facsimile from the following BXA offices:

Export Counseling Division

U.S. Department of Commerce, 14th Street and Pennsylvania Ave., N.W., Room H1099D, Washington, D.C. 20230, Telephone Number: (202) 482–4811, Facsimile Number: (202) 482–3617,

Western Regional Offices:

3300 Irvine Avenue, Ste. 345, Newport Beach, CA 92660, Telephone Number: (714) 660–0144, Facsimile Number: (714) 660–9347,

5201 Great America Pkwy, Ste. 226, Santa Clara, CA 95054, Telephone Number: (408) 748–7450, Facsimile Number: (408) 748–7470

(b) For the convenience of foreign consignees and other foreign parties, certain BXA forms may be obtained at U.S. Embassies and Consulates throughout the world.

(c) All applications should be mailed to the following address, unless otherwise specified: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044. If you wish to submit your application using an overnight courier, use the following address: Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue N.W., Room 2705, Washington, D.C. 20044, Attn: ''Application Enclosed''. BXA will not accept applications sent C.O.D.

§748.3 Classification and Advisory Opinions.

(a) *Introduction.* In light of your responsibility to classify your item, you may ask BXA to provide you with the correct Export Control Classification Number (ECCN) to the paragraph (or subparagraph if appropriate). BXA will advise you whether or not your item is subject to the EAR and, if applicable, the appropriate ECCN. This type of request is commonly referred to as a ''Classification Request''. If requested, for a given end-use, end-user, and/or destination, BXA will advise you whether a license is required, or likely to be granted, for a particular transaction. Note that these responses do not bind BXA to issuing a license in the future. This type of request, along with requests for guidance regarding other interpretations of the EAR are commonly referred to as ''Advisory Opinions''.

(b) *Classification requests.* You must submit your Classification Request using Form BXA–748P or its electronic equivalent. See the instructions contained in Supplement No. 1 to part 748 to complete the Blocks identified for this type of request. Classification Requests must be sent to BXA at one of the addresses listed in §748.2(c) of this part or submitted electronically. Be certain that your request is complete and does not omit any essential information.

(1) Each Classification Request must be limited to six items. Exceptions may be granted by BXA on a case-by-case basis for several related items if the relationship between the items is satisfactorily substantiated in the request. Classification requests must be supported by any descriptive literature, brochures, precise technical specifications or papers that describe the items in sufficient technical detail to enable classification by BXA.

(2) When submitting a Classification Request, you must complete Blocks 1 through 5, 14, 22 (a), (b), (c), (d), and (i), 24, and 25 on Form BXA–748P. You must provide a recommended classification in Block 22(a) and explain the basis for your recommendation based on the technical parameters specified in the appropriate ECCN in Block 24. If you are unable to determine a recommended classification for your item, include an explanation in Block 24, identifying the ambiguities or deficiencies that precluded you from making a recommended classification.

(3) Classification requests for a one-time Department of Commerce review of encryption software transferred from the U.S. Munitions List consistent with E.O. 13026 of November 15, 1996

(61 FR 58767) and pursuant to the Presidential Memorandum of that date are required prior to export to determine eligibility for release from EI controls. Refer to Supplement No. 6 to part 742 for instructions on submitting such requests for mass market encryption software. For requests for Key Escrow, Key Recovery, or Recovery encryption products, include the word ''Encryption'' in Block 24: Additional Information.

(c) *Advisory Opinions.* Advisory Opinions must be submitted in writing to the address listed in § 748.2(c) of the EAR. Both your letter and envelope must be marked ''Advisory Opinion.''

(1) Your letter must contain the following information if you are requesting guidance regarding interpretations of the EAR:

(i) The name, title, and telephone and facsimile numbers of the person to contact,

(ii) Your complete address comprised of street address, city, state, country, and postal code; and

(2) If you are requesting BXA to determine whether a license is required, or the licensing policy related to a particular end-use, end-user, and/or destination, in addition to the information required in § 748.3(c)(1) you must also include:

(i) All available information on the parties to the transaction and the proposed end-use or end-user,

(ii) The model number for each item, where appropriate,

(iii) The Export Control Classification Number, if known, for each item; and

(iv) Any descriptive literature, brochures, technical specifications or papers that describe the items in sufficient technical detail to enable BXA to verify the correct classification.

[61 FR 12812, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996; 62 FR 25461, May 9, 1997]

§ 748.4 Basic guidance related to applying for a license.

(a) *Disclosure and substantiation of facts on license applications.* You, as the applicant, are required to make the complete disclosure of all parties in interest to the transaction so that BXA may decide on the license application with the fullest knowledge of all relevant facts. If the license application is filed for an account other than that of the applicant, the agent, as applicant must disclose the name of the agent's principal. Where there is any doubt as to which of several persons should be named as a party to the license, you must disclose the names of all such persons and the functions to be performed by each in Block 24 on your application or an attachment to your license application.

(b) *Applications for the export of items from the United States.* A license application to export items from the United States may be made only by a person subject to the jurisdiction of the United States who is in fact the exporter, or by the applicant's duly authorized agent. This limitation does not apply to applications for the reexport of items previously exported. An application may be made on behalf of a person not subject to the jurisdiction of the United States by an authorized agent in the United States, who then becomes the applicant.

(c) *Prohibited from applying for a license.* No person convicted of a violation of any statute specified in section 11(h) of the Export Administration Act, as amended, at the discretion of the Secretary of Commerce, may apply for any license for a period up to 10 years from the date of the conviction. See § 766.25 of the EAR.

(d) *Prior action on a shipment.* If you have obtained a license without disclosure of the facts described in this section, the license will be deemed to have been obtained without disclosure of all facts material to the granting of the license and the license so obtained will be deemed void. See part 764 of the EAR for other sanctions that may result in the event a violation occurs.

(1) *Licenses for items subject to detention or seizure.* If you submit a license application for items that you know have been detained or seized by the Office of Export Enforcement or by the U.S. Customs Service, you must disclose this fact to BXA when you submit your license application.

(2) *Licenses for items previously exported.* You may not submit a license application to BXA covering a shipment that is already laden aboard the

exporting carrier, exported or reexported. If such export or reexport should not have been made without first securing a license authorizing the shipment, you must send a letter of explanation to the Office of Export Enforcement, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., H4520, Washington, D.C., 20230. The letter must state why a license was not obtained and disclose all facts concerning the shipment that would normally have been disclosed on the license application. You will be informed of any action and furnished any instructions by the Office of Export Enforcement.

(e) *Multiple shipments.* Your license application need not be limited to a single shipment, but may represent a reasonable estimate of items to be shipped throughout the validity of the license. Do not wait until the license you are using expires before submitting a new application. You may submit a new application prior to the expiration of your current license in order to ensure uninterrupted shipping.

(f) *Second application.* You may not submit a second license application covering the same proposed transaction while the first is pending action by BXA.

(g) *Resubmission.* If a license application is returned without action to you by BXA or your application represents a transaction previously denied by BXA, and you want to resubmit the license application, a new license application must be completed in accordance with the instructions contained in Supplement No. 1 to part 748. Cite the Application Control Number on your original application in Block 24 on the new license application.

(h) *Emergency processing.* If you believe an emergency situation beyond your control necessitates expedited processing of your license application, you should contact BXA's Exporter Counseling Division of the Office of Exporter Services. This office may be reached by telephone on (202) 482–4811 or by facsimile on (202) 482–3617. These procedures do not apply to emergency handling of Special Comprehensive License applications.

(1) *How to request emergency handling.* If your license application is already pending with BXA, contact the Exporter Counseling Division directly on either number listed in paragraph (h) of this section. If you have not yet submitted your license application, include a written letter with the title ''Emergency Handling Request'' with your license application. The letter must include:

(i) A justification for the request, supported, where appropriate, with copies of orders, communications, or other documentation to substantiate that your request constitutes a valid emergency. You may be specifically requested to supply other documents not included with your submission.

(ii) An acknowledgement by you that any license issued under these emergency procedures will have a limited validity period as described in § 750.7(g) of the EAR, and that it generally will not be extended.

(2) *Prompt delivery of emergency handling requests.* You are responsible for prompt delivery of your request and license application to BXA. You may hand-carry your request and license application or use the services of an overnight courier to ensure prompt delivery. If you desire to hand-carry your request and license application, you may hand deliver it to the Exporter Counseling Division at the address stated in § 748.2(a) of this part. If you decide to use an overnight courier, use the address listed in § 748.2(c) of this part. The envelope containing your license application should be labeled ''Attn: Exporter Counseling Division, Emergency Handling Request Enclosed''.

(3) *Review of emergency handling requests.* BXA views an emergency as an unforeseeable situation over which you have no control. On the day of receipt, BXA will evaluate your license application and decide whether emergency handling is warranted. Frequent emergency request will be given particularly close scrutiny. This procedure is not designed to become a substitute for timely filing of license applications.

(4) *Action on license applications processed under emergency procedures.* If you have submitted an emergency request, you will be contacted by the Exporter Counseling Division informing you of

whether or not your request for emergency processing has been granted. If your license is approved under emergency handling procedures, you will be notified by BXA of the approval by telephone or in person. You will be given the license number and verbal authorization to effect shipment immediately, without waiting for the actual license. Any license approved under these emergency handling procedures will have a limited validity period as described in § 750.7(g) of the EAR.

§ 748.5 Parties to the transaction on a license application.

(a) *Applicant.* (1) The ''applicant'' is defined as the person who, as the principal party in interest in the transaction, has the power and responsibility for determining and controlling the exporting or reexporting of the items. BXA is primarily concerned with the identity of the applicant and the applicant's role in the transaction, and not the terms of sale.

(2) Ordinarily, a seller who delivers items in the United States to a foreign buyer, or to the latter's forwarder or other agent, would not be in a position to assume responsibility for the export and would not be a proper applicant. This would normally be the situation where sale is made f.o.b. factory, although such terms of sale may relate only to price and are not necessarily inconsistent with the assumption by the seller of full responsibility for effecting the export or reexport. The seller can still be liable if the seller knows that the importer or its agent will not obtain the required license.

(3) If the seller intends to leave the responsibility for effecting an export or reexport in the hands of the foreign importer or the latter's forwarding or purchasing agent in the United States, the foreign importer should apply for the license in the foreign importer's own name if the foreign importer is subject to the jurisdiction of the United States at the time of export. Otherwise, the importer's forwarding or purchasing agent or other person subject to the jurisdiction of the U.S. must appear as applicant and exporter. In this situation you, as the applicant, must disclose your role as agent and the name of your principal.

(b) *Order party.* The order party is that person in the United States who conducted the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and who, as a result of these negotiations, received the order from the foreign purchaser or ultimate consignee.

(c) *Purchaser.* The purchaser is that person abroad who has entered into the transaction with the applicant to purchase an item for delivery to the ultimate consignee. A bank, freight forwarder, forwarding agent, or other intermediary is not the purchaser. The purchaser and ultimate consignee may be the same entity.

(d) *Intermediate consignee.* The intermediate consignee is the bank, forwarding agent, or other intermediary (if any) who acts in a foreign country as an agent for the exporter or reexporter, the purchaser, or the ultimate consignee, for the purpose of effecting delivery of the export or reexport to the ultimate consignee.

(e) *Ultimate consignee.* The ultimate consignee is the person located abroad who is the true party in interest in actually receiving the export for the designated end-use. A bank, freight forwarder, forwarding agent, or other party, when acting as an intermediary, is not acceptable as the ultimate consignee.

§ 748.6 General instructions for license applications.

(a) *Form and instructions.* An application for license, whether to export or reexport, must be submitted on Form BXA–748P, Multipurpose Application (revised June 15, 1996 or later), and Form BXA–748P-A, Item Appendix, and Form BXA–748P–B, End-User Appendix. Facsimiles or copies of these forms are not acceptable. Instructions for preparing Form BXA–748P are contained in Supplement No. 1 to this part 748. See § 748.7(a) of this part for instructions on submitting license applications electronically.

(b) *Application Control Number.* Each application form includes a preprinted Application Control Number. The Application Control Number, consisting of a letter followed by six digits, is for

use by BXA when processing applications, and by applicants when communicating with BXA concerning pending applications. This number is used for tracking purposes within the U.S. Government. The Application Control Number is not a license number.

(c) *Approval or denial in entirety.* License applications may be approved in whole or in part, denied in whole or in part, or returned without action. However, you may specifically request that your license application be considered as a whole and either approved or denied in its entirety.

(d) *Combining items on license applications.* Any items may be combined on a single application, however, if the items differ dramatically (e.g., computers and shotguns) the number of BXA offices to which a license application may be referred for review may increase significantly. Accordingly, it is recommended that you limit items on each license application to those that are similar and/or related.

(e) *Assembly and additional information.* All documents or correspondence accompanying your license application should bear the Application Control Number, and be stapled together. Where necessary, BXA may require you to submit additional information beyond that stated in the EAR confirming or amplifying information contained in your license application.

(f) *Changes in facts.* Answers to all items on the license application will be deemed to be continuing representations of the existing facts or circumstances. Any material or substantive change in the terms of the order, or in the facts relating to the transaction, must be promptly reported to BXA, whether a license has been granted or the license application is still under consideration. If a license has been granted and such changes are not excepted in §750.7(c) of the EAR, they must be reported immediately to BXA, even though shipments against the license may be partially or wholly completed, during the validity period of the license.

(g) *Request for extended license validity period.* An extended validity period will generally be granted if your transaction is related to a multi-year project, when production lead time will not permit export or reexport during the normal validity period or for other similar circumstances. A continuing requirement to supply spare or replacement parts will not normally justify an extended validity period. To request an extended validity period, include justification for your request in Block 24 on the application.

§748.7 Applying electronically for a license or Classification request.

(a) *Authorization.* You may apply electronically once you have been authorized to do so by BXA. An authorization to submit applications electronically may be limited or withdrawn by BXA at any time. There are no prerequisites for obtaining permission to submit electronically or limitations in terms of country eligibility. However, BXA may direct for any reason that any electronic application be resubmitted in writing, in whole or in part

(1) *Requesting approval to submit applications electronically.* To submit applications electronically, your company must submit a written request to BXA at one of the addresses identified in §748.2(c) of this part. Both the envelope and letter must be marked ''Attn: Electronic Submission Request''. Your letter must contain your company's name, and the address, telephone number, and name of the principal contact person in your company. Before approving your request, BXA will provide you with language for a number of required certifications. Once you have completed the necessary certifications, you may be approved by BXA to submit applications electronically.

(2) *Assignment and use of company and personal identification numbers.* (i) Each company granted permission to submit applications electronically will be assigned a company identification number. Each person approved by BXA to submit applications electronically for the company will be assigned a personal identification number (''PIN'') telephonically by BXA. A PIN will be assigned to you only if your company has certified to BXA that you are authorized to act for it in making electronic submissions under the EAR.

(ii) Your company may reveal the assigned company identification number

only to the PIN holders, their supervisors, employees, or agents of the company with a commercial justification for knowing the company identification number.

(iii) An individual PIN holder may not:

(A) Disclose the PIN to anyone;

(B) Record the PIN either in writing or electronically;

(C) Authorize another person to use the PIN; or

(D) Use the PIN following termination by BXA or your company of your authorization or approval for PIN use.

(iv) To prevent misuse of the PIN:

(A) If a PIN is lost, stolen or otherwise compromised, the company and the PIN holder must report the loss, theft or compromise of the PIN immediately by telephoning BXA at (202) 482–0436. You must confirm this notification in writing within two business days to BXA at the address provided in § 748.2(c) of this part.

(B) Your company is responsible for immediately notifying BXA whenever a PIN holder leaves the employ of the company or otherwise ceases to be authorized by the company to submit applications electronically on its behalf.

(v) No person may use, copy, steal or otherwise compromise a PIN assigned to another person; and no person may use, copy, steal or otherwise compromise the company identification number where the company has not authorized such person to have access to the number.

(b) *Electronic submission of applications.* (1) *All applications.* Upon submission of the required certifications and approval of the company's request to use electronic submission, BXA will provide instructions both on the method to transmit applications electronically and the process for submitting required supporting documents and technical specifications. These instructions may be modified by BXA from time to time.

(2) *License Applications.* The electronic submission of an application for license will constitute an export control document. Such submissions must provide the same information as written applications and are subject to the recordkeeping provisions of part 762 of the EAR. The applicant company and PIN holder submitting the application will be deemed to make all representations and certifications as if the submission were made in writing by the company and signed by the submitting PIN holder. Electronic submission of a license application will be considered complete upon the transmittal of the application to BXA or to an entity under contract to receive such applications for BXA.

(c) *Maintenance of a log.* Your company must maintain a log, either manually or electronically, specifying the date and time of each electronic submission, the ECCNs of items on each electronic submission, and the name of the employee or agent submitting the license application. This log may not be altered. Written corrections must be made in a manner that does not erase or cover original entries. If the log is maintained electronically, corrections may only be made as notations.

(d) *Updating.* An applicant company must promptly notify BXA of any change in its name or address. If your company wishes to have an individual added as a PIN holder, your company must advise BXA and follow the instructions provided by BXA. Your company should conduct periodic reviews to ensure that PINs are held only by individuals whose current responsibilities make it necessary and appropriate that they act for the company in this capacity.

§ 748.8 Unique license application requirements.

In addition to the instructions contained in Supplement No. 1 to this part 748, you must also ensure that the additional requirements for certain items or types of transactions described in this section are addressed in your license application. See Supplement No. 2 to this part 748 if your application involves:

(a) Chemicals, medicinals, and pharmaceuticals.

(b) Communications intercepting devices.

(c) Digital computers, telecommunications, and related equipment.

(d) Gift parcels; consolidated in a single shipment.

(e) Intransit shipments through the United States.

(f) Intransit shipments outside of the United States.

(g) Nuclear Nonproliferation items and end-uses.

(h) Numerical control devices, motion control boards, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed assemblies and specially designed software.

(i) Parts, components, and materials incorporated abroad into foreign-made products.

(j) Ship stores, plane stores, supplies, and equipment.

(k) Regional stability controlled items.

(l) Reexports.

(m) Robots.

(n) Short Supply controlled items.

(o) Technology.

(p) Temporary exports or reexports.

§748.9 Support documents for license applications.

(a) *Exemptions.* If you plan to submit a license application involving one of the following situations, no support documentation is required. Simply submit the license application.

(1) All exports and reexports involving ultimate consignees located in any of the following destinations:

Bahamas	Haiti
Barbados	Honduras
Belize	Jamaica
Bermuda	Leeward and Windward Islands
Bolivia	Mexico
Brazil	Miquelon and St. Pierre Islands
Canada	Netherlands Antilles
Chile	Nicaragua
Colombia	Panama
Costa Rica	Paraguay
Dominican Republic	Peru
Ecuador	Surinam
El Salvador	Trinidad and Tobago
French West Indies	Uruguay
French Guiana	Venezuela
Greenland	
Guatemala	
Guyana	

(2) The ultimate consignee or purchaser is a foreign government(s) or foreign government agency(ies). To determine whether the parties to your transaction meet the definition of ''government agency'' refer to the definition contained in part 772 of the EAR. Remember, if either the ultimate consignee or purchaser is not a foreign government or foreign government agency, a statement is required from the nongovernmental party. However, support documents are required from governments of the People's Republic of China, India, Bulgaria, Czech Republic, Hungary, Poland, Romania, and Slovakia.

(3) The license application is filed by, or on behalf of, a relief agency registered with the Advisory Committee on Voluntary Foreign Aid, U.S. Agency for International Development, for export to a member agency in the foreign country.

(4) The license application is submitted to export or reexport items for temporary exhibit, demonstration, or testing purposes.

(5) The license application is submitted for items controlled for short supply reasons (see part 754 of the EAR).

(6) The license application is submitted under the Special Comprehensive License procedure described in part 752 of the EAR.

(7) The license application is submitted to export or reexport software or technology, except for software or technology subject to national security controls destined for Bulgaria, Czech Republic, Hungary, Poland, Romania, or Slovakia.

(b) *Support document requirements.* License applications not exempt under paragraph (a) of this section generally must be supported by documents designed to elicit information concerning the disposition of the items intended for export or reexport. These support documents must be either submitted at the time the license application is filed or retained in the applicant's files in accordance with the recordkeeping provisions of part 762 of the EAR. The type of support documentation required is dependent on the item involved and the country of ultimate destination. To determine which type of support documentation is required, answer the following questions:

(1) Does your transaction involve items controlled for national security reasons?

(i) If yes, continue with question number 2 in paragraph (b)(2) of this section.

(ii) If no, your transaction may require a Statement by Ultimate Consignee and Purchaser. Read the remainder of this section beginning with paragraph (c) of this section, then proceed to § 748.11 of the EAR.

(2) Does your transaction involve items controlled for national security reasons destined for one of the following countries? (This applies only to those overseas destinations specifically listed.)

Argentina	Korea, Republic of
Australia	Liechtenstein
Austria	Luxembourg
Belgium	Netherlands
Bulgaria	New Zealand
China (PRC)	Norway
Czech Republic	Pakistan
Denmark	Poland
Finland	Portugal
France	Romania
Germany	Singapore
Greece	Slovakia
Hong Kong	Spain
Hungary	Sweden
India	Switzerland
Ireland, Republic of	Taiwan
Italy	Turkey
Japan	United Kingdom

(i) If yes, your transaction may require an Import or End-User Certificate. Note that if the destination is the People's Republic of China, a Statement of Ultimate Consignee and Purchaser may be substituted for a PRC End-User Certificate under the following conditions:

(*1*) The item to be exported is described in an Advisory Note for Country Group D:1 (See Supplement No. 1 to part 740 of the EAR) on the CCL; or

(*2*) The item to be exported (i.e., replacement parts and sub-assemblies) is for servicing previously exported items and is valued at $75,000 or less; or

(*3*) The End-User is not a Chinese entity.

(ii) If no, your transaction may require a Statement by Ultimate Consignee and Purchaser. Read the remainder of this section beginning with paragraph (c) of this section, then proceed to § 748.11 of the EAR.

(c) *License applications requiring support documents.* License applications requiring support by either a Statement by the Ultimate Consignee and Purchaser or an Import or End-User Certificate must indicate the type of support document obtained in Block 6 or 7 on your application with an ''X'' in the appropriate box. If the support document is an Import or End User Certificate, you must also identify the originating country and number of the Certificate in Block 13 on your application. If a license application is submitted without either the correct Block or Box marked on the application or the required support document, the license application will be immediately returned without action unless the satisfactory reasons for failing to obtain the document are supplied in Block 24 or in an attachment to your license application.

(1) *License applications supported by an Import or End User Certificate.* If submission of the original certificate is not required by § 748.10(g) of this part, you may submit your license application upon receipt of a facsimile or other legible copy of the Import or End User Certificate provided that no shipment is made against any license issued based upon the Import or End User Certificate prior to receipt and retention of the original statement by the applicant. If § 748.10(g) of this part requires submission of the original certificate with your license application, you must submit the original. Copies will not be accepted.

(2) *License applications supported by Ultimate Consignee and Purchaser statements.* These types of license applications may be submitted upon receipt of a facsimile or other legible copy of the original statement provided that the applicant receives the manually-signed original within 60 days from the date the original is signed by the ultimate consignee.

(d) *Exceptions to obtaining the required support document.* BXA will consider the granting of an exception to the requirement for supporting document where the requirements cannot be met due to circumstances beyond your control. An exception will not be granted contrary to the objectives of the U.S. export control laws and regulations. Refer to § 748.12(d) of this part for specific instructions on procedures for requesting an exception.

(e) *Validity period.* (1) When an Import or End-User Certificate or a Statement by Ultimate Consignee and Purchaser is required to support one or more license applications, you must submit the first license application within the validity period shown on the Certificate, or 6 months from the date the Certificate was issued or Statement signed, whichever is shorter.

(2) All subsequent license applications supported by the same Import or End-Use Certificate must be submitted to BXA within one year from the date that the first license application supported by the same Import or End-Use Certificate was submitted to BXA.

(3) All subsequent license applications supported by the same Statement by Ultimate Consignee and Purchaser must be submitted within two years of the first application if the statement was completed as a single transaction statement. If the statement was completed as a multiple transaction statement, all applications must be submitted within two years of signature by the consignee or purchaser, whichever was last.

(f) *English translation requirements.* All abbreviations, coded terms, or other expressions on support documents having special significance in the trade or to the parties to the transaction must be explained on an attachment to the document. Documents in a language other than English must be accompanied by an attachment giving an accurate English translation, either made by a translating service or certified by you to be correct. Explanations or translations should be provided on a separate piece of paper, and not entered on the support documents themselves.

(g) *Responsibility for full disclosure.* (1) Information contained in a support document cannot be construed as extending or expanding or otherwise modifying the specific information supplied in a license application or license issued by BXA. The license application covering the transaction discloses all facts pertaining to the transaction. The authorizations contained in the resulting license are not extended by information contained in an Import Certificate, End-User Certificate or Statement by Ultimate Consignee and Purchaser regarding reexport from the country of destination or any other facts relative to the transaction that are not reported on the license application.

(2) Misrepresentations, either through failure to disclose facts, concealing a material fact, or furnishing false information, will subject responsible parties to administrative action by BXA. Administrative action may include suspension, revocation, or denial of licensing privileges and denial of other participation in exports from the United States.

(3) In obtaining the required support document, you as the applicant are not relieved of the responsibility for full disclosure of any other information concerning the ultimate destination and end-use, end-user of which you know, even if inconsistent with the representations made in the Import Certificate, End-User Certificate, or Statement by Ultimate Consignee and Purchaser. You are responsible for promptly notifying BXA of any change in the facts contained in the support document that comes to your attention.

(h) *Effect on license application review.* BXA reserves the right in all respects to determine to what extent any license will be issued covering items for which an Import or End-User Certificate has been issued by a foreign government. BXA will not seek or undertake to give consideration to recommendations from the foreign government as to the action to be taken on a license application. A supporting document issued by a foreign government will be only one of the factors upon which BXA will base its licensing action, since end-uses and other considerations are important factors in the decision making process.

(i) *Request for return of support documents submitted to BXA.* If an applicant is requested by a foreign importer to return an unused or partially used Import or End-User Certificate submitted to BXA in support of a license application, the procedure provided in this paragraph (i) should be followed:

(1) The applicant must send a letter request for return of an Import or End-User Certificate to the address stated

in § 748.2(c) of this part, ''Attn: Import/End-User Certificate Request''.

(2) The letter request must include the name and address of the importer, the Application Control Number under which the original Import or End-User Certificate was submitted, the Application Control Numbers for any subsequent license applications supported by the same certificate, and one of the following statements, if applicable:

(i) If the certificate covers a quantity greater than the total quantity identified on the license application(s) submitted against it, a statement that the certificate will not be used in connection with another license application.

(ii) If you do not intend to make any additional shipments under a license covered by the certificate, or are in possession of an expired license covered by the certificate, a statement to this effect, indicating the unshipped items.

(j) *Recordkeeping requirements for returning certificates retained by the applicant.* (1) Though the recordkeeping provisions of the EAR require that all original support documents be retained for a period of five years, an unused or partially used certificate may be returned at the request of a foreign importer provided that you submit the original certificate, accompanied by a letter of explanation, a copy of each license covered by the certificate, and a list of all shipments made against each license to BXA at the address listed in § 748.2(c). BXA will notify you in writing whether your request has been granted. The following information must be contained in your letter of explanation:

(i) A statement citing the foreign importer's request for return of the certificate;

(ii) The license number(s) that have been issued against the certificate (including both outstanding and expired licenses); and

(iii) If the certificate covers a quantity greater that the total quantity stated on the license(s), you must include a statement that the certificate will not be used in connection with another license application.

(2) If your request is granted, BXA will return the certificate to you. You must make a copy of the certificate before you return the original to the importer. This copy must show all the information contained on the original certificate including any notation made on the certificate by BXA. The copies must be retained on file along with your correspondence in accordance with the recordkeeping provisions in part 762 of the EAR.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997]

§ 748.10 Import and End-User Certificates.

(a) *Scope.* There are a variety of Import and End-User Certificates currently in use by various governments. The control exercised by the government issuing the Import or End-User Certificate is in addition to the conditions and restrictions placed on the transaction by BXA. The laws and regulations of the United States are in no way modified, changed, or superseded by the issuance of an Import or End-User Certificate. This section describes exceptions and relationships true for both Import and End-User Certificates, and applies only to transactions involving national security controlled items destined for one of the countries identified in § 748.9(b)(2) of this part.

(b) *Import or End-User Certificate.* An Import or End-User Certificate must be obtained, unless your transaction meets one of the exemptions stated in § 748.9(a) of this part, if:

(1) Any commodities on your license application are controlled for national security (NS) reasons, or you have software or technology that is controlled for NS reasons and is destined for Bulgaria, Czech Republic, Hungary, Poland, Romania, or Slovakia.

(2) The ultimate destination is a country listed in § 748.9(b)(2) of this part; and

(3) Your license application involves the export of commodities and software classified in a single entry on the CCL, the total value of which exceeds $5,000.

(i) Your license application may list several separate CCL entries. If any entry controlled for national security reasons exceeds $5,000, then an Import or End-User Certificate must be obtained covering all items controlled for national security reasons on your license application;

(ii) If your license application involves a lesser transaction that is part of a larger order for items controlled for national security reasons in a single ECCN exceeding $5,000, an Import or End-User Certificate must be obtained.

(iii) You may be specifically requested by BXA to obtain an Import Certificate for a transaction valued under $5,000.

(c) *How to obtain an Import or End-User Certificate.* (1) Applicants must request that the importer (e.g., ultimate consignee or purchaser) obtain the Import or End-User Certificate, and that it be issued covering only those items that are controlled for national security reasons. Importers should not be requested to obtain an Import or End-User Certificate for items that are controlled for reasons other than national security. Upon receipt, the importer must transmit the original document to the applicant.

(2) The applicant's name must appear on the Import or End-User Certificate submitted to BXA as either the applicant, supplier, or order party. The Import Certificate may be made out to either the ultimate consignee or the purchaser, even though they are different parties, as long as both are located in the same country.

NOTE TO PARAGRAPH (C) OF THIS SECTION: You should furnish the consignee with the item description contained in the CCL to be used in applying for the Import or End-User Certificate. It is also advisable to furnish a manufacturer's catalog, brochure, or technical specifications if the item is new.

(3) If your transaction requires support of a PRC End-User Certificate, you must ensure the following information is included on the PRC End-User Certificate signed by an official of the Department of Science and Technology of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) with MOFTEC's seal affixed to it:

(i) Title of contract and contract number (optional);

(ii) Names of importer and exporter;

(iii) End-User and end-use;

(iv) Description of the item, quantity and dollar value; and

(v) Signature of the importer and date.

(d) *Where to obtain Import and End-User Certificates.* See Supplement No. 4 to this part for a list of the authorities administering the Import Certificate/Delivery Verification and End-User Certificate Systems in other countries.

(e) *Triangular symbol on International Import Certificates.* (1) In accordance with international practice, the issuing government may stamp a triangular symbol on the International Import Certificate (IIC). This symbol is notification that the importer does not intend to import or retain the items in the country issuing the certificate, but that, in any case, the items will not be delivered to any destination except in accordance with the export regulations of the issuing country.

(2) If you receive an IIC bearing a triangular symbol, you must identify all parties to the transaction on the license application, including those located outside the country issuing the IIC. If the importer declines to provide you with this information, you may advise the importer to provide the information directly to BXA, through a U.S. Foreign Commercial Service office, or in a sealed envelope to you marked ''To be opened by BXA only''.

(f) *Multiple license applications supported by one certificate.* An Import or End-User Certificate may cover more than one purchase order and more than one item. Where the certificate includes items for which more than one license application will be submitted, you must include in Block 24 on your application, or in an attachment to each license application submitted against the certificate, the following certification:

I (We) certify that the quantities of items shown on this license application, based on the Certificate identified in Block 13 of this license application, when added to the quantities shown on all other license applications submitted to BXA based on the same Certificate, do not total more than the total quantities shown on the above cited Certificate.

(g) *Submission of Import and End-User Certificates.* If a PRC End-User Certificate is required for your proposed transaction, you must submit the original certificate with your license

application. Copies will not be accepted. All other certificates must be retained on file by the applicant in accordance with the recordkeeping provisions of part 762 of the EAR, and not submitted with the license application.

(h) *Alterations.* After an Import or End-User Certificate is issued by a foreign government, no corrections, additions, or alterations may be made on the Certificate by any person. If you desire to explain any information contained on the Certificate, you may attach a signed statement to the Certificate.

(i) *Request for Delivery Verification.* BXA will, on a selective basis, require Delivery Verification documents for shipments supported by Import Certificates. You will be notified if Delivery Verification is required at the time of issuance of the license. Please refer to § 748.13 of this part for detailed information on these procedures.

(j) *Retention procedures.* You must retain on file the original copy of any certificate issued in support of a license application submitted to BXA, unless the original is submitted with the license application. All recordkeeping provisions contained in part 762 of the EAR apply to this requirement, except that reproductions may not be substituted for the officially authenticated original in this instance.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997]

§ 748.11 Statement by Ultimate Consignee and Purchaser.

(a) *Exceptions to completing a Statement by Ultimate Consignee and Purchaser.* A Statement by the Ultimate Consignee and/or Purchaser involved in a transaction must be completed unless:

(1) An International Import Certificate, a People's Republic of China End-User Certificate, an Indian Import Certificate, or a Bulgarian, Czech, Hungarian, Polish, Romanian or Slovak Import Certificate is required in support of the license application;

(2) The applicant is the same person as the ultimate consignee, provided the required statements are contained in Block 24 on the license application. This exemption does not apply where the applicant and consignee are separate entities, such as parent and subsidiary, or affiliated or associated firms;

(3) The application is valued at $5000 or less, and is not part of a larger transaction; or

(4) The transaction meets one of the exemptions stated in § 748.9(a) of this part.

(b) *Submission of the Statement by Ultimate Consignee and Purchaser.* A copy of the statement must be submitted with your license application if the country of ultimate destination is listed in either Country Group D:2, D:3, or D:4 (See Supplement No. 1 to part 740 of the EAR). The copy submitted by the applicant must be of sufficient quality to ensure all assertions made on the statement are legible and that the signatures are sufficiently legible to permit identification of the signature as that of the signer. The applicant must receive the manually-signed original within 60 days from the date the original is signed by the ultimate consignee. The applicant must, upon receipt, retain the manually-signed original, and both the ultimate consignee and purchaser should retain a copy of the statement in accordance with the recordkeeping provisions contained in part 762 of the EAR.

(c) *Form or letter.* The ultimate consignee and purchaser must complete either a statement on company letterhead in accordance with paragraph (e) of this section or Form BXA–711, Statement by Ultimate Consignee and Purchaser. If the consignee and purchaser elect to complete the statement on letterhead and both the ultimate consignee and purchaser are the same entity, only one statement is necessary. If the ultimate consignee and purchaser are separate entities, separate statements must be prepared and signed. If the ultimate consignee and purchaser elects to complete Form BXA–711, only one Form BXA–711 (containing the signatures of the ultimate consignee and purchaser) need be completed. Whether your ultimate consignee and purchaser sign a written statement or complete Form BXA–711, the following constraints apply:

(1) Responsible officials representing the ultimate consignee and purchaser must sign the statement. ''Responsible

official'' is defined as someone with personal knowledge of the information included in the statement, and authority to bind the ultimate consignee or purchaser for whom they sign, and who has the power and authority to control the use and disposition of the licensed items.

(2) The authority to sign the statement may not be delegated to any person (agent, employee, or other) whose authority to sign is not inherent in his or her official position with the ultimate consignee or purchaser for whom he or she signs. The signing official may be located in the U.S. or in a foreign country. The official title of the person signing the statement must also be included.

(3) The consignee and/or purchaser must submit information that is true and correct to the best of their knowledge and must promptly send a new statement to the applicant if changes in the facts or intentions contained in their statement(s) occur after the statement(s) have been forwarded to the applicant. Once a statement has been signed, no corrections, additions, or alterations may be made. If a signed statement is incomplete or incorrect in any respect, a new statement must be prepared, signed and forwarded to the applicant.

(d) *Instructions for completing Form BXA–711.* Instructions on completing Form BXA–711 are contained in Supplement No. 3 to this part. The ultimate consignee and purchaser may sign a legible copy of Form BXA–711. It is not necessary to require your ultimate consignee and purchaser sign an original Form BXA–711, provided all information contained on the copy is legible.

(e) *Instructions for completing the statement on letterhead.* Information in response to each of the following criteria must be included in the statement. If any information is unknown, that fact should be disclosed in the statement. Preprinted information supplied on the statement, including the name, address, or nature of business of the ultimate consignee or purchaser appearing on the letterhead or order form is acceptable but will not constitute evidence of either the signer's identity, the country of ultimate destination, or end-use of the items described in the license application.

(1) *Paragraph 1.* One of the following certifications must be included depending on whether the statement is proffered in support of a single license application or multiple license applications:

(i) *Single.* This statement is to be considered part of a license application submitted by [name and address of applicant].

(ii) *Multiple.* This statement is to be considered a part of every license application submitted by [name and address of applicant] until two years from the date this statement is signed.

(2) *Paragraph 2.* One or more of the following certifications must be included. Note that if any of the facts related to the following statements are unknown, this must be clearly stated.

(i) The items for which a license application will be filed by [name of applicant] will be used by us as capital equipment in the form in which received in a manufacturing process in [name of country] and will not be reexported or incorporated into an end product.

(ii) The items for which a license application will be filed by [name of applicant] will be processed or incorporated by us into the following product(s) [list products] to be manufactured in [name of country] for distribution in [list name of country or countries].

(iii) The items for which a license application will be filed by [name of applicant] will be resold by us in the form in which received for use or consumption in [name of country].

(iv) The items for which a license application will be filed by [name of applicant] will be reexported by us in the form in which received to [name of country or countries].

(v) The items received from [name of applicant] will be [describe use of the items fully].

(3) *Paragraph 3.* The following two certifications must be included:

(i) The nature of our business is [possible choices include; broker, distributor, fabricator, manufacturer, wholesaler, retailer, value added reseller, original equipment manufacturer, etc.].

(ii) Our business relationship with [name of applicant] is [possible choices include; contractual, franchise, distributor, wholesaler, continuing and regular individual business, etc.] and we have had this business relationship for [number of years].

(4) *Paragraph 4.* The final paragraph must include all of the following certifications:

(i) We certify that all of the facts contained in this statement are true and correct to the best of our knowledge and we do not know of any additional facts that are inconsistent with the above statements. We shall promptly send a replacement statement to [name of the applicant] disclosing any material change of facts or intentions described in this statement that occur after this statement has been prepared and forwarded to [name of applicant]. We acknowledge that the making of any false statement or concealment of any material fact in connection with this statement may result in imprisonment or fine, or both, and denial, in whole or in part, of participation in U.S. exports or reexports.

(ii) Except as specifically authorized by the U.S. Export Administration Regulations, or by written approval from the Bureau of Export Administration, we will not reexport, resell, or otherwise dispose of any items approved on a license supported by this statement:

(*1*) To any country not approved for export as brought to our attention by the U.S. exporter; or

(*2*) To any person if there is reason to believe that it will result directly or indirectly in disposition of the items contrary to the representations made in this statement or contrary to the U.S. Export Administration Regulations.

(iii) We understand that acceptance of this statement as a support document cannot be construed as an authorization by BXA to reexport the items in the form in which received even though we may have indicated the intention to reexport, and that authorization to reexport is not granted in an export license on the basis of information provided in the statement, but as a result of a specific request in a license application.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997]

§ 748.12 Special provisions for support documents.

(a) *Grace periods.* Whenever the requirement for an Import or End-User Certificate or Statement by Ultimate Consignee or Purchaser is imposed or extended by a change in the regulations, the license application need not conform to the new support documentation requirements for a period of 45 days after the effective date of the regulatory change published in the FEDERAL REGISTER.

(1) Requirements are usually imposed or extended by virtue of one of the following:

(i) Addition or removal of national security controls over a particular item; or

(ii) Development of an Import Certificate/Delivery Verification or End-User Certificate program by a foreign country; or

(iii) Removal of an item from eligibility under the Special Comprehensive License described in part 752 of the EAR, when you hold such a special license and have been exporting the item under that license.

(2) License applications filed during the 45 day grace period must be accompanied by any evidence available to you that will support representations concerning the ultimate consignee, ultimate destination, and end use, such as copies of the order, letters of credit, correspondence between you and ultimate consignee, or other documents received from the ultimate consignee. You must also identify the regulatory change (including its effective date) that justifies exercise of the 45 day grace period. Note that an Import or End-User Certificate will not be accepted, after the stated grace period, for license applications involving items that are no longer controlled for national security reasons. If an item is removed from national security controls, you must obtain a Statement by Ultimate Consignee and Purchaser as

described in § 748.11 of this part. Likewise, any item newly controlled for national security purposes requires support of an Import or End-User Certificate as described in § 748.10 of this part after expiration of the stated grace period.

(b) *Reexports.* If a support document would be required for an export from the United States, the same document would be required for reexport to Country Group D:1 and E:2 (see Supplement No. 1 to part 740 of the EAR).

(c) *Granting of exceptions to the support documentation requirement.* An exception to obtaining the required support documentation will be considered by BXA, however, an exception will not be granted contrary to the objectives of the U.S. export control program. A request for exception may involve either a single transaction, or where the reason necessitating the request is continuing in nature, multiple transactions. If satisfied by the evidence presented, BXA may waive the support document requirement and accept the license application for processing. Favorable consideration of a request for exception generally will be given in instances where the support document requirement:

(1) Imposes an undue hardship on you and/or ultimate consignee (e.g., refusal by the foreign government to issue an Import or End-User Certificate and such refusal constitutes discrimination against you); or

(2) Cannot be complied with (e.g., the items will be held in a foreign trade zone or bonded warehouse for subsequent distribution in one or more countries); or

(3) Is not applicable to the transaction (e.g., the items will not be imported for consumption into the named country of destination).

(d) *Procedures for requesting an exception.* (1) Requests for exception must be submitted with the license application to which the request relates. Where the request relates to more than one license application it should be submitted with the first license application and referred to in Block 24 on any subsequent license application. The request for exception must be submitted in writing on the applicant's letterhead.

(2) In instances where you are requesting exception from obtaining an Import or End-User Certificate, the request must be accompanied by a manually-signed original Statement by Ultimate Consignee and Purchaser as described in § 748.11 of this part.

(3) At a minimum, the letter request must include:

(i) Name and address of ultimate consignee;

(ii) Name and address of purchaser, if different from ultimate consignee;

(iii) Location of foreign trade zone or bonded warehouse if the items will be exported to a foreign trade zone or bonded warehouse;

(iv) Type of request, i.e., whether for a single transaction or multiple transactions;

(v) Full explanation of the reason(s) for requesting the exception;

(vi) Nature and duration of the business relationship between you and ultimate consignee and purchaser shown on the license application;

(vii) Whether you have previously obtained and/or submitted to BXA an Import or End-User Certificate issued in the name of the ultimate consignee and/or purchaser, and a list of the Application Control Number(s) to which the certificate(s) applied; and

(viii) Any other facts to justify granting an exception.

(4) *Action by BXA.* (i) *Single transaction request.* Where a single transaction is involved, BXA will act on the request for exception at the same time as the license application with which the request is submitted. In those instances where the related license application is approved, the issuance of the license will serve as an automatic notice to the applicant that the exception was approved. If any restrictions are placed on granting of the exception, these will appear on the approval. If the request for exception is not approved, BXA will advise you by letter.

(ii) *Multiple transactions request.* Where multiple transactions are involved, BXA will advise you by letter of the action taken on the exception request. The letter will contain any conditions or restrictions that BXA finds necessary to impose (including an

exception termination date if appropriate). In addition, a written acceptance of these conditions or restrictions may be required from the parties to the transaction.

(e) *Availability of original.* The original certificate or statement must be kept on file, and made available for inspection in accordance with the provisions of part 762 of the EAR. To ensure compliance with this recordkeeping requirement, BXA will require applicants, on a random basis, to submit specific original certificates and statements that have been retained on file. Applicants will be notified in writing of any such request.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997]

§ 748.13 Delivery Verification (DV).

(a) *Scope.* (1) BXA may request the licensee to obtain verifications of delivery on a selective basis. A Delivery Verification Certificate (DV) is a document issued by the government of the country of ultimate destination after the export has taken place and the items have either entered the export jurisdiction of the recipient country or are otherwise accounted for by the importer to the issuing government. Governments that issue DVs are listed in Supplement No. 4 to this part.

(2) If BXA decides to request verification of delivery, the request will appear as a condition on the face of the license. If the license is sent directly to a party other than the applicant authorized to receive the license (e.g., agent, forwarder, broker, etc.), such party is responsible for notifying the licensee immediately in writing that a DV is required.

(b) *Exception to obtaining Delivery Verification.* The DV requirement for a particular transaction is automatically canceled if, subsequent to the issuance of a license, the item is no longer controlled for national security reasons. In this instance, the licensee must send a letter to BXA at the address listed in § 748.2(c) of this part, stating that the items on the license are no longer controlled for national security reasons, and accordingly, the request for DV will not be fulfilled by the licensee.

(c) *Procedure for obtaining Delivery Verification.* When notified that a DV is required by BXA, the licensee must transmit to the importer a written request for a DV at the time of making each shipment under the license (whenever possible, this request should be submitted together with the related bill of lading or air waybill). The request must include the number of the Import or End-User Certificate for the transaction referred to on the license, and notify the importer that this same Import or End-User Certificate number should be shown on the DV.

(1) The importer must obtain the DV from the appropriate government ministry identified in Supplement No. 4 to this part, and forward the completed DV to the licensee. The DV must cover the items described on the license that have been shipped. Note that BXA must be able to relate the description provided in the DV to the approved license. In order to ensure the same terminology is used, the licensee should provide the importer with the description as it appears on the license.

(2) The original copy of the DV must be sent to BXA within 90 days after the last shipment has been made against the license. If verification of delivery is required for items covered by a license against which partial shipments have been made, the licensee shall obtain the required DV for each partial shipment, and retain these on file until all shipments have been made against the license. Once all shipments against the license have been made (or the licensee has determined that none will be), the licensee must forward, in one package, all applicable DVs to BXA at the address listed in § 748.2(c) of this part.

(3) The documents must be forwarded with a dated letter giving the license number, the name, title and signature of the authorized representative, and one of the following statements:

(i) The total quantity authorized by license number _____ has been exported, and all delivery verification documents are attached.

(ii) A part of the quantity authorized by license number _____ will not be exported. Delivery verification documents covering all items exported are attached.

(iii) No shipment has been made against this license, and none is contemplated.

(d) *Inability to obtain Delivery Verification Certificates.* If a licensee is unable to obtain the required DV (within the time frame stated above, or at all) from the importer, the licensee must promptly notify BXA and, upon request, make available all information and records, including correspondence, regarding the attempt to obtain the DV.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997]

SUPPLEMENT NO. 1 TO PART 748—BXA–748P, BXA–748P–A; ITEM APPENDIX, AND BXA–748P–B; END-USER APPENDIX; MULTIPURPOSE APPLICATION INSTRUCTIONS

All information must be legibly typed within the lines for each Block or Box, except where a signature is required. Enter only one typed line of text per Block or line. Where there is a choice of entering telephone numbers or facsimile numbers, and you wish to provide a facsimile number instead of a telephone number, identify the facsimile number with the letter ''F'' immediately after the number (e.g., 022–358–0–123456F). If you are completing this form to request classification of your item, you must complete Blocks 1 through 5, 14, 22 (a), (b), (c), (d), and (i), 24, and 25 only.

Block 1: Contact Person. Enter the name of the person who can answer questions concerning the application.

Block 2: Telephone. Enter the telephone number of the person who can answer questions concerning the application.

Block 3: Facsimile. Enter the facsimile number, if available, of the person who can answer questions concerning the application.

Block 4: Date of Application. Enter the current date.

Block 5: Type of Application. *Export*. If the items are located within the United States, and you wish to export those items, mark the Box labeled ''Export'' with an (X). *Reexport*. If the items are located outside the United States, mark the Box labeled ''Reexport'' with an (X). *Classification*. If you are requesting BXA to classify your item against the Commerce Control List (CCL), mark the Box labeled ''Classification Request'' with an (X). *Special Comprehensive License*. If you are submitting a Special Comprehensive License application in accordance with the procedures described in part 752 of the EAR, mark the Box labeled ''Special Comprehensive License'' with an (X).

Block 6: Documents submitted with Application. Review the documentation you are required to submit with your application in accordance with the provisions of part 748 of the EAR, and mark all applicable Boxes with an (X).

Mark the Box ''Foreign Availability'' with an (X) if you are submitting an assertion of foreign availability with your license application. See part 768 of the EAR for instructions on foreign availability submissions.

Mark the ''Tech. Specs.'' box with an (X) if you are submitting descriptive literature, brochures, technical specifications, etc. with your application.

Block 7: Documents on File with Applicant. Certify that you have retained on file all applicable documents as required by the provisions of part 748 by placing an (X) in the appropriate Box(es).

Block 8: Special Comprehensive License. Complete this Block only if you are submitting an application for a Special Comprehensive License in accordance with part 752 of the EAR.

Block 9: Special Purpose. Complete this block for certain items or types of transactions only if specifically required in Supplement No. 2 to this part.

Block 10: Resubmission Application Control Number. If your original application was returned without action (RWA), provide the Application Control Number. This does not apply to applications returned without being registered.

Block 11: Replacement License Number. If you have received a license for identical items to the same ultimate consignee, but would like to make a modification that is not excepted in §750.7(c) of the EAR, to the license as originally approved, enter the original license number and complete Blocks 12 through 25, where applicable. Include a statement in Block 24 regarding what changes you wish to make to the original license.

Block 12: Items Previously Exported. This Block should be completed only if you have marked the ''Reexport'' box in Block 5. Enter the license number, License Exception symbol (for exports under General Licenses, enter the appropriate General License symbol), or other authorization under which the items were originally exported, if known.

Block 13: Import/End-User Certificate. Enter the name of the country and number of the Import or End User Certificate obtained in accordance with provisions of this part.

Block 14: Applicant. Enter the applicant's name, street address, city, state/country, and postal code. Provide a complete street address. P.O. Boxes are not acceptable. Refer to §748.5(a) of this part for a definition of ''applicant''. If you have marked ''Export'' in Block 5, you must include your company's Employer Identification Number unless you are filing as an individual or as an agent on behalf of the exporter. The Employee Identification Number is assigned by the Internal

Revenue Service for tax identification purposes. Accordingly, you should consult your company's financial officer or accounting division to obtain this number.

Block 15: Other Party Authorized to Receive License. If you would like BXA to transmit the approved license to another party designated by you, complete all information in this Block, including name, street address, city, country, postal code and telephone number. Leave this space blank if the license is to be sent to the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant.

Block 16: Purchaser. Enter the purchaser's complete name, street address, city, country, postal code, and telephone or facsimile number. Refer to §748.5(c) of this part for a definition of ''purchaser''. If the purchaser is also the ultimate consignee, enter the complete name and address. If your proposed transaction does not involve a separate purchaser, leave Block 16 blank.

Block 17: Intermediate consignee. Enter the intermediate consignee's complete name, street address, city, country, postal code, and telephone or facsimile number. Provide a complete street address, P.O. Boxes are not acceptable. Refer to §748.5(d) of this part for a definition of ''intermediate consignee''. If this party is identical to that listed in Block 16, enter the complete name and address. If your proposed transaction does not involve use of an intermediate consignee, enter ''None''. If your proposed transaction involves more than one intermediate consignee, provide the same information in Block 24 for each additional intermediate consignee.

Block 18: Ultimate Consignee. This Block must be completed if you are submitting a license application. Enter the ultimate consignee's complete name, street address, city, country, postal code, and telephone or facsimile number. Provide a complete street address, P.O. Boxes are not acceptable. The ultimate consignee is the party who will actually receive the item for the end-use designated in Block 21. Refer to §748.5(e) of this part for a definition of ''ultimate consignee''. A bank, freight forwarder, forwarding agent, or other intermediary may not be identified as the ultimate consignee. Government purchasing organizations are the sole exception to this requirement. This type of entity may be identified as the government entity that is the actual ultimate consignee in those instances when the items are to be transferred to the government entity that is the actual end-user, provided the actual end-user and end-use is clearly identified in Block 21 or in the additional documentation attached to the application.

If your application is for the reexport of items previously exported, enter the new ultimate consignee's complete name, street address, city, country, postal code, and telephone or facsimile number. Provide a complete street address, P.O. Boxes are not acceptable. If your application involves a temporary export or reexport, the applicant should be shown as the ultimate consignee in care of a person or entity who will have control over the items abroad.

Block 19: End-User. Complete this Block only if the ultimate consignee identified in Block 18 is not the actual end-user. If there will be more than one end-user, use Form BXA–748P–B to identify each additional end-user. Enter each end-user's complete name, street address, city, country, postal code, and telephone or facsimile number. Provide a complete street address, P.O. Boxes are not acceptable.

Block 20: Original Ultimate Consignee. If your application involves the reexport of items previously exported, enter the original ultimate consignee's complete name, street address, city, country, postal code, and telephone or facsimile number. Provide a complete street address, P.O. Boxes are not acceptable. The original ultimate consignee is the entity identified in the original application for export as the ultimate consignee or the party currently in possession of the items.

Block 21. Specific End-Use: This Block must be completed if you are submitting a license application. Provide a complete and detailed description of the end-use intended by the ultimate consignee and/or end-user(s). If you are requesting approval of a reexport, provide a complete and detailed description of the end-use intended by the new ultimate consignee or end-user(s) and indicate any other countries for which resale or reexport is requested. If additional space is necessary, use Block 21 on Form BXA–748P–A or B. Be specific—vague descriptions such as ''research'', ''manufacturing'', or ''scientific uses'' are not acceptable.

Block 22: For a license application, you must complete each of the sub-blocks contained in this Block. If you are submitting a classification request, you need not complete Blocks (e), (f), (g), and (h). If you wish to export, reexport, or have BXA classify more than one item, use Form BXA–748P–A for additional items.

(a) ECCN. Enter the Export Control Classification Number (ECCN) that corresponds to the item you wish to export or reexport. If you are asking BXA to classify your item, provide a recommended classification for the item in this Block.

(b) CTP. You must complete this Block only if your application involves a digital computer or equipment containing a digital computer as described in Supplement No. 2 to this part. Instructions on calculating the CTP are contained in a Technical Note at the end of Category 4 in the CCL.

(c) Model Number. Enter the correct model number for the item.

(d) CCATS Number. If you have received a classification for this item from BXA, provide the CCATS number shown on the classification issued by BXA.

(e) Quantity. Identify the quantity to be exported or reexported, in terms of the ''Unit'' identified for the ECCN entered in Block 22(a). If the ''Unit'' for an item is ''$ value'', enter the quantity in units commonly used in the trade.

(f) Units. The ''Unit'' paragraph within each ECCN will list a specific ''Unit'' for those items controlled by the entry. The ''Unit'' must be entered on all license applications submitted to BXA. If an item is licensed in terms of ''$ value'', the unit of quantity commonly used in the trade must also be shown on the license application. This Block may be left blank on license applications only if the ''Unit'' for the ECCN entered in Block 22(a) is shown as ''N/A'' on the CCL.

(g) Unit Price. Provide the fair market value of the items you wish to export or reexport. Round all prices to the nearest whole dollar amount. Give the exact unit price only if the value is less than $0.50. If normal trade practices make it impractical to establish a firm contract price, state in Block 24 the precise terms upon which the price is to be ascertained and from which the contract price may be objectively determined.

(h) Total Price. Provide the total price of the item(s) described in Block 22(j).

(i) Manufacturer. Provide the name only of the manufacturer, if known, for each of the items you wish to export, reexport, or have BXA classify, if different from the applicant.

(j) Technical Description. Provide a description of the item(s) you wish to export, reexport, or have BXA classify. Provide details when necessary to identify the specific item(s), include all characteristics or parameters shown in the applicable ECCN using measurements identified in the ECCN (e.g., basic ingredients, composition, electrical parameters, size, gauge, grade, horsepower, etc.). These characteristics must be identified for the items in the proposed transaction when they are different than the characteristics described in promotional brochure(s).

Block 23: Total Application Dollar Value. Enter the total value of all items contained on the application in U.S. Dollars. The use of other currencies is not acceptable.

Block 24: Additional Information. Enter additional data pertinent to the application as required in the EAR. Include special certifications, names of parties of interest not disclosed elsewhere, explanation of documents attached, etc. Do not include information concerning Block 22 in this space.

If your application represents a previously denied application, you must provide the Application Control Number from the original application.

If you are requesting BXA to classify your product, use this space to explain why you believe the ECCN entered in Block 22(a) is appropriate. This explanation must contain an analysis of the item in terms of the technical control parameters specified in the appropriate ECCN. If you have not identified a recommended classification in Block 22(a), you must state the reason you cannot determine the appropriate classification, identifying anything in the regulations that you believe precluded you from determining the correct classification.

If additional space is necessary, use Block 24 on Form BXA–748P–A or B.

Block 25: You, as the applicant or duly authorized agent of the applicant, must manually sign in this Block. Rubber-stamped or electronic signatures are not acceptable. If you are an agent of the applicant, in addition to providing your name and title in this Block, you must enter your company's name in Block 24. Type both your name and title in the space provided.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25462, May 9, 1997]

SUPPLEMENT NO. 2 TO PART 748—UNIQUE LICENSE APPLICATION REQUIREMENTS

In addition to the instructions contained in Supplement No. 1 to part 748, you must also ensure that the additional requirements for certain items or types of transactions described in this supplement are addressed in your license application. All other blocks not specifically identified in this supplement must be completed in accordance with the instructions contained in Supplement No. 1 to part 748. The term ''Block'' used in this supplement relates to Form BXA–748P, unless otherwise noted.

(a) *Chemicals, medicinals, and pharmaceuticals.* If you are submitting a license application for the export or reexport of chemicals, medicinals, and/or pharmaceuticals, the following information must be provided in Block 22.

(1) Facts relating to the grade, form, concentration, mixture(s), or ingredients as may be necessary to identify the item accurately, and;

(2) The Chemical Abstract Service Registry (C.A.S.) numbers, if they exist, must be identified.

(b) *Communications intercepting devices.* If you are required to submit a license application under §742.13 of this part, you must enter the words ''Communications Intercepting Device(s)'' in Block 9. The item you are requesting to export or reexport must be specified by name in Block 22(j).

(c) *Digital computers, telecommunications, and related equipment.* If your license application involves items controlled by both Category 4 and Category 5, your license application must be submitted according to the principal function of the equipment. License applications involving computers controlled by Category 4 must identify a Composite Theoretical Performance (CTP) in Block 22(b). If the principal function is telecommunications, a CTP is not required. Computers, related equipment, or software performing telecommunication or local area network functions will be evaluated against the telecommunications performance characteristics of Category 5, while cryptographic, cryptoanalytic, certifiable multilevel security or certifiable user isolation functions, or systems that limit electromagnetic compatibility (EMC) will be evaluated against the information security performance characteristics of Category 5.

(1) *Requirements for license applications involving digital computers.* If you are submitting a license application to export or reexport ''digital computers'' or equipment containing digital computers to destinations in Country Group D:1 (See Supplement No. 1 to part 740 of the EAR), or to upgrade existing ''digital computer'' installations in those countries, you must include in addition to the CTP in Block 22(b) the following information:

(i) A configuration diagram of the entire system must be submitted if the equipment exceeds the limits of the Advisory Notes that indicate a likelihood of approval for Country Group D:1 for the appropriate ECCN in the Commerce Control List (CCL); and

(ii) Technical specifications and product brochures to corroborate the data supplied in your license application.

(2) *Additional requirements.* License applications to export or reexport computers or related equipment that are described in Advisory Note 4 to Category 4, or that exceed any of the limits specified in Advisory Notes 3 or 4 to Category 4, must include:

(i) A signed statement by a responsible representative of the end-user or the importing agency describing the end-use and certifying that the ''digital'' computers or related equipment:

(A) Will be used only for civil applications; and

(B) Will not be reexported or otherwise disposed of without prior written authorization from BXA;

(ii) A full description of the equipment and its intended application and workload; and

(iii) A complete identification of all end-users and their activities.

(d) *Gift parcels; consolidated in a single shipment.* If you are submitting a license application to export multiple gift parcels for delivery to individuals residing in a foreign country, you must include the following information in your license application.

NOTE: Each gift parcel must meet the terms and conditions described for *gift parcels* in License Exception GFT (see §740.12(a) of the EAR).

(1) In Block 16, enter the word ''None'';

(2) In Block 18, enter the word ''Various'' instead of the name and address of a single ultimate consignee;

(3) In Block 21, enter the phrase ''For personal use by recipients''.

(4) In Block 22(e), indicate a reasonable estimate of the number of parcels to be shipped during the validity of the license;

(5) In Block 22(j), enter the phrase ''Gift Parcels'';

(6) In Block 23, indicate a reasonable value approximation proportionate to the quantity of gift parcels identified in Block 22(e); and

(e) *Intransit through the United States.* If you are submitting a license application for items moving intransit through the United States that do not qualify for the *intransit* provisions of License Exception TMP (see §740.9(b)(1) of the EAR), you must provide the following information with your license application:

(1) In Block 9, enter the phrase ''Intransit Shipment'';

(2) In Block 24, enter the name and address of the foreign consignor who shipped the items to the United States and state the origin of the shipment;

(3) Any available evidence showing the approval or acquiescence of the exporting country (or the country of which the exporter is a resident) for shipments to the proposed ultimate destination. Such evidence may be in the form of a Transit Authorization Certificate; and

(4) Any support documentation required by §748.9 of this part for the country of ultimate destination.

(f) *Intransit outside of the United States.* If you are submitting a license application based on General Prohibition No. 8 stated in §734.2(b)(8) of the EAR and identification of the intermediate consignee in the country of unlading or transit is unknown at the time the license application is submitted, the country of unlading or transit must be shown in Block 17.

(g) *Nuclear Nonproliferation items and end-uses.*—(1)*Statement requirement.* If a license is required to export or reexport items described in §742.3 or §744.4 of the EAR, or any other item (except those controlled for short supply reasons) where the item is intended for a nuclear end-use, prior to submitting a license application, you must obtain a signed written statement from the end-user certifying the following:

(i) The items to be exported or replicas thereof (''replicas'' refers to items produced abroad based on physical examination of the item originally exported, matching it in all

critical design and performance parameters), will not be used in any of the activities described in §744.2(a) of the EAR; and

(ii) Written authorization will be obtained from the BXA prior to reexporting the items, unless they are destined to Canada or would be eligible for export from the United States to the new country of destination under NLR based on Country Chart NP Column 1.

(2) *License application requirements.* Along with the required certification, you must include the following information in your license application:

(i) In Block 7, place an (X) in the box titled ''Nuclear Certification'';

(ii) In Block 9, enter the phrase ''NUCLEAR CONTROLS'';

(iii) In Block 21, provide, if known, the specific geographic locations of any installations, establishments, or sites at which the items will be used;

(iv) In Block 22(j), if applicable, include a description of any specific features of design or specific modifications that make the item capable of nuclear explosive activities, or of safeguarded or unsafeguarded nuclear activities as described in §744.2(a)(3) of the EAR; and

(v) In Block 24, if your license application is being submitted because you know that your transaction involves a nuclear end-use described in §744.2 of the EAR, you must fully explain the basis for your knowledge that the items are intended for the purpose(s) described §744.2 of the EAR. Indicate, if possible, the specific end-use(s) the items will have in designing, developing, fabricating, or testing nuclear weapons or nuclear explosive devices or in designing, constructing, fabricating, or operating the facilities described in §744.2(a)(3) of the EAR.

(h) *Numerical control devices, motion control boards, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed assemblies and specially designed software.* (1) If you are submitting a license application to export, reexport, or request BXA to classify numerical control devices, motion control boards, numerically controlled machine tools, dimensional inspection machines, and specially designed software you must include the following information in your license application:

(i) For numerical control devices and motion control boards:

(A) Make and model number of the control unit;

(B) Description and internal configuration of numerical control device. If the device is a computer with motion control board(s), then include the make and model number of the computer;

(C) Description of the manner in which a computer will be connected to the CNC unit for on-line processing of CAD data. Specify the make and model of the computer;

(D) Number of axes the control unit is capable of simultaneously controlling in a coordinated contouring mode, and type of interpolation (linear, circular, and other);

(E) Minimum programmable increment;

(F) A description and an itemized list of all software/firmware to be supplied with the control device or motion control board, including software/firmware for axis interpolation function and for any programmable control unit or device to be supplied with the control unit;

(G) Description of capabilities related to ''real time processing'' and receiving computer aided-design as described in ECCN 2B001.a.2.a and a.2.b and ECCN 2B001.b.2 and b.3;

(H) A description of capability to accept additional boards or software that would permit an upgrade of the electronic device or motion control board above the control levels specified in ECCN 2B001; and

(I) Specify if the electronic device has been downgraded, and if so can it be upgraded in future.

(ii) For numerically controlled machine tools and dimensional inspection machines:

(A) Name and model number of machine tool or dimensional inspection machine;

(B) Type of equipment, e.g., horizontal boring machine, machining center, dimensional inspection machine, turning center, water jet, etc.;

(C) Description of the linear and rotary axes capable of being simultaneously controlled in a coordinated contouring mode, regardless of the fact that the coordinated movement of the machine axis may be limited by the numerical control unit supplied by the machine tool;

(D) Maximum workpiece diameter for cylindrical grinding machines;

(E) Motion (camming) of the spindle axis measured in the axial direction in one revolution of the spindle, and a description of the method of measurement for turning machine tools only;

(F) Motion (run out) of the spindle axis measured in the radial direction in one revolution of the spindle, and a description of the method of measurement;

(G) Overall positioning accuracy in each axis, and a description of the method for measurement; and

(H) Slide motion test results if required as described in ECCN 2B001.c.1.b.6.

(i) *Parts, components, and materials incorporated abroad into foreign-made products.* BXA will consider license applications to export or reexport to multiple consignees or multiple countries when an application is required for foreign produced direct product containing parts and components subject to the EAR in §732.4(b) of the EAR and to General Prohibition Two stated in §734.2(b)(2) of the EAR. Such requests will not be approved for countries listed in Country Group E:2

(See Supplement No. 1 to part 740 of the EAR), and may be approved only in limited circumstances for countries listed in Country Group D:1.

(1) *License applications for the export of parts and components.* If you are submitting a license application for the export of parts, components, or materials to be incorporated abroad into products that will then be sent to designated third countries, you must enter in Block 21, a description of end-use including a general description of the commodities to be manufactured, their typical end-use, and the countries where those commodities will be marketed. The countries may be listed specifically or may be identified by Country Groups, geographic areas, etc.

(2) *License applications for the reexport of incorporated parts and components.* If you are submitting a license application for the reexport of parts, components, or materials incorporated abroad into products that will be sent to designated third countries you must include the following information in your license application:

(i) In Block 9, enter the phrase ''Parts and Components'';

(ii) In Block 18, enter the name, street address, city and country of the foreign party who will be receiving the foreign-made product. If you are requesting approval for multiple countries or consignees enter ''Various'' in Block 18, and list the specific countries, Country Groups, or geographic areas in Block 24;

(iii) In Block 20, enter the name, street address, city, and country of the foreign party who will be exporting the foreign-made product incorporating U.S. origin parts, components or materials;

(iv) In Block 21, describe the activity of the ultimate consignee identified in Block 18 and the end-use of the foreign-made product. Indicate the final configuration if the product is intended to be incorporated in a larger system. If the end-use is unknown, state ''unknown'' and describe the general activities of the end-user;

(v) In Block 22(e), specify the quantity for each foreign-made product. If this information is unknown, enter ''Unknown'' in Block 22(e);

(vi) In Block 22(h), enter the digit ''0'' for each foreign-made product;

(vii) In Block 22(j), describe the foreign-made product that will be exported, specifying type and model or part number. Attach brochures or specifications, if available. Show as part of the description the unit value, in U.S. dollars, of the foreign-made product (if more than one foreign-made product is listed on the license application, specify the unit value for each type/model/part number). Also include a description of the U.S. content (including the applicable Export Control Classification Number(s)) and its value in U.S. dollars. If more than one foreign-made product is identified on the license application, describe the U.S. content and specify the U.S. content value for each foreign-made product. Also, provide sufficient supporting information to explain the basis for the stated values. To the extent possible, explain how much of the value of the foreign-made product represents foreign origin parts, components, or materials, as opposed to labor, overhead, etc. When the U.S. content varies and cannot be specified in advance, provide a range of percentage and value that would indicate the minimum and maximum U.S. content;

(viii) Include separately in Block 22(j) a description of any U.S. origin spare parts to be reexported with the foreign-made product, if they exceed the amount allowed by §740.10 of the EAR. Enter the quantity, if appropriate, in Block 22(e). Enter the ECCN for the spare parts in Block 22(a) and enter the value of the spare parts in Block 22(h);

(ix) In Block 23, enter the digit ''0'';

(x) If the foreign-made product is the direct product of U.S. origin technology that was exported or reexported subject to written assurance, a request for waiver of that assurance, if necessary, may be made in Block 24. If U.S. origin technology will accompany a shipment to a country listed in Country Group D:1 or E:2 (see Supplement No. 1 to part 740 of the EAR) describe in Block 24 the type of technology and how it will be used.

(j) *Ship stores, plane stores, supplies, and equipment*—(1) *Vessels under construction.* If you are submitting a license application for the export or reexport of items, including ship stores, supplies, and equipment, to a vessel under construction you must include the following information in your license application:

(i) In Block 18, enter the name, street address, city, and country of the shipyard where vessel is being constructed;

(ii) In Block 22(j), state the length of the vessel for a vessel under 12 m (40 ft) in length. For a vessel 12 m (40 ft) in length or over, provide the following information (if this information is unknown, enter ''Unknown'' in this Block):

(A) Hull number and name of vessel;

(B) Type of vessel;

(C) Name and business address of prospective owner, and the prospective owner's nationality; and

(D) Country of registry or intended country of registry.

(2) *Aircraft under construction.* If you are submitting a license application for the export or reexport of items, including plane stores, supplies, and equipment, to an aircraft under construction you must include the following information in your license application:

(i) In Block 18, enter the name and address of the plant where the aircraft is being constructed;

(ii) In Block 22(j), enter the following information (if this information is unknown, enter ''Unknown'' in this Block):

(A) Type of aircraft and model number;

(B) Name and business address of prospective owner and his nationality; and

(C) Country of registry or intended country of registry.

(3) *Operating vessels and aircraft.* If you are submitting a license application for the export or reexport of items, including ship or plane stores, supplies, and equipment to an operating vessel or aircraft, whether in operation or being repaired, you must include the following information in your license application:

(i) In Block 18, enter the name of the owner, the name of the vessel, if applicable, and port or point where the items will be taken aboard;

(ii) In Block 18, enter the following statement if, at the time of filing the license application, it is uncertain where the vessel or aircraft will take on the items, but it is known that the items will not be shipped to a country listed in Country Group D:1 or E:2 (see Supplement No. 1 to part 740 of the EAR):

Uncertain; however, shipment(s) will not be made to Country Groups D:1 or E:2.

(iii) Provide information as described in paragraph (j)(1)(ii) of this supplement for vessels or information contained in paragraph (j)(2)(ii) of this supplement for aircraft.

(k) *Regional stability controlled items.* If you are submitting a license application for the export or reexport of items controlled for regional stability reasons and subject to licensing under RS Column 1 on the Country Chart, your license application must be accompanied by full technical specifications.

(l) *Reexports.* If you know that an item that requires a license to be exported from the United States to a certain foreign destination will be reexported to a third destination also requiring approval, such a request must be included on the license application. The license application must specify the country to which the reexport will be made in Block 24. If the export does not require a license but the reexport does, you may apply for a license for the reexport, or you may export without a license and notify the consignee of the requirement to seek a license to reexport.

(m) *Robots.* If you are submitting a license application for the export or reexport of items controlled by ECCNs 2B007 or 2D001 (including robots, robot controllers, end-effectors, or related software) the following information must be provided in Block 24:

(1) Specify if the robot is equipped with a vision system and its make, type, and model number;

(2) Specify if the robot is specially designed to comply with national safety standards for explosive munitions environments;

(3) Specify if the robot is specially designed for outdoor applications and if it meets military specifications for those applications;

(4) Specify if the robot is specially designed for operating in an electro-magnetic pulse (EMP) environment;

(5) Specify if the robot is specially designed or rated as radiation-hardened beyond that necessary to withstand normal industrial (i.e., non-nuclear industry) ionizing radiation, and its rating in grays (Silicon);

(6) Describe the robot's capability of using sensors, image processing or scene analysis to generate or to modify robot program instructions or data;

(7) Describe the manner in which the robot may be used in nuclear industry/manufacturing; and

(8) Specify if the robot controllers, end-effectors, or software are specially designed for robots controlled by ECCN 2B007, and why.

(n) *Short Supply controlled items.* If you are submitting a license application for the export of items controlled for short supply reasons, you must consult part 754 of the EAR for instructions on preparing your license application.

(o) *Technology—(1) License application instructions.* If you are submitting a license application for the export or reexport of technology you must check the box labeled ''Letter of Explanation'' in Block 6, enter the word ''Technology'' in Block 9, leave Blocks 22(e) and (i) blank, and include a general statement that specifies the technology (e.g., blueprints, manuals, etc.) in Block 22(j).

(2) *Letter of explanation.* Each license application to export or reexport technology must be supported by a comprehensive letter of explanation. This letter must describe all the facts for a complete disclosure of the transaction including, if applicable, the following information:

(i) The identities of all parties to the transaction;

(ii) The exact project location where the technology will be used;

(iii) The type of technology to be exported or reexported;

(iv) The form in which the export or reexport will be made;

(v) The uses for which the data will be employed;

(vi) An explanation of the process, product, size, and output capacity of all items to be produced with the technology, if applicable, or other description that delineates, defines, and limits the data to be transmitted (the ''technical scope''); and

(vii) The availability abroad of comparable foreign technology.

(3) *Special provisions*—(i) *Technology controlled for national security reasons.* If you are submitting a license application to export technology controlled for national security reasons to a country *not* listed in Country Group D:1 or E:2 (see Supplement No. 1 to part 740 of the EAR), upon request, you must provide BXA a copy of the written letter from the ultimate consignee assuring that, unless prior authorization is obtained from BXA, the consignee will not knowingly reexport the technology to any destination, or export the direct product of the technology, directly or indirectly, to a country listed in Country Group D:1 or E:2 (see Supplement No. 2 to part 740 of the EAR). If you are unable to obtain this letter of assurance from your consignee, you must state in your license application why the assurances could not be obtained.

(ii) *Maritime nuclear propulsion plants and related items.* If you are submitting a license application to export or reexport technology relating to maritime nuclear propulsion plants and related items including maritime (civil) nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, or maintenance, including any machinery, device, component, or equipment specifically developed or designed for use in such plants or facilities you must include the following information in your license application:

(A) A description of the foreign project for which the technology will be furnished;

(B) A description of the scope of the proposed services to be offered by the applicant, his consultant(s), and his subcontractor(s), including all the design data that will be disclosed;

(C) The names, addresses and titles of all personnel of the applicant, the applicant's consultant(s) and subcontractor(s) who will discuss or disclose the technology or be involved in the design or development of the technology;

(D) The beginning and termination dates of the period of time during which the technology will be discussed or disclosed and a proposed time schedule of the reports the applicant will submit to BXA, detailing the technology discussed or disclosed during the period of the license;

(E) The following certification:

I (We) certify that if this license application is approved, I (we) and any consultants, subcontractors, or other persons employed or retained by us in connection with the project licensed will not discuss with or disclose to others, directly or indirectly, any technology relating to U.S. naval nuclear propulsion plants. I (We) further certify that I (we) will furnish to the Bureau of Export Administration all reports and information it may require concerning specific transmittals or disclosures of technology under any license granted as a result of this license application.

(F) A statement of the steps that you will take to assure that personnel of the applicant, the applicant's consultant(s) and subcontractor(s) will not discuss or disclose to others technology relating to U.S. naval nuclear propulsion plants; and

(G) A written statement of assurance from the foreign importer as described in paragraph (o)(3)(i) of this supplement.

(p) *Temporary exports or reexports.* If you are submitting a license application for the temporary export or reexport of an item (not eligible for the *temporary exports and reexports* provisions of License Exception TMP (see §740.9(a) of the EAR)) you must include the following certification in Block 24:

The items described on this license application are to be temporarily exported (or reexported) for (state the purpose e.g., demonstration, testing, exhibition, etc.), used solely for the purpose authorized, and returned to the United States (or originating country) as soon as the temporary purpose has ended, but in no case later than one year of the date of export (or reexport), unless other disposition has been authorized in writing by the Bureau of Export Administration.

[61 FR 12812, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996; 62 FR 25462, May 9, 1997]

SUPPLEMENT NO. 3 TO PART 748—BXA–711, STATEMENT BY ULTIMATE CONSIGNEE AND PURCHASER INSTRUCTIONS

All information must be typed or legibly printed in each appropriate Block or Box.

Block 1: Ultimate Consignee. The Ultimate Consignee must be the person abroad who is actually to receive the material for the disposition stated in Block 2. A bank, freight forwarder, forwarding agent, or other intermediary is not acceptable as the Ultimate Consignee.

Block 2: Disposition or Use of Items by Ultimate Consignee named in Block 1. Place an (X) in ''A.,'' ''B.,'' ''C.,'' ''D.,'' and ''E.,'' as appropriate, and fill in the required information.

Block 3: Nature of Business of Ultimate Consignee named in Block 1. Complete both ''A'' and ''B''.

Possible choices for ''A'' include: broker, distributor, fabricator, manufacturer, wholesaler, retailer, value added reseller, original equipment manufacturer, etc.

Possible choices for ''B'' include: contractual, franchise, distributor, wholesaler, continuing and regular individual business, etc.

Block 4: Additional Information. Provide any other information not appearing elsewhere on the form such as other parties to the transaction, and any other material facts that may be of value in considering license applications supported by this statement.

Block 5: Assistance in Preparing Statement. Name all persons, other than employees of the ultimate consignee or purchaser, who assisted in the preparation of this form.

Block 6: Ultimate Consignee. Enter the requested information and sign the statement in ink. (For a definition of ultimate consignee, see §748.5(e) of this part.)

Block 7: Purchaser. This form must be signed in ink by the Purchaser, if the Purchaser is not the same as the Ultimate Consignee identified in Block 1. (For a definition of purchaser, see §748.5(c) of this part.)

Block 8: Certification for U.S. Exporter. This Block must be completed to certify that no correction, addition, or alteration on this form was made subsequent to the signing by the Ultimate Consignee in Block 6 and Purchaser in Block 7.

SUPPLEMENT NO. 4 TO PART 748—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION (IC/DV) AND END USE CERTIFICATE SYSTEMS IN FOREIGN COUNTRIES

Country	IC/DV Authorities	System administered
Argentina	Secretaria Ejecutiva de la Comision Nacional de Control de Exportaciones Sensitivas y Material Belico Balcarce 362—ler. piso Capital Federal—CP 1064 Buenos Aires Tel. 334–0738, Fax 331–1618	IC/DV
Australia	Director, Technology Transfer and Analysis, Industry Policy and Operations Division, Department of Defense, Russell Office, Canberra, A.C.T. 2600	IC/DV
Austria	Bundesministerium fur Handel Gewerbe und Industrie Landstr. Haupstr. 55–57, Vienna 1031	IC/DV
Belgium	Ministere Des Affaires Economiques Office Central des Contingents et Licences 24–26 Rue De Mot, Bruxelles-1040	IC/DV
Bulgaria	Ministry of Trade 12 Al. Batenberg 1000 Sofia	IC/DV
China, People's Republic of	Technology Import and Export Department MOFTEC No. 2 Dong Chang An Street Beijing, Telephone: 651-97-355, Telex: 22478 MFERTCN	PRC End-User Certificate
Czech Republic	Federal Ministry of Foreign Trade Head of Licensing Politickych Veznu 20 112 49 Praha 1	IC/DV
Denmark	Handelsministeriets Licenskontor Kampmannsgade 1, DK 1604, Copenhagen V	IC/DV
	IC's also issued by Danmarks Nationalbank Holmens Kanal 17, Copenhagen K Custom-houses	DV
Finland	Hensingin Piiritullikamari, Kanavakatu 6 (or P.O. Box 168) 00161 Helsinki	IC/DV
France	Ministere de l'Economie et des Finances Direction Generale des Douanes et Droits Indirects Division des Affaires Juridiques et Contentieuses 8, Rue de la Tour des Dames, Bureau D/3, 75436, Paris Codex 09	IC/DV
Germany	Bundesamt fur gewerbliche Wirtschaft Frankfurter Strasse 29–31 65760 Eschborn	IC/DV
Greece	Banque de Greece, Direction des Transactions Commerciales avec l'Etranger Athens	IC/DV
Hong Kong	Trade Department, Ocean Centre, Canton Road, Tsimshatsui, Kowloon,	IC/DV
Hungary	Ministry of International Economic Relations Export Control Office 1054 Budapest P.O. Box 728 H–1365, Hold Str. 17	IC/DV
India	*For small scale industries and entities, and those not elsewhere specified:*	
	Deputy Director General of Foreign Trade Udyog Bhawan, Maulana Azad Road New Delhi 11011	Indian IC
	For the ''organized'' sector, except for computers and related equipment:	
	Directorate General of Technical Development, Udyog Bhawan, Maulana Azad Road, New Delhi 11011	Indian IC
	For Defense organizations:	
	Defense Research and Development Organization Room No. 224, ''B'' Wing Sena Bhawan, New Delhi 110011	Indian IC
	For computers and related electronic items:	
	Department of Electronics, Lok Nayak Bhawan, New Delhi 110003	Indian IC
	For any of the above:	
	Assistant Director, Embassy of India, Commerce Wing, 2536 Massachusetts Ave. NW, Washington D.C. 20008—	Indian IC
Ireland, Republic of	Department of Industry, Trade, Commerce and Tourism, Frederick House, South Frederick Street, Dublin 2	IC/DV
Italy	Ministero del Commercio con l'Estero Direzione Generale delle Importazioni e delle Esportazioni, Div. III, Rome or: Dogana Italiana (of the town where import takes place)	IC/DV

Country	IC/DV Authorities	System administered
Japan	Ministry of International Trade and Industry in: Fukuoka, Hiroshima, Kanmon (Kitakyushu-shi), Kobe, Nagoya, Osaka, Sapporo, Sendai, Shikoku (Takamatsu-shi), Shimizu, Tokyo, and Yokohama Japanese Customs Offices	IC/DV
Korea, Republic of	Trade Administration Division Trade Bureau Ministry of Trade and Industry Jungang-Dong, Kyonggi-Do, Building 3 Kwachon	IC
	Republic of Korea Customs House	DV
Liechtenstein	Swiss Federal Office for Foreign Economic Affairs, Import and Export Division Zieglerstrasse 30, CH–3003 Bern	IC/DV
Luxembourg	Office des Licences Avenue de la Liberte, 10	IC/DV
Netherlands	Centrale Dienst voor In-en Uitvoer Engelse Kamp 2, Groningen	IC/DV
New Zealand	Comptroller for Customs P.O. Box 2218, Wellington	IC/DV
Norway	Handelsdepartmentet Direktoratet for Eksport-og-Importregulering Fr. Nansens plass 5, Oslo	IC/DV
Pakistan	Chief Controller of Imports and Exports 5, Civic Center Islamabad	IC
	Joint Science Advisor, Ministry of Science and Technology, Secretariat Block 'S', Islamabad	DV
Poland	Ministry of Foreign Economic Relations Department of Commodities and Services Plac Trzech Krzyzy 5, Room 358 00–507 Warsaw	IC/DV
Portugal	Reparticao do Comercio Externo Direccao-Geral do Comercio Secretaria de Estado do Comercio Ministerio da Economia, Lisbon	IC/DV
Romania	National Agency for Control of Strategic Exports and Prohibition of Chemical Weapons, 13, Calea 13 Septembrie Casa (or P.O. Box 5–10) Republicii, Gate A 1, Bucharest, Sector 5, Phone: 401–311–2083, Fax: 401–311–1265	IC/DV
Singapore	Controller of Imports and Exports, Trade Development Board World Trade Centre, 1 Maritime Square, Telok Blangah Road,	IC/DV
Slovakia	Ministry of Foreign Affairs Licensing-Registration Department Spitalska 8, 813 15 Bratislava	IC
Spain	Secretary of State for Commerce Paseo la Cistellana 162, Madrid 28046	IC/DV
Sweden	The Association of Swedish Chambers of Commerce & Industry P.O. Box 16050, S–103 22 Stockholm Office: Vastra Tradgardsgatan 9	IC/DV
Switzerland	Swiss Federal Office for Foreign Economic Affairs, Import and Export Division, Zieglerstrasse 30 CH–3003 Bern	IC/DV
Taiwan	Board of Foreign Trade Ministry of Economic Affairs 1 Hu-Kou Street, Taipei	IC/DV
	Science-based Industrial Park Administration No. 2 Hsin Ann Road, Hsinchu	
	Export Processing Zone Administration 600 Chiachang Road Nantz, Kaohsiung	
Turkey	Ministry of Commerce, Department of Foreign Commerce, Ankara	IC
	Head Customs Office at the point of entry	DV
United Kingdom	Department of Trade and Industry Export Licensing Branch Millbank Tower Millbank London, SW1P 4QU	IC
	H.M. Customs and Excise, King's Beam House, Mark Lane London, E.C. 3	DV

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25463, May 9, 1997]

SUPPLEMENT NO. 5 TO PART 748—U.S. IMPORT CERTIFICATE AND DELIVERY VERIFICATION PROCEDURE

The United States participates in an Import Certificate/Delivery Verification procedure. Under this procedure, U.S. importers are sometimes required to provide their foreign suppliers with an U.S. International Import Certificate that is validated by the U.S. Government. This certificate tells the government of the exporter's country that the items covered by the certificate will be imported into the U.S. Economy and will not be reexported except as authorized by U.S. export control regulations. In addition, in some cases, the exporter's government may require a delivery verification. Under this procedure, the U.S. Customs Service validates a certificate confirming that the items have entered the U.S. economy. The U.S. importer must return this certificate to the foreign exporter.

This supplement establishes the procedures and requirements of BXA with respect to both of these programs. Paragraph (a) of this supplement contains the requirements and procedures of the U.S. International Import Certificate procedure. Paragraph (b) of this supplement contains the requirements and procedures of the Delivery Verification procedure.

(a) U.S. International Import Certificates. If you are a U.S. importer, a foreign supplier may request you to obtain a U.S. import certificate. The reason for this request is that the exporter's government requires a U.S. import certificate as a condition to issuing

an export license. To obtain such a certificate you will have to fill in and execute the U.S. International Import Certificate form (Form BXA–645P/ATF–4522/DSP–53) and submit it to the U.S. government agency that has jurisdiction over the items you are importing. In doing so, you will be making a representation to the United States Government that you will import the items described in the certificate into the United States or if not so imported, you will not divert, transship or reexport them to another destination with the explicit approval of the U.S. government agency that has jurisdiction over those items. (Representations that items will be entered into the U.S. do not preclude the temporary unloading of items in a foreign trade zone for subsequent entry into the economy of the U.S.) If the items described in the certificate are subject to U.S. Department of Commerce jurisdiction, the Department will validate the certificate and return it to you. You may then send the certificate to your foreign supplier. In this way the government of the exporting country is assured that the items will become subject to the export control laws of the United States.

(1) Items for which the U.S. Department of Commerce issues U.S. International Import Certificates and forms to use. The Department of Commerce issues U.S. International Import Certificates for the following types of items.

(i) Items controlled for National Security reasons. Items under the export licensing jurisdiction of BXA that are identified as controlled for national security reasons on the Commerce Control List (Supplement No. 1 to part 774 of the EAR). You will need to submit in triplicate a completed Form BXA–645P/ATF–4522/DSP–53;

(ii) Nuclear equipment and materials. Items subject to the export licensing jurisdiction of the Nuclear Regulatory Commission for nuclear equipment and materials. (see 10 CFR part 110). You will need to submit in quadruplicate a completed Form BXA–645P/ATF–4522/DSP–53; and

(iii) Munitions Items. Items listed on the U.S. Munitions List (see 22 CFR part 121) that do not appear on the more limited U.S. Munitions Import List (27 CFR 47.21). You will need to submit in triplicate a completed Form BXA–645P. For triangular transactions (See paragraph (a)(5) of this supplement) involving items on the U.S. Munitions List, you must contact the Department of State, Office of Defense Trade Controls and use Form BXA–645P/ATF–4522/DSP–53. You should contact the Treasury Department, Bureau of Alcohol, Tobacco and Firearms for items appearing on the U.S. Munitions Import List. You will need to use Form ATF–4522.

(2) Where to submit forms. U.S. International Import Certificates and requests to amend certificates may be presented for validation either in person or by mail at the following locations.

(i) By mail to the Bureau of Export Administration, P.O. Box 273, Washington D.C. 20044, Attn: Import Certificate Request; or

(ii) In person or by mail at one of the following Department of Commerce U.S. and Foreign Commercial Service District Offices:

Boston, MA	New Orleans, LO
Buffalo, NY	New York, NY
Chicago, IL	Philadelphia, PA
Cincinnati, OH	Phoenix, AZ
Cleveland, OH	Pittsburgh, PA
Dallas, TX	Portland, OR
Detroit, MI	St. Louis, MO
Houston, TX	San Francisco, CA
Kansas City, MO	Savannah, GA
Los Angeles, CA	Seattle, WA
Miami, FL	Trenton, NJ

(3) U.S. International Import Certificate validity periods. The U.S. International Import Certificate must be submitted to the foreign government within six months from the date of certification by the U.S. Department of Commerce. The expiration of this six-month period in no way affects the responsibility of the importer to fulfill the commitments made in obtaining the certificate. If the certificate is not presented to the government of the exporting country before the expiration of its validity period, the exporter must apply for a new certificate. The original unused U.S. International Import Certificate must be returned to BXA at the address specified in paragraph (a)(2)(i) of this supplement.

(4) Statements on the certificate or amendments are representations to the U.S. Government which continue in effect.

(i) All statements and representations made in a U.S. International Import Certificate or an amendment thereto, will be deemed to be continuing in nature until the transaction described in the certificate is completed and the items are delivered into the economy of the importing country.

(ii) Any change of fact or intention in regard to the transaction described in the certificate shall be promptly disclosed to BXA by the U.S. importer by presentation of an amended certificate. The amended certificate must describe all of the changes and be accompanied by the original certificate bearing the certification of BXA. If the original certificate has been transferred to the foreign exporter, you must, where possible, attempt to obtain the original certificate prior to applying for an amendment. If the original certificate is unobtainable because the foreign exporter has submitted it to the appropriate foreign government, or for any other reason, then you must submit a written statement with your amendment giving the reasons for your failure to submit the original certificate.

(5) Certificates for Triangular transaction (items will not enter the U.S. or applicant is not sure that they will enter the United States).

(i) In accordance with international practice, BXA will, upon request, stamp the certificate with a triangular symbol as notification to the government of the exporting country that the U.S. importer is uncertain whether the items will be imported into the U. S. or knows that the items will not be imported into the U.S., but that, in any case, the items will not be delivered to any other destination except in accordance with the EAR.

(ii) The triangular symbol on a certificate U.S. International Import Certificate is not, in and of itself, an approval by BXA to transfer or sell items to a foreign consignee. Note that a triangular Certificate will not be issued covering foreign excess property sold abroad by the U.S. Department of Defense.

(6) Approval to export items to a foreign consignee prior to delivery under a U.S. International Import Certificate. The written approval of BXA is required before items covered by a U.S. International Import Certificate (whether or not bearing a triangular symbol) may be shipped to a destination other than the U.S. or Canada or sold to a foreign purchaser, and before title to or possession of such items may be transferred to a foreign transferee. This requirement does not apply after the items have been delivered in accordance with the undertaking set forth in the Certificate or if at the time of such shipment, sale, passage of possession or passage of title, a License Exception or a NLR provision of the EAR would authorize the transaction.

(i) If prior approval is required, a letter requesting authorization to release the shipment shall be submitted to BXA at the address listed in paragraph (a)(2)(i) of this supplement.

(ii) The letter must contain the certificate number; date issued; location of the issuing office; names, addresses, and identities of all parties to the complete transaction; and the quantity, dollar value, and description of the items. The letter must be accompanied by the U.S. International Import Certificate, and all other documentation required by the EAR for the item and country of ultimate destination, as identified in part 748 of the EAR. If requirements stated in part 748 of the EAR do not apply to your transaction, you must identify the intended end-use of the items in your letter.

(iii) Where the letter request is approved and is supported by a foreign import certificate, no further approval from BXA is required for the purchaser or transferee to resell or again transfer the items. However, where BXA approves a request that was not supported by a foreign import certificate, the person to whom approval is granted is required to inform the purchaser or transferee, in writing, that the items are to be shipped to the approved destination only and that no other disposition of the items is permitted without the approval of BXA.

(iv) If the transaction is approved, a validated letter of approval will be sent to the U.S. purchaser for retention in his records. Where a DV or other official government confirmation of delivery is required, the letter will so indicate.

(v) If the items covered by a certificate have been imported into a destination other than the U.S. and the foreign exporter of the items requests a Delivery Verification, the person who obtained the certificate must obtain a DV from the person to whom the items were delivered in the actual importing country. (If a DV is unobtainable, other official government confirmation of delivery must be obtained.) The DV or other official government confirmation of delivery must be submitted to BXA together with an explanatory letter giving the U.S. International Import Certificate number, date issued, and location of issuing office. BXA will then issue Form ITA–6008, Delivery Compliance Notice, in two copies, the original of which must be forwarded to the country of origin in order to serve as evidence to the exporting country that the requirements of the U.S. Government have been satisfied with respect to delivery of the items.

(vi) Delivery, sale, or transfer of items to another U.S. purchaser.

(A) Items covered by a U.S. International Import Certificate may not be sold, and title to or possession of such items may not be transferred, to another U.S. purchaser or transferee before the items are delivered to the U.S. (or to an approved foreign destination, as provided by paragraph (a)(5) of this supplement), except in accordance with the provisions described in paragraph (a)(6) of this supplement. The provisions of this paragraph do not apply after the items have been delivered in accordance with the undertaking set forth in the certificate.

(B) Resale or transfer to another U.S. purchaser or transferee requires the prior approval of BXA only in cases where the buyer or transferee is listed in Supplement No. 1 to part 766 of the EAR. However, you, as the person who obtained the certificate are required to notify BXA of any change in facts or intentions relating to the transaction, and in all cases you will be held responsible for the delivery of the items in accordance with the EAR. You are required in all cases to secure, prior to sale or transfer, and to retain in your files in accordance with the recordkeeping provisions contained in part 762 of the EAR, written acceptance by the purchaser or transferee of:

(*1*) All obligations undertaken by, and imposed under the EAR, upon the holder of the certificate; and

(*2*) An undertaking that all subsequent sales or transfers will be made subject to the same conditions.

(iii) The responsibility of the certificate holder for obtaining a DV also applies to those cases where the items are resold to a U.S. purchaser (See paragraph (b)(1) of this supplement.

(vii) Reexport or transshipment of items after delivery to U.S. Items imported into the U.S. under the provisions of a U.S. International Import Certificate may not be reexported to any destination under the *intransit* provisions of License Exception TMP (see §740.9(b)(1) of the EAR). However, all other provisions of the EAR applicable to items of domestic origin shall apply to the reexport of items of foreign origin shipped to the U.S. under a U.S. International Import Certificate.

(viii) Lost or destroyed U.S. International Import Certificates. If a U.S. International Import Certificate is lost or destroyed, a duplicate copy may be obtained by the person in the U.S. who executed the original U.S. International Import Certificate by submitting to any of the offices listed in paragraph (a)(2)(i) of this supplement new Form BXA–645P/ATF–4522/DSP–53 in the same way as an original request, except that the forms shall be accompanied by a letter detailing the circumstances under which the original certificate was lost or destroyed and certifying:

(A) That the original U.S. International Import Certificate No. _____, dated _____, issued to (name and address of U.S. importer) for import from (foreign exporter's name and address) has been lost or destroyed; and

(B) That if the original U.S. International Import Certificate is found, the applicant agrees to return the original or duplicate of the certificate to the Bureau of Export Administration.

(ix) Unused U.S. International Import Certificates. If the transaction will not be completed and the U.S. International Import Certificate will not be used, return the certificate for cancellation to BXA at the address listed in paragraph (a)(2)(i) of this supplement.

(b) Delivery Verification Certificate. U.S. importers may be requested by their foreign suppliers to furnish them with a certified Form BXA–647P, Delivery Verification Certificate, covering items imported into the U.S. These requests are made by foreign governments to assure that strategic items shipped to the U.S. are not diverted from their intended destination. In these instances, the issuance of an export license by the foreign country is conditioned upon the subsequent receipt of a Delivery Verification Certificate from the U.S. importer. Accordingly, your compliance with your foreign exporter's request for a Delivery Verification is necessary to ensure your foreign exporter fulfills its government obligations and is able to participate in future transactions with you. Failure to comply may subject your exporter to penalties that may prevent future trade.

(1) The responsibility of a person or firm executing a U.S. International Import Certificate for providing the foreign exporter with confirmation of delivery of the items includes instances where the items are resold or transferred to another U.S. person or firm prior to actual delivery to the U.S. or to an approved foreign destination. The person who executed the U.S. International Import Certificate shall secure in writing from the U.S. purchaser or transferee, and retain in your files in accordance with the recordkeeping provisions stated in part 762 of the EAR:

(i) Acceptance of the obligation to provide the purchaser or transferee with either the Delivery Verification (or other official government confirmation of delivery if a Delivery Verification is unobtainable) or assurance that this document was submitted to BXA; and

(ii) An undertaking that each succeeding U.S. transferee or purchaser will assume the same obligation or assurance. In each case the seller or transferor must transmit to the U.S. purchaser or transferee the U.S. International Import Certificate number covering the export from the foreign country and request that they pass it on to any other U.S. purchasers or transferees.

(2) Completion and certification of Delivery Verification Certificates. If you are requested by your foreign exporter to provide a Delivery Verification, you must obtain Form BXA–647P from a U.S. customs office or one of the offices listed in paragraph (a)(2) of this supplement and complete all blocks (except those below the line titled ''To be completed by U.S. Customs Service'') on the form. The language used in the block titled ''Description of Goods'' must describe the items in the same terms as those shown on the applicable U.S. International Import Certificate. Upon completion Form BXA–647P must be presented, in duplicate, to a U.S. customs office. The U.S. customs office will certify Form BXA–647P only where the import is made under a warehouse or consumption entry.

(3) Disposition of certified Delivery Verification Certificates. The importer must send the original certified Delivery Verification Certificate to the foreign exporter or otherwise dispose of it in accordance with the instructions of the exporting country. The duplicate copy will be retained by the U.S. customs office.

(4)(i) Issuance of a U.S. Delivery Compliance Notice in lieu of a Delivery Verification Certificate. If you are requested to provide a Delivery Verification Certificate but do not wish to disclose the name of your customer

to the foreign exporter (e.g., in the event that the items are resold or transferred to another person or firm before the items enter the U.S.), you may submit an originally completed Form BXA–647P together with an explanatory letter requesting a Delivery Compliance Notice, to BXA at the address listed in (a)(2)(i) of this supplement.

(ii) BXA will provide you with a notice signifying that the items were imported into the U.S. and that a satisfactory DV has been submitted to BXA. You must then forward the original notice to your foreign exporter for submission to the foreign government. A copy of the notice should be retained in your files in accordance with the recordkeeping provisions stated in part 762 of the EAR.

(5)(i) Lost or destroyed Delivery Verification Certificate. When a Delivery Verification Certificate is lost or destroyed, the U.S. importer must submit a letter to BXA at the address listed in paragraph (a)(2)(i) of this supplement certifying that:

(A) The original Delivery Verification Certificate has been lost or destroyed;

(B) The circumstances under which it was lost or destroyed;

(C) The type of customs entry (warehouse or consumption), entry number, and date of entry; and

(D) The number and date of the related U.S. International Import Certificate.

(ii) BXA will, in applicable cases, notify the exporting government that a Delivery Verification Certificate been issued.

(c) Penalties and sanctions for violations. The enforcement provisions of part 764 and Supplement No. 2 to part 736 of the EAR apply to transactions involving imports into the U.S. covered by this supplement and to both foreign and U.S. parties involved in a violation of this supplement. Any provisions of part 764 and Supplement No. 2 to part 736 of the EAR which, by their terms, relate to ''exports'' or ''exports from the U.S.'' are also deemed to apply and extend to imports into the U.S., applications for U.S. International Import Certificates (Forms BXA–645P presented to U.S. Department of Commerce for certification), U.S. International Import Certificates, and Delivery Verification Certificates, described in this supplement. (Applications the documents described in this supplement, are included within the definition of export control documents provided in part 772 of the EAR.) Refer to §764.3 of the EAR for more information.

[61 FR 12812, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996; 62 FR 25463, May 9, 1997]

PART 750—APPLICATION PROCESSING, ISSUANCE OR AND DENIAL

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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; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 15, 1995 (60 FR 42767, August 17, 1995); E.O. 12981, 60 FR 62981; and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12829, Mar. 25, 1996, unless otherwise noted.

§750.1 Scope.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part describes the Bureau of Export Administration's (BXA) process for reviewing your application for a license and the applicable processing times for various types of applications. Information related to the issuance, denial, revocation, or suspension of a license or license application is provided along with the procedures on obtaining a duplicate or replacement license, the transfer of a license and shipping tolerances available on licenses. This part also contains instructions on obtaining the status of any pending application.

[62 FR 25463, May 9, 1997]

§750.2 Processing of Classification Requests and Advisory Opinions.

(a) *Classification requests.* All classification requests submitted in accordance with procedures described in §748.3 (a) and (b) of the EAR will be answered within 14 calendar days after receipt. All responses will inform the person of the proper classification (e.g., whether or not the item is subject to the Export Administration Regulations (EAR) and, if applicable, the appropriate Export Control Classification Number [ECCN]).

(b) *Advisory Opinion requests.* All advisory opinions submitted in accordance with procedures described in §748.3(a) and (c) of the EAR will be answered within 30 calendar days after receipt.

§750.3 Review of license applications by BXA and other government agencies and departments.

(a) *Review by BXA.* In reviewing specific license applications, BXA will conduct a complete analysis of the license application along with all documentation submitted in support of the application. In addition to reviewing the item and end-use, BXA will consider the reliability of each party to the transaction and review any available intelligence information. To the maximum extent possible, BXA will make licensing decisions without referral of license applications to other agencies, however, BXA may consult with other U.S. departments and agencies regarding any license application.

(b) *Review by other departments or agencies.* (1) The Departments of Defense, Energy, State, and the Arms Control and Disarmament Agency (ACDA) have the authority to review any license application submitted under the EAR. In addition, BXA may, where appropriate, refer license applications to other U.S. government departments or agencies. These agencies and departments will be referred to as ''agencies'' for the purposes of this part. Though these agencies have the authority to review any license application, they may determine that they do not need to review certain types of license applications. In these instances, the agency will provide BXA with a Delegation of Authority to process those license applications without review by that particular agency.

(2) The Departments of Defense, Energy, State, and ACDA are generally concerned with license applications involving items controlled for national security, missile technology, nuclear nonproliferation, and chemical and biological weapons proliferation reasons or destined for countries and/or end uses of concern. In particular, these agencies are concerned with reviewing license applications as follows:

(i) The Department of Defense is concerned primarily with items controlled for national security and regional stability reasons;

(ii) The Department of Energy is concerned primarily with items controlled for nuclear nonproliferation reasons;

(iii) The Department of State is concerned primarily with items controlled for regional stability, anti-terrorism, crime control reasons, and sanctions; and

(iv) ACDA is concerned primarily with items controlled for national security, nuclear nonproliferation, regional stability, and anti-terrorism reasons.

(v) The Department of Justice is concerned with controls relating to encryption items.

[61 FR 12829, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996]

§750.4 Procedures for processing license applications.

(a) *Overview.* (1) All license applications will be resolved or referred to the President no later than 90 calendar days from the date of BXA's registration of the license application. Processing times for the purposes of this section are defined in calendar days. The procedures and time limits described in this part apply to all license applications registered on or after February 4, 1996. The procedures and time limits in effect prior to December 6, 1995 will apply to license applications registered prior to February 4, 1996.

(2) Properly completed license applications will be registered promptly upon receipt by BXA. Registration is defined as the point at which the application is entered into BXA's electronic license processing system. If your application contains deficiencies that prevent BXA from registering your application, BXA will attempt to contact you to correct the deficiencies, however, if BXA is unable to contact you, the license application will be returned without being registered. The specific deficiencies requiring return will be enumerated in a notice accompanying the returned license application. If a license application is registered, but BXA is unable to correct deficiencies crucial to processing the license application, it will be returned without action. The notice will identify the deficiencies and the action necessary to

correct the deficiencies. If you decide to resubmit the license application, it will be treated as a new license application when calculating license processing time frames.

(b) *Actions not included in processing time calculations.* The following actions will not be counted in the time period calculations described in paragraph (a)(1) of this section for the processing of license applications:

(1) *Agreement by the applicant to the delay.* BXA may request applicants to provide additional information in support of their license application, respond to questions arising during processing, or accept proposed conditions or riders on their license application. If BXA has provided the applicant with an intent to deny letter described in § 750.6 of this part, processing times may be suspended in order to negotiate modifications to a license application and obtain agreement to such modifications from the foreign parties to the license application.

(2) *Pre-license checks.* If a pre-license check, to establish the identity and reliability of the recipient of the controlled items, is conducted through government channels, provided that:

(i) The need for such a pre-license check is established by the Secretary, or by another agency, if the request for a pre-license check is made by such agency and the request is made in accordance with the following time frames;

(A) The pre-license check is requested within 5 days of the determination that it is necessary; and

(B) The analysis resulting from the pre-license check is completed within 5 days.

(3) *Government-to-Government assurances.* Requests for government-to-government assurances of suitable end-use of items approved for export or reexport when failure to obtain such assurances would result in rejection of the license application, provided that:

(i) The request for such assurances is sent to the Secretary of State within five days of the determination that the assurances are required;

(ii) The Secretary of State initiates the request of the relevant government within 10 days of receipt of the request for such assurances; and

(iii) The license is issued within 5 days of the Secretary's receipt of the requested assurances.

(4) *Consultations.* Consultation with other governments, if such consultation is provided for by a relevant bilateral arrangement or multilateral regime as a precondition for approving a license.

(5) *Multilateral reviews.* Multilateral review of a license application if such review is required by the relevant multilateral regime.

(6) *Congressional notification.* Under Section 6(j) of the Export Administration Act, as amended (EAA), the Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days prior to issuing a license to any country designated by the Secretary of State as being terrorist-supporting for any items that could make a significant contribution to the military potential of such countries, or could enhance the ability of such countries to support acts of international terrorism. Accordingly, the issuance of any license subject to this requirement will be delayed for 30 days.

(i) *Designated countries.* The following countries have been designated by the Secretary of State as terrorist-supporting countries: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(ii) *Items subject to notification requirement.* License applications involving the export or reexport of the following items to the military, police, intelligence or other sensitive end-users are subject to this notification requirement:

(A) All items controlled for national security reasons, except digital computers with a Composite Theoretical Performance (CTP) less than 500 Mtops;

(B) All items controlled for chemical and biological weapons proliferation reasons;

(C) All items controlled for missile technology reasons;

(D) All items controlled for nuclear nonproliferation reasons; and

(E) All items controlled by the CCL where the entry heading identifies the items controlled as those contained in the International Munitions List.

(iii) *Additional notifications.* The Secretaries of Commerce and State must

also notify the appropriate Congressional committees 30 days before a license is issued for the export or reexport of any item controlled on the CCL to a designated country if the Secretary of State determines that the export or reexport ''could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.''

(c) *Initial processing.* Within 9 days of license application registration, BXA will, as appropriate:

(1) Contact the applicant if additional information is required, if the license application is improperly completed, or required support documents are missing, to request additional or corrected information;

(2) Assure the stated classification on the license application is correct;

(3) Return the license application if a license is not required with a statement notifying the applicant that a license is not required;

(4) Approve the license application or notify the applicant of the intent to deny the license application; or

(5) Refer the license application electronically along with all necessary recommendations and analysis concurrently to all agencies unless the application is subject to a Delegation of Authority. Any relevant information not contained in the electronic file will be simultaneously forwarded in paper copy.

(d) *Review by other agencies and/or interagency groups.* (1) Within 10 days of receipt of a referral the reviewing agency must advise BXA of any information not contained in the referral as described in paragraph (c)(5) of this section. BXA will promptly request such information from the applicant. The time that elapses between the date the information is requested by the reviewing agency and the date the information is received by the reviewing agency will not be counted in processing time frames.

(2) Within 30 days of receipt of the initial referral, the reviewing agency will provide BXA with a recommendation either to approve (with or without conditions or riders) or deny the license application. As appropriate, such a recommendation may be made with the benefit of consultation and/or discussions in interagency groups established to provide expertise and coordinate interagency consultation. These interagency groups consist of:

(i) *The Missile Technology Export Control Group (MTEC).* The MTEC, chaired by the Department of State, reviews license applications involving items controlled for missile technology reasons. The MTEC also reviews license applications involving items not controlled for missile technology (MT) reasons, but destined for a country and/or end-use/end-user of MT concern.

(ii) *The SubGroup on Nuclear Export Coordination (SNEC).* The SNEC, chaired by the Department of State, reviews license applications involving items controlled for nuclear nonproliferation reasons. The SNEC also reviews license applications involving items not controlled for nuclear nonproliferation (NP) reasons, but destined for a country and/or end-use/end-user of NP concern.

(iii) *The Shield.* The Shield, chaired by the Department of State, reviews license applications involving items controlled for chemical and biological weapons reasons. The Shield also reviews license applications involving items not controlled for chemical and biological weapons (CBW) reasons, but destined for a country and/or end-use/end-user of CBW concern.

(e) *Recommendations by reviewing agencies.* Reviewing agencies recommending denial of a license application must provide a statement of reasons, consistent with the provisions of the EAA or EAR, and cite both the statutory and the regulatory basis for the recommendation to deny. A reviewing agency that fails to provide a recommendation within 30 days with a statement of reasons supported by the statutory and regulatory basis shall be deemed to have no objection to the final decision of BXA.

(f) *Interagency dispute resolution and escalation procedures*—(1) *Escalation to the Operating Committee (OC).* (i) In any instance where the reviewing agencies are not in agreement on final disposition of a license application, it will be escalated to the OC for resolution. The

Chair of the OC will consider the recommendations of the reviewing agencies and any information provided by the applicant in person during an open OC session. Each agency will be informed of the Chair's decision on the license application within 14 days after the deadline for receiving agency recommendations.

(ii) If any agency disagrees with the OC Chair's decision, the agency may escalate the decision by appealing to the Chair of the Advisory Committee on Export Policy for resolution. If such a request for escalation is not made within 5 days of the decision of the OC Chair, the Chair's decision will be final.

(2) *Escalation to the Advisory Committee on Export Policy (ACEP).* Requests for escalation to the ACEP must be in writing from an official appointed by the President with the advice and consent of the Senate, or a person properly acting in such capacity, and cite both the statutory and the regulatory basis for the appeal. The ACEP will review all relevant information and recommendations. The Chair of the ACEP will inform the reviewing agencies of the majority vote decision of the ACEP within 11 days from the date of receipt of the escalation request. Within 5 days of the decision, any dissenting agency may appeal in writing the ACEP's decision to the Secretary of Commerce in the Secretary's capacity as the Chair of the Export Administration Review Board. The written request must be made by the head of the agency requesting escalation and cite both the statutory and the regulatory basis for the appeal. Within the same period of time, the Secretary may initiate a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the decision of the ACEP will be final.

(3) *Escalation to the Export Administration Review Board (EARB).* The EARB will review all relevant information and recommendations, and such other export control matters as may be appropriate. The Secretary of Commerce will inform the reviewing agencies of the majority vote decision of the EARB within 11 days from the date of receipt of the appeal. Within 5 days of the decision, any agency dissenting from the decision of the EARB may appeal the decision to the President. The appeal must be in writing from the head of the dissenting agency. In the absence of a timely appeal, the decision of the EARB will be final.

[61 FR 12829, Mar. 25, 1996, as amended at 62 FR 25463, May 9, 1997]

§ 750.5 Status of pending applications and other requests.

(a) *Information available.* You may contact BXA for status of your pending Classification Request, Advisory Opinion, or license application. For Advisory Opinion requests, telephone (202) 482–4905 or send a fax to (202) 219–9179. For license applications and Classification Requests, telephone BXA's System for Tracking Export License Applications (''STELA'') at (202) 482–2752. STELA is an automated voice response system, that upon request via any standard touch-tone telephone, will provide you with up to the minute status on any application pending at BXA. Press ''0'' on your keypad for online instructions or ''9'' for the letter ''Z''. Requests for status may be made only by the applicant or the applicant's agent.

(b) *STELA's hours.* STELA is operational Monday through Friday from 7:15am to 11:15pm and on Saturday from 8:00am to 4:00pm, Eastern Time. If you have any difficulty accessing STELA, contact during normal business hours, one of BXA's offices listed in § 748.2(a) of the EAR.

(c) *Procedures to access information on STELA.* Once you dial STELA you will be instructed to enter your Application Control Number using your push button telephone keys. After you enter the Application Control Number, STELA will provide you with the current status of your license application or Classification request.

[61 FR 12829, Mar. 25, 1996, as amended at 62 FR 25463, May 9, 1997]

§ 750.6 Denial of license applications.

(a) *Intent to deny notification.* If BXA intends to deny your license application, BXA will notify you in writing within 5 days of the decision. The notification will include:

(1) The intent to deny decision;

(2) The statutory and regulatory basis for the denial;

(3) To the extent consistent with the national security and foreign policy of the United States, the specific considerations that led to the decision to deny the license application;

(4) What, if any, modifications or restrictions to the license application would allow BXA to reconsider the license application;

(5) The name of the BXA representative in a position to discuss the issues with the applicant; and

(6) The availability of appeal procedures.

(b) *Response to intent to deny notification.* You will be allowed 20 days from the date of the notification to respond to the decision before the license application is denied. If you respond to the notification, BXA will advise you if, as a result of your response, the decision to deny has been changed. Unless you are so advised by the 45th day after the date of the notification, the denial will become final, without further notice. You will then have 45 days from the date of final denial to exercise the right to appeal under part 756 of the EAR.

§ 750.7 Issuance of licenses.

(a) *Scope.* A license authorizes only a specific transaction, or series of transactions, as described in the license application and any supporting documents. A license application may be approved in whole or in part or further limited by conditions or other restrictions appearing on the license itself or in the EAR. When a license application is approved by BXA, a license is issued as described in paragraph (b) of this section.

(b) *Issuance of a license.* After a license application is approved, a computer generated license is issued by the Department of Commerce bearing the license number and a validation date. Where appropriate, the license will also show an expiration date. Where necessary, attachments to a license will also be validated with the Department of Commerce seal and the date of validation. Exporters must use the complete license number when preparing a Shipper's Export Declaration (SED) and other export control documents, and in communicating with the Department of Commerce concerning the license.

(c) *Changes to the license.* The following non-material changes do not require submission of a ''Replacement'' license or any other notification to BXA. (If you wish to make any change not identified in this paragraph, you will need to submit a ''Replacement'' license in accordance with the instructions contained in Supplement No. 1 to part 748 of the EAR, Block 11):

(1) Decrease in unit price or total value;

(2) Increase in price or quantity if permitted under the shipping tolerances in § 750.11 of this part;

(3) Increase in price that can be justified on the basis of changes in point of delivery, port of export, or as a result of transportation cost, drayage, port charges, warehousing, currency fluctuations, etc.;

(4) Establishment of unit or total price in conformance with a ''price statement'' on a license that permits price to be based on the market price at a specified date plus an exporter's mark-up, or like basis;

(5) Change in intermediate consignee if the new intermediate consignee is located in the country of ultimate destination as shown on the license, except a change in, or addition of, an intermediate consignee involving a consolidated shipment;

(6) Change in continuity of shipment by unloading from carrier at a country listed in Country Group B (see Supplement No. 1 to part 740 of the EAR) port not in the country of ultimate destination, without the designation of an intermediate consignee on the shipping documents and license, provided:

(i) The purpose is to transfer the shipment to another vessel, barge, or vehicle, solely for onforwarding to the country of destination shown on the shipping documents and the license;

(ii) The shipment is moving on a through bill of lading;

(iii) The carrier is not registered in, owned or controlled by, or under charter or lease to a country in Country Group D:1 or E:2 (see Supplement No. 1 to part 740 of the EAR), or a national of any of these countries;

(iv) The carrier retains custody of the shipment until it is delivered to the ultimate consignee; and

(v) The original bill of lading or air waybill first issued at the port of export is delivered with the shipment to the ultimate consignee;

(7) Change in address of purchaser or ultimate consignee if the new address is located within the same country shown on the license; or

(8) Change in ECCN, unit of quantity, unit price, or wording of the item description (where necessary only for the purpose of conforming to an official revision in the CCL). This does not cover an actual change in the item to be shipped, or an increase in the price or quantity.

(d) *Responsibility of the licensee.* If a license is issued to you, you become the licensee. The licensee will be held accountable for use of the license, whether as a principal (exporting for your own account) or as an agent (including an agent acting for the account of a foreign principal who is not subject to the jurisdiction of the United States). You, as the licensee, assume responsibility for effecting the export or reexport, for proper use of the license, and for due performance of all of the license's terms and conditions. The obligations arising under the provisions of the EAA and the EAR are the same whether the license application is submitted and issued in writing or electronically.

(e) *Prohibited use of a license.* No person convicted of a violation of any statute specified in section 11(h) of the EAA, at the discretion of the Secretary of Commerce, may apply for any license for a period up to 10 years from the date of the conviction. See § 766.25 of the EAR.

(f) *Quantity of commodities authorized.* Unlike software and technology, commodities will be approved with a quantity or dollar value limit. The ''Unit'' paragraph within each CCL commodity entry will list a specific ''Unit'' for those commodities controlled by that entry. Any license resulting from a license application to export or reexport commodities will be licensed in terms of the specified ''Unit''. If a commodity is licensed in terms of ''$ value'', the unit of quantity commonly used in trade may also be shown on the license. Though this unit may be shown on the approved license, the quantity of commodities authorized is limited entirely by the total dollar value shown on the approved license.

(g) *License validity period.* Licenses involving the export or reexport of items will generally have a 24-month validity period, unless a different validity period has been requested and specifically approved by BXA. Exceptions from the 24-month validity period include, license applications reviewed and approved as an ''emergency'' (see § 748.4 (h) of the EAR), license applications for items controlled for short supply reasons, and Special Comprehensive Licenses.

Emergency licenses will expire no later than the last day of the calendar month following the month in which the emergency license is issued. Licenses for items controlled for short supply reasons will be limited to a 12-month validity period. The expiration date will be clearly stated on the face of the license. If the expiration date falls on a legal holiday (Federal or State), the validity period is automatically extended to midnight of the first day of business following the expiration date. (See part 752 of the EAR for validity periods for Special Comprehensive Licenses.)

(1) *Extended validity period.* Validity periods in excess of 24 months generally will not be granted. BXA will consider granting a validity period exceeding 24 months when extenuating circumstances warrant such an extension, however, no changes will be approved related to any other particular on the license (e.g., parties to the transaction, countries of ultimate destination, etc.). For example, an extended validity period will generally be granted where the transaction is related to a multi-year project, when production lead time will not permit an export or reexport during the original validity period of the license, when an unforeseen emergency prevents shipment within the 24-month validity of the license, or for other similar circumstances. A continuing requirement to supply spare or replacement parts will not normally justify an extended

validity period. Licenses issued in accordance with the emergency clearance provisions contained in §748.4(h) of the EAR will not be extended. See §752.9 of the EAR for information relating to the extension of a Special Comprehensive License.

(2) *Request for extension.* (i) The applicant must submit a letter in writing to request an extension in the validity period of a previously approved license. The subject of the letter must be titled: ''Request for Validity Period Extension'' and contain the following information:

(A) The name, address, and telephone number of the requestor;

(B) A copy of the original license, with the license number, validation date, and current expiration date legible; and

(C) Justification for the extension;

(ii) It is the responsibility of the applicant to ensure that all applicable support documents remain valid and are in the possession of the applicant. If the request for extension is approved, BXA will provide the applicant with a written response.

(h) *Specific types of licenses*—(1) *Licenses for temporary exports or reexports.* If you have been granted a license for the temporary export or reexport of items and you decide not to return the items to the United States, you must submit a license application requesting authorization to dispose of the items. Except when the items are to be used on a temporary basis at a new destination (and returned to the United States after such use), you must ensure that your license application is accompanied by all documents that would be required if you had requested a license to export or reexport the same item directly to the new destination.

(2) *Intransit within the United States.* If you have been issued a license authorizing an intransit shipment (that does not qualify for the intransit provisions of License Exception TMP) through the United States, your license will be valid only for the export of the intransit shipment wholly of foreign origin and for which a Transportation and Exportation customs entry or an Immediate Exportation customs entry is outstanding.

(3) *Intransit outside the United States.* If you have been issued a license authorizing unlading or transit through a country listed in the General Prohibition Eight contained in §736.2(b)(8) of the EAR, and you did not know the identity of the intermediate consignee at the time of the original license application, you must notify BXA in writing once you have ascertained the identity of the intermediate consignee. Your notification must contain the original license number, and the complete name, address, and telephone number of the intermediate consignee. The written request must be submitted to BXA at the address listed in §748.2(c) of the EAR.

(4) *Replacement license.* If you have been issued a ''replacement'' license (for changes to your original license that were not covered in paragraph (c) of this section), you must attach the ''replacement'' license to the original, and retain both.

(i) *Records.* If you have been issued a license you must retain the license, and maintain complete records in accordance with part 762 of the EAR including any licenses (whether used or unused, valid or expired) and all supporting documents and shipping records.

[61 FR 12829, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996; 62 FR 25463, May 9, 1997]

§750.8 Revocation or suspension of licenses.

(a) *Revocation.* All licenses for exports or reexports are subject to revision, suspension, or revocation, in whole or in part, without notice whenever it is known that the EAR have been violated or that a violation is about to occur. BXA's Office of Exporter Services may revoke any license in which a person who has been convicted of one of the statutes specified in section 11(h) of the EAA, at the discretion of the Secretary of Commerce, has an interest in the license at the time of the conviction. It may be necessary for BXA to stop a shipment or an export or reexport transaction at any stage in the process (e.g., in order to prevent an unauthorized export or reexport). If a shipment is already en route, it may be further necessary for

BXA to order the return or unloading of such shipment at any port of call in accordance with the provisions of the EAA.

(b) *Return of revoked or suspended licenses.* If BXA revokes or suspends a license, the licensee shall return the license immediately upon notification that the license has been suspended or revoked. The license must be returned to BXA at the address listed in § 748.2(c) of the EAR, Attn:'' Return of Revoked/Suspended License''. All applicable supporting documents and records of shipments must be retained by the licensee in accordance with the recordkeeping provisions of part 762 of the EAR. If the licensee fails to return a license immediately upon notification that it has been suspended or revoked, BXA may impose sanctions provided for in part 764 of the EAR.

§ 750.9 Duplicate licenses.

(a) *Lost, stolen or destroyed.* If a license is lost, stolen or destroyed, you, as the licensee, may obtain a duplicate of the license by submitting a letter to the BXA at the address listed in § 748.2(c) of the EAR, Attention: Duplicate License Request''. You must certify in your letter:

(1) That the original license ([number] issued to [name and address of licensee]) has been lost, stolen or destroyed;

(2) The circumstances under which it was lost, stolen or destroyed; and

(3) If the original license is found, the licensee will return either the original or duplicate license to the BXA. Note that if shipment was made against the original license, those shipments must be counted against the duplicate license. If you are issued a duplicate license you must retain the duplicate license in accordance with the recordkeeping provisions of part 762 of the EAR.

(b) *Hong Kong Trade Department.* BXA will automatically issue a duplicate license whenever the license lists a party in Hong Kong as the intermediate consignee, or when Hong Kong is identified as the country from which the reexport will take place. The duplicate license will be labeled ''Duplicate for Hong Kong Trade Department''. This duplicate must be forwarded to the reexporter or intermediate consignee for submission to the Hong Kong Trade Department. The original license must be retained on file by the licensee in accordance with the recordkeeping provisions contained in part 762 of the EAR.

§ 750.10 Transfers of licenses for exports.

(a) *Authorization.* As the licensee, you may not transfer a license issued for the export of items from the United States to any other party, except with the prior written approval of BXA. BXA may authorize a transfer of a license for export to a transferee who is subject to the jurisdiction of the United States, is a principal party in interest, and will assume all powers and responsibilities under the license for the control of the shipment of the items out of the United States. BXA will approve only one transfer of the same license and only transfers of licenses to export items.

(b) *How to request the transfer of licenses*—(1) *Letter from licensee.* You, as the licensee, must submit a letter in writing to request a transfer of a license or licenses. The letter must contain the following information:

(i) The reasons for the requested transfer;

(ii) Either a list of the outstanding license numbers or a statement that all outstanding licenses in the name of the licensee are to be transferred, and the total number of such outstanding licenses;

(iii) A list of all license applications for export to be transferred that are pending with BXA, identifying the Application Control Number for each, or other information that will assist in identifying the pending license applications;

(iv) Name and address of the person you intend to transfer the licenses and license applications to;

(v) The facts necessitating transfer;

(vi) A statement as to whether or not any consideration has been, or will be, paid for the transfer; and

(vii) Identification by name of the legal document (certificate, agreement, etc.) or other authority by which the new firm name is legally established, the new corporation or firm created, or

the assets transferred and showing the effective date of such document and the state where filed or recorded.

(2) *Information from transferee.* The person to whom you wish to transfer your license(s) must provide you a signed letter, that must be submitted with your request, containing the following:

(i) That the transferee is a principal party in interest in the transaction covered by the license, or is acting as agent for a principal party in interest;

(ii) That the transferee is subject to the jurisdiction of the United States;

(iii) That the transferee assumes all powers and responsibilities under the license for the control of the shipment of the items out of the United States;

(iv) Whether any consideration has been, has not been, or will be paid for the transfer;

(v) The name and address of the foreign principal in instances where the transferee will make the export as an agent on behalf of a foreign principal; and

(vi) If the license is to be transferred to a subsidiary or firm, or if you transfer to the transferee all, or a substantial portion, of your assets or business, the transferee must certify that the legal authority changing the exporter imposes on the transferee the responsibility to accept and fulfill the obligations of the transferor under the transactions covered by the license; and

(vii) The following certification:

The undersigned hereby certifies that, if license number(s) _____ is (are) transferred in accordance with my (our) request, any and all documents evidencing the order covered by this (these) license(s) will be retained and made available upon request in compliance with the recordkeeping provisions contained in Part 762 of the Export Administration Regulations. The undersigned further certifies compliance with all requirements of the Export Administration Regulations regarding these licenses.

(c) *Notification of transfer and recordkeeping.* Unless instructed otherwise by BXA, you must retain the license(s) pending notification by BXA of the action taken. If the request is approved, you must forward the license(s) to the transferee and the validated letter received from BXA authorizing the transfer. If the transfer request is not approved, the license(s) must either be returned to BXA or used by you if you so choose and have retained the legal and operational capacity fully to meet the responsibilities imposed by the license(s). If your initial request is returned by BXA for additional information, after obtaining the necessary information you may resubmit your request.

[61 FR 12829, Mar. 25, 1996, as amended at 62 FR 25463, May 9, 1997]

§ 750.11 Shipping tolerances.

(a) *Applicability and use of shipping tolerances.* Under some circumstances, you may use a license issued for the export of items from the United States to export more than the quantity or value shown on that license. This additional amount is called a shipping tolerance. This section tells you, as the licensee, when you may take advantage of a shipping tolerance and the amount of shipping tolerance you are permitted to use.

(1) If you have already shipped the full amount approved on your license, you may not use this shipping tolerance provision. No further shipment may be made under the license.

(2) The amount of shipping tolerance you are permitted is based on the ''Unit'' specified for the item you want to export in the applicable ECCN on the CCL (see Supplement No. 1 to part 774 of the EAR). You must calculate shipping tolerance based on the applicable ''Unit'' whether that be Number, Dollar Value, or Area, Weight, or other Measure. You may not use any other unit that may appear on your license.

(b) *Calculating shipping tolerances.* There are three basic rules, one for items licensed by ''Dollar Value'', one for items licensed by ''Number'', and another for items licensed by ''Area, Weight or other Measure''.

(1) *Items licensed by ''Dollar Value''.* If the ''Unit'' paragraph in the ECCN applicable to your item reads ''§ value'' or ''in § value'', there is no shipping tolerance. You may not ship more than the total dollar value stated on your license.

(2) *Items licensed by ''Number''.* If the ''Unit'' paragraph in the ECCN applicable to your item reads ''Number'' or ''in Number'', there is no shipping tolerance with respect to the number of

units. However, the value of all of your shipments under one license may exceed the total dollar value stated on that license by up to 25%.

(3) *Items licensed by ''Area, Weight or Measure''.* If the ''Unit'' paragraph in the ECCN applicable to your item reads ''kilograms'' or ''square meters'' or some other unit of area, weight or measure, your shipment may exceed the unshipped balance of the area, weight or other measure listed on your license by up to 10% and the total dollar value shown on your license by up to 25%, unless;

(i) Your license stipulates a specific shipping tolerance; or

(ii) Your item is controlled for short supply reasons and a smaller tolerance has been established. (See part 754 of the EAR).

(c) *Examples of shipping tolerances.*—(1) A license authorizes the export of 100,000 kilograms of an item controlled by an ECCN where the ''Unit'' is stated as ''kilograms'', the total cost of which is $1,000,000:

(i) *One shipment.* If one shipment is made, the quantity that may be exported may not exceed 110,000 kg (10% tolerance on the unshipped Area, Weight, or Measure balance), and the total cost of that one shipment may not exceed $1,250,000:

$1,000,000	(the total value shown on the license)
+250,000	(25% of the total value shown on the license)
$1,250,000	

(ii) *Two shipments.* If the first shipment is for 40,000 kg (valued at $400,000), the second shipment may not exceed 66,000 kg (10% of the unshipped balance of 60,000 kg (6,000 kg) plus the unshipped balance), and the total cost of the second shipment shall not exceed $850,000:

$600,000	(the value of the unshipped balance of 60,000 kg)
+250,000	(25% of the original total value shown on the license)
$850,000	

(iii) *Three shipments.* If the first shipment is for 40,000 kg (valued at $400,000) the second shipment is for 20,000 kg (valued at $200,000), the third shipment may not exceed 44,000 kg (10% of the unshipped balance of 40,000 kg (4,000 kg) plus the unshipped balance), and the total cost of the third shipment can not exceed $650,000:

$400,000	(the value of the unshipped balance of 40,000 kg)
+250,000	(25% of the original total value on the license)
$650,000	

(2) A license authorizes the export of an item controlled by an ECCN where the ''Unit'' is stated as ''$ value'', the total cost of which is $5,000,000. There is no shipping tolerance on this license because the items are controlled by an ECCN where ''$ value'' is the stated ''Unit''.

(3) A license authorizes the export of 10 pieces of equipment controlled by an ECCN where the ''Unit'' is stated as ''Number'', with a total value of $10,000,000 and the export of parts and accessories covered by that same entry valued at $1,000,000:

(i)(A) If one shipment is made, the quantity of equipment that may be exported may not exceed 10 pieces of equipment because there is no shipping tolerance on the ''number'' of units. That one shipment of equipment may not exceed $12,500,000:

$10,000,000	(the total value shown on the license)
+2,500,000	(25% of the total value shown on the license)
$12,500,000	

(B) If the one shipment includes parts and accessories, those parts and accessories may not exceed $1,000,000 because there is no shipping tolerance on any commodity licensed in terms of dollar value.

(ii)(A) If the first shipment is for 4 pieces of equipment valued at $4,000,000, the second shipment may not exceed 6 pieces of equipment (no tolerance on ''number'') valued at no more than $8,500,000:

$6,000,000	(the value of the unshipped 6 pieces).
+2,500,000	(25% of the original total value shown on the license).
$8,500,000	

(B) If the first shipment includes $300,000 of parts and accessories, the second shipment may not exceed $700,000 of parts and accessories because there is no shipping tolerance on any commodity licensed in terms of dollar value.

(iii)(A) If the first shipment is for 4 pieces of equipment valued at $4,000,000

and the second shipment is for 3 pieces of equipment valued at $3,000,000, the third shipment may not exceed 3 pieces of equipment (no tolerance on ''number'') valued at no more than $5,500,000:

$3,000,000	(the value of the unshipped 3 pieces).
+2,500,000	(25% of the original value shown on the license),
$5,500,000	

(B) If the first shipment includes $300,000 of parts and accessories and the second shipment includes another $300,000, the third shipment may not exceed $400,000 because there is no shipping tolerance on commodities licensed in terms of dollar value.

PART 752—SPECIAL COMPREHENSIVE LICENSE

Sec.

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SUPPLEMENT NO. 1 TO PART 752: INSTRUCTIONS FOR COMPLETING FORM BXA–748P, MULTIPURPOSE APPLICATION, FOR REQUESTS FOR SPECIAL COMPREHENSIVE LICENSES

SUPPLEMENT NO. 2 TO PART 752: INSTRUCTIONS FOR COMPLETING FORM BXA–748P–A, ITEM ANNEX

SUPPLEMENT NO. 3 TO PART 752: INSTRUCTIONS FOR COMPLETING FORM BXA–752, STATEMENT BY CONSIGNEE IN SUPPORT OF SPECIAL COMPREHENSIVE LICENSE

SUPPLEMENT NO. 4 TO PART 752: INSTRUCTIONS FOR COMPLETING FORM BXA–752–A, REEXPORT TERRITORIES

SUPPLEMENT NO. 5 TO PART 752: INSTRUCTIONS FOR COMPLETING FORM BXA–748P–B END-USER APPENDIX

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

SOURCE: 61 FR 12835, Mar. 25, 1996, unless otherwise noted.

§ 752.1 Scope.

(a)(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part describes the provisions of the Special Comprehensive License (SCL). You may apply for an SCL, when appropriate, in lieu of a license described in part 748 of the EAR, or a License Exception described in part 740 of the EAR, for multiple exports and reexports of items subject to the EAR. The SCL provides authorization to make specified exports and reexports that are otherwise prohibited by General Prohibitions One, Two, and Three described in part 736 of the EAR. The existence of an SCL does not supersede an exporter's obligation to request a separate license as may be required by part 744 of the EAR. Because the Bureau of Export Administration (BXA) does not review each individual transaction authorized by an SCL, parties to the SCL must have the mechanisms in place to ensure that each export and reexport made under an SCL meets all the terms and conditions of the license and are in accordance with all applicable provisions of the EAR. It is through the design and effective implementation of an Internal Control Program (ICP) that the SCL holder and the SCL consignee (referred to as ''consignee'' for purposes of this part) assure that exports and reexports are not made contrary to the EAR.

(2) *Definitions*—(i) *SCL holder.* As used in this part, ''SCL holder'' is that party approved on an SCL to perform activities approved under the SCL.

(ii) *SCL consignee.* As used in this part, ''SCL consignee'' or ''consignee'' means any party authorized to receive items under the SCL and named as a consignee on an approved Form BXA–752, Statement by Consignee in Support of Special Comprehensive License.

(b) *ICP requirement.* To qualify for an SCL, you must develop an ICP. Section 752.11 of this part includes a general description of the elements of the ICP, and guidance on which elements your company must implement before making shipments under the SCL. The elements of the ICP your company will develop reflect the complexity of the activities authorized under the SCL, the countries and items involved, and

the relationship between the SCL holder and the approved consignees. BXA may require you to include in your ICP any combination of elements, depending upon the nature of your SCL application. During your pre-application consultation required by § 752.5(a)(1), BXA will provide you guidance on which elements you must implement.

[61 FR 12835, Mar. 25, 1996, as amended at 62 FR 25463, May 9, 1997]

§ 752.2 Eligible activities.

(a) *Possible authorizations.* Under the SCL, BXA may authorize you to perform any number of activities, which can be grouped under the general categories of ''service'', ''end-user'', ''distribution'' and ''other'' activities. Examples of the general categories include:

(1) *Service activities.* Exporting items subject to the EAR as spare and replacement parts for servicing or stocking.

(2) *End-user activities.* Exporting and reexporting items subject to the EAR for use as capital equipment.

(3) *Distribution activities.* Exporting and reexporting items subject to the EAR for the purpose of resale and reexport by consignees.

(4) *Other activities.* Other activities not included in paragraphs (a)(1) through (a)(3) of this section may be authorized by BXA under the SCL on a case-by-case basis.

(b) *Prohibited activities.* The general prohibitions described in § 736.2(b)(4) through (10) of the EAR apply to all exports and reexports by, and conduct of, all parties approved on your SCL, unless you are specifically authorized under the SCL to perform such activities, or the particular activity otherwise qualifies for a License Exception described in part 740 of the EAR.

§ 752.3 Eligible items.

(a) All items subject to the EAR, including items eligible for License Exceptions described in part 740 of the EAR, are eligible for export and reexport under the SCL, except:

(1) Items controlled for missile technology reasons that are identified by the letters MT in the applicable ''Reason for Control'' paragraph on the Commerce Control List (CCL) (see Supplement No. 1 to part 774 of the EAR);

(2) Items controlled by ECCNs 1C351, 1C352, 1C353, 1C354, 1C991, 1E001, 1E350, 1E391, 2B352, 2E001, 2E002, and 2E301 on the CCL controlled for CB reasons;

(3) Items controlled by ECCNs 1C350, 1C995, 1D390, 2B350, and 2B351 on the CCL that can be used in the production of chemical weapons precursors and chemical warfare agents, to destinations listed in Country Group D:3 (see Supplement No. 1 to part 740 of the EAR);

(4) Items controlled for short supply reasons that are identified by the letters ''SS'' in the applicable ''Reason for Control'' paragraph on the CCL;

(5) Maritime (civil) nuclear propulsion systems or associated design or production software and technology identified in § 744.5 of the EAR;

(6) Communications intercepting devices controlled by ECCN 5A980 on the CCL;

(7) Commercial communications satellites controlled under ECCN 9A004.a on the CCL;

(8) Hot section technology for the development, production or overhaul of commercial aircraft engines controlled under ECCN 9E003.a.1. through a.12. .f, and related controls;

(9) Items specifically identified as ineligible by BXA on your approved SCL; and

(10) Additional items consistent with international commitments.

(b) Items controlled for nuclear nonproliferation reasons that are identified by the letters NP in the applicable ''Reason for Control'' paragraph on the CCL may be authorized on a case-by-case basis provided controls are in place to screen for proscribed end-users or end-uses.

[61 FR 12835, Mar. 25, 1996, as amended at 61 FR 54543, Oct. 21, 1996; 62 FR 25463, May 9, 1997]

§ 752.4 Eligible countries.

(a) *General provisions.* All countries are eligible under the SCL except:

(1) Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(2) Other countries that BXA may designate on a case-by-case basis as ineligible to receive items under the SCL.

(b) *Servicing prohibitions.* Under the SCL, you may not service any item when you know that the item is owned or controlled by, or under the lease or charter of, entities in countries identified in paragraphs (a)(1) and (a)(2) of this section or any national of such countries.

§752.5 Steps you must follow to apply for an SCL.

(a) *Step One: Establish applicant reliability*—(1) *Pre-application consultation.* To apply for an SCL, BXA must determine your reliability as a potential SCL holder. BXA usually does this through consultation with company officials and a review of the criteria identified in paragraph (a)(2) of this section. To determine whether your company requires a consultation before you apply for an SCL, contact BXA at the address, phone, or telefacsimile numbers included in §752.17 of this part.

(2) *Criteria for determining eligibility.* BXA will review the following criteria to help determine SCL holder eligibility:

(i) Evidence of past licensing history and projected, continuous large volume exports;

(ii) Reliability of all parties relative to their compliance with the EAR;

(iii) Commitment of all parties of the necessary resources to implement and maintain an adequate ICP; and

(iv) Evidence of all parties knowledge of all provisions of the EAR.

(b) *Step Two: Establish consignee reliability*—(1) *Requirements.* You must make an initial determination of the reliability of all consignees that are listed on your application for an SCL, based upon the criteria described in paragraph (b)(2) of this section.

(2) *Determining reliability.* The criteria that you should take into consideration include, but are not limited to, the following:

(i) *Criteria.* (A) The proposed consignee has a satisfactory record established through BXA pre-license checks, or extensive experience as a consignee under any license issued by BXA;

(B) The proposed consignee is a wholly-owned subsidiary or a controlled-in-fact affiliate of the applicant or of a consignee that is already approved on an SCL. See part 772 of the EAR for a definition of controlled-in-fact; or

(C) You have evidence of an established, on-going business relationship with the proposed consignee.

(ii) *Exception.* The provisions of paragraph (b)(2)(i) of this section do not preclude the authority of BXA to determine the reliability and eligibility of a proposed consignee. BXA may, based upon any negative information on the proposed consignees, deny a proposed consignee.

(c) *Step Three: Prepare your documentation.* Complete Form BXA–748P, Multipurpose Application, Form BXA–748P–A, Item Appendix, Form BXA–748P–B, End-User Appendix, an ICP, a comprehensive narrative statement, Form BXA–752, Statement by Consignee in Support of Special Comprehensive License, Form BXA–752–A, Reexport Territories, and all applicable certifications. Submit this documentation to BXA at one of the addresses included in §752.17 of this part.

(1) *Form BXA–748P, Multipurpose Application, and Form BXA–748P–A, Item Appendix.* You must complete Form BXA–748P and Form 748P–A according to the instructions found in Supplement Nos. 1 and 2 of this part.

(2) *Form BXA–748P–B, End-User Appendix.* You must identify end-users on Form BXA–748P–B if you are requesting approval to export or reexport items controlled for nuclear nonproliferation or chemical and biological control reasons.

(3) *ICP.* You must provide a copy of your proposed ICP as required by §752.11 of this part. You must indicate whether any of the elements of the ICP will not be implemented and explain why these elements were deemed inapplicable. Existence of a properly constructed ICP will not relieve you of your responsibility to comply with requirements of all applicable regulations pertaining to your SCL;

(4) *Comprehensive narrative statement.* Prepare a comprehensive narrative statement on your company letterhead that includes the following information:

(i) An overview of the total business activity that will be performed by you and all other parties who will receive items under the authority of your SCL,

including consignees, subcontractors, and vessels;

(ii) A description of the nature and anticipated volume of regular and repetitive transactions proposed by consignees under the license;

(iii) An explanation of the relationship between the parties to the application, such as affiliate, subsidiary, or parent, etc;

(iv) A certification that you will implement, upon approval of the application by BXA, an ICP that incorporates all applicable elements listed in § 752.11 of this part and any additional elements as required by BXA upon approval of the SCL; and

(v) Information on whether proposed consignees are end-users or will reexport the items received under your SCL. You must describe the proposed consignee's activities completely to determine the appropriate ICP elements that you and your consignees must implement.

(5) *Form BXA–752, Statement of Consignee in Support of Special Comprehensive License.* This Form is completed by each consignee. You must submit one completed, signed, original Form BXA–752 for each proposed consignee on your SCL application. See Supplement No. 3 to this part for instructions on completing Form BXA–752. Form BXA–752 is not required if the proposed consignee is both an end-user and a ''foreign government agency'' as defined in part 772 of the EAR.

(6) *Form BXA–752–A, Reexport Territories.* You must complete Form BXA–752–A, and attach it to the appropriate Form BXA–752, whenever Blocks 8B, 8C, 8E, and/or 8F are selected on Form BXA–752. See the instruction found in Supplement No. 3 to this part. Form BXA–752–A is not required if the proposed consignee is both an end-user and a foreign government agency (see part 772 of the EAR for a definition of foreign government agency).

(7) *Consignee certifications.* Each consignee must provide certain certifications on company letterhead that is signed by the consignee. Attach certifications to the appropriate Form BXA–752. Each consignee must certify that:

(i) They will implement, upon approval of the SCL by BXA, an ICP that incorporates all applicable elements listed in § 752.11 of this part and any additional elements as required by BXA upon approval of your SCL. If certain elements of an ICP will not be included, state the reasons for that determination;

(ii) They will comply with all provisions of the EAR, including the recordkeeping provisions of part 762 of the EAR, all applicable system review requirements of § 752.14 of this part, and the reexport restrictions of § 752.6 of this part; and

(iii) They will make available for inspection, upon request by BXA, all records required by § 752.12 of this part and part 762 of the EAR.

(8) *Additional certifications.* (i) *Temporary exports.* Proposed consignees that plan to exhibit or demonstrate items in countries other than those in which they are located or are authorized under an SCL, an approved Form BXA–752, or a License Exception provision described in § 740.8(a)(2)(iii) of the EAR may obtain permission to do so by including the following additional certification on company letterhead, and attaching it to Form BXA–752.

I (We) request authorization to reexport temporarily, for exhibit or demonstration in countries eligible to receive items under the Special Comprehensive License. The items exported will be retained under my (our) ownership and control, and will be returned by me (us) to (name destination) promptly after their exhibit or demonstration abroad, and in no case later than one year after the date of reexport, unless other disposition is authorized in writing by the Bureau of Export Administration.

(ii) *Chemicals and chemical equipment certification.* If you are requesting authority to export chemicals or chemical equipment eligible for the SCL, you must obtain a signed written statement on company letterhead from the proposed consignee(s) and end-user(s) (except those located in Country Group A:3) (see Supplement No. 1 to part 740 of the EAR) certifying the following:

No chemicals or chemical equipment received under this Special Comprehensive License will be transferred, resold, or reexported to a destination that requires a license, unless the new end-user has been approved by the Bureau of Export Administration, and in no case will the items be retransferred, resold, or reexported to a party who is not the end-user.

(iii) *Nuclear nonproliferation certification.* If you are requesting the export or reexport under the EAR of items controlled for nuclear nonproliferation reasons described in §744.2(a) of the EAR, prior to submitting an SCL application, you must obtain a signed written statement on company letterhead from the proposed consignee(s) and end-user(s) certifying the following:

(A) The items to be exported or replicas thereof (''replicas'' refer to items produced abroad based on physical examination of the items originally exported, matching it in all critical design and performance parameters), will not be used in any of the activities described in §744.2 of the EAR; and

(B) Written authorization will be obtained from BXA prior to transferring or reexporting the items, unless they are destined to Canada or would not require a license to the new country of destination.

[61 FR 12835, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996; 62 FR 25463, May 9, 1997]

§752.6 Reexports.

(a) *Authorized reexports.* All consignees may reexport items without approval from BXA under any one of the following circumstances, unless otherwise specifically excluded by the provisions of the EAR or by a condition placed on your SCL.

(1) Reexports that qualify for a License Exception authorized by part 740 of the EAR;

(2) Reexports to destinations approved by BXA through validation of Form BXA–752 and/or Form BXA–752–A according to the terms stated on the Form BXA–752 or BXA–752–A; or

(3) Reexports of items approved under an SCL to and among other consignees approved on the same SCL, provided that the items are eligible to the new destination in accordance with your approved SCL and §752.3 of this part.

(b) *Prohibitions.* You are prohibited from the following activities without specific authorization from BXA:

(1) Transferring, reselling, or reexporting under your SCL any chemicals or chemical equipment identified with the letters ''CB'' in the applicable ''Reason for Control'' paragraph on the CCL (see Supplement No. 1 to part 774 of the EAR); and

(2) Reexporting under your SCL items identified by the letters NP in the applicable ''Reason for Control'' paragraph on the CCL to destinations not listed in country group A:4 (see Supplement No. 1 to part 740).

(c) *Sourcing.* Consignees who obtain U.S.-origin items abroad that are eligible for the SCL but that are subject to General Prohibitions One, Two, or Three (see part 734 of the EAR) may reexport them under the authority of your SCL, provided that they are reexported in accordance with the ICP required by §752.11 of this part, and any other applicable conditions or reexport restriction placed on your SCL by BXA. Either the SCL holder or the consignee through the SCL holder must submit the sourcing request for reexport of items on Form BXA–752.

[61 FR 12835, Mar. 25, 1996, as amended at 62 FR 25464, May 9, 1997]

§752.7 Direct shipment to customers.

(a) *General authorization.* (1) Upon request by a consignee, an SCL holder or another consignee approved under the same SCL is authorized to deliver products directly to the requesting consignee's customer in either:

(i) The requesting consignee's country; or

(ii) Another country authorized to receive items under the requesting consignee's validated Form BXA–752–A.

(2) The SCL holder or consignee making direct shipments authorized by this section must implement an ICP containing procedures governing such shipments.

(3) SCL holders and consignees using the direct shipment provision may invoice the shipments directly to the requesting consignee's customers if copies of applicable invoices are maintained by both the shipping party and requesting consignee.

(b) *Procedures*—(1) *Exports by an SCL holder.* The SCL holder may make a direct shipment by entering on the Shipper's Export Declaration the name and address of the customer as ultimate consignee and adding the notation ''by order of (name and address of consignee requesting the direct shipment)''. The notation must appear below the item

description and must cite the SCL number followed by the three digit number of the consignee requesting the ''by order of'' shipment.

(2) *Reexports by a consignee.* An approved consignee may make a direct reexport shipment to a customer of another approved consignee on the same SCL by showing on the commercial invoice the name and address of the customer as ultimate consignee and adding the notation ''by order of (name and address of consignee requesting the direct shipment).''

§ 752.8 SCL application review process.

(a) *Scope.* Under an SCL, you are authorized to make multiple exports and reexports without review and approval of each individual transaction by BXA. To approve an SCL, BXA must be satisfied that the persons benefiting from this license will adhere to the conditions of the license and the EAR, and that approval of the application will not be detrimental to U.S. national security, nonproliferation, or foreign policy interests. In reviewing and approving a specific SCL request, BXA retains the right to limit the eligibility of items or to prohibit the export, reexport, or transfer of items under the SCL to specific firms, individuals, or countries.

(b) *Elements of review.* To permit BXA to make such judgments, BXA will thoroughly analyze your past export and reexport transactions, inspect your export and reexport documents, and interview company officials of both the applicant and the consignees, as necessary. If BXA cannot verify that an appropriate ICP will be implemented upon approval of the SCL by BXA, or establish the reliability of the proposed parties to the application, it may deny the application, or modify it by eliminating certain consignees, items, countries, or activities.

(c) *Order requirement.* You do not need to have in your possession an order from the proposed consignee at the time you apply for an SCL. However, evidence of a consignee's firm intention to place orders on a continuing basis is required.

(d) *Criteria for review.* BXA will consider the following factors during the processing of your SCL application:

(1) The specific nature of proposed end-use and end-uses;

(2) The significance of the export in terms of its contribution to the design, development, production, stockpiling, or use of nuclear or chemical or biological weapons, or missiles;

(3) The types of assurances against design, development, production, stockpiling, or use of nuclear or chemical and biological weapons, or missiles that are included in the ICP;

(4) The nonproliferation credentials of the importing country;

(5) Corporate commitment of the resources necessary to implement and maintain an adequate ICP;

(6) Evidence of past licensing history of the applicant and consignees, and projected, continuous large volume exports and/or reexports;

(7) Reliability of all parties;

(8) Information on all parties' compliance with the provisions of the EAR; and

(9) All parties' knowledge of the EAR.

(e) *Application processing time-frames.* Upon receiving an SCL application, BXA may review the application for up to two weeks to determine whether the SCL application is complete. When all documentation requirements are met, BXA will register the application. After the date of registration, the SCL application will be processed according to the procedures described in part 750 of the EAR.

§ 752.9 Action on SCL applications.

(a) *Approval of SCL applications*—(1) *Validity period.* SCLs are valid for four years from the date of approval.

(2) *Extension of validity period.* You may request an extension of your valid SCL for an additional four years, but such requests must be received by BXA at least 30 days prior to the expiration of your SCL. If approved, Form BXA–748P and your letter requesting an extension will be validated and returned to you, extending the validity period for four years. No further extensions will be approved. A new application and support documentation is required at the end of that eight-year period. To

apply for an extension, complete Form BXA–748P by completing Blocks 1, 2, 3, and 4. In addition, mark ''Special Comprehensive License'' in Block 5, place an ''x'' in ''Letter of Explanation'' in Block 6, and mark ''other'' in Block 8. Include your SCL number in Block 9, and indicate in Block 24 that you are requesting an extension to your SCL. Submit the completed Form BXA–748P and a statement on your company letterhead indicating:

(i) That you continue to abide by the provisions and conditions of the SCL; and

(ii) Any changes to the original SCL that you are requesting (see § 752.10 of this part for procedures on changed circumstances).

(3) *Support documentation*—(i) *General information.* BXA will validate all approved support documentation with the Department of Commerce seal and date of validation.

(ii) *Form BXA–752, Form BXA–752–A, and Form BXA–748P–B.* With the approved SCL, you will receive two validated copies of each approved Form BXA–752, Statement by Consignee in Support of Special Comprehensive License and, if applicable, Form BXA–752–A, Reexport Territories, and Form BXA–748P–B, End-User Appendix. You must retain one copy, and send one copy to the approved consignee. You must also attach a letter to each approved Form BXA–752 that includes each of the following elements:

(A) A description of all recordkeeping requirements of the EAR applicable to the activities of the consignee;

(B) Information on any applicable reexport restrictions on items received by the consignee under the SCL;

(C) A description or copy of § 752.16 of this part, listing administrative actions that may be taken for improper use of, or failure to comply with, the SCL and its required procedures;

(D) A description of any special conditions or restrictions on the license applicable to the consignee, including approved lists of customers, countries, and items, when required;

(E) A description of the elements of the SCL holder's ICP relevant to the SCL consignee;

(F) A copy of the high risk customer profile contained in § 752.11(c)(13)(i) of this part, when required;

(G) A copy of the Denied Persons List currently in effect and notification that you will send the consignee regular updates to this list;

(H) A notice that the consignee, in addition to other requirements, may not sell or otherwise dispose of any U.S. origin items when it knows that the items will be used in the activities prohibited by part 744 of the EAR;

(I) A requirement that the consignee acknowledge, in writing, receipt of this letter of transmittal outlining their obligations under the SCL, and certify that it will comply with all of the requirements, including implementation of an ICP if required by § 752.11 of this part; and

(J) A description of any special documentation requirements for consignees reexporting items to destinations having such requirements.

(4) *Special license conditions.* BXA may place special conditions on your SCL, such as restrictions on eligible items, countries, end-uses, end-users or activities, or a requirement that certain sales or transfers of items under the SCL are subject to prior reporting to BXA. Such special conditions will be listed on your SCL or in a letter from BXA to the SCL holder. You must inform all relevant consignees of all license conditions prior to making any shipments under the SCL.

(b) *Denial of SCL applications.* (1) If BXA intends to deny your SCL application, you will be notified and have opportunity to respond according to the procedures in § 750.6 of the EAR.

(2) BXA may at any time prohibit the sale or transfer of items under the SCL to specified individuals, companies, or countries. In such cases, the SCL holder must inform all consignees, and apply for a license described in part 748 of the EAR for subsequent transactions with such excluded parties.

(3) If a consignee is not approved, Form BXA–752 will be returned to the SCL holder with a letter explaining the reason for denial.

(4) If a particular destination is not approved, it will be removed from the appropriate Form BXA–752–A.

(c) *Return without action.* BXA may determine to return the SCL application without action. Under such circumstances, the application and all related documents will be returned to you along with a letter stating the reason for return of the license application, explaining the deficiencies or additional information required for reconsideration, or advising you to apply for a license described in part 748 of the EAR. BXA may return your entire application or merely documents pertaining to a specific consignee request.

[61 FR 12835, Mar. 25, 1996, as amended at 62 FR 25464, May 9, 1997]

§ 752.10 Changes to the SCL.

(a) *General information.* Certain changed circumstances regarding the SCL require prior approval from BXA before you make such changes, while others require only notification to BXA. Changes and notifications of license holder information must be initiated by submitting Form BXA–748P. Changes and notifications of consignee information must be initiated by submitting Form BXA–752.

(b) *Changes requiring prior written approval from BXA.* The following circumstances require prior written approval by BXA. Such requests must be submitted by the SCL holder, and changes are not effective until BXA approves the request. Upon approval of a change described in this paragraph, BXA will return to the SCL holder a validated copy of the request, indicating any changes that may have been made to your request, or any special conditions that may have been imposed.

(1) *Change of SCL holder company name.* You must submit to BXA Form BXA–748P, Multipurpose Application, for any change in the name of the SCL holder company. Complete Blocks 1, 2, 3, and 4. Mark ''Special Comprehensive License'' in Block 5, and ''other'' in Block 8. In Block 9, include your SCL number. Briefly indicate the purpose of the change in Block 24 (i.e., a change in company name). Enter the new information in the relevant Blocks, and complete Block 25. The SCL holder must send a copy of the validated Form BXA–748P to each approved consignee, and advise them to attach the copy of the validated form to their validated Form BXA–752.

(2) *Change in consignee name or address.* You must submit to BXA Form BXA–752, Statement by Consignee in Support of Special Comprehensive License, when requesting a change in consignee name, or if the consignee moves out of the country. The consignee must complete Block 3, mark ''change an existing consignee'' and provide the new consignee information in Block 4. In Block 9, explain change of address from ''Address A'' to ''Address B''. Also, complete Block 10 and the SCL holder signature Block information.

(3) *Addition of new consignee.* You must submit to BXA Form BXA–752 for requests to add consignees to an SCL. Complete Form BXA–752 in accordance with the instruction in Supplement No. 3 to this part, marking ''Add a New Consignee'' in Block 3. Use Block 9 to describe the proposed consignee's role in the activities authorized by the SCL. Form BXA–752 is not required if the proposed new consignee is a foreign government agency and the items will not be reexported. If Form BXA–752 is not required, the SCL holder may submit the request to add the foreign government agency to the SCL on company letterhead. You must include the proposed consignee's complete street address.

(4) *Change in reexport territories.* You must submit to BXA Form BXA–752 and Form BXA–752–A to add a country to a consignee's approved reexport territory. Upon approval of change in reexport territory, BXA will return to the SCL holder two validated copies of Form BXA–752 and Form BXA–752–A, Reexport Territories, along with any special conditions that may have been imposed.

(i) *Form BXA–752.* Complete Block 3 by marking ''Change an Existing Consignee''. In Block 4, enter the consignee name and consignee number. In Block 5, enter the SCL number. In Block 9, enter ''to add a country to the reexport territory''. Complete Block 10 and the SCL holder signature block information.

(ii) *Form BXA–752–A.* Complete Blocks 2 and 3. Mark each country that

you are adding to your reexport territory.

(5) *Adding items to your SCL.* The following procedures apply to requests to add items to your SCL. Upon approval, BXA will send you a validated Form BXA–748P and, if applicable, Form BXA–748P–A. The SCL holder must send a copy of each validated form to all applicable consignees and attach a copy to their Form BXA–752.

(i) *Adding one item.* You must submit to BXA Form BXA–748P to request the addition of a single item to your SCL. Complete Blocks 1, 2, 3, and 4. Mark an ''x'' in the ''Special Comprehensive License'' box in Block 5, and ''other'' in Block 8. Include your SCL number in Block 9. In Block 24, enter ''add ECCN''. Complete items (a) and (j) in Block 22 and in Block 25.

(ii) *More than one item.* You must submit to BXA Form BXA–748P and Form BXA–748P–A to request to add more than one item to your SCL. Complete Form BXA–748P according to the instructions in paragraph (b)(5)(i) of this section. In Block 24, insert the phrase ''add ECCNs on attached From BXA 748P–A. Complete Block 1 on Form BXA–748P–A by including the ''Application Control Number'' (found on Form BXA–748P). Complete Block 21 and 24, if needed, to describe any special circumstances (i.e., the new item will only be exported to specific consignees and will not be reexported).

(6) *Changes to add end-users.* You must submit to BXA Form BXA–752 and Form BXA–748P–B to add or change end-users to consignee authorizations. When you request multiple ''types of requests'' (i.e., additions or changes) on a single Form BXA–752; you must specify in Block 9, the type of request for each end-user. Example: end-user XXX is to be ''added'' and end-user AAA is to be ''changed'' from ''end-user AAA'' to ''end-user ABA''.

(i) *Form BXA–752.* On Form BXA–752, complete Block 3.B, ''change an existing consignee''. Include the consignee number in Block 4. Include the SCL number in Block 5. In Block 9 insert the phrase ''To add an end-user'' or the phrase ''To change an end-user''. Complete Block 10 and include the SCL holder signature block information.

(ii) *Form BXA–748P–B.* On Form BXA–748–B, complete Blocks 1 and 19. In Block 21, cite the end-user requirement or condition (i.e., end-user XXX is requested in compliance with § 752.5(c)(8)(ii) of this part, which requires prior authorization to reexport chemicals under the SCL). Also, list the items (by ECCN and by description) that each end-user will receive and for what purpose, if approved by BXA.

(c) *Changes that do not require prior approval from BXA.* The following changes regarding your SCL do not require prior approval from BXA, however, such changes must be submitted on the appropriate forms no later than 30 days after the change has occurred. BXA will validate the forms, and return one copy to you for your records.

(1) *Change of SCL holder address, export contact information, or total value of license.* You must submit to BXA Form BXA–748P, Multipurpose Application, for any change in the SCL holder's address, export contact information, or total value of the license. Complete Blocks 1, 2, 3, and 4. Mark ''Special Comprehensive License'' in Block 5, and ''other'' in Block 8. In Block 9, include your SCL number. Briefly indicate the purpose of the change in Block 24. Enter the new information in the relevant Blocks. Complete Block 25. The SCL holder must send a copy of the validated Form BXA–748P to each approved consignee, and advise each approved consignee to attach the copy of the validated form to their validated Form BXA–752.

(2) *Deletion of consignees.* You must submit to BXA Form BXA–752 if you remove a consignee from your SCL. Complete Block 3.C. Indicate your consignee number in Block 4 and your SCL case number in Block 5. Explain the reason for the action in Block 9. Complete Block 10 and the SCL holder signature information. You must notify all remaining consignees if any consignee is no longer eligible to receive items under the SCL.

(3) *Changes in ownership or control of the SCL holder or consignee.*—(i) *SCL holder.* You must notify BXA of changes in ownership or control by submitting to BXA Form BXA–748P. Complete Blocks 1, 2, 3 and 4, mark ''Special Comprehensive License'' in

Block 5. Mark and ''x'' in ''other'' in Block 8 and indicate the SCL number in Block 9. Include the SCL holder information number in Block 14, and describe the change in Block 24, indicating the circumstances necessitating the change (i.e., mergers), and changes in persons who have official signing authority. Also complete Block 25.

(ii) *Consignee.* You must notify BXA of changes in ownership or control of the consignee company by submitting to BXA Form BXA–752. Complete Block 1. Mark and ''x'' in ''change an existing consignee'' in Block 3.B, and complete Blocks 4 and 5. In Block 9, describe the change, indicating the circumstances necessitating the change (i.e., mergers), and changes in persons who have official signing authority. Complete Block 10 and the SCL holder signature block information.

(iii) *Transfers and SCLs after control changes.* Note that under § 750.10(a) of the EAR you may not transfer a license—including a Special Comprehensive License—except with the prior written approval of BXA. In addition, BXA reserves the right to modify, revoke, or suspend an SCL in the event of a change in control of the previously approved SCL holder or consignee(s). In reviewing requests to transfer an SCL or consignee authority under an SCL and in reviewing changes in control of an SCL holder or approved consignee, BXA will consider the reliability of the new parties.

(4) *Remove reexport territories.* If you remove a country from a consignee's approved reexport territory, you must submit to BXA Form BXA–752 and Form BXA–752–A. You cannot add and delete countries on the same forms. Upon review of the change in reexport territory, BXA will return to the SCL holder two validated copies of Form BXA–752 and Form BXA–752–A.

(i) *Form BXA–752.* Complete Block 1. Complete Block 3 by marking ''change an existing consignee''. In Block 4, enter the consignee name and consignee number. In Block 5, enter the SCL number. Complete Block 10 and the SCL holder signature block information.

(ii) *Form BXA–752–A.* Complete Blocks 1, 2, 3, and 5. Mark each country that you are removing from the reexport territory with an ''x''. Mark an ''x'' in ''Other Specify'' and insert ''delete''.

(5) *Remove items from your SCL.* The following procedures apply if you remove an item from your SCL. After review of the change by BXA, BXA will send you a validated Form BXA–748P and Form BXA–748P–A, if applicable. The SCL holder must send a copy of each validated form to all applicable consignees and attach a copy to their BXA–752.

(i) *Removing one item.* You must submit to BXA Form BXA–748P if you remove a single item from your SCL. Complete Blocks 1, 2, 3 and 5. Mark ''Special Comprehensive License'' in Block 5 and mark ''other'' in Block 8. Include your SCL number in Block 9. State ''delete ECCN'' in Block 24. Complete items (a) and (j) in Block 22 and Block 25.

(ii) *Removing more than one item.* You must submit to BXA Form BXA–748P and Form BXA 748P–A if you remove more than one item from your SCL. Complete Form BXA–748P according to the instructions in paragraph (a)(5)(i) of this section, except in Block 24, state ''delete ECCNs on attached BXA–748P–A''. Complete Form BXA 748P–A by including the ''application control number'' (found on Form BXA–748P) in Block 1. Complete items (a) and (j) in Block 22 for each item you are removing from your SCL.

(6) *Remove end-users from your SCL.* You must submit to BXA Form BXA–752 if you remove end-users from consignee authorizations. (Use Form BXA–748P–B, if additional space is needed.) After review by BXA, BXA will return to the SCL holder two validated copies of Form BXA–752 and Form BXA–748P–B, which will include any special instructions that may be necessary. You must send one copy of Forms BXA–752 and BXA–748P to the relevant consignee.

(i) *Form BXA–752.* On Form BXA–752, complete Block 1 and 3.B, ''change an existing consignee''. Include the consignee number in Block 4. Include the SCL case number in Block 5. In Block 9, include the phrase ''to remove an end-user(s)'' followed by the name/address information. Complete Block 10

and the SCL holder signature Block information.

(ii) *Form BXA–748P–B.* If there was not enough space on Form BXA–752, Block 9, you may continue the information on Form BXA–748P–B, in Block 24. Complete the information in Block 1. Do not complete Block 19. Block 19 is only used to add end-users.

(d) *Changes made by BXA.* If BXA revises or adds an ECCN to the CCL, or a country's eligibility already covered by the SCL changes, BXA will publish the change in the FEDERAL REGISTER. The SCL holder is responsible for immediately complying with any changes to the scope of the SCL.

[62 FR 25464, May 9, 1997]

§ 752.11 Internal Control Programs.

(a) *Scope*—(1) *Introduction.* It is through Internal Control Programs (ICPs) that the SCL holder and the consignee assure that exports and reexports are not made contrary to the EAR. The elements of your ICP will reflect the complexity of the activities authorized under the SCL, the countries and items involved, and the relationship between the SCL holder and the approved consignees.

(2) *General requirements.* Prior to making any exports and reexports under an SCL, you and your consignees, when required, must implement an ICP that is designed to ensure compliance with the SCL and the EAR. This section provides an overview of the elements that comprise an ICP. You may obtain from BXA at the address found in § 752.17 of this part guidelines to assist you in developing an adequate ICP. You must submit with your application for an SCL a copy of your proposed ICP, along with any consignee ICPs, when required, incorporating the elements described in this section, as appropriate. BXA may require you to modify your ICP depending upon the activities, items, and destinations requested on your application for an SCL.

(b) *Requirements.* You may not make any shipments under an SCL until you and your consignees, when appropriate, implement all the elements of the required ICP. If there are elements that you consider inapplicable, you must explain the reasons for this determination at the time of application for an SCL. Existence of a properly constructed ICP will not relieve the SCL holder of liability for improper use or failure to comply with the requirements of the EAR.

(c) *Elements of an ICP.* Following is a list of ICP elements. The specific elements that should be included in your ICP depend upon the complexity of the activities authorized under your SCL, the countries and items involved, and the relationship between the SCL holder and the approved consignees.

(1) A clear statement of corporate policy communicated to all levels of the firm involved in exports and reexports, traffic, and related functions, emphasizing the importance of SCL compliance;

(2) Identification of positions (and maintenance of current list of individuals occupying the positions) in the SCL holder firm and consignee firms responsible for compliance with the requirements of the SCL procedure;

(3) A system for timely distribution to consignees and verification of receipt by consignees of the Denied Persons List (Supplement No. 2 to part 764 of the EAR) and other regulatory materials necessary to ensure compliance;

(4) A system for screening items, training and servicing transactions against Denied Persons List (Supplement No. 2 to part 764 of the EAR) and any relevant updates to the Denied Persons List;

(5) A system for assuring compliance with items and destination restrictions, including controls over reexports by consignees and direct exports to consignee customers;

(6) A compliance review program covering the SCL holder and extending to all consignees;

(7) A system for assuring compliance with controls on exports and reexports of nuclear items and to nuclear end-uses described in §§ 742.3 and 744.2 of the EAR;

(8) An on-going program for informing and educating employees responsible for processing transactions involving items received under the SCL about applicable regulations, limits, and restrictions of the SCL;

(9) A program for recordkeeping as required by the EAR;

(10) An order processing system that documents employee clearance of transactions in accordance with applicable elements of the company ICP;

(11) A system for monitoring in-transit shipments and shipments to bonded warehouses and free trade zones;

(12) A system for notifying BXA promptly if the SCL holder knows that a consignee is not in compliance with terms of the SCL;

(13) A system to screen against customers who are known to have, or are suspected of having, unauthorized dealings with specially designated regions and countries for which nonproliferation controls apply;

(i) The signs of potential diversion that you should take into consideration include, but are not limited to, the following:

(A) The customer or purchasing agent is reluctant to offer information about the end-use (or end-user) of a product.

(B) The product's capabilities do not fit the buyer's line of business; for example, a small bakery places an order for several sophisticated lasers.

(C) The product ordered is incompatible with the technical level of the country to which the product is being shipped. For example, semiconductor manufacturing equipment would be of little use in a country without an electronics industry.

(D) The customer has little or no business background. For example, financial information unavailable from normal commercial sources and corporate principals unknown by trade sources.

(E) The customer is willing to pay cash for a very expensive item when the terms of the sale call for financing.

(F) The customer is unfamiliar with the product's performance characteristics but still wants the product.

(G) Routine installation, training or maintenance services are declined by the customer.

(H) Delivery dates are vague, or deliveries are planned for out-of-the-way destinations.

(I) A freight forwarding firm is listed as the product's final destination.

(J) The shipping route is abnormal for the product and destination.

(K) Packaging is inconsistent with the stated method of shipment or destination.

(L) When questioned, the buyer is evasive or unclear about whether the purchased product is for domestic use, export, or reexport.

(M) Customer uses only a ''P.O. Box'' address or has facilities that appear inappropriate for the items ordered.

(N) Customer's order is for parts known to be inappropriate, or for which the customer appears to have no legitimate need (e.g., there is no indication of prior authorized shipment of system for which the parts are sought).

(O) Customer is known to have, or is suspected of having unauthorized dealings with parties and/or destinations in ineligible countries.

(ii) When any of the above characteristics have been identified, but through follow-up inquiries or investigation have not been satisfactorily resolved, the consignee should not transact any business with the customer under the SCL. Apply for a license according to part 748 of the EAR. You should explain the basis for the concern regarding the proposed customer, and state that you are an SCL consignee. Also, cite the SCL number, and your consignee number;

(14) A system for assuring compliance with controls over exports and reexports for missile-related end-uses and end-users described in § 744.3 of the EAR;

(15) A system for assuring compliance with control over exports and reexports of chemical precursors and biological agents and related items and end-uses described in §§ 742.2 and 744.4 of the EAR;

[61 FR 12835, Mar. 25, 1996, as amended at 62 FR 25466, May 9, 1997]

§ 752.12 Recordkeeping requirements.

(a) *SCL holder and consignees.* In addition to the recordkeeping requirements of part 762 of the EAR, the SCL holder and each consignee must maintain copies of manuals, guidelines, policy statements, internal audit procedures, reports, and other documents making up the ICP of each party included under an SCL. Also, all parties must maintain copies of the most current Denied Persons List (see Supplement No. 2 to

part 764 of the EAR) as well as all updates, and all other regulatory materials necessary to ensure compliance with the SCL, such as relevant changes to the EAR, product classification, additions, deletions, or other administrative changes to the SCL, transmittal letters and consignee's confirmations of receipt of these materials.

(b) *Consignees.* All consignees must retain all records of the types of activities identified in §752.2(a)(3) of this part. Records on such sales or reexports must include the following:

(1) Full name and address of individual or firm to whom sale or reexport was made;

(2) Full description of each item sold or reexported;

(3) Units of quantity and value of each item sold or reexported; and

(4) Date of sale or reexport.

§752.13 Inspection of records.

(a) *Availability of records.* You and all consignees must make available all of the records required by §752.12 of this part and §762.2 of the EAR for inspection, upon request, by BXA or by any other representative of the U.S. Government, in accordance with part 762 of the EAR.

(b) *Relationship of foreign laws.* Foreign law may prohibit inspection of records by a U.S. Government representative in the foreign country where the records are located. In that event, the consignee must submit with the required copies of Form BXA–752 an alternative arrangement for BXA to review consignee activities and determine whether or not the consignee has complied with U.S. export control laws and regulations, which must be approved by BXA.

(c) *Failure to comply.* Parties failing to comply with requests to inspect documents may be subject to orders denying export privileges described in part 764 of the EAR or to the administrative actions described in part 766 of the EAR.

§752.14 System reviews.

(a) *Post-license system reviews.* BXA may conduct system reviews of the SCL holder as well as any consignee. Generally, BXA will give reasonable notice to SCL holders and consignees in advance of a system review. The review will involve interviews with company officials, the inspection of records, and the review of ICPs. BXA may conduct special unannounced system reviews if BXA has reason to believe an SCL holder or consignee has improperly used or has failed to comply with the SCL.

(b) *Other reviews.* BXA may require an SCL holder or consignee to submit to its office a list of all sales made under the SCL during a specified timeframe. Also, BXA may request from any consignee a list of transactions during a specified period involving direct shipments of items received under SCLs to customers of other consignees and sales to customers in reexport territories authorized by BXA on the consignee's validated Form BXA–752.

§752.15 Export clearance.

(a) *Shipper's Export Declaration (SED).* The SED covering an export made under an SCL must be prepared in accordance with standard instructions described in §758.3 of the EAR. If the SCL holder has implemented the Bureau of Census Monthly Reporting System, the SCL holder must comply with the Census requirements.

(1) *Item descriptions.* Item descriptions on the SED must indicate specifically the ECCN and item description conforming to the applicable CCL description and incorporating any additional information where required by Schedule B; (e.g., type, size, name of specific item, etc.).

(2) *Value of shipments.* There is no value limitation on shipments under the SCL; however, you must indicate the value of each shipment on the SED.

(3) *SCL number.* The SED must include the SCL number followed by a blank space, and then the consignee number identifying the SCL's approved consignee to whom the shipment is authorized.

(b) *Destination control statement.* The SCL holder and consignees must enter a destination control statement on all copies of the bill of lading or air waybill, and the commercial invoice covering exports under the SCL, in accordance with the provisions of §758.6 of the EAR. Use of a destination control

statement does not preclude the consignee from reexporting to any of the SCL holder's other approved consignees or to other countries for which specific prior approval has been received from BXA. In such instances, reexport is not contrary to U.S. law and, therefore, is not prohibited. Another destination control statement may be required or approved by BXA on a case-by-case basis.

[61 FR 12835, Mar. 25, 1996, as amended at 62 FR 25466, May 9, 1997]

§ 752.16 Administrative actions.

(a)(1) If BXA is not satisfied that you or other parties to the SCL are complying with all conditions and requirements of the SCL, or that ICPs employed by parties to such licenses are not adequate, BXA may, in addition to any enforcement action pursuant to part 764 of the EAR, take any licensing action it deems appropriate, including the following:

(i) Suspend the privileges under the SCL in whole or in part, or impose other restrictions;

(ii) Revoke the SCL in whole or in part;

(iii) Prohibit consignees from receiving items authorized under the SCL, or otherwise restrict their activities under the SCL;

(iv) Restrict items that may be shipped under the SCL;

(v) Require that certain exports, transfers or reexports be individually authorized by BXA;

(vi) Restrict parties to whom consignees may sell under the SCL; and

(vii) Require that an SCL holder provide an audit report to BXA of selected consignees or overseas operations.

(2) Whenever necessary to protect the national interest of the U.S., BXA may take any licensing action it deems appropriate, without regard to contracts or agreements entered into before such administrative action, including those described in paragraphs (a)(1) (i) through (vii) of this section.

(b) *Appeals.* Actions taken pursuant to paragraph (a) of this section may be appealed under the provisions of part 756 of the EAR.

§ 752.17 BXA mailing addresses.

You should use the following addresses when submitting to BXA applications, reports, documentation, or other requests required in this part 752: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044, ''Attn: Special Licensing and Compliance Division''. If you wish to send the required material via overnight courier, use the following address: Bureau of Export Administration, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Room 2705, Washington D.C. 20230 ''Attn: Special Licensing and Compliance Division''. You may also reach the Special Licensing and Compliance Division by phone (202)482–0062, or telefacsmile on (202)501–6750.

SUPPLEMENT NO. 1 TO PART 752—INSTRUCTIONS FOR COMPLETING FORM BXA–748P, MULTIPURPOSE APPLICATION FOR REQUESTS FOR SPECIAL COMPREHENSIVE LICENSES

All information must be legibly typed within the lines for each Block or box, except where a signature is required. Where there is a choice of entering a telephone or telefacsimile number, and you chose a telefacsimile number, identify the number with the letter ''F'' immediately following the number.

Complete Blocks 1, 2, 3 and 4 according to the instructions in Supplement No. 1 to part 748 of the EAR.

Block 5: Type of Application. Enter an ''x'' in the Special Comprehensive License box.

Block 6: Documents Submitted with Application. Enter an ''x'' in the appropriate boxes to indicate which forms are attached.

Block 7: Documents on File with Applicant. Leave blank.

Block 8: Special Comprehensive License. Complete by entering an ''x'' in the appropriate boxes to indicate which forms are attached.

Block 9: Special Purpose. This block should only be completed when requesting changes to an approved SCL.

Block 10: Resubmission Application Control Number. Leave blank.

Block 11: Replacement License Number. This Block should be completed by previous special license holders. If you have had a special license in the past, enter that license number (i.e., V #, SS #, DL #, or SF #). A new SCL number will be assigned upon approval of your SCL application.

Block 12: Items Previously Exported. Leave blank.

Block 13: Import/End-User Certificate. Leave blank.

Block 14: Applicant. Complete according to the instructions in Supplement No. 1 to part 748 of the EAR.

Block 15: Other Party Authorized to Receive License. Complete, if applicable, according to the instructions in Supplement No. 1 to part 748 of the EAR.

Block 16: Purchaser. Leave blank.

Block 17: Intermediate Consignee. Leave blank.

Block 18: Ultimate Consignee. Leave blank.

Block 19: End-User. Leave blank.

Block 20: Original Ultimate Consignee. Leave blank.

Block 21: Specific End-Use. Leave blank.

Block 22: For one item, complete subblocks (a) through (j). For multiple items, complete Form BXA 748P–A.

Block 23: Total Application Dollar Value. Enter the projected total dollar value of all transactions you anticipate making throughout the entire validity period of the SCL.

Block 24: Additional Information. Enter additional data pertinent to the transaction.

Block 25: Signature. Complete according to the instructions in Supplement No. 1 to part 748 of the EAR.

[62 FR 25466, May 9, 1997]

SUPPLEMENT NO. 2 TO PART 752—INSTRUCTIONS FOR COMPLETING FORM BXA–748P–A, ''ITEM ANNEX''

All information must be legibly typed within the lines for each block or box.

Block 1: Application Control No. Enter the application control number found on Form BXA–748P.

Block 2: Subtotal. Leave blank.

Block 21: Continuation of Specific End-Use Information. Complete as necessary to fully describe the transaction(s).

Block 22:

(a) ECCN. Enter the Export Control Classification Number that corresponds to the item you wish to export or reexport under the SCL.

(b) CTP. You must complete this block if you intend to export or reexport a digital computer. Instructions on calculating the CTP are contained in a Technical Note at the end of Category 4 in the CCL.

(c)–(i): Leave blank.

(j) Manufacturer's Description. Enter a detailed description of the item proposed for export or reexport. Brochures or product literature may be supplied at the option of the applicant. However, such information may expedite review and processing of your application.

Block 24: Continuation of Additional Information. Enter any identifying information that defines the scope of items you are requesting to export or reexport under the SCL. For example, ''4A004 except items controlled for MT reasons''.

[61 FR 12835, Mar. 25, 1996, as amended at 62 FR 25466, May 9, 1997]

SUPPLEMENT NO. 3 TO PART 752—INSTRUCTIONS ON COMPLETING FORM BXA–752 ''STATEMENT BY CONSIGNEE IN SUPPORT OF SPECIAL COMPREHENSIVE LICENSE''

All information must be legibly typed within the lines for each Block or Box, except where a signature is required.

Block 1: Application Control No. Enter the ''Control No.'' that is pre-printed on Form BXA–748P, Multipurpose Application. You may obtain this information from the applicant.

Block 2: Consignee ID Number. Leave blank.

Block 3: Type of Request. For new applications, leave blank.

Block 4: Consignee Information. Enter the complete address where the consignee is located. A Post Office (P.O.) Box alone is NOT acceptable, but may be included in this Block 4 for mailing purposes, along with a complete address. If records required by §752.12 of this part and part 762 of the EAR are maintained/stored at a separate address, indicate the address in Block 9. In the absence of a complete address, Form BXA–752 will be returned without action.

Block 5: U.S. Exporter Information. Enter the complete address of the U.S. exporter. Leave the SCL Case No. box blank for new applications and enter the SCL Case No. for ''change'' actions.

Block 6: Description of Items. Provide a summary description of the items proposed for import and reexport under the SCL. Firms that will not receive the entire range of items under a particular ECCN identified on Form BXA–748P–A should describe only the items they will receive under the SCL. In some instances, consignee approval will be contingent on the nature of the item requested.

Block 7: Consignee's Business and Relationships.

(i) Item (a): Identify the nature of your company's principal business as it affects the disposition of items to be imported and reexported under this license by including the appropriate letter choice(s) from the following: (a) manufacturer, (b) distributor, (c) assembler, (d) sales agent, (e) warehouse, (f) service facility, or (g) other. For other, provide an explanation in Block 9.

(ii) Item (b): Indicate the relationship between your company and the applicant's company by providing the appropriate letter choice(s) from the following: (a) wholly-owned subsidiary, (b) independent company,

(c) joint venture company, (d) controlled-in-fact affiliate, (e) contractor/subcontractor, or (f) other. For other, provide an explanation in Block 9.

(iii) Item (c): Enter the number of years of relationship between your company and the applicant company.

(iv) Item (d): Enter the estimated dollar volume of sales or other transactions with the SCL holder during the last twelve month period before submission of the application for an SCL.

(v) Item (e): Enter an estimated dollar volume proposed under this application for the validity period of the SCL.

Block 8: Disposition or Use of Items.

(i) Item (a): Complete this Block if your company is requesting involvement in end-user activities that involves importing items for the company's own use (e.g., as capital equipment).

(ii) Item (b): Complete this Block if your company is requesting involvement in end-user activities that incorporates items received under the SCL into a new end-product that results in a change of identity of the U.S.-item (e.g., U.S.-origin semiconductor devices are included in a foreign-origin test instrument). Under Block 9, Additional Information, describe the new end-product more specifically and state how and to what extent the U.S.-origin items will be used. Complete and attach Form BXA–752–A, Reexport Territories.

(iii) Item (c): Complete this Block if your company is requesting authorization to reexport items for service and/or repair. Complete and attach Form BXA–752–A. If you plan to reexport to end-users that require prior approval by BXA, also complete and attach Form BXA–748P–B, End-User Appendix.

(iv) Item (d): Complete this Block if your company plans to retransfer/resell within the country of import. State the end-use of your customers. If you plan to retransfer to end-users that require prior approval by BXA, complete and attach Form BXA–748P–B, End-User Appendix.

(v) Item (e): Complete this Block if your company plans to reexport. Complete and attach Form BXA–752–A. If you plan to reexport to end-users that require prior approval by BXA, complete and attach Form BXA–748P–B, End-User Appendix.

(vi) Item (f): This item should be completed for ''other'' activities that are not defined in Block 8 paragraphs (a) through (e). Describe the proposed activities fully in Block 9 or in a letter submitted with this Form, and complete and submit Form BXA–752–A, indicating the countries to which the products derived from these activities will be exported.

Block 9: Additional Information. In addition to any information that supports other Blocks, indicate whether your company is an active consignee under any other license issued by BXA. Indicate the license and consignee numbers.

Block 10: Signature of Official of Ultimate Consignee. Include an original signature. The authority to sign Form BXA–752 may not be delegated to any person whose authority to sign is not inherent in his/her official position with the company. The signing official must include their official title with their signature. All copies must be co-signed by the applicant in the SCL holder signature block and submitted with the application to BXA.

[62 FR 25466, May 9, 1997]

SUPPLEMENT NO. 4 TO PART 752—INSTRUCTIONS FOR COMPLETING FORM BXA–752–A, REEXPORT TERRITORIES

All information must be legibly typed within the lines for each Block or Box.

Block 1: Application Control No. Insert the application control No. from the relevant Form BXA–748P.

Block 2: SCL License No. Leave blank for new SCL applications. For changes to existing SCLs, include the original SCL number.

Block 3: Consignee No. Leave blank for new SCL applications. For changes to existing SCLs, include the consignee number that was provided on the original license.

Block 4: Continuation of BXA–752 Question No. Mark an ''x'' in the box next to each country you wish to select. See §752.4 of this part for countries that are not eligible for the SCL. You may request a country that is not included on Form BXA–752-A by marking an ''x'' in the ''other'' box and including the country name.

[62 FR 25467, May 9, 1997]

SUPPLEMENT NO. 5 TO PART 752—INSTRUCTIONS FOR COMPLETING FORM BXA–748–B, END-USER APPENDIX

All information must be legibly typed within the lines for each Block or Box.

Block 1: Application Control No. Insert the application control No. from the relevant Form BXA–748P.

Block 19: End-user. Enter each end-user's complete name, street address, city, country, postal code and telephone or facsimile number. Post Office (P.O.) Boxes are not acceptable.

Block 21: Continuation of Specific End-Use Information. Include any additional information that may help BXA in reviewing and making a determination on your application, such as the special safeguards that will be implemented to prevent diversion.

Block 24: Continuation of Additional Information. Enter additional data pertinent to the transaction as required by part 752. Enter the consignee name and complete address of the consignee responsible for the

end-user(s) (i.e., recordkeeping and ICP screening, etc.).

[62 FR 25467, May 9, 1997]

PART 754—SHORT SUPPLY CONTROLS

Sec.
754.1 Introduction.
754.2 Crude oil.
754.3 Petroleum products not including crude oil.
754.4 Unprocessed western red cedar.
754.5 Horses for export by sea.
754.6 Registration of U.S. agricultural commodities for exemption from short supply limitations on export.
754.7 Petitions for the imposition of monitoring or controls on recyclable metallic materials; Public hearings.

SUPPLEMENT NO. 1 TO PART 754—PETROLEUM AND PETROLEUM PRODUCTS
SUPPLEMENT NO. 2 TO PART 754—UNPROCESSED WESTERN RED CEDAR
SUPPLEMENT NO. 3 TO PART 754—STATUTORY PROVISIONS DEALING WITH EXPORTS OF CRUDE OIL

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

SOURCE: 61 FR 12844, Mar. 25, 1996, unless otherwise noted.

§754.1 Introduction.

(a) *Scope.* In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C. This part implements the provisions of section 7, ''Short Supply Controls,'' of the Export Administration Act (EAA) and similar provisions in other laws that are not based on national security and foreign policy grounds.

(b) *Contents.* Specifically, this part deals with the following:

(1) It sets forth the license requirements and licensing policies for commodities that contain the symbol ''SS'' in the ''Reason for Control'' part of ''License Requirements'' section of the applicable Export Control Classification Number (ECCN) identified on the Commerce Control List (Supplement No. 1 to part 774 of the EAR). In appropriate cases, it also provides for License Exceptions from the short supply licensing requirements described in this part. The license requirements and policies that are described in this part cover the following:

(i) Crude oil described by ECCN 1C981 (Crude petroleum, including reconstituted crude petroleum, tar sands, and crude shale oil listed in Supplement No. 1 to this part). For specific licensing requirements for these items, see §754.2 of this part.

(ii) Petroleum products other than crude oil listed in Supplement No. 1 to this part, that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR-produced or -derived commodities described by the following ECCNs. For specific licensing requirements for these items, see §754.3 of this part.

(A) ECCN 1C980 (Inorganic chemicals);

(B) ECCN 1C982 (Other petroleum products);

(C) ECCN 1C983 (Natural gas liquids and other natural gas derivatives); and

(D) ECCN 1C984 (Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy).

(iii) Unprocessed western red cedar described by ECCN 1C988 (Western red cedar (thuja plicata) logs and timber, and rough, dressed and worked lumber containing wane listed in Supplement No. 2 to this part). For specific licensing requirements for these items, see §754.4 of this part.

(iv) Horses exported by sea for slaughter covered by ECCN 0A980 (Horses for export by sea). For specific licensing requirements, see §754.5 of this part.

(2) It incorporates statutory provisions for the registration of U.S. agricultural commodities for exemption from short supply limitations on export (see §754.6 of this part); and

(3) It incorporates statutory provisions for the filing and review of petitions seeking the imposition of monitoring or controls on recyclable metallic materials and procedures for related public hearings (see §754.7 of this part).

(c) *Reexports.* Reexports of items controlled by this part require a license only if such a requirement is specifically set forth in this part or is set forth on the license authorizing the export from the United States.

(d) *Additional requirements for embargoed destinations.* For exports involving embargoed destinations, you must satisfy the requirements of this part and also of part 746 of the EAR (Embargoes and Other Special Controls).

§ 754.2 Crude oil.

(a) *License requirement.* As indicated by the SS notation in the ''License Requirements'' section of ECCN 1C981 on the CCL (Supplement No. 1 to part 774 of the EAR), a license is required for the export of crude oil to all destinations, including Canada. See paragraph (h) of this section for a License Exception permitting the export of certain oil from the Strategic Petroleum Reserves, paragraph (i) of this section for a License Exception for certain shipments of samples, and paragraph (j) of this section for a License Exception for exports of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652). ''Crude oil'' is defined as a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and which has not been processed through a crude oil distillation tower. Included are reconstituted crude petroleum, and lease condensate and liquid hydrocarbons produced from tar sands, gilsonite, and oil shale. Drip gases are also included, but topped crude oil, residual oil, and other finished and unfinished oils are excluded.

(b) *License policy.* (1) BXA will approve applications to export crude oil for the following kinds of transactions if BXA determines that the export is consistent with the specific requirements pertinent to that export:

(i) Exports from Alaska's Cook Inlet (see paragraph (d) of this section);

(ii) Exports to Canada for consumption or use therein (see paragraph (e) of this section);

(iii) Exports in connection with refining or exchange of strategic petroleum reserve oil (see paragraph (f) of this section);

(iv) Exports of heavy California crude oil up to an average volume not to exceed 25 MB/D (see paragraph (g) of this section);

(v) Exports that are consistent with international agreements as described in the statutes listed in paragraph (c) of this section;

(vi) Exports that are consistent with findings made by the President under an applicable statute, including the statutes described in paragraph (c) of this section; and

(vii) Exports of foreign origin crude oil where, based on written documentation satisfactory to BXA, the exporter can demonstrate that the oil is not of U.S. origin and has not been commingled with oil of U.S. origin. See paragraph (h) of this section for the provisions of License Exception SPR permitting exports of certain crude oil from the Strategic Petroleum Reserve.

(2) BXA will review other applications to export crude oil on a case-by-case basis and, except as provided in paragraph (c) of this section, generally will approve such applications if BXA determines that the proposed export is consistent with the national interest and the purposes of the Energy Policy and Conservation Act (EPCA). Although BXA will consider all applications for approval, generally, the following kinds of transactions will be among those that BXA will determine to be in the national interest and consistent with the purposes of EPCA.

(i) The export is part of an overall transaction:

(A) That will result directly in the importation into the United States of an equal or greater quantity and an equal or better quality of crude oil or of a quantity and quality of petroleum products listed in Supplement No. 1 to this part that is not less than the quantity and quality of commodities that would be derived from the refining of the crude oil for which an export license is sought;

(B) That will take place only under contracts that may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened; and

(C) In which the applicant can demonstrate that, for compelling economic or technological reasons that are beyond the control of the applicant, the crude oil cannot reasonably be marketed in the United States.

(ii) Exports involving temporary exports or exchanges that are consistent with the exceptions from the restrictions of the statutes listed in paragraph (c) of this section.

(c) *Additional statutory controls.* (1) The following statutes provide controls on the export of domestically produced crude oil based on its place of origin or mode of transport. If such other statutory controls apply, an export may only be approved if the President makes the findings required by the applicable law.

(i) Section 201 of Public Law 104–58, entitled ''Exports of Alaskan North Slope Oil,'' provides for exports of domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (''TAPS crude oil''). The President made a determination on April 28, 1996.

(ii) The Mineral Leasing Act of 1920 restricts exports of domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28(u) of that Act (30 U.S.C. 185(u)) (''MLA'').

(iii) The Outer Continental Shelf Lands Act restricts exports of crude oil produced from the outer Continental Shelf (29 U.S.C. 1354) (''OCSLA'').

(iv) The Naval Petroleum Reserves Production Act restricts the export of crude oil produced from the naval petroleum reserves (10 U.S.C. 7430) (''NPRPA'').

(2) Supplement No. 3 to this part describes the relevant statutory provisions. In cases where a particular statute applies, a Presidential finding is necessary before the export can be authorized. You should note that in certain cases it is possible that more than one statute could apply to a particular export of crude oil.

(d) *Exports from Alaska's Cook Inlet.* The licensing policy is to approve applications for exports of crude oil that was derived from the state-owned submerged lands of Alaska's Cook Inlet and has not been, or will not be, transported by a pipeline over a federal right-of-way subject to the MLA or the Trans-Alaska Pipeline Authorization Act.[1]

(e) *Exports to Canada for consumption or use therein.* (1) Except for TAPS crude oil, the licensing policy is to approve applications for exports of crude oil to Canada for consumption or use therein.

(2) The licensing policy for TAPS crude oil is to approve applications for an average of no more than 50,000 barrels of oil per day for consumption or use in Canada, subject to the following procedures and conditions:

(i) Any ocean transportation of the commodity will be made by vessels documented for United States coastwise trade under 46 U.S.C. 12106. Only barge voyages between the State of Washington and Vancouver, British Columbia, and comparable barge movements across waters between the U.S. and Canada may be excluded from this requirement. The Bureau of Export Administration will determine, in consultation with the Maritime Administration, whether such transportation is ''ocean'' transportation; and

(ii) Authorization to export TAPS crude oil will be granted on a quarterly basis. Applications will be accepted by BXA no earlier than two months prior to the beginning of the calendar quarter in question, but must be received no later than the 25th day of the second month preceding the calendar quarter. For example, for the calendar quarter beginning April 1 and ending June 30, applications will be accepted beginning February 1, but must be received no later than February 25.

(iii) The quantity stated on each application must be the total number of barrels for the quarter, not a per-day rate. This quantity must not exceed 50,000 barrels times the number of calendar days in the quarter.

(iv) Each application must include support documents providing evidence that the applicant has either:

[1] On November 6, 1985, the Secretary of Commerce determined that the export of crude oil derived from State waters in Alaska's Cook Inlet is consistent with the national interest and the purposes of the Energy Policy and Conservation Act.

(A) Title to the quantity of barrels stated in the application; or

(B) A contract to purchase the quantity of barrels stated in the application.

(v) The quantity of barrels authorized on each license for export during the calendar quarter will be determined by the BXA as a prorated amount based on:

(A) The quantity requested on each license application; and

(B) The total number of barrels that may be exported by all license holders during the quarter (50,000 barrels per day multiplied by the number of calendar days during the quarter).

(vi) Applicants may combine their licensed quantities for as many as four consecutive calendar quarters into one or more shipments, provided that the validity period of none of the affected licenses has expired.

(vii) BXA will carry forward any portion of the 50,000 barrels per day quota that has not been allocated during a calendar quarter, except that no un-allocated portions will be carried over to a new calendar year. The un-allocated volume for a calendar quarter will be added, until expended, to the quotas available for each quarter through the end of the calendar year.

(f) *Refining or exchange of Strategic Petroleum Reserve Oil.* (1) Exports of crude oil withdrawn from the Strategic Petroleum Reserve (SPR) will be approved if BXA, in consultation with the Department of Energy, determines that such exports will directly result in the importation into the United States of refined petroleum products that are needed in the United States and that otherwise would not be available for importation without the export of the crude oil from the SPR.

(2) Licenses may be granted to export, for refining or exchange outside of the United States, SPR crude oil that will be sold and delivered, pursuant to a drawdown and distribution of the SPR, in connection with an arrangement for importing refined petroleum products into the United States.

(3) BXA will approve license applications subject to the following conditions:

(i) You must provide BXA evidence of the following:

(A) A title to the quantity of barrels of SPR crude stated in the application; or

(B) A contract to purchase, for importation, into the United States the quantity of barrels of SPR crude stated in the application.

(ii) The following documentation must be submitted to BXA no later than fourteen days following the date that the refined petroleum products are imported in the U.S. in exchange for the export of SPR crude:

(A) Evidence that the exporter of the SPR crude has title to or a contract to purchase refined petroleum product;

(B) A copy of the shipping manifest that identifies the refined petroleum products; and

(C) A copy of the entry documentation required by the U.S. Customs Service that show the refined petroleum products were imported into the United States, or a copy of the delivery receipt when the refined petroleum products are for delivery to the U.S. military outside of the United States.

(4) You must complete both the export of the SPR crude and the import of the refined petroleum products no later than 30 days following the issuance of the export license, except in the case of delivery to the U.S. military outside of the United States, in which case the delivery of the refined petroleum products must be completed no later than the end of the term of the contract with the Department of Defense.

(g) *Exports of certain California crude oil.* The export of California heavy crude oil having a gravity of 20.0 degrees API or lower, at an average volume not to exceed 25 MB/D, will be authorized as follows.

(1) Applicants must submit their applications on Form BXA–748 to the following address: Office of Exporter Services, ATTN: Short Supply Program—Petroleum, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

(2) The quantity stated on each application must be the total number of barrels proposed to be exported under the license—not a per-day rate. This quantity must not exceed 25 percent of the annual authorized export quota.

Potential applicants may inquire of BXA as to the amount of the annual authorized export quota available.

(3) Each application shall be accompanied by a certification by the applicant that the California heavy crude oil:

(i) Has a gravity of 20.0 degrees API or lower;

(ii) Was produced within the state of California, including its submerged state lands;

(iii) Was not produced or derived from a U.S. Naval Petroleum Reserve; and

(iv) Was not produced from submerged lands of the U.S. Outer Continental Shelf.

(4) Each license application must be based on an order, and be accompanied by documentary evidence of such an order (e.g., a letter of intent).

(5) BXA will adhere to the following procedures for licensing exports of California heavy crude oil:

(i) BXA will issue licenses for approved applications in the order in which the applications are received (date-time stamped upon receipt by BXA), with the total quantity authorized for any one license not to exceed 25 percent of the annual authorized volume of California heavy crude oil.

(ii) BXA will approve only one application per month for each company and its affiliates.

(iii) BXA will consider the following factors (among others) when determining what action should be taken on individual license applications:

(A) The number of licenses to export California heavy crude oil that have been issued to the applicant or its affiliates during the then-current calendar year;

(B) The number of applications pending in BXA that have been submitted by applicants who have not previously been issued licenses under this section to export California heavy crude oil during the then-current calendar year; and

(C) The percentage of the total amount of California heavy crude oil authorized under other export licenses previously issued to the applicant pursuant to this section that has actually been exported by the applicant.

(iv) BXA will approve applications contingent upon the licensee providing documentation meeting the requirements of both paragraphs(g)(5)(iv)(A) and (B) of this section prior to any export under the license:

(A) Documentation showing that the applicant has or will acquire title to the quantity of barrels stated in the application. Such documentation shall be either:

(*1*) An accepted contract or bill of sale for the quantity of barrels stated in the application; *or*

(*2*) A contract to purchase the quantity of barrels stated in the application, which may be contingent upon issuance of an export license to the applicant.

(B) Documentation showing that the applicant has a contract to export the quantity of barrels stated in the application. The contract may be contingent upon issuance of the export license to the applicant.

(v) BXA will carry forward any portion of the 25 MB/D quota that has not been licensed, except that no unallocated portions will be carried forward more than 90 days into a new calendar year. Applications to export against any carry-forward must be filed with BXA by January 15 of the carry-forward year.

(vi) BXA will return to the available authorized export quota any portion of the 25 MB/D per day quota that has been licensed, but not shipped, during the 90-day validity period of the license.

(vii) BXA will not carry over to the next calendar year pending applications from the previous year.

(6) License holders:

(i) Have 90 calendar days from the date the license was issued to export the quantity of California heavy crude oil authorized on the license. Within 30 days of any export under the license, the exporter must provide BXA with a certified statement confirming the date and quantity of California heavy crude oil exported.

(ii) Must submit to BXA, prior to any export under the license, the documentation required by paragraph (g)(5)(iv) of this section.

(iii) May combine authorized quantities into one or more shipments, provided that the validity period of none of the affected licenses has expired.

(iv) Are prohibited from transferring the license to another party without prior written authorization from BXA.

(7) BXA will allow a 10 percent tolerance on the unshipped balance based upon the volume of barrels it has authorized. BXA will allow a 25 percent shipping tolerance on the total dollar value of the license. See § 750.11 of the EAR for an explanation of shipping tolerances.

(h) *License Exception for certain shipments from the Strategic Petroleum Reserves (SPR).* Subject to the requirements set forth in this paragraph, License Exception SPR may be used to export without a license foreign origin crude oil imported and owned by a foreign government or its representative which is imported for storage in, and stored in, the United States Strategic Petroleum Reserves pursuant to an appropriate agreement with the U.S. Government or an agency thereof. If such foreign origin oil is commingled with other oil in the SPR, such export is authorized under License Exception SPR only if the crude oil being exported is of the same quantity and of comparable quality as the foreign origin crude oil that was imported for storage in the SPR and the Department of Energy certifies this fact to BXA.

(1) The requirements and restrictions described in §§ 740.1 and 740.2 of the EAR that apply to all License Exceptions also apply to the use of License Exception SPR.

(2) A person exporting crude oil pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) the letter code ''SS–SPR.''

(i) *License Exception for certain sample shipments.* Subject to the requirements set forth in this paragraph, License Exception SS–SAMPLE may be used to export crude oil for analytic and testing purposes.

(1) An exporter may ship up to 10 barrels of crude oil to any one end-user annually, up to an annual cumulative limit of 100 barrels per exporter.

(2) The requirements and restrictions described in §§ 740.1 and 740.2 of the EAR that apply to all License Exceptions also apply to the use of License Exception SPR.

(3) A person exporting crude oil pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) the letter code ''SS-SAMPLE''.

(j) *License Exception for exports of TAPS Crude Oil.* (1) License Exception TAPS may be used to export oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (TAPS), provided the following conditions are met:

(i) The TAPS oil is transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802));

(ii) All tankers involved in the TAPS export trade use the same route that they do for shipments to Hawaii until they reach a point 300 miles due south of Cape Hinchinbrook Light and then turn toward Asian destinations. After reaching that point, tankers in the TAPS oil export trade must remain outside of the 200 nautical mile Exclusive Economic Zone, as defined in 16 U.S.C. 1802(6). Tankers returning from foreign ports to Valdez, Alaska must abide by the same restrictions, in reverse, on their return route. This condition shall not be construed to limit any statutory, treaty or Common Law rights and duties imposed upon and enjoyed by tankers in the TAPS oil export trade, including, but not limited to, *force majeure* and maritime search and rescue rules; and

(iii) The owner or operator of a tanker exporting TAPS oil shall:

(A) Adopt a mandatory program of deep water ballast exchange (i.e., at least 2,000 meters water depth). Exceptions can be made at the discretion of the captain only in order to ensure the safety of the vessel and crew. Records must be maintained in accordance with paragraph (j)(3) of this section.

(B) Be equipped with satellite-based communications systems that will enable the Coast Guard independently to determine the tanker's location; and

(C) Maintain a Critical Area Inspection Plan for each tanker in the TAPS

oil export trade in accordance with the U.S. Coast Guard's Navigation and Inspection Circular No. 15–91 as amended, which shall include an annual internal survey of the vessel's cargo block tanks.

(2) *Shipper's Export Declaration.* In addition to the requirements of paragraph (j)(1) of this section, for each export under License Exceptions TAPS, the exporter must file with BXA a Shipper's Export Declaration (SED) covering the export not later than 21 days after the export has occurred. The SED shall be sent to the following address: Manager, Short Supply Program, Department of Commerce, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, Room 2075, Washington, D.C. 20230.

(3) *Recordkeeping requirements for deep water ballast exchange.* (i) As required by paragraph (j)(1)(iii)(A) of this section, the master of each vessel carrying TAPS oil under the provisions of this section shall keep records that include the following information, and provide such information to the Captain of the Port (COTP), U.S. Coast Guard, upon request:

(A) The vessel's name, port of registry, and official number or call sign;

(B) The name of the vessel's owner(s);

(C) Whether ballast water is being carried;

(D) The original location and salinity, if known, of ballast water taken on, before an exchange;

(E) The location, date, and time of any ballast water exchange; and

(F) The signature of the master attesting to the accuracy of the information provided and certifying compliance with the requirements of this paragraph.

(ii) The COTP or other appropriate federal agency representatives may take samples of ballast water to assess the compliance with, and the effectiveness of, the requirements of paragraph (j)(3)(i) of this section.

[61 FR 12844, Mar. 25, 1996, as amended at 61 FR 27257, May 31, 1996]

§ 754.3 Petroleum products not including crude oil.

(a) *License requirement.* As indicated by the letters ''SS'' in the ''Reason for Control'' paragraph in the ''License Requirements'' section of ECCNs 1C980, 1C982, 1C983, and 1C984 on the CCL (Supplement No. 1 to part 774 of the EAR), a license is required to all destinations, including Canada, for the export of petroleum products, excluding crude oil, listed in Supplement No. 1 to this part, that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR produced or derived commodities.

(b) *License policy.* (1) Applications for the export of petroleum products listed in Supplement No. 1 to this part that were produced or derived from the Naval Petroleum Reserves, or that became available for export as a result of an exchange for a Naval Petroleum Reserves produced or derived commodity, other than crude oil, will be denied, unless the President makes a finding required by the Naval Petroleum Reserves Production Act (10 U.S.C. 7430).

(2) Applications that involve temporary exports or exchanges excepted from that Act will be approved.

§ 754.4 Unprocessed western red cedar.

(a) *License requirement.* As indicated by the letters ''SS'' in the ''Reason for Control'' paragraph in the ''License Requirements'' section of ECCN 1C988 on the CCL (Supplement No. 1 to part 774 of the EAR), a license is required to all destinations, including Canada, for the export of unprocessed western red cedar covered by ECCN 1C988 (Western red cedar (thuja plicata) logs and timber, and rough, dressed and worked lumber containing wane listed in Supplement No. 2 to this part). See paragraph (c) of this section for License Exceptions for timber harvested from public lands in the State of Alaska, private lands, or Indian lands, and see paragraph (d) of this section for relevant definitions.

(b) *Licensing policy.* (1) BXA will generally deny applications for licenses to export unprocessed western red cedar harvested from Federal or State lands under harvest contracts entered into after September 30, 1979.

(2) BXA will consider, on a case-by-case basis, applications for licenses to

export unprocessed western red cedar harvested from Federal or State lands under harvest contracts entered into prior to October 1, 1979.

(3) BXA will approve license applications for unprocessed western red cedar timber harvested from public lands in Alaska, private lands, and Indian lands. Applications must be submitted in accordance with the procedures set forth in paragraph (a) of this section. See paragraph (c) of this section for the availability of a License Exception.

(c) *License Exception for western red cedar (WRC).* (1) Subject to the requirements described in paragraph (c) of this section, License Exception WRC may be used to export without a license unprocessed western red cedar timber harvested from Federal, State and other public lands in Alaska, all private lands, and, lands held in trust for recognized Indian tribes by Federal or State agencies.

(2) Exporters who use License Exception WRC must obtain and retain on file the following documents:

(i) A statement by the exporter (or other appropriate documentation) indicating that the unprocessed western red cedar timber exported under this License Exception was not harvested from State or Federal lands outside the State of Alaska, and did not become available for export through substitution of commodities so harvested or produced. If the exporter did not harvest or produce the timber, the records or statement must identify the harvester or producer and must be accompanied by an identical statement from the harvester or producer. If any intermediate party or parties held title to the timber between harvesting and purchase, the exporter must also obtain such a statement, or equivalent documentation, from the intermediate party or parties and retain it on file.

(ii) A certificate of inspection issued by a third party log scaling and grading organization, approved by the United States Forest Service, that:

(A) Specifies the quantity in cubic meters or board feet, scribner rule, of unprocessed western red cedar timber to be exported; and

(B) Lists each type of brand, tag, and/or paint marking that appears on any log or unprocessed lumber in the export shipment or, alternatively, on the logs from which the unprocessed timber was produced.

(3) The requirements and restrictions described in §§740.1 and 740.2 of the EAR that apply to all License Exceptions also apply to the use of License Exception WRC.

(4) A person exporting any item pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) the letter code ''SS-WRC''.

(d) *License Applications.* (1) Applicants requesting to export unprocessed western red cedar must submit a properly completed Form BXA–748P, Multipurpose License Form, other documents as may be required by BXA, and a signed statement from an authorized representative of the exporter, reading as follows:

I, (Name) (Title) of (Exporter) HEREBY CERTIFY that to the best of my knowledge and belief the (Quantity) (cubic meters or board feed scribner) of unprocessed western red cedar timber that (Exporter) proposes to export was not harvested from State or Federal lands under contracts entered into after October 1, 1979,

_____

(Signature)

_____

(Date)

(2) For Items [16] and [18] on Form BXA–748P, ''Various'' may be entered when there is more than one purchaser or ultimate consignee.

(3) For each Form BXA–748P submitted, and for each export shipment made under a license, the exporter must assemble and retain for the period described in part 762 of the EAR, and produce or make available for inspection, the following:

(i) A signed statement(s) by the harvester or producer, and each subsequent party having held title to the commodities, that the commodities in question were harvested under a contract to harvest unprocessed western red cedar from State or Federal lands, entered into before October 1, 1979; and

(ii) A copy of the Shipper's Export Declaration.

(4) A shipping tolerance of 5 percent in cubic feet or board feet scribner is allowed on the un-shipped balance of a commodity listed on a license. This

tolerance applies only to the final quantity remaining un-shipped on a license against which more than one shipment is made and not to the original quantity authorized by such license. See §750.11 of the EAR for an explanation of shipping tolerances.

(e) *Definitions.* When used in this section, the following terms have the meaning indicated:

(1) *Unprocessed western red cedar* means western red cedar (thuja plicata) timber, logs, cants, flitches, and processed lumber containing wane on one or more sides, as defined in ECCN 1C988, that has not been processed into:

(i) Lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better grades, with a maximum cross section of 2,000 square centimeters (310 square inches) for any individual piece of processed western red cedar (WRC) being exported, regardless of grade;

(ii) Chips, pulp, and pulp products;

(iii) Veneer and plywood;

(iv) Poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; and

(v) Shakes and shingles.

(2) *Federal and State lands* means Federal and State lands, excluding lands in the State of Alaska and lands held in trust by any Federal or State official or agency for a recognized Indian tribe or for any member of such tribe.

(3) *Contract harvester* means any person who, on October 1, 1979, had an outstanding contractual commitment to harvest western red cedar timber from State and Federal lands and who can show by previous business practice or other means that the contractual commitment was made with the intent of exporting or selling for export in unprocessed form all or part of the commodities to be harvested.

(4) *Producer* means any person engaged in a process that transforms an unprocessed western red cedar commodity (e.g., western red cedar timber) into another unprocessed western red cedar commodity (e.g., cants) primarily through a saw mill.

§754.5 Horses for export by sea.

(a) *License requirement.* As indicated by the letters ''SS'' in the ''Reason for Control'' paragraph of the ''License Requirements'' section of ECCN 0A980 on the CCL (Supplement No. 1 to part 774 of the EAR) a license is required for the export of horses exported by sea to all destinations, including Canada.

(b) *License policy.* (1) License applications for the export of horses by sea for the purposes of slaughter will be denied.

(2) Other license applications will be approved if BXA, in consultation with the Department of Agriculture, determines that the horses are not intended for slaughter. You must provide a statement in the additional information section of the Form BXA–748P, certifying that no horse under consignment is being exported for the purpose of slaughter.

(3) Each application for export may cover only one consignment of horses.

§754.6 Registration of U.S. agricultural commodities for exemption from short supply limitations on export.

(a) *Scope.* Under the provisions of section 7(g) of the Export Administration Act of 1979 (EAA), agricultural commodities of U.S. origin purchased by or for use in a foreign country and stored in the United States for export at a later date may be registered with BXA for exemption from any quantitative limitations on export that may subsequently be imposed under section 7 of the EAA for reasons of short supply.

(b) *Applications for registration.* Applications to register agricultural commodities must be submitted by a person or firm subject to the jurisdiction of the United States who is acting as a duly authorized agent for the foreign purchaser.

(c) *Mailing address.* Submit applications pursuant to the provisions of section 7(g) of the EAA to: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

[61 FR 12844, Mar. 25, 1996, as amended at 62 FR 25467, May 9, 1997]

§ 754.7 Petitions for the imposition of monitoring or controls on recyclable metallic materials; Public hearings.

(a) *Scope.* Section 7(c) of the Export Administration Act of 1979 (EAA) provides for the filing and review of petitions seeking the imposition of monitoring or controls on recyclable metallic materials.

(b) *Eligibility for filing petitions.* Any entity, including a trade association, firm or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, has or may have a significant adverse effect on the national economy or any sector thereof, may submit a written petition to BXA requesting the monitoring of exports, or the imposition of export controls, or both, with respect to such materials.

(c) *Public hearings.* The petitioner may also request a public hearing. Public hearings may also be requested by an entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes, produces or exports the metallic materials which are the subject of a petition.

(d) *Mailing address.* Submit petitions pursuant to section 7(c) of the EAA to: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

[61 FR 12844, Mar. 25, 1996, as amended at 62 FR 25467, May 9, 1997]

SUPPLEMENT NO. 1 TO PART 754—PETROLEUM AND PETROLEUM PRODUCTS

This supplement provides relevant Schedule B numbers and a commodity description of the items controlled by ECCNs 1C980, 1C981, 1C982, 1C983, and 1C984.

Schedule B No.	Commodity description [1]
	Crude Oil
2709.0710	Crude petroleum (including reconstituted crude petroleum), tar sands and crude shale oil.
2710.0710	Petroleum, partly refined for further refining.
	Petroleum Products
2804.29.0010	Helium.
2804.10.0000	Hydrogen.
2814.20.0000	Ammonia, aqueous.
2811.21.0000	Carbon dioxide and carbon monoxide.
2710.00.0550	Distillate fuel oils, having a Saybolt Universal viscosity at 100 °F. of less than 45 seconds.
2710.00.1007	Distillate fuel oils (No. 4 type) having a Saybolt Universal viscosity at 100 °F. of 45 seconds or more, but not more than 125 seconds.
2710.00.1050	Fuel oils, having a Saybolt Universal viscosity at 100 °F. of more than 125 seconds.
2711.11.0000	Natural gas, methane and mixtures thereof (including liquefied natural gas and synthetic or substitute natural gas).[2]
2711.14.0000	Ethane with a minimum purity of 95 liquid volume percent.
2711.12.0000	Propane with a minimum purity of 90 liquid volume percent.
2711.13.0000	Butane with a minimum purity of 90 liquid volume percent.
2711.19.0000	Other natural gases (including mixtures), n.s.p.f. and manufactured gas.
2710.00.1510	Gasoline, motor fuel (including aviation).
2710.00.1520	Jet fuel, naphtha-type.
2710.00.1530	Jet fuel, kerosene-type.
2710.00.1550	Other motor fuel (including tractor fuel and stationary turbine fuel).
2710.00.2000	Kerosene derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel).
2710.00.2500	Naphthas derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel).
2710.00.5030	Mineral oil of medicinal grade derived from petroleum, shale oil or both.
3819.00.0000	Hydraulic fluids, including automatic transmission fluids.
2710.00.3010	Aviation engine lubricating oil, except jet engine lubricating oil.
2710.00.3020	Jet engine lubricating oil 475.4520 Automotive, diesel, and marine engine lubricating oil.
2710.00.3030	Turbine lubricating oil, including marine.
2710.00.3040	Automotive gear oils.
2710.00.3050	Steam cylinder oils.
2710.00.5045	Insulating or transformer oils.
2710.00.3070	Quenching or cutting oils.
2710.00.3080	Lubricating oils, n.s.p.f., except white mineral oil.
2710.00.3700	Greases.

Schedule B No.	Commodity description [1]
2710.00	Carbon black feedstock oil.
2712.10.0000	Petroleum jelly and petrolatum, all grades.
2710.00.5040	White mineral oil, except medicinal grade.
2710.00.5060	Other non-lubricating and non-fuel petroleum oils, n.s.p.f.
2814.10.0000	Ammonia, anhydrous.
2712.20.0000	Paraffin wax, crystalline, fully refined.
2712.90.0000	Paraffin wax, crystalline, except fully refined.
2712.90.0000	Paraffin wax, all others (including microcrystalline wax).
2517.30.0000	Paving mixtures, bituminous, based on asphalt and petroleum.
2713.12.0000	Petroleum coke, calcined.
2714	Petroleum asphalt.
2713.11.0000	Petroleum coke, except calcined.

[1] The commodity descriptions provided in this supplement for the most part reflect those found in the U.S. Department of Commerce, Bureau of the Census, (1990 Edition) Statistical Classification of Domestic and Foreign Commodities Exported from the United States (1990 Ed., as revised through Jan. 1994). In some instances the descriptions are expanded or modified to ensure proper identification of products subject to export restriction. The descriptions in this supplement, rather than Schedule B Number, determine the commodity included in the definition of ''Petroleum'' under the Naval Petroleum Reserves Production Act.

[2] Natural gas and liquefied natural gas (LNG), and synthetic natural gas commingled with natural gas (Schedule B Nos. 2711.11.0000, 2711.14.0000, and 2711.19.0000) require export authorization from the U.S. Department of Energy.

SUPPLEMENT NO. 2 TO PART 754—UNPROCESSED WESTERN RED CEDAR

This supplement provides relevant Schedule B numbers and a commodity description of the items controlled by ECCN 1C988.

Schedule B No. 1 [1]	Commodity description	Unit of quantity [2]
200.3516	Western red cedar (Thuja plicata) logs and timber	MBF
202.2820	Western red cedar lumber; rough, containing wane	MBF
202.2840	Western red cedar lumber; dressed or worked, containing wane	MBF

[1] Schedule B Numbers are provided only as a guide to proper completion of the Shipper's Export Declaration, Form No. 7525 V.

[2] For export licensing purposes, report commodities on Form BXA–748P in units of quantity indicated.

SUPPLEMENT NO. 3 TO PART 754—STATUTORY PROVISIONS DEALING WITH EXPORTS OF CRUDE OIL

[The statutory material published in this supplement is for the information of the reader only. See the U.S. Code for the official text of this material.]

Public Law 104–58

SEC. 201. EXPORTS OF ALASKAN NORTH SLOPE OIL.

Section 28 of the Mineral Leasing Act (30 U.S.C. 185(s)) is amended by amending subsection(s) to read as follows:

''EXPORTS OF ALASKAN NORTH SLOPE OIL

(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this Act or any other provision of laws (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of the date of enactment of this subsection. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider—

(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of the date of the enactment of this subsection; and

(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or

to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)).

(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act ( ) U.S.C. 1601 et seq.), or Part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271–76) to prohibit exports.

(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortage or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5, United States Code.

MINERAL LANDS LEASING ACT

30 U.S.C. 185(U)

LIMITATIONS ON EXPORT

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following) and, in addition, before any crude oil subject this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: *Provided,* That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential finding shall cease.

NAVAL PETROLEUM RESERVES PRODUCTION ACT

10 § 7430(E)

Any petroleum produced from the naval petroleum reserves, except such petroleum which is either exchanged in similar quantities for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and, in addition, before any petroleum subject to this section may be exported under the limitations and licensing requirement and penalty and enforcement provisions of the Export Administration Act of 1979, the President must make and publish an express finding that such exports will not diminish the total quality or quantity of petroleum available to the United States and that such exports are in the national interest and are in accord with the Export Administration Act of 1979.

OUTER CONTINENTAL SHELF LANDS ACT

43 U.S.C. 1354

(a) Application of Export Administration provisions.

Except as provided in subsection (d) of this section, any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969. Note that

the Export Administration Act of 1969, referred to in paragraphs (a) and (b) of the Supplement, terminated on September 30, 1979, pursuant to the terms of that Act.

(b) Condition precedent to exportation; express finding by President of no increase in reliance on imported oil or gas.

Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

(c) Report of findings by President to Congress; joint resolution of disagreement with findings of President.

The President shall submit reports to Congress containing findings made under this section, and after the date of receipt of such reports Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether export under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

(d) Exchange or temporary exportation of oil and gas for convenience or efficiency of transportation.

The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increase efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, or which is exchanged or exported pursuant to an existing international agreement.

PART 756—APPEALS

Sec.
756.1 Introduction.
756.2 Appeal from an administrative action.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

SOURCE: 61 FR 12851, Mar. 25, 1996, unless otherwise noted.

§ 756.1 Introduction.

(a) *Scope.* This part 756 describes the procedures applicable to appeals from administrative actions taken under the Export Administration Act (EAA) or the Export Administration Regulations (EAR). (In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C). Any person directly and adversely affected by an administrative action taken by the Bureau of Export Administration (BXA) may appeal to the Under Secretary for reconsideration of that administrative action. The following types of administrative actions are not subject to the appeals procedures described in this part 756:

(1) Issuance, amendment, revocation, or appeal of a regulation. (These requests may be submitted to BXA at any time.)

(2) Denial or probation orders, civil penalties, sanctions, or other actions under parts 764 and 766 of the EAR.

(b) *Definitions.* [Reserved]

[61 FR 12851, Mar. 25, 1996, as amended at 62 FR 25467, May 9, 1997]

§ 756.2 Appeal from an administrative action.

(a) *Review and appeal officials.* The Under Secretary may delegate to the Deputy Under Secretary for Export Administration or to another BXA official the authority to review and decide the appeal. In addition, the Under Secretary may designate any BXA official to be an appeals coordinator to assist in the review and processing of an appeal under this part. The responsibilities of an appeals coordinator may include presiding over informal hearings.

(b) *Appeal procedures*—(1) *Filing.* An appeal under this part must be received by the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H–3886C, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230, not later than 45 days after the date appearing on the written notice of administrative action.

(2) *Content of appeal.* The appeal must include a full written statement in support of appellant's position. The appeal must include a precise statement of why the appellant believes the administrative action has a direct and adverse effect and should be reversed or modified. The Under Secretary may request additional information that

would be helpful in resolving the appeal, and may accept additional submissions. The Under Secretary will not ordinarily accept any submission filed more than 30 days after the filing of the appeal or of any requested submission.

(3) *Request for informal hearing.* In addition to the written statement submitted in support of an appeal, an appellant may request, in writing, at the time an appeal is filed, an opportunity for an informal hearing. The Under Secretary may grant or deny a request for an informal hearing. Any hearings will be held in the District of Columbia unless the Under Secretary determines, based upon good cause shown, that another location would be better.

(4) *Informal hearing procedures*—(i) *Presentations.* The Under Secretary shall provide an opportunity for the appellant to make an oral presentation based on the materials previously submitted by the appellant or made available by the Department in connection with the administrative action. The Under Secretary may require that any facts in controversy be covered by an affidavit or testimony given under oath or affirmation.

(ii) *Evidence.* The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the Under Secretary to be relevant and material to the proceeding, and not unduly repetitious, will be received and considered.

(iii) *Procedural questions.* The Under Secretary has the authority to limit the number of people attending the hearing, to impose any time or other limitations deemed reasonable, and to determine all procedural questions.

(iv) *Transcript.* A transcript of an informal hearing shall not be made, unless the Under Secretary determines that the national interest or other good cause warrants it, or the appellant requests a transcript. If the appellant requests a transcript, the appellant will be responsible for paying all expenses related to production of the transcript.

(v) *Report.* When the Under Secretary designates another BXA official to conduct an informal hearing, that official will submit a written report containing a summary of the hearing and recommended action to the Under Secretary.

(c) *Decisions*—(1) *Determination of appeals.* In addition to the documents specifically submitted in connection with the appeal, the Under Secretary shall consider any recommendations, reports, or relevant documents available to BXA in determining the appeal, but shall not be bound by any such recommendation, nor prevented from considering any other information, or consulting with any other person or groups, in making a determination. The Under Secretary may adopt any other procedures deemed necessary and reasonable for considering an appeal. The Under Secretary shall decide an appeal within a reasonable time after receipt of the appeal. The decision shall be issued to the appellant in writing and contain a statement of the reasons for the action.

(2) *Effect of the determination.* The decision of the Under Secretary shall be final.

(d) *Effect of appeal.* Acceptance and consideration of an appeal shall not affect any administrative action, pending or in effect, unless the Under Secretary, upon request by the appellant and with opportunity for response, grants a stay.

[61 FR 12851, Mar. 25, 1996, as amended at 62 FR 25467, May 9, 1997]

PART 758—EXPORT CLEARANCE REQUIREMENTS

Sec.
758.1 Export clearance requirements.
758.2 Use of export license.
758.3 Shipper's Export Declaration (SED).
758.4 Conformity of documents for shipments under export licenses.
758.5 General destination control requirements.
758.6 Destination control statement.
758.7 Authority of the Office of Export Enforcement, the Bureau of Export Administration, Customs offices and Postmasters in clearing shipments.
758.8 Return or unloading of cargo at direction of BXA, the Office of Export Enforcement or Customs Service.
758.9 Other applicable laws and regulations.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

SOURCE: 61 FR 12852, Mar. 25, 1996, unless otherwise noted.

§758.1 Export clearance requirements.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Responsibility of licensee, exporter and agent.* (1) If you are issued a BXA license, or you rely on a License Exception described in part 740 of the EAR, you are responsible for the proper use of that license or License Exception and for the performance of all of its terms and conditions.

(2) If you export without either a license issued by BXA or a License Exception, you are responsible for determining that the transaction is outside the scope of the EAR or the export is designated as ''No License Required'' as described in paragraph (a)(3) of this section.

(3)(i) *''No License Required''.* Items that are listed on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) but that do not require a license by reason of the Country Chart contained in Supplement 1 to part 738 of the EAR, and items designated EAR99 (See §734.3(c) of the EAR entitled ''Scope of the EAR'') must be designated as ''NLR'', or ''no license required'', on your shipping documents in accordance with the provisions of this part.

(ii) *NLR notation.* Entering the symbol NLR is a representation to the U.S. Government that the items being exported are listed on the CCL but do not require a license by reason of the Country Chart or that they are within the scope of EAR99 (See §734.3(c) of the EAR entitled ''Scope of the EAR''); that they do not require a license under General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), or Three (Foreign-produced Direct Product Reexports); that General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and that the items are subject to the EAR.

(4) *License Exception symbol.* Entering a License Exception symbol on an export control document is a representation to the U.S. Government that the transaction meets all of the terms and conditions of the License Exception cited. (See part 740 of the EAR for details regarding License Exceptions.)

(5) *Software and technology not subject to the EAR.* If you are exporting software or technology that is outside the scope of the EAR as described in §§734.7 through 734.11 of the EAR, you may use the symbol TSPA. Use of this symbol is optional; however, if you enter it on an export control document, you are making a representation to the U.S. Government that the technology or software is outside the scope of the EAR.

(b) *Forwarding agent*—(1) *Authorizing a forwarding agent.* A forwarding agent is a person the exporter authorizes to perform services that facilitate the export described on the Shipper's Export Declaration (SED). The agent must be authorized to act on behalf of the exporter either for the specific transaction for which the agent is submitting the SED or under a general power of attorney. The Foreign Trade Statistics Regulations of the Bureau of the Census (15 CFR part 30) provide the specific requirements for obtaining authorization as a forwarding agent.

(2) *Forwarding agent as licensee.* If the forwarding agent is appointed at the suggestion of a foreign buyer, the seller may insist that the agent apply for the export license. See §748.5(a)(1) of the EAR which defines parties to a transaction.

(3) *Record and proof of agent's authority.* The power-of-attorney or other authorization from the exporter must be retained on file in the forwarding agent's office while the authorization is in force and for a period of five years after the last action taken by the forwarding agent under the authority. During this retention period, the forwarding agent must make its delegation of authority from the exporter available for inspection on demand, in accordance with the provisions of §762.6 of the EAR. This recordkeeping and inspection requirement also applies to any redelegation of the forwarding agent's authority and to any person to whom the forwarding agent redelegates its authority. (For further recordkeeping requirements see part 762 of the EAR).

(c) *Responsibility for compliance.* Acting through a forwarding agent, or

other agent or delegation or redelegation of authority, does not relieve anyone of responsibility for compliance with the EAR. Forwarding agents, carriers and others who participate in transactions that are subject to the EAR are also responsible for complying with the EAR.

(d) *Exports by U.S. Mail*——(1) *Exports made under a license issued by BXA.* Before making an export by U.S. Mail that is authorized by a license issued by BXA, you must enter the license number on the address side of the parcel and submit a properly executed SED to the post office at the place of mailing, when required by the regulations in this part and/or the Foreign Trade Statistics Regulations of the U.S. Bureau of the Census.[1]

(2) *Shipments without a license.* The requirements of this paragraph apply whenever you export items that do not require a license under the EAR. These requirements apply regardless of whether your transaction does not require a license because the item you are going to ship is encompassed with EAR99 (See §734.3(c) of the EAR entitled ''Scope of the EAR''), because the item, although on the list, does not require a license to be exported to the destination to which you intend to ship or because the transaction qualifies for a License Exception as described in part 740 of the EAR.

(i) *Shipments to Canada for consumption therein.* An SED is not required for exports of items to Canada if the items are for consumption in Canada and the export transaction does not require a license from BXA. Note that if the item you are exporting to Canada is controlled by another government agency, the regulations of that agency may require you to file a SED.

(ii) *Shipments to Puerto Rico or U.S. territories or possessions.* Exports of items to Puerto Rico or the U.S. territories or possessions do not require a license issued by BXA. However, the regulations of the Census Bureau (15 CFR part 30) may still require you to file a SED.

(iii) *Shipments valued over $500.* When mailing an item from one business concern to another where the total value of the items being shipped exceeds $500, you must present an executed SED to the post office at the place of mailing unless the EAR or the Bureau of the Census Foreign Trade Statistics Regulations specifically provide an exception to this requirement. If either the exporter or recipient is not a business concern, no SED is required.

(iv) *Designation on SED and/or parcel.* If you are exporting an item that is encompassed within EAR99 (See §734.3(c) of the EAR entitled ''Scope of the EAR''), or one that is listed on the CCL but no license is required to the destination to which you are shipping, or you are exporting pursuant to a License Exception, as described in part 740 of the EAR, you must enter the appropriate symbol indicating the absence of a license requirement either NLR, meaning ''No License Required'' or the applicable License Exception symbol, on the SED and on the address side of the parcel along with the phrase ''Export License Not Required.'' If your transaction is one for which you are not required to file a SED, you must enter the appropriate symbol NLR, meaning no license required or of the applicable License Exception on the address side of the parcel along with the phrase ''Export License Not Required.'' If you are exporting technology or software that is outside the scope of the EAR as described in §734.7 through 734.11 you may enter the symbol TSPA.

(A) By entering the symbol NLR you are representing to the U.S. Government that the items you are exporting are listed on the CCL (See Supplement No. 1 to part 774 of the EAR) but do not require a license by reason of the Country Chart (Supplement No. 1 to part 738 of the EAR) or because they are encompassed within the EAR99 (See §734.3(c) of the EAR entitled ''Scope of the

[1] The Shipper's Export Declaration (U.S. Department of Commerce form 7525–V) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or it may be privately printed. Form 7525–V-Alt (Intermodal), must be privately printed. Privately printed forms must strictly conform to the official form in all respects. Samples of these forms may be obtained from the Bureau of the Census, Washington, DC 20233, local Customs offices, and the U.S. Department of Commerce District Offices.

EAR''); that they do not require a license under General Prohibitions One (Exports and reexports of controlled items to listed countries), Two (Parts and Components Reexports), or Three (Foreign Produced Direct Product Reexports); that General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and that the item is subject to the EAR.

(B) By entering a License Exception symbol, you are representing to the U.S. Government that your transaction meets all of the terms and conditions of the License Exception you are using. (See part 740 of the EAR for details regarding License Exceptions).

(C) By entering the symbol TSPA you are representing to the U.S. Government that the technology or software you are exporting is outside the scope of the EAR.

(v) *Gift parcels.* If you are sending a gift parcel pursuant to the requirements of § 746.16 of the EAR, you must enter the phrase ''Gift—export license not required'' on any customs declaration documents and on the address side of the parcel.

(vi) *Software and technology*. If you are exporting software or technology, the export of which is authorized under the License Exceptions in § 740.6 or § 740.13 of the EAR, you do not need to make any notation on the package. If you are exporting software or technology that is outside the scope of the EAR, check to see if any other agency's regulations require specific markings on the package.

(3) When you enter any of the symbols or phrases referred to in paragraph (d) of this section on the documents or packages, you are certifying to the post office and to BXA that you are exporting the package in compliance with all of the terms and provisions of an applicable License Exception or other authority to export.

(e) *Exports by means other than U.S. Mail.* (1) When SEDs are required to be submitted, the exporter or the exporter's agent must present a duly executed SED to the exporting carrier before the vessel, aircraft, or overland transport depart.

(i) Exemptions to SED. A SED is not required for:

(A) Any shipment, other than a shipment made under a license issued by BXA, to any country in Country Group B (see Supplement No. 1 to part 740 of the EAR) or to the People's Republic of China if the shipment is valued at $2,500 or less per Schedule B Number (or other number acceptable to the Foreign Trade Division, Bureau of the Census). The Schedule B number of an item is shown in the current edition of the *Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States.* In paragraph (e) of this section, ''shipment'' means all items classified under a single Schedule B number (or other number acceptable to the Foreign Trade Statistics Division, Bureau of the Census), shipped on the same carrier, from one exporter to one importer. The Foreign Trade Statistics Regulations of the Bureau of the Census (15 CFR part 30) shall govern the valuation of items when determining whether a shipment meets the $2,500 threshold of this paragraph.

(B) Any shipment reported under the provisions of the Monthly Reporting Procedure (§ 758.3(o) of this part); or

(C) Any shipment made under any other exception to the SED requirements found in Subpart B of the Bureau of the Census' Foreign Trade Statistics Regulations.

(ii) *Exceptions from SED requirements.* (A) *Statement on shipping documents.* If you are exempt by paragraph (e)(1) of this section from the requirement of filing a SED, the Bureau of the Census Foreign Trade Statistics Regulations (FTSR) (15 CFR 30.50), require you to make a statement on the bill of lading, air waybill, or other loading document describing the basis for the exemption and referencing the specific section of the FTSR where the exemption is provided, unless the exemption is based on value and destination. If the exemption is based on the value and destination of your shipment, you must state the basis for the exemption, but you do not have to cite a reference to the specific section of the FTSR containing the exemption.

(B) *Monthly reporting procedures.* (*1*) All forwarders or brokers who use the monthly reporting procedures described in FTSR § 30.39 (15 CFR 30.39) on

behalf of exporters who are not themselves exempt from the individual filing requirement must also include on the bill of lading, air waybill (including house air waybill), or other loading document either the number of and expiration date of an export license issued by BXA, or the appropriate symbol indicating the inapplicability of an export license requirement (either NLR, meaning ''No License Required'' or of the applicable License Exception, from part 740 of the EAR).

(*2*) The notation required by paragraph (e)(1)(ii)(B)(*1*) of this section applies to any bill of lading or other loading document, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, this requirement does not apply to a ''master'' bill of lading or other loading document issued by a carrier to cover a consolidated shipment. The bill of lading or other loading document must be available for inspection along with the goods or data prior to lading on the carrier.

(2) *Export carrier SED information.* The exporting carrier, or if none is utilized, the exporter or agent is responsible for the accuracy of the following items of information (where required) on the SED:

(i) Name of carrier (including flag of vessel),

(ii) U.S. Customs port of export,

(iii) Method of transportation,

(iv) Foreign port of unloading,

(v) Bill of lading or air waybill number, and

(vi) Whether or not containerized.

(3) *Exports not requiring a license.* Even if your shipment does not require a license from BXA, it may still require a SED. Before shipping, check the Bureau of the Census Foreign Trade Statistics Regulations for the complete SED requirements.

(f) *Shipments transiting Canada en route to other countries*—(1) *Shipments moving under individual SED.* When an export to a foreign country is made in transit through Canada, and the shipment is one for which an individual SED is required by this part 758, the U.S. exporter must submit to the Canadian Customs authorities at the Canadian port of entry a copy of the U.S. SED, Form 7525–V, certified by the exporter as ''A True Copy'' of the original SED.

(2) *Shipments for which individual SED are not required.* When an export to a foreign country is made in transit through Canada, and the shipment is one for which an individual SED is not required because:

(i) The forwarder or broker is authorized to report export information to Census by means other than an individual SED; or

(ii) The shipment qualifies for a specific exemption (listed in Subpart D of the Census Bureau Foreign Trade Statistics Regulations), the forwarder or broker must include the number of and expiration date of the license issued by BXA, or the appropriate symbol indicating the inapplicability of an export license requirement (either NLR, meaning ''No License Required'' or the applicable License Exception from part 740 of the EAR on the bill of lading or other loading document as directed in paragraph (e)(2) of this section). The bill of lading or other loading document properly annotated with respect to the FTSR SED exemption or exception, along with the license authorization, when required, must be displayed to the Canadian Customs authorities at the Canadian port of entry and a copy provided, if requested by the Canadian authorities.

[61 FR 12852, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996; 62 FR 25468, May 9, 1997]

§ 758.2 Use of export license.

(a) *License valid for shipment from any port.* A license issued by BXA authorizes exports from the United States from any U.S. port of export unless the license notes otherwise. Items that leave the United States at one port, cross adjacent foreign territory, and reenter the United States at another port before final export to a foreign country will be treated as an export from the last U.S. port of export.

(b) *Shipments against expiring license.* (1) Any item that has not departed from the last U.S. port of export by midnight of the expiration date of the license may not be exported under that license unless the shipment meets the requirements of paragraph (b)(1)(i) or (ii) of this section.

(i) BXA grants an extension; or

(ii) Prior to midnight of the expiration date of the license, the items:

(A) Were laden aboard the vessel; or

(B) Were located on a pier ready for loading and not for storage, and were booked for a vessel that was at the pier ready for loading; or

(2) When the vessel is expected to be available at the pier for loading before the license expires, but exceptional and unforeseen circumstances delay it, the items may be exported without an extension of the license, if in the judgment of the U.S. Customs Service or BXA, undue hardship would otherwise result.

(c) *Reshipment of undelivered items.* If the consignee does not receive an export made under a license because the carrier failed to deliver it, the exporter may reship the same or an identical item subject to the same limitations as to quantity or value as described on the license to the same consignee and destination under the same license. Before reshipping, the exporter must submit to the BXA satisfactory evidence of the original export and of the delivery failure, together with a satisfactory explanation of the delivery failure. If an item is to be reshipped to any person other than the original consignee, the shipment is deemed to be a new export and is subject to all current EAR regarding the specific item and destination.

[61 FR 12852, Mar. 25, 1996, as amended at 62 FR 25468, May 9, 1997]

§758.3 Shipper's Export Declaration (SED).

(a) *SED presentation requirement.* Both the Foreign Trade Statistics Regulations of the Census Bureau (15 CFR part 30) and these Export Administration Regulations require that SED's be submitted to the U.S. Government. There are a few exceptions to this rule, but if you are required to submit a SED you must prepare it in accordance with the rules of the Foreign Trade Statistics Regulations (FTSR) and present the number of copies specified in the FTSR at the port of export.

(b) *SED is a statement to the U.S. Government.* Your SED is a statement to the U.S. Government in which you assert that all of the information shown on the SED is true. You may execute and submit the SED only if you are the exporter or the duly authorized forwarding agent of an exporter.

(c) *Limitation on time when SED may be used.* No one may use a SED to export, or facilitate or effect an export, after the expiration of the applicable license or after the termination of the applicable License Exception or provisions of the EAR that authorize export without a license, except as provided in §750.7(f) (License validity period) of the EAR and §758.2(b) (Shipments against expiring license) of this part.

(d) *Additional copies of the SED.* You are required to submit additional copies of the SED when:

(1) BXA or one of its component offices asks you to send it copies of the SED for exports:

(i) Authorized by a license (see paragraph (l) of this section);

(ii) Authorized by a Special Comprehensive License (see §752.16(a)(5) of the EAR; or

(iii) The items are controlled for short supply reasons (see part 754 of the EAR); or

(iv) Required by §758.1(f) (shipments transiting Canada) of this part.

(2) You are required under the provisions of §754.2(j)(2) of the EAR.

(e) *Statements on SED.* Whenever a SED is presented to a carrier, a customs office, or a postmaster, the exporter represents that:

(1) All statements and information on the SED have been furnished by the exporter or on the exporter's behalf to effect an export under the provisions of the EAR;

(2) Export of the items described on the SED is authorized under the ''No License Required'' provisions of the EAR as described in §758.1(a) of this part, a License Exception described in part 740 of the EAR or the license identified on the SED;

(3) Statements contained on the SED are consistent with the contents of the license or the terms, provisions, and conditions of the applicable License Exception or of the applicable ''No License Required'' provisions of the EAR as described in §758.1(a) of this part; and

(4) All other terms, provisions, and conditions of the EAR applicable to the export have been met.

(f) *Items that may be listed on the same SED*—(1) *General.* Except as described in paragraph (f)(2) of this section, more than one item may be listed on the same SED provided they are contained in one shipment on board a single carrier and are going from the same exporter to the same consignee. Even if some of the items are being shipped under authority of a license and others under a License Exception or the ''No License Required'' (NLR) provisions of the EAR (as described in § 758.1(a) of this part), they may still be shown on one SED. For the second and subsequent authorizations used, the applicable license number and expiration date, License Exception symbol, or the symbol NLR must be shown along with the descriptions (including quantity, if required, Schedule B number or other number acceptable to the Foreign Trade Division, Bureau of the Census, and value) to which each authorization applies must be shown under each of the properly aligned line item descriptions. The following apply for notations made on the SED:

(i) Entering the license number and expiration date is a representation to the U.S. Government that the transaction is authorized by the license cited.

(ii) Entering a License Exception symbol, or ''NLR'' is a representation to the U.S. Government that the shipment meets one of the applicable provisions of paragraph (a)(3) of § 758.1 of this part.

(2) *Exception.* Separate SED's must be prepared and presented for each vehicle when more than one vehicle is used to make the shipment. Customs Directors may waive this requirement if a shipment is made under a single bill of lading or other loading document and all the items listed on the SED are cleared simultaneously.

(g) *Schedule B number and item description.* (1) *Schedule B number.* You must enter the Schedule B number (or other number acceptable to the Foreign Trade Division, Bureau of the Census), as shown in the current edition of Schedule B, *Statistical Classification of Domestic and Foreign Commodities Exported from the United States,* in the designated column of the SED or other number acceptable to the Foreign Trade Division, Bureau of the Census regardless of whether the shipment is being exported under authority of a license issued by BXA, a License Exception described in part 740 of the EAR, or the ''No License Required'' (NLR) provisions of the EAR as described in § 758.1(a) of this part.

(2) *Item description for exports under a license*—(i) *General.* If your export is being made under the authority of a license issued by BXA, you must enter the item description shown on the license on the SED. However, if part of the description on the license is underlined, you need place only the underlined portions on the SED. The item description on the license will be stated in CCL terms, which may be inadequate to meet Census Bureau requirements. In this event, the item description you place on the SED must be given enough additional detail to permit verification of the Schedule B number (or other number acceptable to the Foreign Trade Division, Bureau of the Census) (e.g., size, material, or degree of fabrication).

(ii) *Distinguishing characteristics or specifications.* If a commodity classification in Schedule B (or other schedule acceptable to the Foreign Trade Division, Bureau of the Census) has instructions such as ''specify by name'', ''state species'', etc., you must furnish that information in the column of the SED provided for the commodity description. When a single SED covers more than one item classifiable under a single classification carrying the ''specify by name'' or similar requirement, you must enter each item separately in this column. However, if more than five items are involved, all classifiable under one Schedule B number or ''other number acceptable to the Foreign Trade Division, Bureau of the Census'' only the five items of greatest value in the classification need be shown separately. Separate quantities, values, and shipping weights for individual items are not required in either case.

(3) *Item description for License Exception shipments or shipments for which no license is required.* For items that may

be exported under authority of a License Exception, or under the NLR provisions of the EAR (as described in § 758.1(a) of this part), you must enter a description in sufficient detail to permit review by the U.S. Government and verification of the Schedule B number or ''other number acceptable to the Foreign Trade Division, Bureau of the Census'' entered on the SED.

(h) *License number or other authorization designation*—(1) *Exports under the authority of a license issued by BXA.* You must show the license number and expiration date, the Export Control Classification Number (ECCN) and the item description, in the designated spaces of a SED covering an export under a license issued by BXA (the space for the item description on the SED form may be headed ''commodity description''). If you intend to include other items on the SED that may be exported under a License Exception, or under the ''No License Required'' (NLR) provisions of the EAR (as described in § 758.1(a) of this part) you must show the License Exception or NLR symbol, along with the specific description (quantity, Schedule B number or ''other number acceptable to the Foreign Trade Division, Bureau of the Census'', value) of the item(s) to which the authorization applies in the designated spaces on the SED continuation sheet.

(2) *Exports not needing a license.* In addition to the item description, the appropriate License Exception symbol, or the ''No License Required'' symbol (NLR) must be shown in the appropriate column of each SED or SED continuation sheet covering a shipment under authority of a License Exception (see part 740 of the EAR), or ''No License Required'' provisions of the EAR (as described in § 758.1(a) of this part). If several authorizations are to be listed on one SED, the SED and continuation sheets must be completed as described in paragraph (f)(1) of this section. If the item(s) will be exported under the provisions of License Exceptions GBS, CIV, or LVS, or under the ''NLR'' provisions of the EAR (as described in § 758.1(a) of this part) and the item(s) are covered by entries on the Commerce Control List that have the column identifier ''NS Column 2'' controlled for ''NS'' reasons, the ECCN must also be shown in the designated space on the SED or SED continuation sheet. The following apply for notations made on SED:

(i) Entering the license number and expiration date is a representation to the U.S. Government that the transaction is authorized by the license cited.

(ii) Entering a License Exception symbol, or ''NLR'' is a representation to the U.S. Government that the shipment meets one of the applicable provisions of paragraphs (a)(3) through (a)(4) of § 758.1 of this part.

(3) If you are exporting technology or software that is outside the scope of the EAR as described in §§ 734.7 through 734.11 of the EAR, you may enter the symbol TSPA on the SED. Use of this symbol is optional, however, if you enter it, you are representing to the U.S. Government that the software or technology you are exporting is outside the scope of the EAR.

(i) *Optional ports of unlading*—(1) *Applicability.* If, prior to the departure of the exporting carrier, the exporter does not know at what port the shipment will be unloaded, the exporter may designate optional ports of unlading on the SED and bill of lading or air waybill in accordance with the provisions of this paragraph. There are restrictions on the countries in which these optional ports may be located. The restrictions depend on whether the export is authorized under the ''No license Required'' provisions of the EAR (as described in § 758.1(a) of this part), the License Exceptions described in part 740 of the EAR, or a license (See paragraph (j)(3) of this section).

(2) *Exemptions.* You may never designate an optional port of unlading for a shipment destined directly or indirectly to Country Group D:1 in Supplement No. 1 to part 740 of the EAR (except for the People's Republic of China), Libya, Cuba, or North Korea.

(3) *Shipments for which no license is required or which are authorized by a License Exception.* (i) For exports under the authority of the ''No License Required'' provisions of the EAR (as described in § 758.1(a) of this part), if the exporter does not know which of several countries in Country Group B or the People's Republic of China is the

country of ultimate destination, the exporter may name optional ports of unlading in one or more of these countries.

(ii) When an export under any License Exception is shipped in transit through a country other than the country of ultimate destination, the exporter may designate optional ports of unlading in one or more countries, together with the name and address of the intermediate consignee in each country designated.

(4) *Restrictions on optional ports of unlading.* The optional ports of unlading, which the exporter designates on the SED pursuant to paragraph (i)(3)(i) of this section, must be in a country to which the item being unloaded may be exported directly from the United States under the same or another applicable ''No License Required'' provision of the EAR (described in § 758.1(a) of this part), or License Exception contained in the EAR.

(5) *Shipments under a license issued by BXA.* For exports under a license, optional ports of unlading are restricted to the country of ultimate destination, unless either the transaction complies with the provisions of § 750.7 of the EAR dealing with continuity of shipments, or the license designates intermediate consignees in other countries. In the latter case, the optional ports of unlading must be designated as optional intransit points on the SED, or if there is no SED, on the Shipper's Letter of Instructions, or, if there is neither, the optional port of unlading must appear on another document containing instructions that the exporter conveys (either directly or through an agent) to the carrier, and on the bill of lading or air waybill.

(6) *Correcting the SED.* As soon as the exporter, or the exporter's forwarding agent or carrier determines at which port the shipment is to be unloaded (whether in the country of ultimate destination or in a country of transit), that person must correct the SED to show the specific port of unloading and the name and address of the intermediate consignee to whom delivery is to be made. An intermediate consignee must be shown if the port of unloading is located in a country other than the country of destination. If the export is unloaded at more than one port, the quantity and value unloaded at each port and the name and address of each intermediate consignee must be given. The procedures for correcting and filing SEDs may be found in paragraph (n) of this section.

(j) *Signature on SED.* The exporter or the exporter's authorized forwarding agent, or an authorized employee of either, may sign the SED. In general, the requisite authority rests with employees who, by their official titles, are apparently vested with power to deal with exports, such as export managers or such corporate officers as the president, vice president, treasurer, and secretary of a corporation, any partner of a partnership, and any responsible head of any other form of private or quasi-governmental organization, and assistant officers. The signature of such person, whether that of the exporter or authorized agent or employee, constitutes a representation by the exporter that all statements and information in the SED are true and correct. In addition, if the signature is that of the forwarding agent, or the forwarding agent's duly authorized officer or employee, such signature constitutes a like representation by the forwarding agent.

(k) *Attachment to SED.* (1) If you need additional space for any information on the SED, you may use additional copies of the SED or copies of the continuation sheet. In such cases, only one SED need be signed. You must number the additional sheets in sequence and securely attach them to the executed SED. You must insert the following statement on the last line of the description line of the SED form itself:

This SED consists of this sheet and _____ continuation sheets.

(2) No portion of any form attached as a continuation sheet may be torn off or removed.

(l) *Special requirements for additional information and documents.* (1) A license may bear on its face a requirement to submit a SED or other documents (or information) to the Office of Export Enforcement in addition to that furnished when the application was filed. The exporter and the person submitting the documents represent that the

documents are complete, truthful and accurate. The Export Administration Regulations prohibit the making of false representations to the U.S. Government in any export control matter (see § 764.2(g) of the EAR). The licensee must furnish the documents to: Office of Export Enforcement, Room H–4520, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

(2) When required, the licensee must:

(i) Prepare one copy of the SED in addition to the number of copies otherwise required;

(ii) Enter the additional information called for by the license in the space between the column provided for marks and numbers of the shipment and the column provided for its value on all copies of the SED; and

(iii) Unless otherwise specified on the license, attach the required documents (either original or certified copy) to the extra copy of the SED.

(m) *SED for shipments moving in- transit.* (1) *Applicability.* Use the SED for In-transit Goods, Commerce Form 7513,[2] for the following types of transactions:

(i) Items departing the United States by vessel, which transited through, or transshipped in, ports of the United States, destined from one foreign country or area to another.

(ii) Foreign merchandise exported from a General Order Warehouse and the export of foreign-origin merchandise that was rejected after government inspection or examination. Shipments in bond transiting the United States being exported by means of any carrier other than a vessel may be cleared for export without presenting a Form 7513, unless a license is required for the export.

(2) *Exports from Foreign Trade Zones.* You may not use Form 7513 for any exports from Foreign Trade Zones. Such shipments require the filing of the SED (Form 7525–V), unless otherwise exempted, with the applicable zone number reported on the Document.

(3) *Additional information.* The following additional information must be entered on a SED for In-transit Goods:

(i) The name and address of the intermediate consignee in a foreign destination, if any, must be shown below the description of the items.

(ii) Underneath the name and address of the intermediate consignee, one of the following statements, whichever is appropriate, must be entered:

(A) For intransit shipments of foreign-origin merchandise (see part 772 of the EAR for a definition of ''foreign-origin,''), enter the following statement:

The merchandise described herein is of foreign-origin.

(B) For intransit shipments of domestic (U.S.) merchandise, enter the following statement:

The merchandise described herein is of the growth, production, or manufacture of the United States.

(C) For intransit shipments of items of U.S.-origin eligible for the *intransit* provisions of License Exception TMP (see § 740.9(b) of the EAR), enter the following statement:

The merchandise described herein is of the growth, production, or manufacture of the United States, but has been so altered by further processing, manufacture, or assembly in a foreign country that it has either been substantially enhanced in value, or has lost its original identity with respect to form.

(iii) The items must be described in terms of Schedule B, including the appropriate Schedule B number or ''other number acceptable to the Foreign Trade Division, Bureau of the Census''.

(4) See § 30.8 of the Foreign Trade Statistics Regulations (15 CFR 30.8) for additional requirements concerning the information that must be placed on a SED for In-transit Goods.

(n) *Correction, change, alteration, or amendment of SED*—(1) *Methods of changing SED's.* The exporter or the exporter's agent must report corrections, cancellations, additions or amendments to information reported on SEDs to the Customs Director at the port of exportation (or, in the case of mail shipments, to the Postmaster at the post office where the shipment was mailed) as soon as the need for such changes is determined. See the Foreign Trade Statistics Regulations (15 CFR

[2] Form 7513 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, the local customs offices, or may be privately printed.

part 30) for additional information about how to correct SEDs and file the corrections. If you are required by paragraph (l) of this section to file a copy of the original SED with the Office of Export Enforcement (OEE), a copy of the changed SED should be sent to OEE at the address shown in paragraph (l) of this section with the words ''Correction Copy'' conspicuously shown in the upper right portion of the form.

(2) *Responsibility*. Nothing in this section relieves you or any person or firm making changes on the SED from responsibility for any such changes. Acceptance of a changed SED by the Customs office does not imply approval of any act involved in the shipment or acceptance of the truth or accuracy of the information provided.

(o) *Summary monthly reports in lieu of individual SED's*—(1) *Scope*. This paragraph contains only basic information about the monthly filing procedures for the SED. Details of the procedure may be found in § 30.39 of the Foreign Trade Statistics Regulations (FTSR) of the Bureau of the Census (15 CFR 30.39). Exporters interested in the procedure should consult § 30.39 of the FTSR to ascertain qualifications, how to apply for the privilege of participating, how to file electronically after approval is given, and other pertinent facts.

(2) *Applicability*. Approved parties may file monthly SEDs with the Bureau of the Census for export to destinations in Country Groups B and D (see Supplement No. 1 to part 740 of the EAR).

(3) *How to request monthly reporting privileges*—(i) *Addresses*. (A) A request for the privilege of participating in monthly reporting procedures should be forwarded to: Foreign Trade Division, Bureau of the Census, Washington, D.C. 20233.

(B) A copy of all requests must be sent to: Office of Export Enforcement, Room H–4616, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230.

(ii) *Certification requirements*. The request must include the following certification by the applicant:

I (We) certify that I (we) have established adequate internal procedures and safeguards to assure compliance with the requirements set forth in the U.S. Department of Commerce Export Administration Regulations and Foreign Trade Statistics Regulations. Among other things, these procedures and safeguards assure:

(1) A proper determination as to whether a license is required for a particular export;

(2) Actual receipt of the export license, if required, before the shipment is exported;

(3) Compliance with all the terms of the license, License Exception, or NLR provisions of the EAR as applicable;

(4) Return of licenses to BXA in accordance with § 750.8(b) of the Export Administration Regulations, if requested;

(5) Compliance with the destination control statement provisions of §§ 758.5 and 758.6 of the Export Administration Regulations;

(6) Compliance with the prohibition against export transactions that involve persons who have been denied U.S. export privileges; and

(7) Compliance with the recordkeeping requirements of part 762 of the EAR and, in addition, I (we) agree that my (our) office records will be made available for inspection by the Bureau of the Census, BXA or the U.S. Customs Service, upon request, to verify that a given shipment was properly included in a particular monthly report.

(4) *Exporter's agent*. If the exporter intends to authorize a forwarding agent to file electronically on the exporter's behalf, the exporter's request must include the name and address of each such forwarding agent.

(5) *Authorization by Census to use monthly reporting procedure*. Any authorization to file summary monthly reports in lieu of individual SEDs may be granted only by the Bureau of the Census with the concurrence of BXA.

(6) *Export clearance*. (i) *Destination control statement*. In addition to the exporter's responsibility for assuring that the proper destination control statement is placed on the commercial invoice as required by § 758.6 of this part, the exporter or the exporter's forwarding agent is responsible for assuring that the carrier places the proper destination control statement on the related bill of lading or air waybill.

(ii) *Detention and examination*. Shipments being reported under the summary filing procedure described in this paragraph are subject to inspection, examination and detention, as provided in § 758.7 of this part, whenever an official of BXA, a customs officer, or a

postmaster deems such action necessary to assure compliance with the EAR.

(7) *Revocation of authorization.* An authorization to file summary monthly reports in lieu of individual SED's, granted under the provisions of §30.39 of the Foreign Trade Statistics Regulations (15 CFR 30.39) and this paragraph, may be revoked, suspended, or revised at any time.

(8) *Effect of other provisions.* Insofar as consistent with the provisions of this paragraph that relate specifically to filing electronically in lieu of individual SED's, the other provisions of this part 758 apply to exports reported under this procedure.

[61 FR 12852, Mar. 25, 1996, as amended at 61 FR 27257, May 31, 1996; 61 FR 64285, Dec. 4, 1996; 62 FR 25468, May 9, 1997]

§758.4 Conformity of documents for shipments under export licenses.

(a) *Applicability.* The rules of conformity in this section apply to shipping documents used in connection with any shipment under the authority of a license issued by BXA except ''master'' air waybills issued by consolidators. These rules apply to any individual air waybill issued by a consolidator (indirect carrier) for an export included in a consolidated shipment and to any air waybill issued by anyone in connection with an export not included in a consolidated shipment.

(b) *Compliance.* You may not issue, prepare, or procure a bill of lading that is contrary to the provisions of this section. Officials of BXA and the U.S. Customs Service are authorized to require any document or to use any other appropriate methods to ensure compliance with the rules of conformity in this section.

(c) *Rules of conformity*—(1) *General.* The following documents must be consistent with each other:

(i) The license issued by BXA;

(ii) One of the following applicable documents:

(A) The SED;

(B) If there is no SED, the Shipper's Letter of Instructions; or

(C) If there is neither, another document containing instructions that the exporter conveys (either directly or through an agent) to the carrier; and

(iii) The outbound bill of lading (including a railroad through bill of lading) covering a particular export shipment must be consistent with one another.

(2) *Signs of inconsistent documents.* The bill of lading, whether in negotiable or nonnegotiable form, is not consistent with those other documents if:

(i) It does not provide for delivery of the shipment (cargo) at a port located in the country of either the ultimate or intermediate consignee named in the documents described in paragraph (c)(1)(ii) of this section;

(ii) It contains any indication that the shipment is intransit to a country of ultimate destination different from that named in the appropriate one of the documents described in paragraph (c)(1)(ii) of this section, or that the shipment is not for consumption in such country of ultimate destination. For example, it would be inconsistent to consign a shipment to the ultimate destination with a qualifying phrase indicating the shipment is ''in transit'' at that destination, or to consign the shipment to a free zone or free port;

(iii) It names as shipper any person other than the licensee (the person to whom a license is issued) or the licensee's duly authorized forwarding agent. Where shipments from more than one licensee are consolidated on a single bill of lading, the shipper named on the bill of lading must also appear as the authorized forwarding agent for each exporter on each document described in paragraph (c)(1)(ii) of this section.

(iv) The name and address of the ultimate consignee are not shown either in the space provided for ''consignee'' or in the body of the bill of lading under the caption ''ultimate consignee and notify party'' or, in the case of the air waybill, under the caption ''also notify.'' However, where shipments to more than one ultimate consignee are consolidated on one bill of lading and not all are shown in the body of the bill of lading, the name of the intermediate consignee (customs broker or consolidator's agent in the foreign

country) who will receive and distribute the items to the ultimate consignees must appear on the bill of lading, the export license(s), and documents listed in paragraph (c)(1)(ii) of this section.

(3) *Additional rules for negotiable bills of lading.* A negotiable bill of lading (an ''order'' bill of lading) is deemed consistent with the appropriate one of the documents described in paragraph (c)(1)(ii) of this section only if the consignee or order party named on the bill of lading is also named in the SED, the Shipper's Letter of Instructions or the other document.

(i) Sometimes ''order'' bills of lading consign the items they cover to the order of the shipper, to the order of an intermediate consignee such as a bank, foreign freight forwarder, or other intermediary, or to the order of a purchaser who is not the same person as the ultimate consignee. An ''order'' bill of lading issued in any of these forms constitutes a representation by the shipper that:

(A) The items covered by the appropriate one of the documents described in paragraph (c)(1)(ii) of this section and bill of lading are ultimately destined to the ultimate consignee stated on the license;

(B) The ''order'' bill of lading has not been used for the purpose of evading the terms and conditions of the license; and

(C) Pursuant to the contract of carriage, the items will be delivered at a port located in the country of the ultimate consignee or of the intermediate consignee named on the appropriate one of the documents described in paragraph (c)(1)(ii) of this section.

(ii) [Reserved]

(4) *Item description.* On the bill of lading the items may be described in terms of the freight tariff classification or other type of classification, but may not be inconsistent with the description shown on the appropriate one of the documents described in paragraph (c)(1)(ii). These documents must include the same item description as shown on the related license, and, in addition, it must include more detailed information where required by the Bureau of the Census.

(5) *Carrier's manifest.* If the carrier's outward foreign manifest filed with the U.S. customs office contains the names of shippers or consignees, these names must not be inconsistent with the names shown on the bill of lading and the appropriate one of the documents described in paragraph (c)(1)(ii) of this section.

§ 758.5 General destination control requirements.

(a) *Scope.* This section sets forth some actions the parties to a transaction authorized by a license issued by BXA are prohibited from taking. The purpose of these prohibitions is to prevent items licensed for export from being diverted while in transit or thereafter. It also sets forth the duties of the parties when the goods are unloaded in a country other than that of the ultimate consignee or intermediate consignee as stated on the export license.

(b) *Destination on bill of lading or air waybill*—(1) *Requirements to prevent diversions*—(i) *Statements on bill of lading or air waybill.* (A) A carrier (or any other person on behalf of any carrier) may not issue a bill of lading or air waybill providing for delivery of cargo at any foreign port located outside the country of the ultimate consignee, or the intermediate consignee, named on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part.

(B) *Optional ports on bill of lading or air waybill.* No carrier may issue a bill of lading or air waybill providing for delivery of cargo at optional ports to the ultimate consignee named on one of the appropriate documents described in § 758.4(c)(1) (i) and (ii) of this part where one of such optional ports is not in the country of ultimate destination named on the license or SED, or if there is no SED, the Shipper's Letter of Instructions, or if there is neither, another document containing instructions that the exporter conveys (either directly or through an agent) to the carrier, without prior written authorization from BXA. However, where the appropriate document described in § 758.4(c)(1) (i) and (ii) of this part provide for delivery of cargo to optional intermediate consignees located in ports in different countries, the carrier

may issue a bill of lading or air waybill providing for delivery at such optional ports.

(ii) [Reserved]

(2) *Delivery of cargo.* No carrier may deliver cargo to any country other than the country of the ultimate consignee, or the intermediate consignee, named on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part at the request or option of the shipper, consignor, exporter, purchaser, or ultimate consignee, or their agents, or any other person having custody or control of the shipment, without prior written authorization from BXA to the carrier or its agent.

(c) *Duties when items are unloaded in a unauthorized country.* If the items are unloaded in a country other than that of the intermediate or ultimate consignee as stated on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, the procedures described in this paragraph must be followed.

(1) *Reasons beyond carrier's control.* Nothing contained in the EAR shall be deemed to prohibit a carrier from unloading cargo at a port outside the country of intermediate or ultimate destination shown on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, where for reasons beyond the control of the carrier (as set forth in the standard provisions of the carrier's bill of lading or air waybill, such as acts of God, perils of the sea, damage to the carrier, strikes, war, political disturbances, or insurrections), it is not feasible to deliver the cargo at the licensed port of destination.

(2) *Required actions for unscheduled unloading.* (i) If the item is unloaded in a country to which that item may be exported without a license issued by BXA, no one is required to notify BXA of the unloading. The exporter may dispose of the items in that country without approval of BXA. When making such a disposition you must still comply with any conditions or requirements of the License Exception or other provisions of the EAR that would authorize the export of the item being unloaded to the country in which you are disposing of it, and any regulations of other government agencies that apply to the transaction. This paragraph does not authorize anyone to take any action with knowledge that a violation of the Export Administration Act, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur or is intended to occur, or to deliver to a denied party or to take any other action prohibited by the EAR.

(ii) If a license issued by BXA would be required to export the item to the country in which it is unloaded:

(A) No person may take any steps to effect delivery or entry of the items into the commerce of the country where unloaded without prior approval of BXA;

(B) The carrier must take steps to assure that the items are placed in custody under bond or other guaranty not to enter the commerce of such country or any country other than the countries of the ultimate and intermediate consignees shown on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, without prior approval of BXA;

(iii) The carrier, the carrier's agent located in the United States, and the exporter each have specific responsibilities to notify BXA regarding any unscheduled unloading. The specific responsibilities of each party are as follows:

(A) The carrier must, within 10 days after date of unloading, report the facts to the nearest American Consulate and to the agent of the carrier located in the United States. Within 10 days after receipt of such report, the agent must send a copy of the report to BXA. The report must include:

(*1*) A copy of the manifest of such diverted cargo;

(*2*) A statement of the place of unloading; and;

(*3*) The name and address of the person in whose custody the items were delivered.

(B) BXA will inform the exporter of the unloading. Within 10 days following receipt of this notice, the exporter must inform BXA of the proposed disposition of the items. The exporter may not dispose of the items without approval of BXA.

§ 758.6 Destination control statement.

(a) *Requirement for destination control statement.* (1) The destination control statement shown in paragraph (b) of this section must be entered on all copies of the bill of lading, the air waybill and the commercial invoice covering any export from the United States if:

(i) The export is made under authority of a license, including the Special Comprehensive License;

(ii) The export is made under the authority of the following License Exceptions: LVS, GBS, CIV, CTP, TMP, or RPL; or

(iii) The export is made under the ''No License Required'' provisions of the EAR (as described in § 758.1(a) of this part) if the reason for control of the item as stated in the entry on the CCL is NS or NP.

(2) An exporter or the exporter's agent may enter a destination control statement on the shipping documents for exports for which no destination control statement is required.

(b) *Text of destination control statement.*

These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law prohibited.

(c) *Additional destination information.* In addition to the destination control statement, an exporter or exporter's agent may supply additional information on the shipping documents, including the country(ies) to which export or reexport is authorized.

(d) *Permissive reexports.* If reexport or diversion from the original transaction is contemplated and the change from the original transaction is consistent with the license, License Exception, the NLR provisions of the EAR or other authorization and with all other requirements of the EAR, the exporter may so advise its foreign importer without obtaining further authorization from BXA.

(e) *Responsibility for assuring that the destination control statement is used*—(1) *Exporters.* The exporter is responsible for assuring entry of the destination control statement on the commercial invoice, regardless of whether the exporter actually prepares this document. The exporter has this responsibility even if the invoice is prepared by an order party or the exporter acts through an agent.

(2) *Agents of exporters (forwarding agents).* Agents of exporters are also responsible for assuring entry of the destination control statement on the commercial invoice.

(i) If the agent receives from the exporter a copy of a commercial invoice without the correct destination control statement, the agent must:

(A) Notify the exporter in writing;

(B) Request written assurance from the exporter that:

(*1*) The destination control statement has been properly entered on all other copies of the commercial invoice; and

(*2*) Any person who received an invoice without the statement has been informed in writing of the restrictions in the statement;

(ii) And either:

(A) Enter the appropriate statement on the agent's copy of the invoice; or

(B) Return it to the exporter for completion; and

(iii) Keep and make available for inspection, in accordance with part 762 of the EAR, a copy of that person's notification to the exporter and the original of the exporter's assurance required by paragraph (e)(2)(i) of this section. (For further recordkeeping requirements, see part 762 of the EAR.)

(iv) If the agent prepares the invoice, the agent's responsibilities are governed by paragraph (e)(3) of this section.

(3) *Forwarders, carriers and other parties who prepare invoices.* If a forwarder, a carrier acting as a forwarder, or any other party prepares, presents, and/or executes the invoice, the forwarder, carrier, or other party is also responsible for assuring that an appropriate statement is entered on the invoice.

(4) *Carriers and other parties who issue bills of lading or air waybills.* The carrier, or any other party that issues the bill of lading or air waybill, is responsible for assuring that the destination control statement appearing on the corresponding invoice also appears on the bill of lading or air waybill.

(f) *Responsibility for distributing copies of the invoice.* The exporter or other person issuing any invoice containing a

destination control statement must send copies in a manner which assures their arrival either with or prior to arrival of the items being exported to:

(1) The ultimate consignee and the purchaser named in the SED;

(2) The intermediate consignee; and

(3) Any other persons named in the invoice who are located in a foreign country. Nothing contained in this part shall be construed to limit the persons or classes of persons to whom such invoices, bills of lading or air waybills are usually and customarily sent in the course of export trade. The shipper or other person issuing the commercial invoice may comply with the requirements of this section even if the copy of the invoice sent to any of the persons listed in paragraphs (f)(1) or (2) this section omits all reference to price or sales commission provided such invoice otherwise adequately identifies the shipment. As an alternative in lieu of a copy of the commercial invoice, such person may send a copy of the bill of lading or air waybill containing the destination control statement.

(g) *Requirements for bill of lading or air waybill*—(1) *General.* No carrier may issue (and no one may prepare or procure) a bill of lading or air waybill covering an export for which a destination control statement is required under the provisions of paragraph (a) of this section, unless all copies of such bill of lading or air waybill (including all nonnegotiable and office copies) contain the destination control statement in clearly legible form.

(2) *Exception for ''master'' air waybills.* In the case of shipments by air (other than airmail or air parcel post), the requirement of paragraph (e)(2)(i) of this section applies to any air waybill, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, the provisions of paragraph (f) of this section do not apply to a ''master'' air waybill issued by a carrier to cover a consolidated shipment.

(h) *Requirements for the commercial invoice.* No licensee, shipper, consignor, exporter, agent, or any other person may prepare or issue a commercial invoice for a shipment for which a destination control statement is required under the provisions of paragraph (a) of this section, unless all copies of the invoice(s) contain the statement in clearly legible form.

(i) *Carrier's responsibility before releasing cargo.* No carrier may release custody of a shipment covered by the provisions of this section to any party without surrender by that party, to the carrier, of a copy of the bill of lading or air waybill bearing on its face the applicable destination control statement, unless either:

(1) Simultaneously with the release, the carrier delivers to such party a written copy of the destination control statement, contained in the carrier's copy of the bill of lading or air waybill for the shipment. The written copy must identify the shipment by bill of lading or air waybill number, name of carrier, voyage or flight number, date, and port of arrival. The carrier must also secure either a signed receipted copy of the written statement or other equivalent written evidence that the statement has been delivered by the carrier; or,

(2) The regulations of the importing country require the carrier to deliver the items directly into the physical possession and control of customs or other government agency for delivery to the consignee or the consignee's agent. In this case, the carrier need not give to, or receive from, the customs or other government agency, or the consignee or the consignee's agent, any document bearing the destination control statement.

[61 FR 12852, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996]

§ 758.7 Authority of the Office of Export Enforcement, the Bureau of Export Administration, Customs offices and Postmasters in clearing shipments

(a) *Actions to assure compliance with the EAR.* Officials of BXA, the Office of Export Enforcement, the U.S. Customs Service and postmasters, including post office officials, are authorized and directed to take appropriate action to assure compliance with the EAR. This includes assuring that:

(1) Exports without a license issued by BXA are either outside the scope of the license requirements of the Export

Administration Regulations or authorized by a License Exception; and

(2) Exports purporting to be authorized by licenses issued by BXA are, in fact, so authorized and the transaction complies with the terms of the license.

(b) *Types of actions.* The officials designated in paragraph (a) of this section are authorized to take the following types of actions:

(1) *Inspection of items*—(i) *Purpose of inspection.* All items declared for export are subject to inspection for the purpose of verifying the items specified in the SED, or if there is no SED, the bill of lading or other loading document covering the items about to be exported, and the value and quantity thereof, and to assure observance of the other provisions of the Export Administration Regulations. This authority applies to all exports within the scope of the Export Administration Act or Export Administration Regulations whether or not such exports require a license issued by BXA. The inspection may include, but is not limited to, item identification, technical appraisal (analysis), or both.

(ii) *Place of inspection.* Inspection shall be made at the place of lading or where officials authorized to make those inspections are stationed for that purpose.

(iii) *Technical identification.* Where, in the judgment of the official making the inspection, the item cannot be properly identified, a sample may be taken for more detailed examination or for laboratory analysis.

(A) *Obtaining samples.* The sample will be obtained by the official making the inspection in accordance with the provisions for sampling imported merchandise. The size of the sample will be the minimum representative amount necessary for identification or analysis. This will depend on such factors as the physical condition of the material (whether solid, liquid, or gas) and the size and shape of the container.

(B) *Notification to exporter and consignee.* When a sample is taken, the exporter (or the exporter's agent) and the ultimate consignee will be notified by letter from one of the official designated in paragraph (a) of this section, showing the port of export, date of sampling, export license number (if any) or other authorization, invoice number quantity of sample taken, description of item, marks and packing case numbers, and manufacturer's number for the item. The original letter will be sent to the exporter or the exporter's agent, the duplicate will be placed in the container that had been opened, and the triplicate will be retained by the inspecting office.

(C) *Disposal of samples.* Samples will be disposed of in accordance with the U.S. Customs Service procedure for imported commodities.

(2) *Inspection of documents*—(i) *General.* Officials designated in paragraph (a) of this section are authorized to require exporters or their agents, and owners and operators of exporting carriers or their agents, to produce for inspection or copying: invoices, orders, letters of credit, inspection reports, packing lists, shipping documents and instructions, correspondence, and any other relevant documents, as well as furnish other information bearing upon a particular shipment being exported or intended to be exported.

(ii) *Cartridge and shell case scrap.* When cartridge or shell cases are being exported as scrap (whether or not they have been heated, flame-treated, mangled, crushed, or cut) from the United States, the U.S. Customs Service is authorized to require the exporter to furnish information bearing on the identity and relationships of all parties to the transaction and produce a copy of the bid offer by the armed services in order to assure that the terms of the Export Administration Regulations are being met and that the material being shipped is scrap.

(3) *Questioning of individuals.* Officials designated in paragraph (a) of this section are authorized to question the owner or operator of an exporting carrier and the carrier's agent(s), as well as the exporter and the exporter's agent(s), concerning a particular shipment exported or intended to be exported.

(4) *Prohibiting lading.* Officials designated in paragraph (a) of this section are authorized to prevent the lading of items on an exporting carrier whenever those officials have reasonable cause to believe that the export or removal from the United States is contrary to

the Export Administration Regulations.

(5) *Inspection of exporting carrier.* The U.S. Customs Service is authorized to inspect and search any exporting carrier at any time to determine whether items are intended to be, or are being, exported or removed from the United States contrary to the Export Administration Regulations. Officials of the Office of Export Enforcement may conduct such inspections with the concurrence of the U.S. Customs Service.

(6) *Seizure and detention.* Customs officers are authorized, under Title 22 of the United States Code, section 401, *et seq.*, to seize and detain any items whenever an attempt is made to export such items in violation of the Export Administration Regulations, or whenever they know or have probable cause to believe that the items are intended to be, are being, or have been exported in violation of the EAR. Seized items are subject to forfeiture. In addition to the authority of Customs officers to seize and detain items, both Customs officials and officials of the Office of Export Enforcement are authorized to detain any shipment held for review of the SED, or if there is no SED, the bill of lading or other loading document covering the items about to be exported, or for physical inspection of the items, whenever such action is deemed to be necessary to assure compliance with the EAR.

(7) *Preventing departure of carrier.* The U.S. Customs Service is authorized under Title 22 of the U. S. Code, section 401, *et seq.*, to seize and detain, either before or after clearance, any vessel or vehicle or air carrier that has been or is being used in exporting or attempting to export any item intended to be, being, or having been exported in violation of the EAR.

(8) *Ordering the unloading.* The U.S. Customs Service is authorized to unload, or to order the unloading of, items from any exporting carrier, whenever the U.S. Customs Service has reasonable cause to believe such items are intended to be, or are being, exported or removed from the United States contrary to the EAR.

(9) *Ordering the return of items.* If, after notice that an inspection of a shipment is to be made, a carrier departs without affording the U.S. Customs Service, Office of Export Enforcement, or BXA personnel an adequate opportunity to examine the shipment, the owner or operator of the exporting carrier and the exporting carrier's agent(s) may be ordered to return items exported on such exporting carrier and make them available for inspection.

(10) *Designating time and place for clearance.* The U.S. Customs Service is authorized to designate times and places at which U.S. exports may move by land transportation to countries contiguous to the United States.

[61 FR 12852, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997]

§ 758.8 Return or unloading of cargo at direction of BXA, the Office of Export Enforcement or Customs Service.

(a) *Exporting carrier.* As used in this section, the term ''exporting carrier'' includes a connecting or on-forwarding carrier, as well as the owner, charterer, agent, master, or any other person in charge of the vessel, aircraft, or other kind of carrier, whether such person is located in the United States or in a foreign country.

(b) *Ordering return or unloading of shipment.* Where there are reasonable grounds to believe that a violation of the Export Administration Regulations has occurred, or will occur, with respect to a particular export from the United States, BXA, the Office of Export Enforcement, or the U.S. Customs Service may order any person in possession or control of such shipment, including the exporting carrier, to return or unload the shipment. Such person must, as ordered, either:

(1) Return the shipment to the United States or cause it to be returned or;

(2) Unload the shipment at a port of call and take steps to assure that it is placed in custody under bond or other guaranty not to enter the commerce of any foreign country without prior approval of BXA. For the purpose of this section, the furnishing of a copy of the order to any person included within the definition of exporting carrier will be sufficient notice of the order to the exporting carrier.

(c) *Requirements regarding shipment to be unloaded.* The provisions of § 758.5(b) and (c) of this part, relating to reporting, notification to BXA, and the prohibition against unauthorized delivery or entry of the item into a foreign country, shall apply also when items are unloaded at a port of call, as provided in paragraph (b)(2) of this section.

(d) *Notification.* Upon discovery by any person included within the term ''exporting carrier,'' as defined in paragraph (a) of this section, that a violation of the EAR has occurred or will occur with respect to a shipment on board, or otherwise in the possession or control of the carrier, such person must immediately notify both:

(1) The Office of Export Enforcement at the following address: Room H–4520, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington D.C. 20230, Telephone: (202) 482 1208, Facsimile: (202) 482–0964; and

(2) The person in actual possession or control of the shipment.

§ 758.9 Other applicable laws and regulations.

The provisions of this part 758 apply only to exports regulated by BXA. Nothing contained in this part 758 shall relieve any person from complying with any other law of the United States or rules and regulations issued thereunder, including those governing SEDs and manifests, or any applicable rules and regulations of the U.S. Customs Service.

PART 760—RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

Sec.

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§ 760.1 Definitions.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Definition of Person.* For purposes of this part, the term *person* means any individual, or any association or organization, public or private, which is organized, permanently established, resident, or registered to do business, in the United States or any foreign country. This definition of person includes both the singular and plural and, in addition, includes:

(1) Any partnership, corporation, company, branch, or other form of association or organization, whether organized for profit or non-profit purposes;

(2) Any government, or any department, agency, or commission of any government;

(3) Any trade association, chamber of commerce, or labor union;

(4) Any charitable or fraternal organization; and

(5) Any other association or organization not specifically listed in paragraphs (a)(1) through (4) of this section.

(b) *Definition of ''United States Person''.* (1) This part applies to United States persons. For purposes of this part, the term *United States person*

means any person who is a United States resident or national, including individuals, domestic concerns, and ''controlled in fact'' foreign subsidiaries, affiliates, or other permanent foreign establishments of domestic concerns. This definition of United States person includes both the singular and plural and, in addition, includes:

(i) The government of the United States or any department, agency, or commission thereof;

(ii) The government of any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any subdivision, department, agency, or commission of any such government;

(iii) Any partnership, corporation, company, association, or other entity organized under the laws of paragraph (b)(1)(i) or (ii) of this section;

(iv) Any foreign concern's subsidiary, partnership, affiliate, branch, office, or other permanent establishment in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and

(v) Any domestic concern's foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment which is controlled in fact by such domestic concern. (See paragraph (c) of this section on ''Definition of 'Controlled in Fact'.'')

(2) The term *domestic concern* means any partnership, corporation, company, association, or other entity of, or organized under the laws of, any jurisdiction named in paragraph (b)(1) (i) or (ii) of this section, or any permanent domestic establishment of a foreign concern.

(3) The term *foreign concern* means any partnership, corporation, company, association, or other entity of, or organized under the laws of, any jurisdiction other than those named in paragraph (b)(1)(i) or (ii) of this section.

(4) The term *United States person* does not include an individual United States national who is resident outside the United States and who is either employed permanently or temporarily by a non-United States person or assigned to work as an employee for, and under the direction and control of, a non-United States person.

EXAMPLES OF ''UNITED STATES PERSON''

The following examples are intended to give guidance in determining whether a person is a ''United States person.'' They are illustrative, not comprehensive.

(i) U.S. bank A has a branch office in foreign country P. Such branch office is a United States person, because it is a permanent foreign establishment of a domestic concern.

(ii) Ten foreign nationals establish a manufacturing plant, A, in the United States, incorporating the plant under New York law.

A is a United States person, because it is a corporation organized under the laws of one of the states of the United States.

(iii) A, a foreign corporation, opens an office in the United States for purposes of soliciting U.S. orders. The office is not separately incorporated.

A's U.S. office is a United States person, because it is a permanent establishment, in the United States, of a foreign concern.

(iv) A, a U.S. individual, owns stock in foreign corporation B.

A is a United States person. However, A is not a ''domestic concern,'' because the term ''domestic concern'' does not include individuals.

(v) A, a foreign national resident in the United States, is employed by B, a foreign corporation.

A is a United States person, because he is resident in the United States.

(vi) A, a foreign national, who is resident in a foreign country and is employed by a foreign corporation, makes occasional visits to the United States, for purposes of exploring business opportunities.

A is not a United States person, because he is not a United States resident or national.

(vii) A is an association of U.S. firms organized under the laws of Pennsylvania for the purpose of expanding trade.

A is a United States person, because it is an association organized under the laws of one of the states of the United States.

(viii) At the request of country Y, A, an individual employed by U.S. company B, is transferred to company C as an employee. C is a foreign company owned and controlled by country Y. A, a U.S. national who will reside in Y, has agreed to the transfer provided he is able to retain his insurance, pension, and other benefits. Accordingly, company B has agreed to keep A as an employee in order to protect his employee benefits, and company C has agreed to pay for A's salary. At all times while he works for C, A will be under C's direction and control.

A is not a United States person while under C's direction and control, because he

will be resident outside the United States and assigned as an employee to a non-United States person. The arrangement designed to protect A's insurance, pension, and other benefits does not destroy his status as an employee of C so long as he is under the direction and control of C.

(ix) A, a U.S. citizen, has resided in Europe for three years, where he is a self-employed consultant for United States and foreign companies in the communications industry.

A is a United States person, because he is a U.S. national and because he is not a resident outside the United States who is employed by other than a United States person.

(c) *Definition of ''Controlled in Fact''.* (1) This part applies to any domestic concern's foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment which is *controlled in fact* by such domestic concern. *Control in fact* consists of the authority or ability of a domestic concern to establish the general policies or to control day-to-day operations of its foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment.

(2) A foreign subsidiary or affiliate of a domestic concern will be presumed to be controlled in fact by that domestic concern, subject to rebuttal by competent evidence, when:

(i) The domestic concern beneficially owns or controls (whether directly or indirectly) more than 50 percent of the outstanding voting securities of the foreign subsidiary or affiliate;

(ii) The domestic concern beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the foreign subsidiary or affiliate, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

(iii) The foreign subsidiary or affiliate is operated by the domestic concern pursuant to the provisions of an exclusive management contract;

(iv) A majority of the members of the board of directors of the foreign subsidiary or affiliate are also members of the comparable governing body of the domestic concern;

(v) The domestic concern has authority to appoint the majority of the members of the board of directors of the foreign subsidiary or affiliate; or

(vi) The domestic concern has authority to appoint the chief operating officer of the foreign subsidiary or affiliate.

(3) A brokerage firm or other person which holds simple record ownership of securities for the convenience of clients will not be deemed to control the securities.

(4) A domestic concern which owns, directly or indirectly, securities that are immediately convertible at the option of the holder or owner into voting securities is presumed to own or control those voting securities.

(5) A domestic concern's foreign branch office or other unincorporated permanent foreign establishment is deemed to be controlled in fact by such domestic concern under all circumstances.

EXAMPLES OF ''CONTROLLED IN FACT''

The following examples are intended to give guidance in determining the circumstances in which a foreign subsidiary, affiliate, or other permanent foreign establishment of a domestic concern is ''controlled in fact.'' They are illustrative, not comprehensive.

(i) Company A is incorporated in a foreign country. Fifty-one percent of the voting stock of A is owned by U.S. company B.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(ii) Company A is incorporated in a foreign country. Ten percent of the voting stock of A is owned by U.S. company B. A has an exclusive management contract with B pursuant to which A is operated by B.

As long as such contract is in effect, A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(iii) Company A is incorporated in a foreign country. Ten percent of the voting stock of A is owned by U.S. company B. A has 10 persons on its board of directors. Six of those persons are also members of the board of directors of U.S. company B.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(iv) Company A is incorporated in a foreign country. Thirty percent of the voting securities of A is owned by U.S. company B and no other person owns or controls an equal or larger share.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(v) Company A is incorporated in a foreign country. In A's articles of incorporation, U.S. company B has been given authority to appoint A's board of directors.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(vi) Company A is a joint venture established in a foreign country, with equal participation by U.S. company B and foreign company C. U.S. Company B has authority to appoint A's chief operating officer.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(vii) Same as (vi), except that B has no authority to appoint A's chief operating officer.

B is not presumed to control A, absent other facts giving rise to a presumption of control.

(viii) Company A is incorporated in a foreign country. U.S. companies B, C, and D each own 20 percent of A's voting securities and regularly cast their votes in concert.

A is presumed to be controlled in fact by B, C, and D, because these companies are acting in concert to control A.

(ix) U.S. bank B located in the United States has a branch office, A, in a foreign country. A is not separately incorporated.

A is deemed to be controlled in fact by B, because A is a branch office of a domestic concern.

(x) Company A is incorporated in a foreign country. Fifty-one percent of the voting stock of A is owned by company B, which is incorporated in another foreign country. Fifty-one percent of the voting stock of B is owned by C, a U.S. company.

Both A and B are presumed to be controlled in fact by C. The presumption of C's control over B may be rebutted by competent evidence showing that control over B does not, in fact, lie with C. The presumption of B's control over A (and thus C's control over A) may be rebutted by competent evidence showing that control over A does not, in fact, lie with B.

(xi) B, a U.S. individual, owns 51 percent of the voting securities of A, a manufacturing company incorporated and located in a foreign country.

A is not ''controlled in fact'' under this part, because it is not controlled by a ''domestic concern.''

(d) *Definition of ''Activities in the Interstate or Foreign Commerce of the United States''.*

ACTIVITIES INVOLVING UNITED STATES PERSONS LOCATED IN THE UNITED STATES

(1) For purposes of this part, the activities of a United States person located in the United States are in the interstate or foreign commerce of the United States if they involve the sale, purchase, or transfer of goods or services (including information) between:

(i) Two or more of the several States (including the District of Columbia);

(ii) Any State (including the District of Columbia) and any territory or possession of the United States;

(iii) Two or more of the territories or possessions of the United States; or

(iv) A State (including the District of Columbia), territory or possession of the United States and any foreign country.

(2) For purposes of this part, the export of goods or services from the United States and the import of goods or services into the United States are activities in United States commerce. In addition, the action of a domestic concern in specifically directing the activities of its controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment is an activity in United States commerce.

(3) Activities of a United States person located in the United States may be in United States commerce even if they are part of or ancillary to activities outside United States commerce. However, the fact that an ancillary activity is in United States commerce does not, in and of itself, mean that the underlying or related activity is in United States commerce.

(4) Hence, the action of a United States bank located in the United States in providing financing from the United States for a foreign transaction that is not in United States commerce is nonetheless itself in United States commerce. However, the fact that the financing is in United States commerce does not, in and of itself, make the underlying foreign transaction an activity in United States commerce, even if the underlying transaction involves a foreign company that is a *United States person* within the meaning of this part.

(5) Similarly, the action of a United States person located in the United

States in providing financial, accounting, legal, t ransportation, or other ancillary services to its controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment in connection with a foreign transaction is in United States commerce. But the provision of such ancillary services will not, in and of itself, bring the foreign transaction of such subsidiary, affiliate, or permanent foreign establishment into United States commerce.

ACTIVITIES OF CONTROLLED IN FACT FOREIGN SUBSIDIARIES, AFFILIATES, AND OTHER PERMANENT FOREIGN ESTABLISHMENTS

(6) Any transaction between a controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment of a domestic concern and a person located in the United States is an activity in United States commerce.

(7) Whether a transaction between such a foreign subsidiary, affiliate, or other permanent foreign establishment and a person located outside the United States is an activity in United States commerce is governed by the following rules.

ACTIVITIES IN UNITED STATES COMMERCE

(8) A transaction between a domestic concern's controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment and a person outside the United States, involving goods or services (including information but not including ancillary services) acquired from a person in the United States is in United States commerce under any of the following circumstances—

(i) If the goods or services were acquired for the purpose of filling an order from a person outside the United States;

(ii) If the goods or services were acquired for incorporation into, refining into, reprocessing into, or manufacture of another product for the purpose of filling an order from a person outside the United States;

(iii) If the goods or services were acquired for the purpose of fulfilling or engaging in any other transaction with a person outside the United States; or

(iv) If the goods were acquired and are ultimately used, without substantial alteration or modification, in filling an order from, or fulfilling or engaging in any other transaction with, a person outside the United States (whether or not the goods were originally acquired for that purpose). If the goods are indistinguishable as to origin from similar foreign-trade goods with which they have been mingled in a stockpile or inventory, the subsequent transaction involving the goods is presumed to be in United States commerce unless, at the time of filling the order, the foreign-origin inventory on hand was sufficient to fill the order.

(9) For purposes of this section, goods or services are considered to be acquired for the purpose of filling an order from or engaging in any other transaction with a person outside the United States where:

(i) They are purchased by the foreign subsidiary, affiliate, or other permanent foreign establishment upon the receipt of an order from or on behalf of a customer with the intention that the goods or services are to go to the customer;

(ii) They are purchased by the foreign subsidiary, affiliate, or other permanent foreign establishment to meet the needs of specified customers pursuant to understandings with those customers, although not for immediate delivery; or

(iii) They are purchased by the foreign subsidiary, affiliate, or other permanent foreign establishment based on the anticipated needs of specified customers.

(10) If any non-ancillary part of a transaction between a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment and a person outside the United States is in United States commerce, the entire transaction is in United States commerce. For example, if such a foreign subsidiary is engaged in filling an order from a non-United States customer both with goods acquired from the United States and with goods acquired elsewhere, the entire transaction with that customer is in United States commerce.

ACTIVITIES OUTSIDE UNITED STATES COMMERCE

(11) A transaction between a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment and a person outside the United States, not involving the purchase, sale, or transfer of goods or services (including information) to or from a person in the United States, is not an activity in United States commerce.

(12) The activities of a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment with respect to goods acquired from a person in the United States are not in United States commerce where:

(i) They were acquired without reference to a specific order from or transaction with a person outside the United States; and

(ii) They were further manufactured, incorporated into, refined into, or reprocessed into another product.

(13) The activities of a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment with respect to services acquired from a person in the United States are not in United States commerce where:

(i) They were acquired without reference to a specific order from or transaction with a person outside the United States; or

(ii) They are ancillary to the transaction with the person outside the United States.

(14) For purposes of this section, services are *ancillary services* if they are provided to a controlled foreign subsidiary, affiliate, or other permanent foreign establishment primarily for its own use rather than for the use of a third person. These typically include financial, accounting, legal,transportation, and other services, whether provided by a domestic concern or an unrelated entity.

(15) Thus, the provision of the project financing by a United States bank located in the United States to a controlled foreign subsidiary unrelated to the bank is an ancillary service which will not cause the underlying transaction to be in United States commerce. By contrast, where a domestic concern, on behalf of its controlled foreign subsidiary, gives a guaranty of performance to a foreign country customer, that is a service provided to the customer and, as such, brings that subsidiary's transaction with the customer into United States commerce. Similarly, architectural or engineering services provided by a domestic concern in connection with its controlled foreign subsidiary's construction project in a third country are services passed through to the subsidiary's customer and, as such, bring that subsidiary's foreign transaction into United States commerce.

GENERAL

(16) Regardless of whether the subsequent disposition of goods or services from the United States is in United States commerce, the original acquisition of goods or services from a person in the United States is an activity in United States commerce subject to this part. Thus, if a domestic concern's controlled foreign subsidiary engages in a prohibited refusal to do business in stocking its inventory with goods from the United States, that action is subject to this part whether or not subsequent sales from that inventory are.

(17) In all the above, goods and services will be considered to have been acquired from a person in the United States whether they were acquired directly or indirectly through a third party, where the person acquiring the goods or services knows or expects, at the time he places the order, that they will be delivered from the United States.

LETTERS OF CREDIT

(18) Implementation of a letter of credit in the United States by a United States person located in the United States, including a permanent United States establishment of a foreign concern, is an activity in United States commerce.

(19) Implementation of a letter of credit outside the United States by a United States person located outside the United States is in United States commerce where the letter of credit (a) specifies a United States address for the beneficiary, (b) calls for documents indicating shipment from the United

States, or (c) calls for documents indicating that the goods are of United States origin.

(20) See § 760.2(f) of this part on ''Letters of Credit'' to determine the circumstances in which paying, honoring, confirming, or otherwise implementing a letter of credit is covered by this part.

EXAMPLES OF ACTIVITIES IN THE INTERSTATE OR FOREIGN COMMERCE OF THE UNITED STATES

The following examples are intended to give guidance in determining the circumstances in which an activity is in the interstate or foreign commerce of the United States. They are illustrative, not comprehensive.

UNITED STATES PERSON LOCATED IN THE UNITED STATES

(i) U.S. company A exports goods from the United States to a foreign country. A's activity is in U.S. commerce, because A is exporting goods from the United States.

(ii) U.S. company A imports goods into the United States from a foreign country. A's activity is in U.S. commerce, because A is importing goods into the United States.

(iii) U.S. engineering company A supplies consulting services to its controlled foreign subsidiary, B. A's activity is in U.S. commerce, because A is exporting services from the United States.

(iv) U.S. company A supplies consulting services to foreign company B. B is unrelated to A or any other U.S. person.

A's activity is in U.S. commerce even though B, a foreign-owned company located outside the United States, is not subject to this part, because A is exporting services from the United States.

(v) Same as (iv), except A is a bank located in the United States and provides a construction loan to B.

A's activity is in U.S. commerce even though B is not subject to this part, because A is exporting financial services from the United States.

(vi) U.S. company A issues policy directives from time to time to its controlled foreign subsidiary, B, governing the conduct of B's activities with boycotting countries.

A's activity in directing the activities of its foreign subsidiary, B, is an activity in U.S. commerce.

FOREIGN SUBSIDIARIES, AFFILIATES, AND OTHER PERMANENT FOREIGN ESTABLISHMENTS OF DOMESTIC CONCERNS

(i) A, a controlled foreign subsidiary of U.S. company B, purchases goods from the United States.

A's purchase of goods from the United States is in U.S. commerce, because A is importing goods from the United States. Whether A's subsequent disposition of these goods is in U.S. commerce is irrelevant. Similarly, the fact that A purchased goods from the United States does not, in and of itself, make any subsequent disposition of those goods an activity in U.S. commerce.

(ii) A, a controlled foreign subsidiary of U.S. company B, receives an order from boycotting country Y for construction materials. A places an order with U.S. company B for the materials.

A's transaction with Y is an activity in U.S. commerce, because the materials are purchased from the United States for the purpose of filling the order from Y.

(iii) A, a controlled foreign subsidiary of U.S. company B, receives an order from boycotting country Y for construction materials. A places an order with U.S. company B for some of the materials, and with U.S. company C, an unrelated company, for the rest of the materials.

A's transaction with Y is an activity in U.S. commerce, because the materials are purchased from the United States for the purpose of filling the order from Y. It makes no difference whether the materials are ordered from B or C.

(iv) A, a controlled foreign subsidiary of U.S. company B, is in the wholesale and retail appliance sales business. A purchases finished air conditioning units from the United States from time to time in order to stock its inventory. A's inventory is also stocked with air conditioning units purchased outside the United States. A receives an order for air conditioning units from Y, a boycotting country. The order is filled with U.S.-origin units in A's inventory.

A's transaction with Y is in U.S. commerce, because its U.S.-origin goods are resold without substantial alteration.

(v) Same as (iv), except that A is in the chemicals distribution business. Its U.S.-origin goods are mingled in inventory with foreign-origin goods.

A's sale to Y of unaltered goods from its general inventory is presumed to be in U.S. commerce unless A can show that at the time of the sale the foreign-origin inventory on hand was sufficient to cover the shipment to Y.

(vi) A, a foreign subsidiary of U.S. company B, receives an order from boycotting country Y for computers. A places an order with U.S. company B for some of the components; with U.S. company C, an unrelated company, for other components; and with foreign company D for the rest of the components. A then assembles the computers and ships them to Y.

A's transaction with Y is an activity in U.S. commerce, because some of the components are acquired from the United States for purposes of filling an order from Y.

(vii) Same as (vi), except A purchases all the components from non-U.S.sources.

A's transaction with Y is not an activity in U.S. commerce, because it involves no export of goods from the United States. It makes no difference whether the technology A uses to manufacture computers was originally acquired from its U.S. parent.

(viii) A, a controlled foreign subsidiary of U.S. company B, manufactures computers. A stocks its general components and parts inventory with purchases made at times from the United States and at times from foreign sources. A receives an order from Y, a boycotting country, for computers. A fills that order by manufacturing the computers using materials from its general inventory.

A's transaction with Y is not in U.S. commerce, because the U.S.-origin components are not acquired for the purpose of meeting the anticipated needs of specified customers in Y. It is irrelevant that A's operations may be based on U.S.-origin technology.

(ix) Same as (viii), except that in anticipation of the order from Y, A orders and receives the necessary materials from the United States.

A's transaction with Y is in U.S. commerce, because the U.S.-origin goods were acquired for the purpose of filling an anticipated order from Y.

(x) A, a controlled foreign subsidiary of U.S. company B, manufactures typewriters. It buys typewriter components both from the United States and from foreign sources. A sells its output in various places throughout the world, including boycotting country Y. Its sales to Y vary from year to year, but have averaged approximately 20 percent of sales for the past five years. A expects that its sales to Y will remain at approximately that level in the years ahead although it has no contracts or orders from Y on hand.

A's sales of typewriters to Y are not in U.S. commerce, because the U.S. components are not acquired for the purpose of filling an order from Y. A general expectancy of future sales is not an ''order'' within the meaning of this section.

(xi) U.S. company A's corporate counsel provides legal advice to B, its controlled foreign subsidiary, on the applicability of this Part to B's transactions.

While provision of this legal advice is itself an activity in U.S. commerce, it does not, in and of itself, bring B's activities into U.S. commerce.

(xii) A, a controlled foreign subsidiary of U.S. company B, is in the general construction business. A enters into a contract with boycotting country Y to construct a power plant in Y. In preparing engineering drawings and specifications, A uses the advice and assistance of B.

A's transaction with Y is in U.S. commerce, because B's services are used for purposes of fulfilling the contract with Y. B's services are not ancillary services, because the engineering services in connection with construction of the power plant are part of the services ultimately provided to Y by A.

(xiii) Same as (xii), except that A gets no engineering advice or assistance from B. However, B's corporate counsel provides legal advice to A regarding the structure of the transaction. In addition, B's corporate counsel draws up the contract documents.

A's transaction with Y is not in U.S. commerce. The legal services provided to A are ancillary services, because they are not part of the services provided to Y by A in fulfillment of its contract with Y.

(xiv) A, a controlled foreign subsidiary of U.S. company B, enters into a contract to construct an apartment complex in boycotting country Y. A will fulfill its contract completely with goods and services from outside the United States. Pursuant to a provision in the contract, B guarantees A's performance of the contract.

A's transaction with Y is in U.S. commerce, because B's guaranty of A's performance involves the acquisition of services from the United States for purposes of fulfilling the transaction with Y, and those services are part of the services ultimately provided to Y.

(xv) Same as (xiv), except that the guaranty of A's performance is supplied by C, a non-U.S. person located outside the United States. However, unrelated to any particular transaction, B from time to time provides general financial, legal, and technical services to A.

A's transaction with Y is not in U.S. commerce, because the services acquired from the United States are not acquired for purposes of fulfilling the contract with Y.

(xvi) A, a foreign subsidiary of U.S. company B, has a contract with boycotting country Y to conduct oil drilling operations in that country. In conducting these operations, A from time to time seeks certain technical advice from B regarding the operation of the drilling rigs.

A's contract with Y is in U.S. commerce, because B's services are sought for purposes of fulfilling the contract with Y and are part of the services ultimately provided to Y.

(xvii) A, a controlled foreign subsidiary of U.S. company B, enters into a contract to sell typewriters to boycotting country Y. A is located in non-boycotting country P. None of the components are acquired from the United States. A engages C, a U.S. shipping company, to transport the typewriters from P to Y.

A's sales to Y are not in U.S. commerce, because in carrying A's goods, C is providing an ancillary service to A and not a service to Y.

(xviii) Same as (xvii), except that A's contract with Y calls for title to pass to Y in P.

In addition, the contract calls for A to engage a carrier to make delivery to Y.

A's sales to Y are in U.S. commerce, because in carrying Y's goods, C is providing a service to A which is ultimately provided to Y.

(xix) A, a controlled foreign subsidiary of U.S. company B, has general product liability insurance with U.S. company C. Foreign-origin goods sold from time to time by A to boycotting country Y are covered by the insurance policy.

A's sales to Y are not in U.S. commerce, because the insurance provided by C is an ancillary service provided to A which is not ultimately provided to Y.

(xx) A, a controlled foreign subsidiary of U.S. company B, manufactures automobiles abroad under a license agreement with B. From time to time, A sells such goods to boycotting country Y.

A's sales to Y are not in U.S. commerce, because the rights conveyed by the license are not acquired for the specific purpose of engaging in transactions with Y.

(e) *''Intent''.* (1) This part prohibits a United States person from taking or knowingly agreeing to take certain specified actions with intent to comply with, further, or support an unsanctioned foreign boycott.

(2) A United States person has the intent to comply with, further, or support an unsanctioned foreign boycott when such a boycott is at least one of the reasons for that person's decision whether to take a particular prohibited action. So long as that is at least one of the reasons for that person's action, a violation occurs regardless of whether the prohibited action is also taken for non-boycott reasons. Stated differently, the fact that such action was taken for legitimate business reasons does not remove that action from the scope of this part if compliance with an unsanctioned foreign boycott was also a reason for the action.

(3) Intent is a necessary element of any violation of this part. It is not sufficient that one take action that is specifically prohibited by this part. It is essential that one take such action with intent to comply with, further,or support an unsanctioned foreign boycott. Accordingly, a person who inadvertently, without boycott intent, takes a prohibited action, does not commit any violation of this part.

(4) Intent in this context means the reason or purpose for one's behavior. It does not mean that one has to agree with the boycott in question or desire that it succeed or that it be furthered or supported. But it does mean that the reason why a particular prohibited action was taken must be established.

(5) Reason or purpose can be proved by circumstantial evidence. For example, if a person receives a request to supply certain boycott information, the furnishing of which is prohibited by this part, and he knowingly supplies that information in response, he clearly intends to comply with that boycott request. It is irrelevant that he may disagree with or object to the boycott itself. Information will be deemed to be furnished with the requisite intent if the person furnishing the information knows that it was sought for boycott purposes. On the other hand, if a person refuses to do business with someone who happens to be blacklisted, but the reason is because that person produces an inferior product, the requisite intent does not exist.

(6) Actions will be deemed to be taken with intent to comply with an unsanctioned foreign boycott if the person taking such action knew that such action was required or requested for boycott reasons. On the other hand, the mere absence of a business relationship with a blacklisted person or with or in a boycotted country does not indicate the existence of the requisite intent.

(7) In seeking to determine whether the requisite intent exists, all available evidence will be examined.

EXAMPLES OF ''INTENT''

The following examples are intended to illustrate the factors which will be considered in determining whether the required intent exists. They are illustrative, not comprehensive.

(i) U.S. person A does business in boycotting country Y. In selecting firms to supply goods for shipment to Y, A chooses supplier B because B's products are less expensive and of higher quality than the comparable products of supplier C. A knows that C is blacklisted, but that is not a reason for A's selection of B.

A's choice of B rather than C is not action with intent to comply with Y's boycott, because C's blacklist status is not a reason for A's action.

(ii) Same as (i), except that A chooses B rather than C in part because C is blacklisted by Y.

Since C's blacklist status is a reason for A's choice, A's action is taken with intent to comply with Y's boycott.

(iii) U.S. person A bids on a tender issued by boycotting country Y. A inadvertently fails to notice a prohibited certification which appears in the tender document. A's bid is accepted.

A's action in bidding was not taken with intent to comply with Y's boycott, because the boycott was not a reason for A's action.

(iv) U.S. bank A engages in letter of credit transactions, in favor of U.S. beneficiaries, involving the shipments of U.S. goods to boycotting country Y. As A knows, such letters of credit routinely contain conditions requiring prohibited certifications. A fails to take reasonable steps to prevent the implementation of such letters of credit. A receives for implementation a letter of credit which in fact contains a prohibited condition but does not examine the letter of credit to determine whether it contains such a condition.

Although Y's boycott may not be a specific reason for A's action in implementing the letter of credit with a prohibited condition, all available evidence shows that A's action was taken with intent to comply with the boycott, because A knows or should know that its procedures result in compliance with the boycott.

(v) U.S. bank A engages in letter of credit transactions, in favor of U.S. beneficiaries, involving the shipment of U.S. goods to boycotting country Y. As A knows, the documentation accompanying such letters of credit sometimes contains prohibited certifications. In accordance with standard banking practices applicable to A, it does not examine such accompanying documentation. A receives a letter of credit in favor of a U.S. beneficiary. The letter of credit itself contains no prohibited conditions. However, the accompanying documentation, which A does not examine, does contain such a condition.

All available evidence shows that A's action in implementing the letter of credit was not taken with intent to comply with the boycott, because A has no affirmative obligation to go beyond applicable standard banking practices in implementing letters of credit.

(vi) A, a U.S. company, is considering opening a manufacturing facility in boycotted country X. A already has such a facility in boycotting country Y. After exploring the possibilities in X, A concludes that the market does not justify the move. A is aware that if it did open a plant in X, Y might object because of Y's boycott of X. However Y's possible objection is not a reason for A's decision not to open a plant in X.

A's decision not to proceed with the plant in X is not action with intent to comply with Y's boycott, because Y's boycott of X is not a reason for A's decision.

(vii) Same as (vi), except that after exploring the business possibilities in X, A concludes that the market does justify the move to X. However, A does not open the plant because of Y's possible objections due to Y's boycott of X.

A's decision not to proceed with the plant in X is action taken with intent to comply with Y's boycott, because Y's boycott is a reason for A's decision.

(viii) A, a U.S. chemical manufacturer, receives a ''boycott questionnaire'' from boycotting country Y asking, among other things, whether A has any plants located in boycotted country X. A, which has never supported Y's boycott of X, responds to Y's questionnaire, indicating affirmatively that it does have plants in X and that it intends to continue to have plants in X.

A's responding to Y's questionnaire is deemed to be action with intent to comply with Y's boycott because A knows that the questionnaire is boycott-related. It is irrelevant that A does not also wish to support Y's boycott.

(ix) U.S. company A is on boycotting country Y's blacklist. In an attempt to secure its removal from the blacklist, A wishes to supply to Y information which demonstrates that A does at least as much business in Y and other countries engaged in a boycott of X as it does in X. A intends to continue its business in X undiminished and in fact is exploring and intends to continue exploring an expansion of its activities in X without regard to Y's boycott.

A may furnish the information, because in doing so it has no intent to comply with, further, or support Y's boycott.

(x) U.S. company A has a manufacturing facility in boycotted country X. A receives an invitation to bid on a construction project in boycotting country Y. The invitation states that all bidders must complete a boycott questionnaire and send it in with the bid. The questionnaire asks for information about A's business relationships with X. Regardless of whether A's bid is successful, A intends to continue its business in X undiminished and in fact is exploring and intends to continue exploring an expansion of its activities in X without regard to Y's boycott.

A may not answer the questionnaire, because, despite A's intentions with regard to its business operations in X, Y's request for completion of the questionnaire is for boycott purposes and by responding, A's action would betaken with intent to comply with Y's boycott.

(NOTE: Example (ix) is distinguishable from (x), because in (ix) A is not responding to any boycott request or requirement. Instead, on its own initiative, it is supplying information to demonstrate non-discriminatory conduct as between X and Y without any intent

to comply with, further, or support Y's boycott.)

§ 760.2 Prohibitions.

(a) *Refusals to do business.*

PROHIBITION AGAINST REFUSALS TO DO BUSINESS

(1) No United States person may: refuse, knowingly agree to refuse, require any other person to refuse, or knowingly agree to require any other person to refuse, to do business with or in a boycotted country, with any business concern organized under the laws of a boycotted country, with any national or resident of a boycotted country, or with any other person, when such refusal is pursuant to an agreement with the boycotting country, or a requirement of the boycotting country, or a request from or on behalf of the boycotting country.

(2) Generally, a refusal to do business under this section consists of action that excludes a person or country from a transaction for boycott reasons. This includes a situation in which a United States person chooses or selects one person over another on a boycott basis or takes action to carry out another person's boycott-based selection when he knows or has reason to know that the other person's selection is boycott-based.

(3) Refusals to do business which are prohibited by this section include not only specific refusals, but also refusals implied by a course or pattern of conduct. There need not be a specific offer and refusal to constitute a refusal to do business; a refusal may occur when a United States person has a financial or commercial opportunity and declines for boycott reasons to consider or accept it.

(4) A United States person's use of either a boycott-based list of persons with whom he will not deal (a so-called ''blacklist'') or a boycott-based list of persons with whom he will deal (a so-called ''whitelist'') constitutes a refusal to do business.

(5) An agreement by a United States person to comply generally with the laws of the boycotting country with which it is doing business or an agreement that local laws of the boycotting country shall apply or govern is not, in and of itself, a refusal to do business. Nor, in and of itself, is use of a contractual clause explicitly requiring a person to assume the risk of loss of non-delivery of his products a refusal to do business with any person who will not or cannot comply with such a clause. (But see § 760.4 of this part on ''Evasion.'')

(6) If, for boycott reasons, a United States general manager chooses one supplier over another, or enters into a contract with one supplier over another, or advises its client to do so, then the general manager's actions constitute a refusal to do business under this section. However, it is not a refusal to do business under this section for a United States person to provide management, procurement, or other pre-award services for another person so long as the provision of such pre-award services is customary for that firm (or industry of which the firm is a part), without regard to the boycotting or non-boycotting character of the countries in which they are performed, and the United States person, in providing such services, does not act to exclude a person or country from the transaction for boycott reasons, or otherwise take actions that are boycott-based. For example, a United States person under contract to provide general management services in connection with a construction project in a boycotting country may compile lists of qualified bidders for the client if that service is a customary one and if persons who are qualified are not excluded from that list because they are blacklisted.

(7) With respect to post-award services, if a client makes a boycott-based selection, actions taken by the United States general manager or contractor to carry out the client's choice are themselves refusals to do business if the United States contractor knows or has reason to know that the client's choice was boycott-based. (It is irrelevant whether the United States contractor also provided pre-award services.) Such actions include entering into a contract with the selected supplier, notifying the supplier of the client's choice, executing a contract on behalf of the client, arranging for inspection and shipment of the supplier's

goods, or taking any other action to effect the client's choice. (But see § 760.3(c) of this part on ''Compliance with Unilateral Selection'' as it may apply to post-award services.)

(8) An agreement is not a prerequisite to a violation of this section since the prohibition extends to actions taken pursuant not only to agreements but also to requirements of, and requests from or on behalf of, a boycotting country.

(9) Agreements under this section may be either express or implied by a course or pattern of conduct. There need not be a direct request from a boycotting country for action by a United States person to have been taken pursuant to an agreement with or requirement of a boycotting country.

(10) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott. The mere absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with national(s) or resident(s) of the boycotted country, or with any other person does not indicate the existence of the required intent.

EXAMPLES OF REFUSALS AND AGREEMENTS TO REFUSE TO DO BUSINESS

The following examples are intended to give guidance in determining the circumstances in which, in a boycott situation, a refusal to do business or an agreement to refuse to do business is prohibited. They are illustrative, not comprehensive.

REFUSALS TO DO BUSINESS

(i) A, a U.S. manufacturer, receives an order for its products from boycotting country Y. To fill that order, A solicits bids from U.S. companies B and C, manufacturers of components used in A's products. A does not, however, solicit bids from U.S. companies D or E, which also manufacture such components, because it knows that D and E are restricted from doing business in Y and that their products are, therefore, not importable into that country.

Company A may not refuse to solicit bids from D and E for boycott reasons, because to do so would constitute a refusal to do business with those persons.

(ii) A, a U.S. exporter, uses company B, a U.S. insurer, to insure the shipment of its goods to all its overseas customers. For the first time, A receives an order for its products from boycotting country Y. Knowing that B is on the blacklist of Y, A arranges with company C, a non-blacklisted U.S. insurer, to insure the shipment of its goods to Y.

A's action constitutes a refusal to do business with B.

(iii) A, a U.S. exporter, purchases all its liability insurance from company B, a U.S. company that does business in boycotted country X. A wishes to expand its operations into country Y, the boycotting country. Before doing so, A decides to switch from insurer B to insurer C in anticipation of a request from Y that A sever its relations with B as a condition of doing business in Y.

A may not switch insurers for this reason, because doing so would constitute a refusal to do business with B.

(iv) U.S. company A exports goods to boycotting country Y. In selecting vessels to transport the goods to Y, A chooses only from among carriers which call at ports in Y.

A's action is not a refusal to do business with carriers which do not call at ports in Y.

(v) A, a U.S. bank with a branch office in boycotting country Y, sends representatives to boycotted country X to discuss plans for opening a branch office in X. Upon learning of these discussions, an official of the local boycott office in Y advises A's local branch manager that if A opens an office in X it will no longer be allowed to do business in Y. As a result of this notification, A decides to abandon its plans to open a branch in X.

Bank A may not abandon its plans to open a branch in X as a result of Y's notification, because doing so would constitute a refusal to do business in boycotted country X.

(vi) A, a U.S. company that manufactures office equipment, has been restricted from doing business in boycotting country Y because of its business dealings with boycotted country X. In an effort to have itself removed from Y's blacklist, A ceases its business in X.

A's action constitutes a refusal to do business in boycotted country X.

(vii) A, a U.S. computer company, does business in boycotting country Y. A decides to explore business opportunities in boycotted country X. After careful analysis of possible business opportunities in X, A decides, solely for business reasons, not to market its products in X.

A's decision not to proceed is not a refusal to do business, because it is not based on boycott considerations. A has no affirmative obligation to do business in X.

(viii) A, a U.S. oil company with operations in boycotting country Y, has regularly purchased equipment from U.S. petroleum equipment suppliers B, C, and D, none of whom is on the blacklist of Y. Because of its satisfactory relationship with B, C, and D, A has not dealt with other suppliers, including supplier E, who is blacklisted by Y.

A's failure affirmatively to seek or secure business with blacklisted supplier E is not a refusal to do business with E.

(ix) Same as (viii), except U.S. petroleum equipment supplier E, a company on boycotting country Y's blacklist, offers to supply U.S. oil company A with goods comparable to those provided by U.S. suppliers B, C, and D. A, because it has satisfactorily, established relationships with suppliers B, C, and D, does not accept supplier E's offer.

A's refusal of supplier E's offer is not a refusal to do business, because it is based solely on non-boycott considerations. A has no affirmative obligation to do business with E.

(x) A, a U.S. construction company, enters into a contract to build an office complex in boycotting country Y. A receives bids from B and C, U.S. companies that are equally qualified suppliers of electrical cable for the project. A knows that B is blacklisted by Y and that C is not. A accepts C's bid, in part because C is as qualified as the other potential supplier and in part because C is not blacklisted.

A's decision to select supplier C instead of blacklisted supplier B is a refusal to do business, because the boycott was one of the reasons for A's decision.

(xi) A, a U.S. general contractor, has been retained to construct a highway in boycotting country Y. A circulates an invitation to bid to U.S. manufacturers of road-building equipment. One of the conditions listed in the invitation to bid is that, in order for A to obtain prompt service, suppliers will be required to maintain a supply of spare parts and a service facility in Y. A includes this condition solely for commercial reasons unrelated to the boycott. Because of this condition, however, those suppliers on Y's blacklist do not bid, since they would be unable to satisfy the parts and services requirements.

A's action is not a refusal to do business, because the contractual condition was included solely for legitimate business reasons and was not boycott-based.

(xii) Company A, a U.S. oil company, purchases drill bits from U.S. suppliers for export to boycotting country Y. In its purchase orders, A includes a provision requiring the supplier to make delivery to A's facilities in Y and providing that title to the goods does not pass until delivery has been made. As is customary under such an arrangement, the supplier bears all risks of loss, including loss from fire, theft, perils of the sea, and inability to clear customs, until title passes.

Insistence on such an arrangement does not constitute a refusal to do business, because this requirement is imposed on all suppliers whether they are blacklisted or not. (But see § 760.4 of this part on ''Evasion'').

(xiii) A, a U.S. engineering and construction company, contracts with a government agency in boycotting country Y to perform a variety of services in connection with the construction of a large industrial facility in Y. Pursuant to this contract, A analyzes the market of prospective suppliers, compiles a suggested bidders list, analyzes the bids received, and makes recommendations to the client. The client independently selects and awards the contract to supplier C for boycott reasons. All of A's services are performed without regard to Y's blacklist or any other boycott considerations, and are the type of services A provides clients in both boycotting and non-boycotting countries.

A's actions do not constitute a refusal to do business, because, in the provision of pre-award services, A has not excluded the other bidders and because A customarily provides such services to its clients.

(xiv) Same as (xiii), except that in compiling a list of prospective suppliers, A deletes suppliers he knows his client will refuse to select because they are blacklisted. A knows that including the names of blacklisted suppliers will neither enhance their chances of being selected nor provide his client with a useful service, the function for which he has been retained.

A's actions, which amount to furnishing a so-called ''whitelist'', constitute refusals to do business, because A's pre-award services have not been furnished without regard to boycott considerations.

(xv) A, a U.S. construction firm, provides its boycotting country client with a permissible list of prospective suppliers, B, C, D, and E. The client independently selects and awards the contract to C, for boycott reasons, and then requests A to advise C of his selection, negotiate the contract with C, arrange for the shipment, and inspect the goods upon arrival. A knows that C was chosen by the client for boycott reasons.

A's action in complying with his client's direction is a refusal to do business, because A's post-award actions carry out his client's boycott-based decision. (Note: Whether A's action comes within the unilateral selection exception depends upon factors discussed in § 760.3(d) of this part).

(xvi) Same as (xv), except that A is building the project on a turnkey basis and will retain title until completion. The client instructs A to contract only with C.

A's action in contracting with C constitutes a refusal to do business, because it is action that excludes blacklisted persons from the transaction for boycott reasons. (Note: Whether A's action comes within the

unilateral selection exception depends upon factors discussed in § 760.3(d) of this part).

(xvii) A, a U.S. exporter of machine tools, receives an order for drill presses from boycotting country Y. The cover letter from Y's procurement official states that A was selected over other U.S. manufacturers in part because A is not on Y's blacklist.

A's action in filling this order is not a refusal to do business, because A has not excluded anyone from the transaction.

(xviii) A, a U.S. engineering firm under contract to construct a dam in boycotting country Y, compiles, on a non-boycott basis, a list of potential heavy equipment suppliers, including information on their qualifications and prior experience. A then solicits bids from the top three firms on its list-B, C, and D-because they are the best qualified.

None of them happens to be blacklisted. A does not solicit bids from E, F, or G, the next three firms on the list, one of whom is on Y's blacklist.

A's decision to solicit bids from only B, C, and D, is not a refusal to do business with any person, because the solicited bidders were not selected for boycott reasons.

(xix) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted. B meets all other conditions of the letter of credit but refuses to certify as to his blacklist status. A refuses to pay B on the letter of credit solely because B refuses to certify as to his blacklist status.

A has refused to do business with another person pursuant to a boycott requirement or request.

(xx) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to provide a certification from the steamship line that the vessel carrying the goods is not blacklisted. B seeks payment from A and meets all other conditions of the letter of credit but refuses or is unable to provide the certification from the steamship line about the vessel's blacklist status. A refuses to pay B on the letter of credit solely because B cannot or will not provide the certification.

A has required another person to refuse to do business pursuant to a boycott requirement or request by insisting that B obtain such a certificate. (Either A or B may request an amendment to the letter of credit substituting a certificate of vessel eligibility, however. See Example (xxi) below).

(xxi) U.S. bank A receives a letter of credit from a bank in boycotting country Y in favor of U.S. beneficiary B. The letter of credit requires B to provide a certification from the steamship line that the vessel carrying the goods is eligible to enter the ports in Y. B seeks payment from A and meets all other conditions of the letter of credit. A refuses to pay B solely because B cannot or will not provide the certification.

A has neither refused, nor required another person to refuse, to do business with another person pursuant to a boycott requirement or request because the vessel eligibility certificate is a common requirement for non-boycott purposes.

(xxii) U.S. bank A confirms a letter of credit in favor of U.S. beneficiary B. The letter of credit contains a requirement that B certify that he is not blacklisted. B presents the letter of credit to U.S. bank C, a correspondent of bank A. B does not present the certificate of blacklist status to bank C, but, in accordance with these rules, bank C pays B, and then presents the letter of credit and documentation to bank A for reimbursement. Bank A refuses to reimburse bank C because the blacklist certification of B is not included in the documentation.

A has required another person to refuse to do business with a person pursuant to a boycott requirement or request by insisting that C obtain the certificate from B.

(xxiii) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted. B fails to provide such a certification when he presents the documents to A for payment. A notifies B that the certification has not been submitted.

A has not refused to do business with another person pursuant to a boycott requirement by notifying B of the omitted certificate. A may not refuse to pay on the letter of credit, however, if B states that B will not provide such a certificate.

(xxiv) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B from the issuing bank for the purpose of confirmation, negotiation or payment. The letter of credit requires B to certify that he is not blacklisted. A notifies B that it is contrary to the policy of A to handle letters of credit containing this condition and that, unless an amendment is obtained deleting this condition, A will not implement the letter of credit.

A has not refused to do business with another person pursuant to a boycott requirement, because A has indicated its policy against implementing the letter of credit containing the term without regard to B's ability or willingness to furnish such a certificate.

AGREEMENTS TO REFUSE TO DO BUSINESS

(i) A, a U.S. construction firm, is retained by an agency of boycotting country Y to build a primary school. The proposed contract contains a clause stating that A ''may not use goods or services in the project that are produced or provided by any person restricted from having a business relationship with country Y by reason of Y's boycott against country X''.

A's action in entering into such a contract would constitute an agreement to refuse to

do business, because it is an agreement to exclude blacklisted persons from the transaction. A may, however, renegotiate this clause so that it does not contain terms prohibited by this part.

(ii) A, a U.S. manufacturer of commercial refrigerators and freezers, receives an invitation to bid from boycotting country Y. The tender states that the bidder must agree not to deal with companies on Y's blacklist. A does not know which companies are on the blacklist, and A's bid makes no commitment regarding not dealing with certain companies. A's bid in response to the tender is accepted.

At the point when A's bid is accepted, A has agreed to refuse to do business with blacklisted persons, because the terms of Y's tender are part of the contract between Y and A.

(iii) A, a U.S. construction firm, is offered a contract to perform engineering and construction services in connection with a project located in boycotting country Y. The contract contains a clause stating that, in the event of a contract dispute, the laws of Y will apply.

A may enter into the contract. Agreement that the laws of boycotting country Y will control in resolving a contract dispute is not an agreement to refuse to do business.

(iv) Same as (iii), except that the contract contains a clause that A and its employees will comply with the laws of boycotting country Y. A knows that Y has a number of boycott laws.

Such an agreement is not, in and of itself, an agreement to refuse to do business. If, however, A subsequently refuses to do business with someone because of the laws of Y, A's action would be a refusal to do business.

(v) Same as (iv), except that the contract contains a clause that A and its employees will comply with the laws of boycotting country Y, ''including boycott laws''.

A's agreeing, without qualification, to comply with local boycott laws constitutes an agreement to refuse to do business.

(vi) Same as (v), except that A inserts a proviso ''except insofar as Y's laws conflict with U.S. laws'', or words to that effect.

Such an agreement is not an agreement to refuse to do business.

(vii) A, a U.S. general contractor, is retained to construct a pipeline in boycotting country Y. A provision in the proposed contract stipulates that in purchasing equipment, supplies, and services A must give preference to companies located in host country Y.

A may agree to this contract provision. Agreeing to a ''buy local'' contract provision is not an agreement to refuse to do business, because A's agreement is not made for boycott reasons.

(viii) A, a U.S. exporter planning to sell retail goods to customers in boycotting country Y, enters into a contract to purchase goods wholesale from B, a U.S. appliance manufacturer. A's contract with B includes a provision stipulating that B may not use components or services of blacklisted companies in the manufacture of its appliances.

A's contract constitutes a refusal to do business, because it would require another person, B, to refuse to do business with other persons for boycott reasons. B may not agree to such a contract, because it would be agreeing to refuse to do business with other persons for boycott reasons.

(ix) Same as (viii), except that A and B reach an implicit understanding that B will not use components or services of blacklisted companies in the manufacture of goods to be exported to Y. In the manufacture of appliances to be sold to A for export to non-boycotting countries, B uses components manufactured by blacklisted companies.

The actions of both A and B constitute agreement to refuse to do business. The agreement is implied by their pattern of conduct.

(x) Boycotting country Y orders goods from U.S. company B. Y opens a letter of credit with foreign bank C in favor of B. The letter of credit specifies that negotiation of the letter of credit with a bank that appears on the country X boycott blacklist is prohibited. U.S. bank A, C's correspondent bank, advises B of the letter of credit. B presents documentation to bank A seeking to be paid on the letter of credit, without amending or otherwise taking exception to the boycott condition.

B has agreed to refuse to do business with blacklisted banks because, by presenting the letter of credit for payment, B has accepted all of its terms and conditions.

(b) *Discriminatory actions.*

PROHIBITION AGAINST TAKING DISCRIMINATORY ACTIONS

(1) No United States person may:

(i) Refuse to employ or otherwise discriminate against any individual who is a United States person on the basis of race, religion, sex, or national origin;

(ii) Discriminate against any corporation or other organization which is a United States person on the basis of the race, religion, sex, or national origin of any owner, officer, director, or employee of such corporation or organization;

(iii) Knowingly agree to take any of the actions described in paragraph (b)(1)(i) and (ii) of this section; or

(iv) Require or knowingly agree to require any other person to take any of the actions described in paragraph (b)(1)(i) and (ii) of this section.

(2) This prohibition shall apply whether the discriminatory action is taken by a United States person on its own or in response to an agreement with, request from, or requirement of a boycotting country. This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

(3) The section does not supersede or limit the operation of the civil rights laws of the United States.

EXAMPLES OF DISCRIMINATORY ACTIONS

The following examples are intended to give guidance in determining the circumstances in which the taking of particular discriminatory actions is prohibited. They are illustrative, not comprehensive.

(i) U.S. construction company A is awarded a contract to build an office complex in boycotting country Y. A, believing that employees of a particular religion will not be permitted to work in Y because of Y's boycott against country X, excludes U.S. persons of that religion from consideration for employment on the project.

A's refusal to consider qualified U.S. persons of a particular religion for work on the project in Y constitutes a prohibited boycott-based discriminatory action against U.S. persons on the basis of religion.

(ii) Same as (i), except that a clause in the contract provides that ''no persons of country X origin are to work on this project.''

A's agreement constitutes a prohibited boycott-based agreement to discriminate against U.S. persons, among others, on the basis of national origin.

(iii) Same as (i), except that a clause in the contract provides that ''no persons who are citizens, residents, or nationals of country X are to work on this project.''

A's agreement does not constitute a boycott-based agreement to discriminate against U.S. persons on the basis of race, religion, sex, or national origin, because the clause requires exclusion on the basis of citizenship, residency, and nationality only.

(iv) U.S. construction company A enters into a contract to build a school in boycotting country Y. Y's representative orally tells A that no persons of country X origin are to work on the project.

A may not comply, because to do so would constitute discrimination on the basis of national origin.

It makes no difference that A learned of Y's requirement orally. It makes no difference how A learns about Y's discriminatory requirement.

(v) Boycotting country Y tenders an invitation to bid on a construction project in Y. The tender requires that the successful bidder's personnel will be interviewed and that persons of a particular religious faith will not be permitted to work on the project. Y's requirement is based on its boycott of country X, the majority of whose citizens are of that particular faith.

Agreement to this provision in the tender document by a U.S. person would constitute a prohibited agreement to engage in boycott-based discrimination against U.S. persons of a particular religion.

(vi) Same as (v), except that the tender specifies that ''women will not be allowed to work on this project.''

Agreement to this provision in the tender by a U.S. person does not constitute a prohibited agreement to engage in boycott-based discrimination, because the restriction against employment of women is not boycott-based. Such an agreement may, however, constitute a violation of U.S. civil rights laws.

(vii) A is a U.S. investment banking firm. As a condition of participating in an underwriting of securities to be issued by boycotting country Y, A is required to exclude investment banks owned by persons of a particular faith from participation in the underwriting. Y's requirement is based on its boycott of country X, the majority of whose citizens are of that particular faith.

A's agreement to such a provision constitutes a prohibited agreement to engage in boycott-based discrimination against U.S. persons on the basis of religion. Further, if A requires others to agree to such a condition, A would be acting to require another person to engage in such discrimination.

(viii) U.S. company A is asked by boycotting country Y to certify that A will not use a six-pointed star on the packaging of its products to be imported into Y. The requirement is part of the enforcement effort by Y of its boycott against country X.

A may not so certify. The six-pointed star is a religious symbol, and the certification by A that it will not use such a symbol constitutes a statement that A will not ship products made or handled by persons of that religion.

(ix) Same as (viii), except that A is asked to certify that no symbol of boycotted country X will appear on the packaging of its products imported into Y.

Such a certification conveys no statement about any person's religion and, thus, does not come within this prohibition.

(c) *Furnishing information about race, religion, sex, or national origin.*

PROHIBITION AGAINST FURNISHING INFORMATION ABOUT RACE, RELIGION, SEX, OR NATIONAL ORIGIN

(1) No United States person may:

(i) Furnish information about the race, religion, sex, or national origin of any United States person;

(ii) Furnish information about the race, religion, sex, or national origin of any owner, officer, director, or employee of any corporation or other organization which is a United States person;

(iii) Knowingly agree to furnish information about the race, religion, sex, or national origin of any United States person; or

(iv) Knowingly agree to furnish information about the race, religion, sex, or national origin of any owner, officer, director, or employee of any corporation or other organization which is a United States person.

(2) This prohibition shall apply whether the information is specifically requested or is offered voluntarily by the United States person. It shall also apply whether the information requested or volunteered is stated in the affirmative or the negative.

(3) Information about the place of birth of or the nationality of the parents of a United States person comes within this prohibition, as does information in the form of code words or symbols which could identify a United States person's race, religion, sex, or national origin.

(4) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

EXAMPLES OF THE PROHIBITION AGAINST FURNISHING DISCRIMINATORY INFORMATION

The following examples are intended to give guidance in determining the circumstances in which the furnishing of discriminatory information is prohibited. They are illustrative, not comprehensive.

(i) U.S. company A receives a boycott questionnaire from boycotting country Y asking whether it is owned or controlled by persons of a particular faith, whether it has any persons on its board of directors who are of that faith, and what the national origin of its president is. The information is sought for purposes of enforcing Y's boycott against country X, and A knows or has reason to know that the information is sought for that reason.

A may not answer the questionnaire, because A would be furnishing information about the religion and national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(ii) U.S. company A, located in the United States, is asked by boycotting country Y to certify that A has no persons of a particular national origin on its board of directors. A knows that Y's purpose in asking for the certification is to enforce its boycott against country X.

A may not make such a certification, because A would be furnishing information about the national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(iii) U.S. company A believes that boycotting country Y will select A's bid over those of other bidders if A volunteers that it has no shareholders, officers, or directors of a particular national origin. A's belief is based on its knowledge that Y generally refuses, as part of its boycott against country X, to do business with companies owned, controlled, or managed by persons of this particular national origin.

A may not volunteer this information, because it would be furnishing information about the national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(iv) U.S. company A has a contract to construct an airport in boycotting country Y. Before A begins work, A is asked by Y to identify the national origin of its employees who will work on the site. A knows or has reason to know that Y is seeking this information in order to enforce its boycott against X.

A may not furnish this information, because A would be providing information about the national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(v) Same as (iv), except that in order to assemble its work force on site in Y, A sends visa forms to its employees and asks that the forms be returned to A for transmittal to Y's consulate or embassy. A, itself, furnishes no information about its employees, but merely transmits the visa forms back and forth.

In performing the ministerial function of transmitting visa forms, A is not furnishing information about any U.S. person's race, religion, sex, or national origin.

(vi) Same as (iv), except that A is asked by Y to certify that none of its employees in Y

will be women, because Y's laws prohibit women from working.

Such a certification does not constitute a prohibited furnishing of information about any U.S. person's sex, since the reason the information is sought has nothing to do with Y's boycott of X.

(vii) U.S. company A is considering establishing an office in boycotting country Y. In order to register to do business in Y, A is asked to furnish information concerning the nationalities of its corporate officers and board of directors.

A may furnish the information about the nationalities of its officers and directors, because in so doing A would not be furnishing information about the race, religion, sex, or national origin of any U.S. person.

(d) *Furnishing information about business relationships with boycotted countries or blacklisted persons.*

PROHIBITION AGAINST FURNISHING INFORMATION ABOUT BUSINESS RELATIONSHIPS WITH BOYCOTTED COUNTRIES OR BLACKLISTED PERSONS

(1) No United States person may furnish or knowingly agree to furnish information concerning his or any other person's past, present or proposed business relationships:

(i) With or in a boycotted country;

(ii) With any business concern organized under the laws of a boycotted country;

(iii) With any national or resident of a boycotted country; or

(iv) With any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

(2) This prohibition shall apply:

(i) Whether the information pertains to a business relationship involving a sale, purchase, or supply transaction; legal or commercial representation; shipping or other transportation transaction; insurance; investment; or any other type of business transaction or relationship; and

(ii) Whether the information is directly or indirectly requested or is furnished on the initiative of the United States person.

(3) This prohibition does not apply to the furnishing of normal business information in a commercial context. Normal business information may relate to factors such as financial fitness, technical competence, or professional experience, and may be found in documents normally available to the public such as annual reports, disclosure statements concerning securities, catalogs, promotional brochures, and trade and business handbooks. Such information may also appear in specifications or statements of experience and qualifications.

(4) Normal business information furnished in a commercial context does not cease to be such simply because the party soliciting the information may be a boycotting country or a national or resident thereof. If the information is of a type which is generally sought for a legitimate business purpose (such as determining financial fitness, technical competence, or professional experience), the information may be furnished even if the information could be used, or without the knowledge of the person supplying the information is intended to be used, for boycott purposes. However, no information about business relationships with blacklisted persons or boycotted countries, their residents or nationals, may be furnished in response to a boycott request, even if the information is publicly available. Requests for such information from a boycott office will be presumed to be boycott-based.

(5) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

EXAMPLES CONCERNING FURNISHING OF INFORMATION

The following examples are intended to give guidance in determining the circumstances in which the furnishing of information is prohibited. They are illustrative, not comprehensive.

(i) U.S. contractor A is considering bidding for a contract to build a dam in boycotting country Y. The invitation to bid, which appears in a trade journal, specifies that each bidder must state that he does not have any offices in boycotted country X. A knows or has reason to know that the requirement is boycott-based.

A may not make this statement, because it constitutes information about A's business relationships with X.

(ii) U.S. contractor A is considering bidding for a contract to construct a school in

boycotting country Y. Each bidder is required to submit copies of its annual report with its bid. Since A's annual report describes A's worldwide operations, including the countries in which it does business, it necessarily discloses whether A has business relations with boycotted country X. A has no reason to know that its report is being sought for boycott purposes.

A, in furnishing its annual report, is supplying ordinary business information in a commercial context.

(iii) Same as (ii), except that accompanying the invitation to bid is a questionnaire from country Y's boycott office asking each bidder to supply a copy of its annual report.

A may not furnish the annual report despite its public availability, because it would be furnishing information in response to a questionnaire from a boycott office.

(iv) U.S. company A is on boycotting country Y's blacklist. For reasons unrelated to the boycott, A terminates its business relationships with boycotted country X. In exploring other marketing areas, A determines that boycotting country Y offers great potential. A is requested to complete a questionnaire from a central boycott office which inquires about A's business relations with X.

A may not furnish the information, because it is information about A's business relationships with a boycotted country.

(v) U.S. exporter A is seeking to sell its products to boycotting country Y. A is informed by Y that, as a condition of sale, A must certify that it has no salesmen in boycotted country X. A knows or has reason to know that the condition is boycott-based.

A may not furnish the certification, because it is information about A's business relationships in a boycotted country.

(vi) U.S. engineering company A receives an invitation to bid on the construction of a dam in boycotting country Y. As a condition of the bid, A is asked to certify that it does not have any offices in boycotted country X. A is also asked to furnish plans for other dams it has designed.

A may not certify that it has no office in X, because this is information about its business relationships in a boycotted country. A may submit plans for other dams it has designed, because this is furnishing normal business information, in a commercial context, relating to A's technical competence and professional experience.

(vii) U.S. company A, in seeking to expand its exports to boycotting country Y, sends a sales representative to Y for a one week trip. During a meeting in Y with trade association representatives, A's representative desires to explain that neither A nor any companies with which A deals has any business relationship with boycotted country X. The purpose of supplying such information is to ensure that A does not get blacklisted.

A's representative may not volunteer this information even though A, for reasons unrelated to the boycott, does not deal with X, because A's representative would be volunteering information about A's business relationships with X for boycott reasons.

(viii) U.S. company A is asked by boycotting country Y to furnish information concerning its business relationships with boycotted country X. A, knowing that Y is seeking the information for boycott purposes, refuses to furnish the information asked for directly, but proposes to respond by supplying a copy of its annual report which lists the countries with which A is presently doing business. A does not happen to be doing business with X.

A may not respond to Y's request by supplying its annual report, because A knows that it would be responding to a boycott-based request for information about its business relationships with X.

(ix) U.S. company A receives a letter from a central boycott office asking A to ''clarify'' A's operations in boycotted country X. A intends to continue its operations in X, but fears that not responding to the request will result in its being placed on boycotting country Y's blacklist. A knows or has reason to know that the information is sought for boycott reasons.

A may not respond to this request, because the information concerns its business relationships with a boycotted country.

(x) U.S. company A, in the course of negotiating a sale of its goods to a buyer in boycotting country Y, is asked to certify that its supplier is not on Y's blacklist.

A may not furnish the information about its supplier's blacklist status, because this is information about A's business relationships with another person who is believed to be restricted from having any business relationship with or in a boycotting country.

(xi) U.S. company A has a manufacturing plant in boycotted country X and is on boycotting country Y's blacklist. A is seeking to establish operations in Y, while expanding its operations in X. A applies to Y to be removed from Y's blacklist. A is asked, in response, to indicate whether it has manufacturing facilities in X.

A may not supply the requested information, because A would be furnishing information about its business relationships in a boycotted country.

(xii) U.S. bank A plans to open a branch office in boycotting country Y. In order to do so, A is required to furnish certain information about its business operations, including the location of its other branch offices. Such information is normally sought in other countries where A has opened a branch office, and A does not have reason to know that Y is seeking the information for boycott reasons.

A may furnish this information, even though in furnishing it A would disclose information about its business relationships in a boycotted country, because it is being furnished in a normal business context and A does not have reason to know that it is sought for boycott reasons.

(xiii) U.S. architectural firm A responds to an invitation to submit designs for an office complex in boycotting country Y. The invitation states that all bidders must include information concerning similar types of buildings they have designed. A has not designed such buildings in boycotted country X. Clients frequently seek information of this type before engaging an architect.

A may furnish this information, because this is furnishing normal business information, in a commercial context, relating to A's technical competence and professional experience.

(xiv) U.S. oil company A distributes to potential customers promotional brochures and catalogs which give background information on A's past projects. A does not have business dealings with boycotted country X. The brochures, which are identical to those which A uses throughout the world, list those countries in which A does or has done business. In soliciting potential customers in boycotting country Y, A desires to distribute copies of its brochures.

A may do so, because this is furnishing normal business information, in a commercial context, relating to professional experience.

(xv) U.S. company A is interested in doing business with boycotting country Y. A wants to ask Y's Ministry of Trade whether, and if so why, A is on Y's blacklist or is otherwise restricted for boycott reasons from doing business with Y.

A may make this limited inquiry, because it does not constitute furnishing information.

(xvi) U.S. company A is asked by boycotting country Y to certify that it is not owned by subjects or nationals of boycotted country X and that it is not resident in boycotted country X.

A may not furnish the certification, because it is information about A's business relationships with or in a boycotted country, or with nationals of a boycotted country.

(xvii) U.S. company A, a manufacturer of certain patented products, desires to register its patents in boycotting country Y. A receives a power of attorney form required to register its patents. The form contains a question regarding A's business relationships with or in boycotted country X. A has no business relationships with X and knows or has reason to know that the information is sought for boycott reasons.

A may not answer the question, because A would be furnishing information about its business relationships with or in a boycotted country.

(xviii) U.S. company A is asked by boycotting country Y to certify that it is not the mother company, sister company, subsidiary, or branch of any blacklisted company, and that it is not in any way affiliated with any blacklisted company.

A may not furnish the certification, because it is information about whether A has a business relationship with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country. This interpretation became effective on June 22, 1978.

(e) *Information concerning association with charitable and fraternal organizations.*

PROHIBITION AGAINST FURNISHING INFORMATION ABOUT ASSOCIATIONS WITH CHARITABLE AND FRATERNAL ORGANIZATIONS

(1) No United States person may furnish or knowingly agree to furnish information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports a boycotted country.

(2) This prohibition shall apply whether:

(i) The information concerns association with or involvement in any charitable or fraternal organization which (a) has, as one of its stated purposes, the support of a boycotted country through financial contributions or other means, or (b) undertakes, as a major organizational activity, to offer financial or other support to a boycotted country;

(ii) The information is directly or indirectly requested or is furnished on the initiative of the United States person; or

(iii) The information requested or volunteered concerns membership in, financial contributions to, or any other type of association with or involvement in the activities of such charitable or fraternal organization.

(3) This prohibition does not prohibit the furnishing of normal business information in a commercial context as defined in paragraph (d) of this section.

(4) This prohibition, like all others, applies only with respect to a United

States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

EXAMPLES OF PROHIBITION AGAINST FURNISHING INFORMATION ABOUT ASSOCIATIONS WITH CHARITABLE OR FRATERNAL ORGANIZATIONS

The following examples are intended to give guidance in determining the circumstances in which the furnishing of information concerning associations with charitable or fraternal organizations is prohibited. They are illustrative, not comprehensive.

(i) U.S. engineering firm A receives an invitation to bid from boycotting country Y. The invitation includes a request to supply information concerning any association which A's officers have with charitable organization B, an organization which is known by A to contribute financial support to boycotted country X. A knows or has reason to know that the information is sought for boycott reasons.

A may not furnish the information.

(ii) U.S. construction company A, in an effort to establish business dealings with boycotting country Y, proposes to furnish information to Y showing that no members of its board of directors are in any way associated with charitable organizations which support boycotted country X. A's purpose is to avoid any possibility of its being blacklisted by Y.

A may not furnish the information, because A's purpose in doing so is boycott-based. It makes no difference that no specific request for the information has been made by Y.

(iii) A, a citizen of the United States, is applying for a teaching position in a school in boycotting country Y. In connection with his application, A furnishes a resume which happens to disclose his affiliation with charitable organizations. A does so completely without reference to Y's boycott and without knowledge of any boycott requirement of Y that pertains to A's application for employment.

The furnishing of a resume by A is not a boycott-related furnishing of information about his association with charitable organizations which support boycotted country X.

(f) *Letters of credit.*

PROHIBITION AGAINST IMPLEMENTING LETTERS OF CREDIT CONTAINING PROHIBITED CONDITIONS OR REQUIREMENTS

(1) No United States person may pay, honor, confirm, or otherwise implement a letter of credit which contains a condition or requirement compliance with which is prohibited by this part, nor shall any United States person, as a result of the application of this section, be obligated to pay, honor or otherwise implement such a letter of credit.

(2) For purposes of this section, ''implementing'' a letter of credit includes:

(i) Issuing or opening a letter of credit at the request of a customer;

(ii) Honoring, by accepting as being a valid instrument of credit, any letter of credit;

(iii) Paying, under a letter of credit, a draft or other demand for payment by the beneficiary;

(iv) Confirming a letter of credit by agreeing to be responsible for payment to the beneficiary in response to a request by the issuer;

(v) Negotiating a letter of credit by voluntarily purchasing a draft from a beneficiary and presenting such draft for reimbursement to the issuer or the confirmer of the letter of credit; and

(vi) Taking any other action to implement a letter of credit.

(3) In the standard international letter of credit transaction facilitating payment for the export of goods from the United States, a bank in a foreign country may be requested by its customer to issue a revocable or irrevocable letter of credit in favor of the United States exporter. The customer usually requires, and the letter of credit provides, that the issuing (or a confirming) bank will make payment to the beneficiary against the bank's receipt of the documentation specified in the letter of credit. Such documentation usually includes commercial and consular invoices, a bill of lading, and evidence of insurance, but it may also include other required certifications or documentary assurances such as the origin of the goods and information relating to the carrier or insurer of the shipment.

Banks usually will not accept drafts for payment unless the documents submitted therewith comply with the terms and conditions of the letter of credit.

(4) A United States person is not prohibited under this section from advising a beneficiary of the existence of a letter of credit in his favor, or from taking ministerial actions to dispose of

a letter of credit which it is prohibited from implementing.

(5) Compliance with this section shall provide an absolute defense in any action brought to compel payment of, honoring of, or other implementation of a letter of credit, or for damages resulting from failure to pay or otherwise honor or implement the letter of credit. This section shall not otherwise relieve any person from any obligations or other liabilities he may incur under other laws or regulations, except as may be explicitly provided in this section.

LETTERS OF CREDIT TO WHICH THIS SECTION APPLIES

(6) This prohibition, like all others, applies only with respect to a United States person's activities taken with intent to comply with, further, or support an unsanctioned foreign boycott. In addition, it applies only when the transaction to which the letter of credit applies is in United States commerce and the beneficiary is a United States person.

IMPLEMENTATION OF LETTERS OF CREDIT IN THE UNITED STATES

(7) A letter of credit implemented in the United States by a United States person located in the United States, including a permanent United States establishment of a foreign bank, will be presumed to apply to a transaction in United States commerce and to be in favor of a United States beneficiary where the letter of credit specifies a United States address for the beneficiary. These presumptions may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is not a United States person or that the underlying transaction is not in United States commerce.

(8) Where a letter of credit implemented in the United States by a United States person located in the United States does not specify a United States address for the beneficiary, the beneficiary will be presumed to be other than a United States person. This presumption may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is a United States person despite the foreign address.

IMPLEMENTATION OF LETTERS OF CREDIT OUTSIDE THE UNITED STATES

(9) A letter of credit implemented outside the United States by a United States person located outside the United States will be presumed to apply to a transaction in United States commerce and to be in favor of a United States beneficiary where the letter of credit specifies a United States address for the beneficiary and calls for documents indicating shipment from the United States or otherwise indicating that the goods are of United States origin. These presumptions may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is not a United States person or that the underlying transaction is not in United States commerce.

(10) Where a letter of credit implemented outside the United States by a United States person located outside the United States does not specify a United States address for the beneficiary, the beneficiary will be presumed to be other than a United States person. In addition, where such a letter of credit does not call for documents indicating shipment from the United States or otherwise indicating that the goods are of United States origin, the transaction to which it applies will be presumed to be outside United States commerce. The presumption that the beneficiary is other than a United States person may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is a United States person. The presumption that the transaction to which the letter of credit applies is outside United States commerce may be rebutted by facts which could reasonably lead the bank to conclude that the underlying transaction is in United States commerce.

EXAMPLES OF THE PROHIBITION AGAINST IMPLEMENTING LETTERS OF CREDIT

The following examples are intended to give guidance in determining the circumstances in which this section applies to the implementation of a letter of credit and in which such implementation is prohibited. They are illustrative, not comprehensive.

IMPLEMENTATION OF LETTERS OF CREDIT IN UNITED STATES COMMERCE

(i) A, a U.S. bank located in the United States, opens a letter of credit in the United States in favor of B, a foreign company located outside the United States. The letter of credit specifies a non-U.S. address for the beneficiary.

The beneficiary is presumed to be other than a U.S. person, because it does not have a U.S. address. The presumption may be rebutted by facts showing that A could reasonably conclude that the beneficiary is a U.S. person despite the foreign address.

(ii) A, a branch of a foreign bank located in the United States, opens a letter of credit in favor of B, a foreign company located outside the United States. The letter of credit specifies a non-U.S. address for the beneficiary.

The beneficiary is presumed to be other than a U.S.person, because it does not have a U.S. address. The presumption may be rebutted by facts showing that A could reasonably conclude that the beneficiary is a U.S. person despite the foreign address.

(iii) A, a U.S. bank branch located outside the United States, opens a letter of credit in favor of B, a person with a U.S. address. The letter of credit calls for documents indicating shipment of goods from the United States.

The letter of credit is presumed to apply to a transaction in U.S. commerce and to be in favor of a U.S. beneficiary because the letter of credit specifies a U.S. address for the beneficiary and calls for documents indicating that the goods will be shipped from the United States. These presumptions may be rebutted by facts showing that A could reasonably conclude that the beneficiary is not a U.S. person or that the underlying transaction is not in U.S. commerce.

(iv) A, a U.S. bank branch located outside the United States, opens a letter of credit which specifies a beneficiary, B, with an address outside the United States and calls for documents indicating that the goods are of U.S.-origin. A knows or has reason to know that although B has an address outside the United States, B is a U.S. person.

The letter of credit is presumed to apply to a transaction in U.S. commerce, because the letter of credit calls for shipment of U.S.-origin goods. In addition, the letter of credit is presumed to be in favor of a beneficiary who is a U.S. person, because A knows or has reason to know that the beneficiary is a U.S. person despite the foreign address.

(v) A, a U.S. bank branch located outside the United States, opens a letter of credit which specifies a beneficiary with a U.S. address. The letter of credit calls for documents indicating shipment of foreign-origin goods.

The letter of credit is presumed to be in favor of a U.S. beneficiary but to apply to a transaction outside U.S. commerce, because it calls for documents indicating shipment of foreign-origin goods. The presumption of non-U.S. commerce may be rebutted by facts showing that A could reasonably conclude that the underlying transaction involves shipment of U.S.-origin goods or goods from the U.S.

PROHIBITION AGAINST IMPLEMENTING LETTERS OF CREDIT

(i) Boycotting country Y orders goods from U.S. company B. Y opens a letter of credit with foreign bank C in favor of B. The letter of credit specifies as a condition of payment that B certify that it does not do business with boycotted country X. Foreign bank C forwards the letter of credit it has opened to U.S. bank A for confirmation.

A may not confirm or otherwise implement this letter of credit, because it contains a condition with which a U.S. person may not comply.

(ii) Same as (i), except U.S. bank A desires to advise the beneficiary, U.S. company B, of the letter of credit.

A may do so, because advising the beneficiary of the letter of credit (including the term which prevents A from implementing it) is not implementation of the letter of credit.

(iii) Same as (i), except foreign bank C sends a telegram to U.S. bank A stating the major terms and conditions of the letter of credit. The telegram does not reflect the boycott provision. Subsequently, C mails to A documents setting forth the terms and conditions of the letter of credit, including the prohibited boycott condition.

A may not further implement the letter of credit after it receives the documents, because they reflect the prohibited boycott condition in the letter of credit. A may advise the beneficiary and C of the existence of the letter of credit (including the boycott term), and may perform any essentially ministerial acts necessary to dispose of the letter of credit.

(iv) Same as (iii), except that U.S. company B, based in part on information received from U.S. bank A, desires to obtain an amendment to the letter of credit which would eliminate or nullify the language in the letter of credit which prevents A from paying or otherwise implementing it.

Either company B or bank A may undertake, and the other may cooperate and assist in, this endeavor. A could then pay or otherwise implement the revised letter of credit, so long as the original prohibited language is of no force or effect.

(v) Boycotting country Y requests a foreign bank in Y to open a letter of credit to effect payment for goods to be shipped by U.S. supplier B, the beneficiary of the letter of credit. The letter of credit contains prohibited boycott clauses. The foreign bank

forwards a copy of the letter of credit to its branch office A, in the United States.

A may advise the beneficiary but may not implement the letter of credit, because it contains prohibited boycott conditions.

(vi) On November 1, 1977, boycotting country Y orders goods from U.S. company B. U.S. bank A is asked to implement, for the benefit of B, a letter of credit which contains a clause requiring documentation that the goods shipped are not of boycotted country X origin.

A may implement the letter of credit, but after June 21, 1978, may accept only a positive certificate of origin as satisfactory documentation. (See § 760.3(b) of this part on ''Import and Shipping Document Requirements.'')

(vii) Same as (vi), except that U.S. company B has a contract with Y to supply a certain quantity of goods each month over a two-year period. B's contract was entered into on May 15, 1977, and thus qualifies for grace period treatment until December 31, 1978. Each month, Y causes a letter of credit to be opened in favor of B in order to effect payment. Such letters of credit call for negative certificates of origin.

A may accept negative certificates of origin in fulfillment of the terms of the letter of credit through December 31, 1978, because the underlying contract is entitled to a grace period through that date. (See § 760.8 of this part on ''Grace Period.'')

(viii) B is a foreign bank located outside the United States. B maintains an account with U.S. bank A, located in the United States. A letter of credit issued by B in favor of a U.S. beneficiary provides that any negotiating bank may obtain reimbursement from A by certifying that all the terms and conditions of the letter of credit have been met and then drawing against B's account. B notifies A by cable of the issuance of a letter of credit and the existence of reimbursement authorization; A does not receive a copy of the letter of credit.

A may reimburse any negotiating bank, even when the underlying letter of credit contains a prohibited boycott condition, because A does not know or have reason to know that the letter of credit contains a prohibited boycott condition.

(ix) Same as (viii), except that foreign bank B forwards a copy of the letter of credit to U.S. bank A, which then becomes aware of the prohibited boycott clause.

A may not thereafter reimburse a negotiating bank or in any way further implement the letter of credit, because it knows of the prohibited boycott condition.

(x) Boycotting country Y orders goods from U.S. exporter B and requests a foreign bank in Y to open a letter of credit in favor of B to cover the cost. The letter of credit contains a prohibited boycott clause. The foreign bank asks U.S. bank A to advise and confirm the letter of credit. Through inadvertence, A does not notice the prohibited clause and confirms the letter of credit. A thereafter notices the clause and then refuses to honor B's draft against the letter of credit. B sues bank A for payment.

A has an absolute defense against the obligation to make payment under this letter of credit. (Note that paragraph (ix) of this section does not alter any other obligations or liabilities of the parties under appropriate law.)

(xi) [Reserved]

(xii) Boycotting country Y orders goods from U.S. company B. A letter of credit which contains a prohibited boycott clause is opened in favor of B by a foreign bank in Y. The foreign bank asks U.S. bank A to advise and confirm the letter of credit, which it forwards to A.

A may advise B that it has received the letter of credit (including the boycott term), but may not confirm the letter of credit with the prohibited clause.

(xiii) Same as (xii), except U.S. bank A fails to tell B that it cannot process the letter of credit. B requests payment.

A may not pay. If the prohibited language is eliminated or nullified as the result of renegotiation, A may then pay or otherwise implement the revised letter of credit.

(xiv) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted.

A may implement such a letter of credit, but it may not insist that the certification be furnished, because by so insisting it would be refusing to do business with a blacklisted person in compliance with a boycott.

(xv) A, a U.S. bank located in the U.S. opens a letter of credit in favor of U.S. beneficiary B for B's sale of goods to boycotting country Y. The letter of credit contains no boycott conditions, but A knows that Y customarily requires the seller of goods to certify that it has dealt with no blacklisted supplier. A, therefore, instructs B that it will not make payment under the letter of credit unless B makes such a certification.

A's action in requiring the certification from B constitutes action to require another person to refuse to do business with blacklisted persons.

(xvi) A, a U.S. bank located in the U.S., opens a letter of credit in favor of U.S. beneficiary B for B's sale of goods to boycotting country Y. The letter of credit contains no boycott conditions, but A has actual knowledge that B has agreed to supply a certification to Y that it has not dealt with blacklisted firms, as a condition of receiving the letter of credit in its favor.

A may not implement the letter of credit, because it knows that an implicit condition of the credit is a condition with which B may not legally comply.

(xvii) Boycotting country Y orders goods from U.S. company B. Y opens a letter of credit with foreign bank C in favor of B. The letter of credit includes the statement, ''Do not negotiate with blacklisted banks.'' C forwards the letter of credit it has opened to U.S. bank A for confirmation.

A may not confirm or otherwise implement this letter of credit, because it contains a condition with which a U.S. person may not comply.

§ 760.3 Exceptions to prohibitions.

(a) *Import requirements of a boycotting country.*

COMPLIANCE WITH IMPORT REQUIREMENTS OF A BOYCOTTING COUNTRY

(1) A United States person, in supplying goods or services to a boycotting country, or to a national or resident of a boycotting country, may comply or agree to comply with requirements of such boycotting country which prohibit the import of:

(i) Goods or services from the boycotted country;

(ii) Goods produced or services provided by any business concern organized under the laws of the boycotted country; or

(iii) Goods produced or services provided by nationals or residents of the boycotted country.

(2) A United States person may comply or agree to comply with such import requirements whether or not he has received a specific request to comply. By its terms, this exception applies only to transactions involving imports into a boycotting country. A United States person may not, under this exception, refuse on an across-the-board basis to do business with a boycotted country or a national or resident of a boycotted country.

(3) In taking action within the scope of this exception, a United States person is limited in the types of boycott-related information he can supply. (See § 760.2(d) of this part on ''Furnishing Information About Business Relationships with Boycotted Countries or Blacklisted Persons'' and paragraph (c) of this section on ''Import and Shipping Document Requirements.'')

EXAMPLES OF COMPLIANCE WITH IMPORT REQUIREMENTS OF A BOYCOTTING COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with the import requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) A, a U.S. manufacturer, receives an order from boycotting country Y for its products, country X is boycotted by country Y, and the import laws of Y prohibit the importation of goods produced or manufactured in X. In filling this type of order, A would usually include some component parts produced in X.

For the purpose of filling this order, A may substitute comparable component parts in place of parts produced in X, because the import laws of Y prohibit the importation of goods manufactured in X.

(ii) Same as (i), except that A's contract with Y expressly provides that in fulfilling the contract A ''may not include parts or components produced or manufactured in boycotted country X.''

A may agree to and comply with this contract provision, because Y prohibits the importation of goods from X. (NOTE: After June 21, 1978, A may not furnish negative certifications regarding the origin of components in response to import and shipping document requirements.)

(iii) A, a U.S. building contractor, is awarded a contract to construct a plant in boycotting country Y. A accepts bids on goods required under the contract, and the lowest bid is made by B, a business concern organized under the laws of X, a country boycotted by Y. Y prohibits the import of goods produced by companies organized under the laws of X.

For purposes of this contract, A may reject B's bid and accept another, because B's goods would be refused entry in to Y because of Y's boycott against X.

(iv) Same as (iii), except that A also rejects the low bid by B for work on a construction project in country M, a country not boycotted by Y.

This exception does not apply, because A's action is not taken in order to comply with Y's requirements prohibiting the import of products from boycotted country X.

(v) A, a U.S. management consulting firm, contracts to provide services to boycotting country Y. Y requests that A not employ residents or nationals of boycotted country X to provide those services.

A may agree, as a condition of the contract, not to have services furnished by nationals or residents of X, because importation of such services is prohibited by Y.

(vi) A, a U.S. company, is negotiating a contract to supply machine tools to boycotting country Y. Y insists that the contract

contain a provision whereby A agrees that none of the machine tools will be produced by any business concern owned by nationals of boycotted country X, even if the business concern is organized under the laws of a non-boycotted country.

A may not agree to this provision, because it is a restriction on the import of goods produced by business concerns owned by nationals of a boycotted country even if the business concerns themselves are organized under the laws of a non-boycotted country.

(b) *Shipment of goods to a boycotting country.*

COMPLIANCE WITH REQUIREMENTS REGARDING THE SHIPMENT OF GOODS TO A BOYCOTTING COUNTRY

(1) A United States person, in shipping goods to a boycotting country, may comply or agree to comply with requirements of that country which prohibit the shipment of goods:

(i) On a carrier of the boycotted country; or

(ii) By a route other than that prescribed by the boycotting country or the recipient of the shipment.

(2) A specific request that a United States person comply or agree to comply with requirements concerning the use of carriers of a boycotted country is not necessary if the United States person knows, or has reason to know, that the use of such carriers for shipping goods to the boycotting country is prohibited by requirements of the boycotting country. This exception applies whether a boycotting country or the purchaser of the shipment:

(i) Explicitly states that the shipment should not pass through a port of the boycotted country; or

(ii) Affirmatively describes a route of shipment that does not include a port in the boycotted country.

(3) For purposes of this exception, the term *carrier of a boycotted country* means a carrier which flies the flag of a boycotted country or which is owned, chartered, leased, or operated by a boycotted country or by nationals or residents of a boycotted country.

EXAMPLES OF COMPLIANCE WITH THE SHIPPING REQUIREMENTS OF A BOYCOTTING COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with import and shipping document requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) A is a U.S. exporter from whom boycotting country Y is importing goods. Y directs that the goods not pass through a port of boycotted country X.

A may comply with Y's shipping instructions, because they pertain to the route of shipment of goods being shipped to Y.

(ii) A, a U.S. fertilizer manufacturer, receives an order from boycotting country Y for fertilizer. Y specifies in the order that A may not ship the fertilizer on a carrier of boycotted country X.

A may comply with this request, because it pertains to the carrier of a boycotted country.

(iii) B, a resident of boycotting country Y, orders textile goods from A, a U.S. distributor, specifying that the shipment must not be made on a carrier owned or leased by nationals of boycotted country X and that the carrier must not pass through a port of country X enroute to Y.

A may comply or agree to comply with these requests, because they pertain to the shipment of goods to Y on a carrier of a boycotted country and the route such shipment will take.

(iv) Boycotting country Y orders goods from A, a U.S. retail merchant. The order specifies that the goods shipped by A ''may not be shipped on a carrier registered in or owned by boycotted country X.''

A may agree to this contract provision, because it pertains to the carrier of a boycotted country.

(v) Boycotting country Y orders goods from A, a U.S. pharmaceutical company, and requests that the shipment not pass through a port of country P, which is not a country boycotted by Y.

This exception does not apply in a non-boycotting situation. A may comply with the shipping instructions of Y, because in doing so he would not violate any prohibition of this part.

(c) *Import and shipping document requirements.*

COMPLIANCE WITH IMPORT AND SHIPPING DOCUMENT REQUIREMENTS OF A BOYCOTTING COUNTRY

(1) A United States person, in shipping goods to a boycotting country, may comply or agree to comply with import and shipping document requirements of that country, with respect to:

(i) The country or origin of the goods;

(ii) The name of the carrier;

(iii) The route of the shipment;

(iv) The name of the supplier of the shipment; and

(v) The name of the provider of other services.

(2) After June 21, 1978, all such information must be stated in positive, non-blacklisting, non-exclusionary terms except for information with respect to the names of carriers or routes of shipment, which may continue to be stated in negative terms in conjunction with shipments to a boycotting country, in order to comply with precautionary requirements protecting against war risks or confiscation. The purpose of this delayed effective date, which is provided by section 4A(a)(2)(B) of the Export Administration Act of 1969, as amended, is to allow time for persons to adjust their practices to the use of import and shipping documentation stated in positive rather than negative terms.

EXAMPLES OF COMPLIANCE WITH IMPORT AND SHIPPING DOCUMENT REQUIREMENTS

The following examples are intended to give guidance in determining the circumstances in which compliance with the import requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) Boycotting country Y contracts with A, a U.S. petroleum equipment manufacturer, for certain equipment. Y requires that goods being imported into Y must be accompanied by a certification that the goods being supplied did not originate in boycotted country X.

Until June 21, 1978, A may comply with such import requirements in the terms requested. After June 21, 1978, A may not supply such a certification in negative terms but may identify instead the country of origin of the goods in positive terms only.

(ii) Same as (i), except that Y requires that the shipping documentation accompanying the goods specify the country of origin of the goods.

A may furnish the information.

(iii) On February 1, 1978, A, a U.S. distributor, enters into a two-year contract with boycotting country Y to make monthly shipments of goods to Y. A clause in the contract requires that all shipments into the country must be accompanied by a certification that the goods did not originate in X, a country boycotted by Y.

A may supply such a negative certification until June 21, 1978. After that date, A may state the origin of the goods on the shipping or import documents in positive terms only.

(iv) A, a U.S. apparel manufacturer, has contracted to sell certain of its products to B, a national of boycotting country Y. The form that must be submitted to customs officials of Y requires the shipper to certify that the goods contained in the shipment have not been supplied by ''blacklisted'' persons.

Until June 21, 1978, A may furnish the information required in the terms requested. After June 21, 1978, A may not furnish the information in negative terms but may certify, in positive terms only, the name of the supplier of the goods.

(v) Same as (iv), except the customs form requires certification that the insurer and freight forwarder used are not ''blacklisted.''

Until June 21, 1978, A may furnish the information required in the terms requested. After June 21, 1978, A may not comply with the request but may supply a certification stating, in positive terms only, the names of the insurer and freight forwarder.

(vi) A, a U.S. petrochemical manufacturer, executes a sales contract with B, a resident of boycotting country Y. A provision of A's contract with B requires that the bill of lading and other shipping documents contain certifications that the goods have not been shipped on a ''blacklisted'' carrier.

Until June 21, 1978, A may furnish the information required in the terms requested. After June 21, 1978, A may not agree to supply a certification that the carrier is not ''blacklisted'' but may certify the name of the carrier in positive terms only.

(vii) Same as (vi), except that the contract requires certification that the goods will not be shipped on a carrier which flies the flag of, or is owned, chartered, leased, or operated by boycotted country X, or by nationals or residents of X.

Such a certification, which is a reasonable requirement to protect against war risks or confiscation, may be furnished at any time.

(viii) Same as (vi), except that the contract requires that the shipping documents certify the name of the carrier being used.

A may, at any time, supply or agree to supply the requested documentation regarding the name of the carrier, either in negative or positive terms.

(ix) Same as (vi), except that the contract requires a certification that the carrier will not call at a port in boycotted country X before making delivery in Y.

Such a certification, which is a reasonable requirement to protect against war risks or confiscation, may be furnished at any time.

(x) Same as (vi), except that the contract requires that the shipping documents indicate the name of the insurer and freight forwarder.

A may comply at any time, because the statement is not required to be made in negative or blacklisting terms.

(xi) A, a U.S. exporter, is negotiating a contract to sell bicycles to boycotting country Y. Y insists that A agree to certify that the goods will not be shipped on a vessel which has ever called at a port in boycotted country X.

As distinguished from a certification that goods will not be shipped on a vessel which will call enroute at a port of boycotted country X, such a certification is not a reasonable requirement to protect against war risks or confiscation, and, hence, may not be supplied.

(xii) Same as (xi), except that Y insists that A agree to certify that the goods will not be shipped on a carrier that is ineligible to enter Y's waters.

Such a certification, which is not a reasonable requirement to protect against war risks or confiscation may not be supplied.

(xiii) A, a U.S. exporter, sells some of its products to boycotting country Y. A foreign bank located in Y opens a letter of credit to pay for the goods. The letter of credit requires that A supply documentation certifying that ''the goods are not manufactured in boycotted country X.''

A may make the required certification until June 21, 1978, because import and shipping document requirements of a boycotting country may be reflected in letters of credit.

(d) *Compliance with unilateral selection.*

COMPLIANCE WITH UNILATERAL AND SPECIFIC SELECTION

(1) A United States person may comply or agree to comply in the normal course of business with the unilateral and specific selection by a boycotting country, a national of a boycotting country, or a resident of a boycotting country (including a United States person who is a bona fide resident of a boycotting country) of carriers, insurers, suppliers of services to be performed within the boycotting country, or specific goods, provided that with respect to services, it is necessary and customary that an insignificant part of the services be performed within the boycotting country, and with respect to goods, the items, in the normal course of business, are identifiable as to their source or origin at the time of their entry into the boycotting country by uniqueness of design or appearance or trademark, trade name, or other identification normally on the items themselves, including their packaging.

(2) This exception pertains to what is permissible for a United States person who is the recipient of a unilateral and specific selection of goods or services to be furnished by a third person. It does not pertain to whether the act of making such a selection is permitted; that question is covered, with respect to United States persons, in paragraph (g) of this section on ''Compliance with Local Law.'' Nor does it pertain to the United States person who is the recipient of an order to supply its own goods or services. Nothing in this part prohibits or restricts a United States person from filling an order himself, even if he is selected by the buyer on a boycott basis (e.g., because he is not blacklisted), so long as he does not himself take any action prohibited by this part.

UNILATERAL AND SPECIFIC CHARACTER OF THE SELECTION

(3) In order for this exception to apply, the selection with which a United States person wishes to comply must be unilateral and specific.

(4) A ''specific'' selection is one which is stated in the affirmative and which specifies a particular supplier of goods or services.

(5) A ''unilateral'' selection is one in which the discretion in making the selection is exercised by the boycotting country buyer. If the United States person who receives a unilateral selection has provided the buyer with any boycott-based assistance (including information for purposes of helping the buyer select someone on a boycott basis), then the buyer's selection is not unilateral, and compliance with that selection by a United States person does not come within this exception.

(6) The provision of so-called ''pre-selection'' or ''pre-award'' services, such as providing lists of qualified suppliers, subcontractors, or bidders, does not, in and of itself, destroy the unilateral character of a selection, provided such services are not boycott-based. Lists of qualified suppliers, for example, must not exclude anyone because he is blacklisted. Moreover, such services must be of the type customarily provided in similar transactions by the firm (or industry of which the firm is a part) as measured by the practice in non-boycotting as well as boycotting countries. If such services are not customarily provided in similar transactions or such services are provided in such a way as to exclude blacklisted

persons from participating in a transaction or diminish their opportunity for such participation, then the services may not be provided without destroying the unilateral character of any subsequent selection.

SELECTION TO BE MADE BY BOYCOTTING COUNTRY RESIDENT

(7) In order for this exception to be available, the unilateral and specific selection must have been made by a boycotting country, or by a national or resident of a boycotting country. Such a resident may be a United States person. For purposes of this exception, a United States person will be considered a resident of a boycotting country only if he is a bona fide resident. A United States person may be a bona fide resident of a boycotting country even if such person's residency is temporary.

(8) Factors that will be considered in determining whether a United States person is a bona fide resident of a boycotting country include:

(i) Physical presence in the country;

(ii) Whether residence is needed for legitimate business reasons;

(iii) Continuity of the residency;

(iv) Intent to maintain the residency;

(v) Prior residence in the country;

(vi) Size and nature of presence in the country;

(vii) Whether the person is registered to do business or incorporated in the country;

(viii) Whether the person has a valid work visa; and

(ix) Whether the person has a similar presence in both boycotting and non-boycotting foreign countries in connection with similar business activities.

NOTE TO PARAGRAPH (D)(8) OF THIS SECTION: No one of the factors is dispositive. All the circumstances will be examined closely to ascertain whether there is, in fact, a bona fide residency. Residency established solely for purposes of avoidance of the application of this part, unrelated to legitimate business needs, does not constitute bona fide residency.

(9) The boycotting country resident must be the one actually making the selection. If a selection is made by a non-resident agent, parent, subsidiary, affiliate, home office or branch office of a boycotting country resident, it is not a selection by a resident within the meaning of this exception.

(10) A selection made solely by a bona fide resident and merely transmitted by another person to a United States person for execution is a selection by a bona fide resident within the meaning of this exception.

DUTY OF INQUIRY

(11) If a United States person receives, from another person located in the United States, what may be a unilateral selection by a boycotting country customer, and knows or has reason to know that the selection is made for boycott reasons, he has a duty to inquire of the transmitting person to determine who actually made the selection. If he knows or has reason to know that the selection was made by other than a boycotting country, or a national or resident of a boycotting country, he may not comply. A course or pattern of conduct which a United States person recognizes or should recognize as consistent with boycott restrictions will create a duty to inquire.

(12) If the United States person does not know or have reason to know that the selection it receives is boycott-based, its compliance with such a selection does not offend any prohibition and this exception is not needed.

SELECTION OF SERVICES

(13) This exception applies only to compliance with selections of certain types of suppliers of services-carriers, insurers, and suppliers of services to be performed ''within the boycotting country.'' Services to be performed wholly within the United States or wholly within any country other than the boycotting country are not covered.

(14) For purposes of this part, services are to be performed ''within the boycotting country'' only if they are of a type which would customarily be performed by suppliers of those services within the country of the recipient of those services, and if the part of the services performed within the boycotting country is a necessary and not insignificant part of the total services performed.

(15) What is ''customary and necessary'' for these purposes depends on

the usual practice of the supplier of the services (or the industry of which he is a part) as measured by the practice in non-boycotting as well as boycotting countries, except where such practices are instituted to accommodate this part.

SELECTION OF GOODS

(16) This exception applies only to compliance with selections of certain types of goods—goods that, in the normal course of business, are identifiable as to their source or origin at the time of their entry into the boycotting country. The definition of ''specifically identifiable goods'' is the same under this section as it is in paragraph (g) of this section on ''Compliance with Local Law.''

(17) Goods ''specifically identifiable'' in the normal course of business are those items which at the time of their entry into a boycotting country are identifiable as to source or origin by uniqueness of design or appearance; or trademark, trade name, or other identification normally on the items themselves, including their packaging. Goods are ''specifically identifiable'' in the normal course of business if their source or origin is ascertainable by inspection of the items themselves, including their packaging, regardless of whether inspection takes place. Goods are not considered to be ''specifically identifiable'' in the normal course of business if a trademark, trade name, or other form of identification not normally present is added to the items themselves, including their packaging, to accommodate this part.

GENERAL

(18) If a unilateral selection meets the conditions described in paragraph (d) of this section, the United States person receiving the unilateral selection may comply or agree to comply, even if he knows or has reason to know that the selection was boycott-based. However, no United States person may comply or agree to comply with any unilateral selection if he knows or has reason to know that the purpose of the selection is to effect discrimination against any United States person on the basis of race, religion, sex, or national origin.

EXAMPLES OF COMPLIANCE WITH A UNILATERAL SELECTION

The following examples are intended to give guidance in determining what constitutes a unilateral selection and the circumstances in which compliance with such a selection is permissible. They are illustrative, not comprehensive.

SPECIFIC AND UNILATERAL SELECTION

(i) A, a U.S. manufacturer of road-grading equipment, is asked by boycotting country Y to ship goods to Y on U.S. vessel B, a carrier which is not blacklisted by Y. A knows or has reason to know that Y's selection of B is boycott-based.

A may comply with Y's request, or may agree to comply as a condition of the contract, because the selection is specific and unilateral.

(ii) A, a U.S. contractor building an industrial facility in boycotting country Y is asked by B, a resident of Y, to use C as the supplier of air conditioning equipment to be used in the facility. C is not blacklisted by country Y. A knows or has reason to know that B's request is boycott-based.

A may comply with B's request, or may agree to comply as a condition of the contract, because the selection of C is specific and unilateral.

(iii) A, a U.S. manufacturer of automotive equipment, is asked by boycotting country Y not to ship its goods to Y on U.S. carriers, B, C, or D. Carriers B, C, and D are blacklisted by boycotting country Y. A knows or has reason to know that Y's request is boycott-based.

A may not comply or agree to comply with Y's request, because no specific selection of any particular carrier has been made.

(iv) A, a U.S. exporter shipping goods ordered by boycotting country Y, is provided by Y with a list of eligible U.S. insurers from which A may choose in insuring the shipment of its goods. A knows or has reason to know that the list was compiled on a boycott basis.

A may not comply or agree to comply with Y's request that A choose from among the eligible insurers, because no specific selection of any particular insurer has been made.

(v) A, a U.S. aircraft manufacturer, is negotiating to sell aircraft to boycotting country Y. During the negotiations, Y asks A to identify the company which normally manufactures the engines for the aircraft. A responds that they are normally manufactured by U.S. engine manufacturer B. B is blacklisted by Y. In making the purchase, Y specifies that the engines for the aircraft should be supplied by U.S. engine manufacturer C.

A may comply or agree to comply with Y's selection of C, because Y's selection is unilateral and specific.

(vi) A, a U.S. construction firm, is retained by an agency of boycotting country Y to build a pipeline. Y requests A to suggest qualified engineering firms to be used on-site in the construction of the pipeline. It is customary for A, regardless of where it conducts its operations, to identify qualified engineering firms to its customers so that its customers may make their own selection of the firm to be engaged. Choice of engineering firm is customarily a prerogative of the customer. A provides a list of five engineering firms, B–F, excluding no firm because it may be blacklisted, and then confers with and gives its recommendations to Y. A recommends C, because C is the best qualified. Y then selects B, because C is blacklisted.

A may comply with Y's selection of B, because the boycott-based decision is made by Y and is unilateral and specific. Since A's pre-award services are of the kind customarily provided in these situations, and since they are provided without reference to the boycott, they do not destroy the unilateral character of Y's selection.

(vii) A, a U.S. aircraft manufacturer, has an order to supply a certain number of planes to boycotting country Y. In connection with the order, Y asks A to supply it with a list of qualified aircraft tire manufacturers so that Y can select the tires to be placed on the planes. This is a highly unusual request, since, in A's worldwide business operations, choice of tires is customarily made by the manufacturer, not the customer. Nonetheless, A supplies a list of tire manufacturers, B, C, D, and E. Y chooses tire manufacturer B because B is not blacklisted. Had A, as is customary, selected the tires, company C would have been chosen. C happens to be blacklisted, and A knows that C's blacklist status was the reason for Y's selection of B.

A's provision of a list of tire manufacturers for Y to choose from destroys the unilateral character of Y's selection, because such a pre-selection service is not customary in A's worldwide business operations.

(viii) A, a U.S. aircraft manufacturer, receives an order from U.S. company C, which is located in the United States, for the sale of aircraft to company D, a U.S. affiliate of C. D is a bona fide resident of boycotting country Y. C instructs A that ''in order to avoid boycott problems,'' A must use engines that are manufactured by company B, a company that is not blacklisted by Y. Engines built by B are unique in design and also bear B's trade name.

Since A has reason to know that the selection is boycott-based, he must inquire of C whether the selection was in fact made by D. If C informs A that the selection was made by D, A may comply.

(ix) Same as (viii), except that C initially states that the designation was unilaterally and specifically made by D.

A may accept C's statement without further investigation and may comply with the selection, because C merely transmitted D's unilateral and specific selection.

(x) Same as (ix), except that C informs A that it, C, has selected B on behalf of or as an agent of its affiliated company resident in the boycotting country.

A may not comply with this selection, because the decision was not made by a resident of the boycotting country.

(xi) A, a U.S. management consulting firm, is advising boycotting country Y on the selection of a contracting firm to construct a plant for the manufacture of agricultural chemicals. As is customary in its business, A compiles a list of potential contractors on the basis of its evaluation of the capabilities of the respective candidates to perform the job. A has knowledge that company B is blacklisted, but provides Y with the names of companies B, C, D, and E, listing them in order of their qualifications. Y instructs A to negotiate with C.

A may comply with Y's instruction, because Y's selection is unilateral and specific.

(xii) A, a U.S. exporter, is asked by boycotting country Y not to ship goods on carriers B, C, or D, which are owned by nationals of and are registered in country P, a country not boycotted by Y.

A may comply or agree to comply with Y's request even though the selection is not specific, because A does not know or have reason to know that the request is boycott-based.

(NOTE: In example (xii), A has violated no prohibition, because it does not know or have reason to know that Y's instruction is boycott-based. Therefore, A could not act with the requisite intent to comply with the boycott.)

(xiii) A, a U.S. construction company, receives a contract to construct a hotel in boycotting country Y. As part of the contract, A is required to furnish Y with lists of qualified suppliers of various specifically identifiable items. A compiles lists of various qualified suppliers wholly without reference to the boycott, and thereafter Y instructs A to negotiate with, enter into contracts with, and arrange for delivery from each of the suppliers which Y designates. A knows that Y's choices are made on a boycott basis.

A may comply with Y's selections and carry out these post-award services for Y, because Y's selections were unilateral and specific and A's pre-award services were provided without reference to Y's boycott.

EXAMPLES OF BOYCOTTING COUNTRY BUYER

(The factors in determining whether a United States person is a ''bona fide resident'' of a boycotting country are the same

as in paragraph (g) of this section on ''Compliance with Local Law.'' See also the examples in that section.)

(i) A, a U.S. exporter, is asked by B, a U.S. person who is a bona fide resident of boycotting country Y, to ship goods on U.S. carrier C. C is not blacklisted by Y, and A knows that B has chosen on a boycott basis in order to comply with Y's boycott laws.

A may comply or agree to comply with B's request, because B is a bona fide resident of Y.

(ii) A is a U.S. computer company whose subsidiary, B, is a bona fide resident of boycotting country Y. A receives an order from B for specific, identifiable products manufactured by company C in connection with a computer which B is installing in Y.

A may comply or agree to comply with B's unilateral and specific selection, so long as the discretion was in fact exercised by B, not A.

(NOTE: Unilateral selection transactions involving related United States persons will be scrutinized carefully to ensure that the selection was in fact made by the bona fide resident of the boycotting country.)

(iii) A, a U.S. engineering firm, has chief engineer B as its resident engineer on a dam construction site in boycotting country Y. B's presence at the site is necessary in order to ensure proper supervision of the project. In order to comply with local law, B selects equipment supplier C rather than D, who is blacklisted, and directs A to purchase certain specific equipment from C for use in the project.

A may comply with this unilateral selection, because the decision was made by a bona fide resident of Y.

(As noted above, unilateral selections involving related United States persons will be scrutinized carefully to ensure that the selection was in fact made by the bona fide resident of the boycotting country.)

(iv) B, a branch of U.S. bank A, is located in boycotting country Y. B is in need of office supplies and asks the home office in New York to make the necessary purchases. A contacts C, a U.S. company in the office supply business, and instructs C to purchase various items from certain specific companies and ship them directly to B. In order to avoid any difficulties for B with respect to Y's boycott laws, A is careful to specify only non-blacklisted companies or suppliers. C knows that that was A's purpose. C may not comply with A's instruction, because the selection of suppliers was not made by a resident of a boycotting country.

(v) Same as (iv), except that A has given standing instructions to B that whenever it needs office supplies, it should specify certain suppliers designated by A. To avoid running afoul of Y's boycott laws, A's designations consist exclusively of non-blacklisted firms. A receives an order from B with the suppliers designated in accordance with A's instructions.

A may not comply with B's selection, because the selection was not in fact made by a bona fide resident of the boycotting country, but by a person located in the United States.

EXAMPLES OF SUPPLIERS OF SERVICES

(i) A, a U.S. manufacturer, is asked by boycotting country Y to ship goods to Y on U.S. vessel B, a carrier which is not blacklisted by Y.

A may comply or agree to comply with Y's request, because compliance with the unilateral and specific selection of carriers is expressly permitted under this exception.

(ii) A, a U.S. exporter shipping goods ordered by C, a national of boycotting country Y, is asked by C to insure the shipment through U.S. insurer B.

A may comply or agree to comply with C's request, because compliance with the unilateral and specific selection of an insurer is expressly permitted under this exception.

(iii) A, a U.S. construction company, is hired by C, an agency of the government of boycotting country Y, to build a power plant in Y. C specifies that A should subcontract the foundation work to U.S. contractor B. Part of the foundation design work will be done by B in the United States.

A may comply or agree to comply with Y's designation, because a necessary and not insignificant part of B's services are to be performed within the boycotting country, and such services are customarily performed on-site.

(iv) A, a U.S. contractor, is engaged by boycotting country Y to build a power plant. Y specifies that U.S. architectural firm B should be retained by A to design the plant. In order to design the plant, it is essential that B's personnel visit and become familiar with the site, although the bulk of the design and drawing work will be done in the United States.

A may comply or agree to comply with Y's unilateral and specific selection of architectural firm B, because a necessary and not insignificant part of B's services are to be performed within Y, and such on-site work is customarily involved in the provision of architectural services. The fact that the bulk of the actual work may be performed in the United States is irrelevant since the part to be performed within Y is necessary to B's effective performance.

(v) Same as (iv), except that Y specifies that the turbine for the power plant should be designed by U.S. engineer C. It is neither customary nor necessary for C to visit the site in order to do any of his work, but C has informed A that he would probably want to

visit the site in Y if he were selected for the job.

A may not comply or agree to comply with Y's request, because, in the normal course of business, it is neither customary nor necessary for engineer C's services to be performed in Y.

(vi) A, a U.S. aircraft manufacturer, receives a contract from boycotting country Y to manufacture jet engines for Y's use. Y specifies that the engines should be designed by U.S. industrial engineering firm B.

A may not comply or agree to comply with Y's request, because, in the normal course of business, the services will not be performed in Y.

(vii) U.S. company A has a contract to supply specially designed road graders to boycotting country Y. Y has instructed A that it should engage engineering firm B in the design work rather than engineering firm C, which A normally uses, because C is blacklisted. When A contacts B, B informs A that one of B's personnel customarily visits the location in which any equipment B designs is used after it is in use, in order to determine how good a design job B has done. Such visits are necessary from B's point of view to provide a check on the quality of its work, and they are necessary from Y's point of view because they make it possible for Y to discuss possible design changes should deficiencies be detected.

A may not comply with Y's selection of B, because the services which B would perform in Y are an insignificant part of the total services to be performed by B.

EXAMPLES OF SPECIFICALLY IDENTIFIABLE GOODS

(The test of what constitutes ''specifically identifiable goods'' under this exception also applies to the term ''specifically identifiable goods'' as used in paragraph (g) of this section on ''Compliance with Local Law.'')

(i) A, a U.S. contractor, is constructing an apartment complex, on a turnkey basis, for boycotting country Y. Y instructs A to use only kitchen appliances manufactured by U.S. company B in completing the project. The appliances normally bear the manufacturer's name and trademark.

A may comply with Y's selection of B, because Y's unilateral and specific selection is of goods identifiable as to source or origin in the normal course of business at the time of their entry into Y.

(ii) Same as (i), except that Y directs A to use lumber manufactured only by U.S. company C. In the normal course of business, C neither stamps its name on the lumber nor identifies itself as the manufacturer on the packaging. In addition, normal export packaging does not identify the manufacturer.

A may not comply with Y's selection, because the goods selected are not identifiable by source or origin in the normal course of business at the time of their entry into Y.

(iii) B, a U.S. contractor who is a bona fide resident of boycotting country Y, is engaged in building roads. B retains the services of A, a U.S. engineering firm, to assist it in procuring construction equipment. B directs A to purchase road graders only from manufacturer C because other road grader manufacturers which A might use are blacklisted. C's road graders normally bear C's insignia.

A may comply with B's selection of C, because the goods selected are identifiable by source or origin in the normal course of business at the time of their entry into Y.

(iv) A, a U.S. company, manufactures computer-operated machine tools. The computers are mounted on a separate bracket on the side of the equipment and are readily identifiable by brand name imprinted on the equipment. There are five or six U.S. manufacturers of such computers which will function interchangeably to operate the machine tools manufactured by A. B, a resident of boycotting country Y, contracts to buy the machine tools manufactured by A on the condition that A incorporate, as the computer drive, a computer manufactured by U.S. company C. B's designation of C is made to avoid boycott problems which could be caused if computers manufactured by some other company were used.

A may comply with B's designation of C, because the goods selected are identifiable by source or origin in the normal course of business at the time of their entry into Y.

(v) A, a U.S. wholesaler of electronic equipment, receives an order from B, a U.S. manufacturer of radio equipment, who is a bona fide resident of boycotting country Y. B orders a variety of electrical components and specifies that all transistors must be purchased from company C, which is not blacklisted by Y. The transistors requested by B do not normally bear the name of the manufacturer; however, they are typically shipped in cartons, and C's name and logo appear on the cartons.

A may comply with B's selection, because the goods selected by B are identifiable as to source or origin in the normal course of business at the time of their entry into Y by virtue of the containers or packaging used.

(vi) A, a U.S. computer manufacturer, receives an order for a computer from B, a university in boycotting country Y. B specifies that certain integrated circuits incorporated in the computer must be supplied by U.S. electronics company C. These circuits are incorporated into the computer and are not visible without disassembling the computer.

A may not comply or agree to comply with B's specific selection of these components, because they are not identifiable as to their source or origin in the normal course of business at the time of their entry into Y.

(vii) A, a U.S. clothing manufacturer, receives an order for shirts from B, a retailer resident in boycotting country Y. B specifies that the shirts are to be manufactured from cotton produced by U.S. farming cooperative C. Such shirts will not identify C or the source of the cotton.

A may not comply or agree to comply with B's designation, because the cotton is not identifiable as to source or origin in the normal course of business at the time of entry into Y.

(viii) A, a U.S. contractor, is retained by B, a construction firm located in and wholly-owned by boycotting country Y, to assist B in procuring construction materials. B directs A to purchase a range of materials, including hardware, tools, and trucks, all of which bear the name of the manufacturer stamped on the item. In addition, B directs A to purchase steel beams manufactured by U.S. company C. The name of manufacturer C normally does not appear on the steel itself or on its export packaging.

A may comply with B's selection of the hardware, tools, and trucks, because they are identifiable as to source or origin in the normal course of business at the time of entry into Y. A may not comply with B's selection of steel beams, because the goods are not identifiable as to source or origin by trade name, trademark, uniqueness or packaging at the time of their entry into Y.

EXAMPLES OF DISCRIMINATION ON BASIS OF RACE, RELIGION, SEX, OR NATIONAL ORIGIN

(i) A, a U.S. paper manufacturer, is asked by boycotting country Y to ship goods to Y on U.S. vessel B. Y states that the reason for its choice of B is that, unlike U.S. vessel C, B is not owned by persons of a particular faith.

A may not comply or agree to comply with Y's request, because A has reason to know that the purpose of the selection is to effect religious discrimination against a United States person.

(e) *Shipment and transshipment of exports pursuant to a boycotting country's requirements.*

COMPLIANCE WITH A BOYCOTTING COUNTRY'S REQUIREMENTS REGARDING SHIPMENT AND TRANSSHIPMENT OF EXPORTS

(1) A United States person may comply or agree to comply with the export requirements of a boycotting country with respect to shipments or transshipments of exports to:

(i) A boycotted country;

(ii) Any business concern of a boycotted country;

(iii) Any business concern organized under the laws of a boycotted country; or

(iv) Any national or resident of a boycotted country.

(2) This exception permits compliance with restrictions which a boycotting country may place on direct exports to a boycotted country; on indirect exports to a boycotted country (i.e., those that pass via third parties); and on exports to residents, nationals, or business concerns of, or organized under the laws of, a boycotted country, including those located in third countries.

(3) This exception also permits compliance with restrictions which a boycotting country may place on the route of export shipments when the restrictions are reasonably related to preventing the export shipments from coming into contact with or under the jurisdiction of the boycotted country. This exception applies whether a boycotting country or the vendor of the shipment:

(i) Explicitly states that the shipment should not pass through the boycotted country enroute to its final destination; or

(ii) Affirmatively describes a route of shipment that does not include the boycotted country.

(4) A United States person may not, under this exception, refuse on an across-the-board basis to do business with a boycotted country or a national or resident of a boycotted country.

EXAMPLES OF COMPLIANCE WITH A BOYCOTTING COUNTRY'S REQUIREMENTS REGARDING SHIPMENT OR TRANSSHIPMENT OF EXPORTS

The following examples are intended to give guidance in determining the circumstances in which compliance with the export requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) A, a U.S. petroleum company, exports petroleum products to 20 countries, including the United States, from boycotting country Y. Country Y's export regulations require that products not be exported from Y to boycotted country X.

A may agree to and comply with Y's regulations with respect to the export of goods from Y to X.

(ii) Same as (i), except that Y's export regulations require that goods not be exported from boycotting country Y to any business

concern organized under the laws of boycotted country X.

A may agree to and comply with Y's regulations with respect to the export of goods from Y to a business concern organized under the laws of X, even if such concern is located in a country not involved in Y's boycott of X.

(iii) B, the operator of a storage facility in country M, contracts with A, a U.S. carrier, for the shipment of certain goods manufactured in boycotting country Y. A's contract with B contains a provision stating that the goods to be transported may not be shipped or transshipped to boycotted country X. B informs A that this provision is a requirement of C, the manufacturer of goods who is a resident of boycotting country Y. Country M is not boycotted by Y.

A may agree to and comply with this provision, because such a provision is required by the export regulations of boycotting country Y in order to prevent shipment of Y-origin goods to a country boycotted by Y.

(iv) A, a U.S. petroleum refiner located in the United States, purchases crude oil from boycotting country Y. A has a branch operation in boycotted country X. Y requires, as a condition of sale, that A agree not to ship or transship the crude oil or products refined in Y to A's branch in X.

A may agree to and comply with these requirements, because they are export requirements of Y designed to prevent Y-origin products from being shipped to a boycotted country.

(v) A, a U.S. company, has a petrochemical plant in boycotting country Y. As a condition of securing an export license from Y, A must agree that it will not ship or permit transshipment of any of its output from the plant in Y to any companies which Y lists as being owned by nationals of boycotted country X.

A may agree to this condition, because it is a restriction designed to prevent Y-origin products from being exported to a business concern of boycotted country X or to nationals of boycotted country X.

(vi) Same as (v), except that the condition imposed on A is that Y-origin goods may not be shipped or permitted to be transshipped to any companies which Y lists as being owned by persons whose national origin is X.

A may not agree to this condition, because it is a restriction designed to prevent Y-origin goods from being exported to persons of a particular national origin rather than to residents or nationals of a particular boycotted country.

(vii) A, a U.S. petroleum company, exports petroleum products to 20 countries, including the United States, from boycotting country Y. Y requires, as a condition of sale, that A not ship the products to be exported from Y to or through boycotted country X.

A may agree to and comply with this requirement because it is an export requirement of Y designed to prevent Y-origin products from coming into contact with or under the jurisdiction of a boycotted country.

(viii) Same as (vii), except that boycotting country Y's export regulations require that products to be exported from Y not pass through a port of boycotted country X.

A may agree to and comply with Y's regulations prohibiting Y-origin exports from passing through a port at boycotted country X, because they are export requirements of Y designed to prevent Y-origin products from coming into contact with or under the jurisdiction of a boycotted country.

(ix) Same as (vii), except that Y's export regulations require that A not transship the exported products ''in or at'' boycotted country X.

A may agree to and comply with Y's regulations with respect to the transshipment of goods ''in or at'' X, because they are export requirements of Y designed to prevent Y-origin products from coming into contact with or under the jurisdiction of a boycotted country.

(f) *Immigration, passport, visa, or employment requirements of a boycotting country.*

COMPLIANCE WITH IMMIGRATION, PASSPORT, VISA, OR EMPLOYMENT REQUIREMENTS OF A BOYCOTTING COUNTRY

(1) A United States individual may comply or agree to comply with the immigration, passport, visa, or employment requirements of a boycotting country, and with requests for information from a boycotting country made to ascertain whether such individual meets requirements for employment within the boycotting country, provided that he furnishes information only about himself or a member of his family, and not about any other United States individual, including his employees, employers, or co-workers.

(2) For purposes of this section, a *United States individual* means a person who is a resident or national of the United States. *Family* means immediate family members, including parents, siblings, spouse, children, and other dependents living in the individual's home.

(3) A United States person may not furnish information about its employees or executives, but may allow any individual to respond on his own to any

request for information relating to immigration, passport, visa, or employment requirements. A United States person may also perform any ministerial acts to expedite processing of applications by individuals. These include informing employees of boycotting country visa requirements at an appropriate time; typing, translation, messenger and similar services; and assisting in or arranging for the expeditious processing of applications. All such actions must be undertaken on a non-discriminatory basis.

(4) A United States person may proceed with a project in a boycotting country even if certain of its employees or other prospective participants in a transaction are denied entry for boycott reasons. But no employees or other participants may be selected in advance in a manner designed to comply with a boycott.

EXAMPLES OF COMPLIANCE WITH IMMIGRATION, PASSPORT, VISA, OR EMPLOYMENT REQUIREMENTS OF A BOYCOTTING COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with immigration, passport, visa, or employment requirements is permissible. They are illustrative, not comprehensive.

(i) A, a U.S. individual employed by B, a U.S. manufacturer of sporting goods with a plant in boycotting country Y, wishes to obtain a work visa so that he may transfer to the plant in Y. Country Y's immigration laws specify that anyone wishing to enter the country or obtain a visa to work in the country must supply information about his religion. This information is required for boycott purposes.

A may furnish such information, because it is required by Y's immigration laws.

(ii) Same as (i), except that A is asked to supply such information about other employees of B.

A may not supply this information, because it is not information about himself or his family.

(iii) A, a U.S. building contractor, has been awarded a construction contract to be performed in boycotting country Y. Y's immigration laws require that individuals applying for visas must indicate race, religion, and place of birth. The information is sought for boycott purposes. To avoid repeated rejections of applications for work visas by A's employees, A desires to furnish to country Y a list of its prospective and current employees and required information about each so that Y can make an initial screening.

A may not furnish such a list, because A would be furnishing information about the race, religion, and national origin of its employees.

(iv) Same as (iii), except that A selects for work on the project those of its current employees whom it believes will be granted work visas from boycotting country Y.

A may not make a selection from among its employees in a manner designed to comply with the boycott-based visa requirements of Y, but must allow all eligible employees to apply for visas. A may later substitute an employee who obtains the necessary visa for one who has had his application rejected.

(v) Same as (iii), except that A selects employees for the project and then allows each employee individually to apply for his own visa. Two employees' applications are rejected, and A then substitutes two other employees who, in turn, submit their own visa applications.

A may take such action, because in so doing A is not acting in contravention of any prohibition of this part.

(vi) Same as (v), except that A arranges for the translation, typing and processing of its employees' applications, and transmits all the applications to the consulate of boycotting country Y.

A may take such ministerial actions, because in so doing A is not itself furnishing information with respect to race, religion, sex, or national origin, but is merely transmitting information furnished by its individual employees.

(vii) A, a U.S. contractor, selects U.S. subcontractor B to perform certain engineering services in connection with A's project in boycotting country Y. The work visa application submitted by the employee B has proposed as chief engineer of this project is rejected by Y because his national origin is of boycotted country X. Subcontractor B thereupon withdraws.

A may continue with the project and select another subcontractor, because A is not acting in contravention of any prohibition of this part.

(g) *Compliance with local law.* (1) This exception contains two parts. The first covers compliance with local law with respect to a United States person's activities exclusively within a foreign country; the second covers compliance with local import laws by United States persons resident in a foreign country. Under both parts of this exception, local laws are laws of the host country, whether derived from statutes, regulations, decrees, or other official sources having the effect of law in the host country. This exception is not

available for compliance with presumed policies or understandings of policies unless those policies are reflected in official sources having the effect of law.

(2) Both parts of this exception apply only to United States persons resident in a foreign country. For purposes of this exception, a United States person will be considered to be a resident of a foreign country only if he is a bona fide resident. A United States person may be a bona fide resident of a foreign country even if such person's residency is temporary.

(3)(i) Factors that will be considered in determining whether a United States person is a bona fide resident of a foreign country include:

(A) Physical presence in the country;

(B) Whether residence is needed for legitimate business reasons;

(C) Continuity of the residency;

(D) Intent to maintain the residency;

(E) Prior residence in the country;

(F) Size and nature of presence in the country;

(G) Whether the person is registered to do business or incorporated in the country;

(H) Whether the person has a valid work visa; and

(I) Whether the person has a similar presence in both boycotting and non-boycotting foreign countries in connection with similar business activities.

(ii) No one of the factors in paragraph (g)(3) of this section is dispositive. All the circumstances involved will be closely examined to ascertain whether there is, in fact, bona fide residency. Residency established solely for purposes of avoidance of the application of this part, unrelated to legitimate business needs, does not constitute bona fide residency.

EXAMPLES OF BONA FIDE RESIDENCY

The following examples are intended to give guidance in determining the circumstances in which a United States person may be a bona fide resident of a foreign country. For purposes of illustration, each example discusses only one or two factors, instead of all relevant factors. They are illustrative, not comprehensive.

(i) A, a U.S. radio manufacturer located in the United States, receives a tender to bid on a contract to supply radios for a hotel to be built in boycotting country Y. After examining the proposal, A sends a bid from its New York office to Y.

A is not a resident of Y, because it is not physically present in Y.

(ii) Same as (i), except that after receiving the tender, A sends its sales representative to Y. A does not usually have sales representatives in countries when it bids from the United States, and this particular person's presence in Y is not necessary to enable A to make the bid.

A is not a bona fide resident of Y, because it has no legitimate business reasons for having its sales representative resident in Y.

(iii) A, a U.S. bank, wishes to establish a branch office in boycotting country Y. In pursuit of that objective, A's personnel visit Y to make the necessary arrangements. A intends to establish a permanent branch office in Y after the necessary arrangements are made.

A's personnel in Y are not bona fide residents of Y, because A does not yet have a permanent business operation in Y.

(iv) Same as (iii), except A's personnel are required by Y's laws to furnish certain non-discriminatory boycott information in order to establish a branch in Y.

In these limited circumstances, A's personnel may furnish the non-discriminatory boycott information necessary to establish residency to the same extent a U.S. person who is a bona fide resident in that country could. If this information could not be furnished in such limited circumstances, the exception would be available only to firms resident in a boycotting country before the effective date of this part.

(v) A, a U.S. construction company, receives an invitation to build a power plant in boycotting country Y. After receipt of the invitation, A's personnel visit Y in order to survey the site and make necessary analyses in preparation for submitting a bid. The invitation requires that otherwise prohibited boycott information be furnished with the bid.

A's personnel in Y are not bona fide residents of Y, because A has no permanent business operation in Y. Therefore, A's personnel may not furnish the prohibited information.

(vi) Same as (v), except that A is considering establishing an office in boycotting country Y. A's personnel visit Y in order to register A to do business in that country. A intends to establish ongoing construction operations in Y. A's personnel are required by Y's laws to furnish certain non-discriminatory boycott information in order to register A to do business or incorporate a subsidiary in Y.

In these limited circumstances, A's personnel may furnish non-discriminatory boycott information necessary to establish residency to the same extent a U.S. person who is a bona fide resident in that country could. If this information could not be furnished in

such limited circumstances, the exception would be available only to firms resident in a boycotting country before the effective date of this part.

(vii) A, a subsidiary of U.S. oil company B, is located in boycotting country Y. A has been engaged in oil explorations in Y for a number of years.

A is a bona fide resident of Y, because of its pre-existing continuous presence in Y for legitimate business reasons.

(viii) Same as (vii), except that A has just been established in Y and has not yet begun operations.

A is a bona fide resident of Y, because it is present in Y for legitimate business reasons and it intends to reside continuously.

(ix) U.S. company A is a manufacturer of prefabricated homes. A builds a plant in boycotting country Y for purposes of assembling components made by A in the United States and shipped to Y.

A's personnel in Y are bona fide residents of Y, because A's plant in Y is established for legitimate business reasons, and it intends to reside continuously.

(x) U.S. company A has its principal place of business in the United States. A's sales agent visits boycotting country Y from time to time for purposes of soliciting orders.

A's sales agent is not a bona fide resident of Y, because such periodic visits to Y are insufficient to establish a bona fide residency.

(xi) A, a branch office of U.S. construction company B, is located in boycotting country Y. The branch office has been in existence for a number of years and has been performing various management services in connection with B's construction operations in Y.

A is a bona fide resident of Y, because of its longstanding presence in Y and its conduct of ongoing operations in Y.

(xii) U.S. construction company A has never done any business in boycotting country Y. It is awarded a contract to construct a hospital in Y, and preparatory to beginning construction, sends its personnel to Y to set up operations.

A's personnel are bona fide residents of Y, because they are present in Y for the purposes of carrying out A's legitimate business purposes; they intend to reside continuously; and residency is necessary to conduct their business.

(xiii) U.S. company A manufactures furniture. All its sales in foreign countries are conducted from its offices in the United States. From time to time A has considered opening sales offices abroad, but it has concluded that it is more efficient to conduct sales operations from the United States. Shortly after the effective date of this part, A sends a sales representative to boycotting country Y to open an office in and solicit orders from Y. It is more costly to conduct operations from that office than to sell directly from the United States, but A believes that if it establishes a residence in Y, it will be in a better position to avoid conflicts with U.S. law in its sales to Y.

A's sales representative is not a bona fide resident of Y, because the residency was established to avoid the application of this part and not for legitimate business reasons.

(xiv) Same as (xiii), except that it is in fact more efficient to have a sales office in Y. In fact, without a sales office in Y, A would find it difficult to explore business opportunities in Y. A is aware, however, that residency in Y would permit its sales representative to comply with Y's boycott laws.

A's sales representative is a bona fide resident of Y, because A has a legitimate business reason for establishing a sales office in Y.

(xv) U.S. company B is a computer manufacturer. B sells computers and related programming services tailored to the needs of individual clients. Because of the complex nature of the product, B must have sales representatives in any country where sales are made. B has a sales representative, A, in boycotting country Y. A spends two months of the year in Y, and the rest of the year in other countries. B has a permanent sales office from which A operates while in Y, and the sales office is stocked with brochures and other sales materials.

A is a bona fide resident of Y, because his presence in Y is necessary to carry out B's legitimate business purposes; B maintains a permanent office in Y; and B intends to continue doing business in Y in the future.

(xvi) A, a U.S. construction engineering company, is engaged by B, a U.S. general contracting company, to provide services in connection with B's contract to construct a hospital complex in boycotting country Y. In order to perform those services, A's engineers set up a temporary office in a trailer on the construction site in Y. A's work is expected to be completed within six months.

A's personnel in Y are bona fide residents of Y, because A's on-site office is necessary to the performance of its services for B, and because A's personnel are continuously there.

(xvii) A, a U.S. company, sends one of its representatives to boycotting country Y to explore new sales possibilities for its line of transistor radios. After spending several weeks in Y, A's representative rents a post office box in Y, to which all persons interested in A's products are directed to make inquiry.

A is not a bona fide resident of Y, because rental of a post office box is not a sufficient presence in Y to constitute residency.

(xviii) A, a U.S. computer company, has a patent and trademark registered in the

United States. In order to obtain registration of its patent and trademark in boycotting country Y, A is required to furnish certain non-discriminatory boycott information.

A may not furnish the information, because A is not a bona fide resident of Y.

(h) *Activities exclusively within a foreign country*. (1) Any United States person who is a bona fide resident of a foreign country, including a boycotting country, may comply or agree to comply with the laws of that country with respect to his activities exclusively within that country. These activities include:

(i) Entering into contracts which provide that local law applies or governs, or that the parties will comply with such laws;

(ii) Employing residents of the host country;

(iii) Retaining local contractors to perform work within the host country;

(iv) Purchasing or selling goods or services from or to residents of the host country; and

(v) Furnishing information within the host country.

(2) Activities exclusively within the country do not include importing goods or services from outside the host country, and, therefore, this part of the exception does not apply to compliance with import laws in connection with importing goods or services.

EXAMPLES OF PERMISSIBLE COMPLIANCE WITH LOCAL LAW WITH RESPECT TO ACTIVITIES EXCLUSIVELY WITHIN A FOREIGN COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with local law is permissible. They are illustrative, not comprehensive.

ACTIVITIES EXCLUSIVELY WITHIN A FOREIGN COUNTRY

(i) U.S. construction company A, a bona fide resident of boycotting country Y, has a contract to build a school complex in Y. Pursuant to Y's boycott laws, the contract requires A to refuse to purchase supplies from certain local merchants. While Y permits such merchants to operate within Y, their freedom of action in Y is constrained because of their relationship with boycotted country X.

A may enter into the contract, because dealings with local merchants are activities exclusively within Y.

(ii) A, a banking subsidiary of U.S. bank B, is a bona fide resident of boycotting country Y. From time to time, A purchases office supplies from the United States.

A's purchase of office supplies is not an activity exclusively within Y, because it involves the import of goods from abroad.

(iii) A, a branch of U.S. bank B, is a bona fide resident of boycotting country Y. Under Y's boycott laws, A is required to supply information about whether A has any dealings with boycotted country X. A compiles and furnishes the information within Y and does so of its own knowledge.

A may comply with that requirement, because in compiling and furnishing the information within Y, based on its own knowledge, A is engaging in an activity exclusively within Y.

(iv) Same as (iii), except that A is required to supply information about B's dealings with X. From its own knowledge and without making any inquiry of B, A compiles and furnishes the information.

A may comply with that requirement, because in compiling and furnishing the information within Y, based on its own knowledge, A is engaging in an activity exclusively within Y.

(v) Same as (iv), except that in making its responses, A asks B to compile some of the information.

A may not comply, because the gathering of the necessary information takes place partially outside Y.

(vi) U.S. company A has applied for a license to establish a permanent manufacturing facility in boycotting country Y. Under Y's boycott law, A must agree, as a condition of the license, that it will not sell any of its output to blacklisted foreign firms.

A may not comply, because the agreement would govern activities of A which are not exclusively within Y.

DISCRIMINATION AGAINST UNITED STATES PERSONS

(i) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y. A manufactures air conditioners in its plant in Y. Under Y's boycott laws, A must agree not to hire nationals of boycotted country X.

A may agree to the restriction and may abide by it with respect to its recruitment of individuals within Y, because the recruitment of such individuals is an activity exclusively within Y. However, A cannot abide by this restriction with respect to its recruitment of individuals outside Y, because this is not an activity exclusively within Y.

(ii) Same as (i), except that pursuant to Y's boycott laws, A must agree not to hire anyone who is of a designated religion.

A may not agree to this restriction, because the agreement calls for discrimination against U.S. persons on the basis of religion.

It makes no difference whether the recruitment of the U.S. persons occurs within or without Y.

(NOTE: The exception for compliance with local law does not apply to boycott-based refusals to employ U.S. persons on the basis of race, religion, sex, or national origin even if the activity is exclusively within the boycotting country.)

(i) *Compliance with local import law.* (1) Any United States person who is a bona fide resident of a foreign country, including a boycotting country, may, in importing goods, materials or components into that country, comply or agree to comply with the import laws of that country, provided that:

(i) The items are for his own use or for his use in performing contractual services within that country; and

(ii) In the normal course of business, the items are identifiable as to their source or origin at the time of their entry into the foreign country by:

(a) Uniqueness of design or appearance; or

(b) Trademark, trade name, or other identification normally on the items themselves, including their packaging.

(2) The factors that will be considered in determining whether a United States person is a bona fide resident of a foreign country are those set forth in paragraph (g) of this section. Bona fide residence of a United States company's subsidiary, affiliate, or other permanent establishment in a foreign country does not confer such residence on such United States company. Likewise, bona fide residence of a United States company's employee in a foreign country does not confer such residence on the entire company.

(3) A United States person who is a bona fide resident of a foreign country may take action under this exception through an agent outside the country, but the agent must act at the direction of the resident and not exercise his own discretion. Therefore, if a United States person resident in a boycotting country takes action to comply with a boycotting country's import law with respect to the importation of qualified goods, he may direct his agent in the United States on the action to be taken, but the United States agent himself may not exercise any discretion.

(4) For purposes of this exception, the test that governs whether goods or components of goods are specifically identifiable is identical to the test applied in paragraph (c) of this section on ''Compliance With Unilateral Selection'' to determine whether they are identifiable as to their source or origin in the normal course of business.

(5) The availability of this exception for the import of goods depends on whether the goods are intended for the United States person's own use at the time they are imported. It does not depend upon who has title to the goods at the time of importation into a foreign country.

(6) Goods are for the United States person's own use (including the performance of contractual services within the foreign country) if:

(i) They are to be consumed by the United States person;

(ii) They are to remain in the United States person's possession and to be used by that person;

(iii) They are to be used by the United States person in performing contractual services for another;

(iv) They are to be further manufactured, incorporated into, refined into, or reprocessed into another product to be manufactured for another; or

(v) They are to be incorporated into, or permanently affixed as a functional part of, a project to be constructed for another.

(7) Goods acquired to fill an order for such goods from another are not for the United States person's own use. Goods procured for another are not for one's own use, even if the furnishing of procurement services is the business in which the United States person is customarily engaged. Nor are goods obtained for simple resale acquired for one's own use, even if the United States person is engaged in the retail business. Likewise, goods obtained for inclusion in a turnkey project are not for one's own use if they are not customarily incorporated into, or do not customarily become permanently affixed as a functional part of the project.

(8) This part of the local law exception does not apply to the import of services, even when the United States person importing such services is a

bona fide resident of a boycotting country and is importing them for his own use. In addition, this exception is available for a United States person who is a bona fide resident of a foreign country only when the individual or entity actually present within that country takes action through the exercise of his own discretion.

(9) Use of this exception will be monitored and continually reviewed to determine whether its continued availability is consistent with the national interest. Its availability may be limited or withdrawn as appropriate. In reviewing the continued availability of this exception, the effect that the inability to comply with local import laws would have on the economic and other relations of the United States with boycotting countries will be considered.

(10) A United States person who is a bona fide resident of a foreign country may comply or agree to comply with the host country's import laws even if he knows or has reason to know that particular laws are boycott-related. However, no United States person may comply or agree to comply with any host country law which would require him to discriminate against any United States person on the basis of race, religion, sex, or national origin, or to supply information about any United States person's race, religion, sex, or national origin.

EXAMPLES OF PERMISSIBLE COMPLIANCE WITH LOCAL IMPORT LAW

The following examples are intended to give guidance in determining the circumstances in which compliance with local import law is permissible. They are illustrative, not comprehensive.

COMPLIANCE BY A BONA FIDE RESIDENT

(i) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y and is engaged in oil drilling operations in Y. In acquiring certain large, specifically identifiable products for carrying out its operations in Y, A chooses only from non-blacklisted firms because Y's import laws prohibit the importation of goods from blacklisted firms. However, with respect to smaller items, B makes the selection on behalf of A and sends them to A in Y.

A may choose from non-blacklisted firms, because it is a U.S. person who is a bona fide resident in Y. However, because B is not resident in Y, B cannot make boycott-based selections to conform with Y's import laws prohibiting the importation of goods from blacklisted firms.

(ii) Same as (i), except that after making its choices on the larger items, A directs B to carry out its instructions by entering into appropriate contracts and making necessary shipping arrangements.

B may carry out A's instructions provided that A, a bona fide resident of Y, has in fact made the choice and B is exercising no discretion, but is acting only as A's agent.

(NOTE: Such transactions between related companies will be scrutinized carefully. A must in fact exercise the discretion and make the selections. If the discretion is exercised by B, B would be in violation of this part.)

(iii) U.S. construction company A has a contract to build a school in boycotting country Y. A's employees set up operations in Y for purposes of commencing construction. A's employees in Y advise A's headquarters in the United States that Y's import laws prohibit importation of goods manufactured by blacklisted firms. A's headquarters then issues invitations to bid only to non-blacklisted firms for certain specifically identifiable goods.

A's headquarters' choice of non-blacklisted suppliers is not a choice made by a U.S. person who is a bona fide resident of Y, because the discretion in issuing the bids was exercised in the United States, not in Y.

(iv) Same as (iii), except that A's employees in Y actually make the decision regarding to whom the bids should be issued.

The choices made by A's employees are choices made by U.S. persons who are bona fide residents of Y, because the discretion in choosing was exercised solely in Y.

(NOTE: Choices purportedly made by employees of U.S. companies who are resident in boycotting countries will be carefully scrutinized to ensure that the discretion was exercised entirely in the boycotting country.)

SPECIFICALLY IDENTIFIABLE GOODS

The test and examples as to what constitutes specifically identifiable goods are identical to those applicable under paragraph (d) of this section on ''Compliance With Unilateral Selection.''

IMPORTS FOR U.S. PERSON'S OWN USE

(i) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y. A plans to import computer operated machine tools to be installed in its automobile plant in boycotting country Y. The computers are mounted on a separate bracket on the side of the equipment and are readily identifiable by brand name. A orders the tools from U.S. supplier C and specifies that C

must incorporate computers manufactured by D, a non-blacklisted company. A would have chosen computers manufactured by E, except that E is blacklisted, and Y's import laws prohibit the importation of goods manufactured by blacklisted firms.

A may refuse to purchase E's computers, because A is importing the computers for its own use in its manufacturing operations in Y.

(ii) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y. To meet the needs of its employees in Y, A imports certain specifically identifiable commissary items for sale, such as cosmetics; and canteen items, such as candy. In selecting such items for importation into Y, A chooses items made only by non-blacklisted firms, because Y's import laws prohibit importation of goods from blacklisted firms.

A may import these items only from non-blacklisted firms, because the importation of goods for consumption by A's employees is an importation for A's own use.

(iii) A, a U.S. construction company which is a bona fide resident of boycotting country Y, has a contract to build a hospital complex for the Ministry of Health in Y. Under the contract, A will be general manager of the project with discretion to choose all subcontractors and suppliers. The complex is to be built on a turnkey basis, with A retaining title to the property and bearing all financial risk until the complex is conveyed to Y. In choosing specifically identifiable goods for import, such as central air conditioning units and plate glass, A excludes blacklisted suppliers in order to comply with Y's import laws. These goods are customarily incorporated into, or permanently affixed as a functional part of, the project.

A may refuse to deal with blacklisted suppliers of specifically identifiable goods, because importation of goods by a general contractor to be incorporated into a construction project in Y is an importation of goods for A's own use.

(iv) Same as (iii), except that, in addition, in choosing U.S. architects and engineers to work on the project, A excludes blacklisted firms, because Y's import laws prohibit the use of services rendered by blacklisted persons.

A may not refuse to deal with blacklisted architectural or engineering firms, because this exception does not apply to the import of services. It is irrelevant that, at some stage, the architectural or engineering drawings or plans may be brought to the site in Y. This factor is insufficient to transform such services into ''goods'' for purposes of this exception.

(v) Same as (iii), except that the project is to be completed on a ''cost plus'' basis, with Y making progress payments to A at various stages of completion.

A may refuse to deal with blacklisted suppliers of specifically identifiable goods, because the importation of goods by A to be incorporated in a project A is under contract to complete is an importation of goods for its own use. The terms of payment are irrelevant.

(vi) A, a U.S. construction company which is a bona fide resident of boycotting country Y, has a contract for the construction of an office building in Y on a turnkey basis. In choosing goods to be used or included in the office complex, A orders wallboard, office partitions, and lighting fixtures from non-blacklisted manufacturers. A likewise orders desks, office chairs, typewriters, and office supplies from non-blacklisted manufacturers.

Because they are customarily incorporated into or permanently affixed as a functional part of an office building, the wallboard, office partitions, and lighting fixtures are for A's own use, and A may select non-blacklisted suppliers of these goods in order to comply with Y's import laws. Because they are not customarily incorporated into or permanently affixed to the project, the desks, office chairs, typewriters, and office supplies are not for A's own use, and A may not make boycott-based selections of the suppliers of these goods.

(vii) A, a U.S. company engaged in the business of selling automobiles, is a bona fide resident of boycotting country Y. In ordering automobiles from time to time for purposes of stocking its inventory, A purchases from U.S. manufacturer B, but not U.S. manufacturer C, because C is blacklisted. Retail sales are subsequently made from this inventory.

A's import of automobiles from B is not an import for A's own use, because the importation of items for general inventory in a retail sales operation is not an importation for one's own use.

(viii) A, a U.S. company engaged in the manufacture of pharmaceutical products, is a bona fide resident of boycotting country Y. In importing chemicals for incorporation into the pharmaceutical products, A purchases from U.S. supplier B, but not U.S. supplier C, because C is blacklisted.

A may import chemicals from B rather than C, because the importation of specifically identifiable items for incorporation into another product is an importation for one's own use.

(ix) A, a U.S. management company which is a bona fide resident of boycotting country Y, has a contract with the Ministry of Education in Y to purchase supplies for Y's school system. From time to time, A purchases goods from abroad for delivery to various schools in Y.

A's purchase of goods for Y's school system does not constitute an importation of goods

for A's own use, because A is acting as a procurement agent for another. A, therefore, cannot make boycott-based selections of suppliers of such school supplies.

(x) A, a U.S. company which is a bona fide resident of boycotting country Y, has a contract to make purchases for Y in connection with a construction project in Y. A is not engaged in the construction of, or in any other activity in connection with, the project. A's role is merely to purchase goods for Y and arrange for their delivery to Y.

A is not purchasing goods for its own use, because A is acting as a procurement agent for Y. A, therefore, cannot make boycott selections of suppliers of such goods.

(xi) A, a U.S. company which is a bona fide resident of boycotting country Y, imports specifically identifiable goods into Y for exhibit by A at a trade fair in Y. In selecting goods for exhibit, A excludes items made by blacklisted firms.

A's import of goods for its exhibit at a trade fair constitutes an import for A's own use. However, A may not sell in Y those goods it imported for exhibit.

FOR USE WITHIN BOYCOTTING COUNTRY

A is a bona fide resident of boycotting countries Y and Z. In compliance with Y's boycott laws, A chooses specifically identifiable goods for its oil drilling operations in Y and Z by excluding blacklisted suppliers. The goods are first imported into Y. Those purchased for A's use in Z are then transshipped to Z.

In selecting those goods for importation into Y, A is making an import selection for its own use, even though A may use some of the imported goods in Z. Further, the subsequent shipment from Y to Z of those goods purchased for use in Z is an import into Z for A's own use.

§ 760.4 Evasion.

(a) No United States person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provisions of this part. Nor may any United States person assist another United States person to violate or evade the provisions of this part.

(b) The exceptions set forth in § 760.3(a) through (g) of this part do not permit activities or agreements (express or implied by a course of conduct, including a pattern of responses) which are otherwise prohibited by this part and which are not within the intent of such exceptions. However, activities within the coverage and intent of the exceptions set forth in this part do not constitute evasion regardless of how often such exceptions are utilized.

(c) Use of any artifice, device or scheme which is intended to place a person at a commercial disadvantage or impose on him special burdens because he is blacklisted or otherwise restricted for boycott reasons from having a business relationship with or in a boycotting country will be regarded as evasion for purposes of this part.

(d) Unless permitted under one of the exceptions, use of risk of loss provisions that expressly impose a financial risk on another because of the import laws of a boycotting country may constitute evasion. If they are introduced after January 21, 1978, their use will be presumed to constitute evasion. This presumption may be rebutted by a showing that such a provision is in customary usage without distinction between boycotting and non-boycotting countries and that there is a legitimate non-boycott reason for its use. On the other hand, use of such a provision by a United States person subsequent to January 21, 1978 is presumed not to constitute evasion if the provision had been customarily used by that person prior to January 21, 1978.

(e) Use of dummy corporations or other devices to mask prohibited activity will also be regarded as evasion. Similarly, it is evasion under this part to divert specific boycotting country orders from a United States parent to a foreign subsidiary for purposes of complying with prohibited boycott requirements. However, alteration of a person's structure or method of doing business will not constitute evasion so long as the alteration is based on legitimate business considerations and is not undertaken solely to avoid the application of the prohibitions of this part. The facts and circumstances of an arrangement or transaction will be carefully scrutinized to see whether appearances conform to reality.

EXAMPLES

The following examples are intended to give guidance to persons in determining circumstances in which this section will apply. They are illustrative, not comprehensive.

(i) A, a U.S. insurance company, receives a request from boycotting country Y asking whether it does business in boycotted country X. Because furnishing such information

is prohibited, A declines to answer and as a result is placed on Y's blacklist. The following year, A's annual report contains new information about A's worldwide operations, including a list of all countries in which A does business. A then mails a copy of its annual report, which has never before contained such information, to officials of the government of country Y.

Absent some business justification unrelated to the boycott for changing the annual report in this fashion, A's action constitutes evasion of this part.

(ii) A, a U.S. construction firm resident in boycotting country Y, orders lumber from U.S. company B. A unilaterally selects B in part because U.S. lumber producer C is blacklisted by Y and C's products are therefore not importable. In placing its order with B, A requests that B stamp its name or logo on the lumber so that A ''can be certain that it is, in fact, receiving B's products.'' B does not normally so stamp its lumber, and A's purpose in making the request is to appear to fit within the unilateral selection exception of this part.

Absent additional facts justifying A's action, A's action constitutes evasion of this part.

(iii) A, a U.S. company, has been selling sewing machines to boycotting country Y for a number of years and routinely supplying negative certificates of origin. A is aware that the furnishing of negative certificates of origin will be prohibited after June 21, 1978 and, therefore, arranges to have all future shipments run through a foreign corporation in a third country which will affix the necessary certification before forwarding the machines on to Y.

A's action constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

(iv) A, a U.S. company, has been selling hand calculators to boycotting country Y for a number of years and routinely supplies negative certificates of origin. A is aware that the furnishing of such negative certificates will be prohibited after June 21, 1978. A thereupon ceases all direct sales to Y, and instead arranges to make all future sales to distributor B in a third country. A knows B will step in and make the sales to Y which A would otherwise have made directly. B will make the necessary negative certifications. A's warranty, which it will continue to honor, runs to the purchaser in Y.

A's action constitutes evasion, because the diverting of orders to B is a device to mask prohibited activity carried out on A's behalf.

(v) A, a U.S. company, is negotiating a long-term contract with boycotting country Y to meet all Y's medical supply needs. Y informs A that before such a contract can be concluded, A must complete Y's boycott questionnaire. A knows that it is prohibited from answering the questionnaire so it arranges for a local agent in Y to supply the necessary information.

A's action constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

(vi) A, a U.S. contractor which has not previously dealt with boycotting country Y, is awarded a construction contract by Y. Because it is customary in the construction industry for a contractor to establish an on-site facility for the duration of the project, A establishes such an office, which satisfies the requirements for bona fide residency. Thereafter, A's office in Y takes a number of actions permitted under the compliance with local law exception.

A's actions do not constitute evasion, because A's facility in Y was established for legitimate business reasons.

(vii) A, a controlled foreign subsidiary of U.S. company B, is located in non-boycotting country M. A and B both make machine tools for sale in their respective marketing regions. B's marketing region includes boycotting country Y. After assessing the requirements of this part, B decides that it can no longer make machines for sale in Y. Instead, A decides to expand its facilities in M in order to service the Y market.

The actions of A and B do not constitute evasion, because there is a legitimate business reason for their actions. It is irrelevant that the effect may be to place sales which would otherwise have been subject to this part beyond the reach of this part.

(viii) A, a U.S. manufacturer, from time to time receives purchase orders from boycotting country Y which A fills from its plant in the United States. A knows that it is about to receive an order from Y which contains a request for a certification which A is prohibited from furnishing under this part. In order to permit the certification to be made, A diverts the purchase order to its foreign subsidiary.

A's diversion of the purchase order constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

(ix) A, a U.S. company, is engaged in assembling drilling rigs for shipment to boycotting country Y. Because of potential difficulties in securing entry into Y of materials supplied by blacklisted firms, A insists that blacklisted firms take a 15 percent discount on all materials which they supply to A. As a result, no blacklisted firms are willing to transact with A.

A's insistence on the discount for materials supplied by blacklisted firms constitutes evasion of this part, because it is a device or scheme which is intended to place a special burden on blacklisted firms because of Y's boycott.

(x) Same as (ix), except that shortly after the effective date of this part, A insists that its suppliers sign contracts which provide

that even after title passes from the supplier to A, the supplier will bear the risk of loss and indemnify A if goods which the supplier has furnished are denied entry into Y for boycott reasons.

A's action constitutes evasion of this part, because it is a device or scheme which is intended to place a special burden on blacklisted persons because of Y's boycott.

(xi) Same as (x), except that A customarily insisted on such an arrangement with its supplier prior to the effective date of this part.

A's action is presumed not to constitute evasion, because use of this contractual arrangement was customary for A prior to the effective date of this part.

(xii) A, a U.S. company, has a contract to supply automobile sub-assembly units to boycotting country Y. Shortly after the effective date of this part, A insists that its suppliers sign contracts which provide that even after title passes to A, the supplier will bear the risk of loss and indemnify A if goods which the supplier has furnished are denied entry into boycotting country Y for whatever reason.

A's insistence on this arrangement is presumed to constitute evasion, because it is a device which is intended to place a special burden on blacklisted firms because of Y's boycott. The presumption may be rebutted by competent evidence showing that use of such an arrangement is customary without regard to the boycotting or non-boycotting character of the country to which it relates and that there is a legitimate non-boycott business reason for its use.

(xiii) Same as (vii), except that A requires that all suppliers make in-country delivery.

A's action does not constitute evasion, because it is an ordinary commercial practice to require in-country delivery of goods.

(xiv) Same as (xii), except that A requires that title remain with the supplier until delivery in Y has been made.

A's action does not constitute evasion, because it is ordinary commercial practice to require that title remain with the supplier until delivery has been made. This example is distinguishable from example (xii), because in example (xii) A had insisted on an extraordinary arrangement designed to require that the risk of loss remain with the supplier even after title had passed to A.

(xv) U.S. bank A is contacted by U.S. company B to finance B's transaction with boycotting country Y. Payment will be effected through a letter of credit in favor of B at its U.S. address. A knows that the letter of credit will contain restrictive boycott conditions which would bar its implementation by A if the beneficiary were a U.S. person. A suggests to B that the beneficiary should be changed to C, a shell corporation in non-boycotting country M. The beneficiary is changed accordingly.

A's action constitutes evasion of this part, because the arrangement is a device to mask prohibited activity on A's part.

(xvi) Same as (xv), except that U.S. company B, the beneficiary of the letter of credit, arranges to change the beneficiary to B's foreign subsidiary so that A can implement the letter of credit. A knows that this has been done.

A's implementation of the letter of credit in the face of its knowledge of B's action constitutes evasion of this part, because its action is part of a device to mask prohibited activity on A's part.

(xvii) U.S. bank A, located in the United States, is contacted by foreign company B to finance B's transaction with boycotting country Y. B is a controlled subsidiary of a U.S. company. The transaction which is to be financed with a letter of credit payable to B at its foreign address, requires B to certify that none of its board members are of a particular religious faith. Since B cannot legally furnish the certificate, it asks A to convey the necessary information to Y through A's bank branch in Y. Such information would be furnished wholly outside the letter of credit transaction.

A's action constitutes evasion of this part, because it is undertaken to assist B's violation of this part.

(xviii) U.S. bank A is asked by foreign corporation B to implement a letter of credit in favor of B so that B might perform under its long-term contract with boycotting country Y. Under the terms of the letter of credit, B is required to certify that none of its suppliers is blacklisted. A knows that it cannot implement a letter of credit with this condition, so it tells B to negotiate the elimination of this requirement from the letter of credit and instead supply the certification to Y directly.

A's suggestion to B that it provide the negative certification to Y directly constitutes evasion of this part, because A is taking an action through another person to mask prohibited activity on A's part.

§ 760.5 Reporting requirements.

(a) *Scope of reporting requirements.* (1) A United States person who receives a request to take any action which has the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country against a country friendly to the United States or against any United States person must report such request to the Department of Commerce in accordance with the requirements of this section. Such a request may be either written or oral and may include a request to furnish information or enter into or implement an agreement. It

may also include a solicitation, directive, legend or instruction that asks for information or that asks that a United States person take or refrain from taking a particular action. Such a request shall be reported regardless of whether the action requested is prohibited or permissible under this part, except as otherwise provided by this section.

(2) For purposes of this section, a request received by a United States person is reportable if he knows or has reason to know that the purpose of the request is to enforce, implement, or otherwise further, support, or secure compliance with an unsanctioned foreign boycott or restrictive trade practice.

(i) A request received by a United States person located in the United States is reportable if it is received in connection with a transaction or activity in the interstate or foreign commerce of the United States, as determined under § 760.1(d)(1) through (5) and (18) of this part.

(ii) A request received by a United States person located outside the United States (that is, a foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment which is controlled in fact by any domestic concern, as determined under § 760.1(c) of this part) is reportable if it is received in connection with a transaction or activity in the interstate or foreign commerce of the United States, as determined under § 760.1(d)(6) through (17) and (19) of this part.

(iii) A request such as a boycott questionnaire, unrelated to a particular transaction or activity, received by any United States person is reportable when such person has or anticipates a business relationship with or in a boycotting country involving the sale, purchase or transfer of goods or services (including information) in the interstate or foreign commerce of the United States, as determined under § 760.1(d) of this part.

(3) These reporting requirements apply to all United States persons. They apply whether the United States person receiving the request is an exporter, bank or other financial institution, insurer, freight forwarder, manufacturer, or any other United States person subject to this part.

(4) The acquisition of information about a boycotting country's boycott requirements through the receipt or review of books, pamphlets, legal texts, exporters' guidebooks and other similar publications does not constitute receipt of a reportable request for purposes of this section. In addition, a United States person who receives an unsolicited invitation to bid, or similar proposal, containing a boycott request has not received a reportable request for purposes of this section where he does not respond to the invitation to bid or other proposal.

(5) Because of the use of certain terms for boycott and non-boycott purposes; because of Congressional mandates to provide clear and precise guidelines in areas of inherent uncertainty; and because of the Department's commitment to minimize paperwork and reduce the cost of reporting where it will not impair the Department's ability to continue to monitor foreign boycotts, the following specific requests are not reportable:

(i) A request to refrain from shipping goods on a carrier which flies the flag of a particular country or which is owned, chartered, leased or operated by a particular country or by nationals or residents of a particular country, or a request to certify to that effect.

(ii) A request to ship goods via a prescribed route, or a request to refrain from shipping goods via a proscribed route, or a request to certify to either effect.

(iii) A request to supply an affirmative statement or certification regarding the country of origin of goods.

(iv) A request to supply an affirmative statement or certification regarding the name of the supplier or manufacturer of the goods shipped or the name of the provider of services.

(v) A request to comply with the laws of another country except where the request expressly requires compliance with that country's boycott laws.

(vi) A request to an individual to supply information about himself or a member of his family for immigration, passport, visa, or employment purposes.

(vii) A request to supply an affirmative statement or certification indicating the destination of exports or confirming or otherwise indicating that such cargo will be unloaded or discharged at a particular destination.

(viii) A request to supply a certificate by the owner, master, charterer, or any employee thereof, that a vessel, aircraft, truck or any other mode of transportation is eligible, otherwise eligible, permitted, or allowed to enter, or not restricted from entering, a particular port, country, or group of countries pursuant to the laws, rules, or regulations of that port, country, or group of countries.

(ix) A request to supply a certificate from an insurance company stating that the insurance company has a duly authorized agent or representative within a boycotting country and/or the name and address of such agent.

(x) A request to comply with a term or condition of a transaction that provides that the vendor bear the risk of loss and indemnify the purchaser if the vendor's goods are denied entry into a country for any reason (''risk of loss clause'') if such clause was in use by the purchaser prior to January 18, 1978.

(6) No United States person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provisions of this part.

(7) From time to time the Department will survey domestic concerns for purposes of determining the worldwide scope of boycott requests received by their controlled foreign subsidiaries and affiliates with respect to their activities outside United States commerce. This pertains to requests which would be reportable under this section but for the fact that the activities to which the requests relate are outside United States commerce. The information requested will include the number and nature of non-reportable boycott requests received, the action(s) requested, the actions(s) taken in response and the countries in which the requests originate. The results of such surveys, including the names of those surveyed, will be made public.

(b) *Manner of reporting.* (1) Each reportable request must be reported. However, if more than one document (such as an invitation to bid, purchase order, or letter of credit) containing the same boycott request is received as part of the same transaction, only the first such request need be reported. Individual shipments against the same purchase order or letter of credit are to be treated as part of the same transaction. Each different boycott request associated with a given transaction must be reported, regardless of how or when the request is received.

(2) Each United States person actually receiving a reportable request must report that request. However, such person may designate someone else to report on his behalf. For example, a United States company, if authorized, may report on behalf of its controlled foreign subsidiary or affiliates; a freight forwarder, if authorized, may report on behalf of the exporter; and a bank, if authorized, may report on behalf of the beneficiary of a letter of credit. If a person designated to report a request received by another receives an identical request directed to him in connection with the same transaction, he may file one report on behalf of himself and the other person.

(3) Where a person is designated to report on behalf of another, the person receiving the request remains liable for any failure to report or for any representations made on his behalf. Further, anyone reporting on behalf of another is not relieved of his own responsibility for reporting any boycott request which he receives, even if it is an identical request in connection with the same transaction.

(4) Reports must be submitted in duplicate to: Report Processing Staff, Office of Antiboycott Compliance, U.S. Department of Commerce, Room 6099C, Washington, D.C. 20230. Each submission must be made in accordance with the following requirements:

(i) Where the person receiving the request is a United States person located in the United States, each report of requests received through June 30, 1979, must be postmarked by the last day of the month following the month in which the request was received. Thereafter, each submission must be postmarked by the last day of the month following the calendar quarter in which the request was received (e.g., April 30

for the quarter consisting of January, February, and March).

(ii) Where the person receiving the request is a United States person located outside the United States, each report of requests received through June 30, 1979, must be postmarked by the last day of the second month following the month in which the request was received. Thereafter, each submission must be postmarked by the last day of the second month following the calendar quarter in which the request was received (e.g., May 31 for the quarter consisting of January, February, and March).

(5) At the reporting person's option, reports may be submitted on either a single transaction form (Form BXA–621P, Report of Restrictive Trade Practice or Boycott Request Single Transaction (revised 10–89)) or on a multiple transaction form (Form BXA–6051P, Report of Request for Restrictive Trade Practice or Boycott Multiple Transactions (revised 10–89)). Use of the multiple transaction form permits the reporting person to provide on one form all required information relating to as many as 75 reportable requests received within any single reporting period.

(6) Reports, whether submitted on the single transaction form or on the multiple transaction form, must contain entries for every applicable item on the form, including whether the reporting person intends to take or has taken the action requested. If the reporting person has not decided what action he will take by the time the report is required to be filed, he must later report the action he decides to take within 10 business days after deciding. In addition, anyone filing a report on behalf of another must so indicate and identify that other person.

(7) Each report of a boycott request must be accompanied by two copies of the relevant page(s) of any document(s) in which the request appears. Reports may also be accompanied by any additional information relating to the request as the reporting person desires to provide concerning his response to the request.

(8) Records containing information relating to a reportable boycott request, including a copy of any document(s) in which the request appears, must be maintained by the recipient for a five-year period after receipt of the request. The Department may require that these materials be submitted to it or that it have access to them at any time within that period. (See part 762 of the EAR for additional recordkeeping requirements.)

(c) *Disclosure of information.* (1) Reports of requests received on or after October 7, 1976, as well as any accompanying documents filed with the reports, have been and will continue to be made available for public inspection and copying, except for certain proprietary information. With respect to reports of requests received on or after August 1, 1978, if the person making the report certifies that a United States person to whom the report relates would be placed at a competitive disadvantage because of the disclosure of information regarding the quantity, description, or value of any articles, materials, and supplies, including related technical data and other information, whether contained in a report or in any accompanying document(s), such information will not be publicly disclosed except upon failure by the reporting entity to edit the public inspection copy of the accompanying document(s) as provided by paragraph (c)(2) of this section, unless the Secretary of Commerce determines that the disclosure would not place the United States person involved at a competitive disadvantage or that it would be contrary to the national interest to withhold the information. In the event the Secretary of Commerce considers making such a determination concerning competitive disadvantage, appropriate notice and an opportunity for comment will be given before any such proprietary information is publicly disclosed. In no event will requests of reporting persons to withhold any information contained in the report other than that specified in this paragraph be honored.

(2) Because a copy of any document(s) accompanying the report will be made available for public inspection and copying, one copy must be submitted intact and another copy must be edited by the reporting entity to delete the same information which it certified

in the report would place a United States person at a competitive disadvantage if disclosed. In addition, the reporting entity may delete from this copy information that is considered confidential and that is not required to be contained in the report (e.g., information related to foreign consignee). This copy should be conspicuously marked with the legend ''Public Inspection Copy.'' With respect to documents accompanying reports received by the Department on or after July 1, 1979, the public inspection copy will be made available as submitted whether or not it has been appropriately edited by the reporting entity as provided by this paragraph.

(3) Reports and accompanying documents which are available to the public for inspection and copying are located in the BXA Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Requests to inspect such documents should be addressed to that facility.

(4) The Secretary of Commerce will periodically transmit summaries of the information contained in the reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary of Commerce, may deem appropriate for carrying out the policies in section 8(b)(2) of the Export Administration Act of 1979.

EXAMPLES

The following examples are intended to give guidance in determining what is reportable. They are illustrative, not comprehensive.

(i) A, a U.S. manufacturer, is shipping goods to boycotting country Y and is asked by Y to certify that it is not blacklisted by Y's boycott office.

The request to A is reportable, because it is a request to A to comply with Y's boycott requirements.

(ii) A, a U.S. manufacturing company, receives an order for tractors from boycotting country Y. Y's order specifies that the tires on the tractors be made by B, another U.S. company. A believes Y has specified B as the tire supplier because otherwise A would have used tires made by C, a blacklisted company, and Y will not take shipment of tractors containing tires made by blacklisted companies.

A must report Y's request for tires made by B, because A has reason to know that B was chosen for boycott reasons.

(iii) Same as (ii), except A knows that Y's request has nothing to do with the boycott but simply reflects Y's preference for tires made by B.

Y's request is not reportable, because it is unrelated to Y's boycott.

(iv) Same as (ii), except A neither knows nor has reason to know why Y has chosen B.

Y's request is not reportable, because A neither knows nor has reason to know that Y's request is based on Y's boycott.

(v) A, a controlled foreign subsidiary of U.S. company B, is a resident of boycotting country Y. A is a general contractor. After being supplied by A with a list of competent subcontractors, A's customer instructs A to use subcontractor C on the project. A believes that C was chosen because, among other things, the other listed subcontractors are blacklisted.

The instruction to A by its customer that C be used on the project is reportable, because it is a request to comply with Y's boycott requirements.

(vi) A, a controlled foreign subsidiary of U.S. company B, is located in non-boycotting country P. A receives an order for washing machines from boycotting country Y. Y instructs A that a negative certificate of origin must accompany the shipment. The washing machines are made wholly in P, without U.S. components.

Y's instruction to A regarding the negative certificate of origin is not reportable, because the transaction to which it relates is not in U.S. commerce.

(vii) Same as (vi), except that A obtains components from the United States for the purpose of filling the order from Y. Y's instruction to A regarding the negative certificate of origin is reportable, because the transaction to which it relates is in U.S. commerce.

(viii) A, a U.S. construction company, receives in the mail an unsolicited invitation to bid on a construction project in boycotting country Y. The invitation to bid requires those who respond to certify that they do not have any plants or branch offices in boycotted country X. A does not respond.

A's receipt of the unsolicited invitation to bid is not reportable, because the request does not relate to any present or anticipated business of A with or in Y.

(ix) Same as (viii), except that A receives a boycott questionnaire from a central boycott office. A does not do business in any of the boycotting countries involved, and does not anticipate doing any business in those countries. A does not respond.

A's receipt of the boycott questionnaire is not reportable, because it does not relate to any present or anticipated business by A with or in a boycotting country.

(x) A, a U.S. manufacturer, is seeking markets in which to expand its exports. A sends a representative to boycotting country Y to explore Y's potential as a market for A's products. A's representative discusses its products but does not enter into any contracts on that trip. A does, however, hope that sales will materialize in the future. Subsequently, A receives a boycott questionnaire from Y.

A's receipt of the boycott questionnaire is reportable, because the request relates to A's anticipated business with or in a boycotting country. For purposes of determining whether a report is required, it makes no difference whether A responds to the questionnaire, and it makes no difference that actual sales contracts are not in existence or do not materialize.

(xi) Same as (x), except that A's representative enters into a contract to sell A's products to a buyer in boycotting country Y. Subsequently, A receives a boycott questionnaire from Y.

A's receipt of the boycott questionnaire is reportable, because it relates to A's present business with or in a boycotting country. For purposes of determining whether a report is required, it makes no difference whether A responds to the questionnaire.

(xii) A, a U.S. freight forwarder, purchases an exporter's guidebook which includes the import requirements of boycotting country Y. The guidebook contains descriptions of actions which U.S. exporters must take in order to make delivery of goods to Y.

A's acquisition of the guidebook is not reportable, because he has not received a request from anyone.

(xiii) A, a U.S. freight forwarder, is arranging for the shipment of goods to boycotting country Y at the request of B, a U.S. exporter. B asks A to assume responsibility to assure that the documentation accompanying the shipment is in compliance with Y's import requirements. A examines an exporters' guidebook, determines that Y's import regulations require a certification that the insurer of the goods is not blacklisted and asks U.S. insurer C for such a certification.

B's request to A is reportable by A, because it constitutes a request to comply with Y's boycott as of the time A takes action to comply with Y's boycott requirements in response to the request. A's request to C is reportable by C.

(xiv) A, a U.S. freight forwarder, is arranging for the shipment of U.S. goods to boycotting country Y. The manufacturer supplies A with all the necessary documentation to accompany the shipment. Among the documents supplied by the manufacturer is his certificate that he himself is not blacklisted. A transmits the documentation supplied by the manufacturer.

A's action in merely transmitting documents received from the manufacturer is not reportable, because A has received no request to comply with Y's boycott.

(xv) Same as (xiv), except that A is asked by U.S. exporter B to assume the responsibility to assure that the necessary documentation accompanies the shipment whatever that documentation might be. B forwards to A a letter of credit which requires that a negative certificate of origin accompany the bill of lading. A supplies a positive certificate of origin.

Both A and B must report receipt of the letter of credit, because it contains a request to both of them to comply with Y's boycott.

(xvi) Same as (xiv), except that the manufacturer fails to supply a required negative certificate of origin, and A is subsequently asked by a consular official of Y to see to it that the certificate is supplied. A supplies a positive certificate of origin.

The consular official's request to A is reportable by A, because A was asked to comply with Y's boycott requirements by supplying the negative certificate of origin.

(xvii) A, a U.S. manufacturer, is shipping goods to boycotting country Y. Arrangements have been made for freight forwarder B to handle the shipment and secure all necessary shipping certifications. B notes that the letter of credit requires that the manufacturer supply a negative certificate of origin and B asks A to do so. A supplies a positive certificate of origin.

B's request to A is reportable by A, because A is asked to comply with Y's boycott requirements by providing the negative certificate.

(xviii) A, a controlled foreign subsidiary of U.S. company B, is a resident of boycotting country Y. A is engaged in oil exploration and drilling operations in Y. In placing orders for drilling equipment to be shipped from the United States, A, in compliance with Y's laws, selects only those suppliers who are not blacklisted.

A's action in choosing non-blacklisted suppliers is not reportable, because A has not received a request to comply with Y's boycott in making these selections.

(xix) A, a controlled foreign subsidiary of U.S. company B, is seeking permission to do business in boycotting country Y. Before being granted such permission, A is asked to sign an agreement to comply with Y's boycott laws.

The request to A is reportable, because it is a request that expressly requires compliance with Y's boycott law and is received in connection with A's anticipated business in Y.

(xx) A, a U.S. bank, is asked by a firm in boycotting country Y to confirm a letter of credit in favor of B, a U.S. company. The letter of credit calls for a certificate from B that the goods to be supplied are not produced by a firm blacklisted by Y. A informs

B of the letter of credit, including its certification condition, and sends B a copy.

B must report the certification request contained in the letter of credit, and A must report the request to confirm the letter of credit containing the boycott condition, because both are being asked to comply with Y's boycott.

(xxi) Same as (xx), except that the letter of credit calls for a certificate from the beneficiary that the goods will not be shipped on a vessel that will call at a port in boycotted country X before making delivery in Y.

The request is not reportable, because it is a request of a type deemed by this section to be in common use for non-boycott purposes.

(xxii) A, a U.S. company, receives a letter of credit from boycotting country Y stating that on no condition may a bank blacklisted by Y be permitted to negotiate the credit.

A's receipt of the letter of credit is reportable, because it contains a request to A to comply with Y's boycott requirements.

(xxiii) A, a U.S. bank, receives a demand draft from B, a U.S. company, in connection with B's shipment of goods to boycotting country Y. The draft contains a directive that it is valid in all countries except boycotted country X.

A's receipt of the demand draft is reportable, because it contains a request to A to comply with Y's boycott requirements.

(xxiv) A, a U.S. exporter, receives an order from boycotting country Y. On the order is a legend that A's goods, invoices, and packaging must not bear a six-pointed star or other symbol of boycotted country X.

A's receipt of the order is reportable, because it contains a request to comply with Y's boycott requirements.

(xxv) Same as (xxiv), except the order contains a statement that goods exported must not represent part of war reparations to boycotted country X.

A's receipt of the order is reportable, because it contains a request to A to comply with Y's boycott requirements.

(xxvi) A, a U.S. contractor, is negotiating with boycotting country Y to build a school in Y. During the course of the negotiations, Y suggests that one of the terms of the construction contract be that A agree not to import materials produced in boycotted country X. It is A's company policy not to agree to such a contractual clause, and A suggests that instead it agree that all of the necessary materials will be obtained from U.S. suppliers. Y agrees to A's suggestion and a contract is executed.

A has received a reportable request, but, for purposes of reporting, the request is deemed to be received when the contract is executed.

(xxvii) Same as (xxvi), except Y does not accept A's suggested alternative clause and negotiations break off.

A's receipt of Y's request is reportable. For purposes of reporting, it makes no difference that A was not successful in the negotiations. The request is deemed to be received at the time the negotiations break off.

(xxviii) A, a U.S. insurance company, is insuring the shipment of drilling equipment to boycotting country Y. The transaction is being financed by a letter of credit which requires that A certify that it is not blacklisted by Y. Freight forwarder B asks A to supply the certification in order to satisfy the requirements of the letter of credit.

The request to A is reportable by A, because it is a request to comply with Y's boycott requirements.

(xxix) A, a U.S. manufacturer, is engaged from time-to-time in supplying drilling rigs to company B in boycotting country Y. B insists that its suppliers sign contracts which provide that, even after title passes from the supplier to B, the supplier will bear the risk of loss and indemnify B if goods which the supplier has furnished are denied entry into Y for whatever reason. A knows or has reason to know that this contractual provision is required by B because of Y's boycott, and that B has been using the provision since 1977. A receives an order from B which contains such a clause.

B's request is not reportable by A, because the request is deemed to be not reportable by these regulations if the provision was in use by B prior to the effective date of the regulations, January 18, 1978.

(xxx) Same as (xxix), except that A does not know when B began using the provision.

Unless A receives information from B that B introduced the term prior to the effective date of the regulations, January 18, 1978, A must report receipt of the request.

(xxxi) A, a U.S. citizen, is a shipping clerk for B, a U.S. manufacturing company. In the course of his employment, A receives an order for goods from boycotting country Y. The order specifies that none of the components of the goods is to be furnished by blacklisted firms.

B must report the request received by its employee, A, acting in the scope of his employment. Although A is a U.S. person, such an individual does not have a separate obligation to report requests received by him in his capacity as an employee of B.

(xxxii) U.S. exporter A is negotiating a transaction with boycotting country Y. A knows that at the conclusion of the negotiations he will be asked by Y to supply certain boycott-related information and that such a request is reportable. In an effort to forestall the request and thereby avoid having to file a report, A supplies the information in advance.

A is deemed to have received a reportable request.

(xxxiii) A, a controlled foreign affiliate of U.S. company B, receives an order for computers from boycotting country Y and obtains components from the United States for the purpose of filling the order. Y instructs A that a negative certificate of origin must accompany the shipment.

Y's instruction to A regarding the negative certificate of origin is reportable by A. Moreover, A may designate B or any other person to report on its behalf. However, A remains liable for any failure to report or for any representations made on its behalf.

(xxxiv) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to state on the bill of lading that the vessel is allowed to enter Y's ports. The request further states that a certificate from the owner or master of the vessel to that effect is acceptable.

The request A received from his customer in Y is not reportable if it was received after January 21, 1978, because it is a request of a type deemed to be not reportable by these regulations. (A may not make such a statement on the bill of lading himself, if he knows or has reason to know it is requested for a boycott purpose.

(xxxv) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to furnish a certificate from the owner of the vessel that the vessel is permitted to call at Y's ports.

The request A received from his customer in Y is not reportable if it was received after the effective date of these rules, because it is a request of a type deemed to be not reportable by these regulations.

(xxxvi) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to furnish a certificate from the insurance company indicating that the company has a duly authorized representative in country Y and giving the name of that representative.

The request A received from his customer in Y is not reportable if it was received after the effective date of these rules, because it is a request of a type deemed to be not reportable by these regulations.

SUPPLEMENT NO. 1 TO PART 760—INTERPRETATIONS

It has come to the Department's attention that some U.S. persons are being or may be asked to comply with new boycotting country requirements with respect to shipping and insurance certifications and certificates of origin. It has also come to the Department's attention that some U.S. persons are being or may be asked to agree to new contractual provisions in connection with certain foreign government or foreign government agency contracts. In order to maximize its guidance with respect to section 8 of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2407) and part 760 of the EAR, the Department hereby sets forth its views on these certifications and contractual clauses.[1]

I. CERTIFICATIONS

§760.2(d) of this part prohibits a U.S. person from furnishing or knowingly agreeing to furnish:

''Information concerning his or any other person's past, present or proposed business relationships:

(i) With or in a boycotted country;

(ii) With any business concern organized under the laws of a boycotted country;

(iii) With any national or resident of a boycotted country; or

(iv) With any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country.''

This prohibition, like all others under part 760, applies only with respect to a U.S. person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott. (§760.2(d)(5) of this part.)

This prohibition does not apply to the furnishing of normal business information in a commercial context. (§760.2(d)(3) of this part). Normal business information furnished in a commercial context does not cease to be such simply because the party soliciting the information may be a boycotting country or a national or resident thereof. If the information is of a type which is generally sought for a legitimate business purpose (such as determining financial fitness, technical competence, or professional experience), the information may be furnished even if the information could be used, or without the knowledge of the person supplying the information is intended to be used, for boycott purposes. (§760.2(d)(4) of this part).

The new certification requirements and the Department's interpretation of the applicability of part 760 thereto are as follows:

A. *Certificate of origin*. A certificate of origin is to be issued by the supplier or exporting company and authenticated by the exporting country, attesting that the goods exported to the boycotting country are of purely indigenous origin, and stating the name of the factory or the manufacturing company. To the extent that the goods as described on

[1] The Department originally issued this interpretation pursuant to the Export Administration Amendments Act of 1979 (Public Law 95–52) and the regulations on restrictive trade practices and boycotts (15 CFR part 369) published on January 25, 1978 (43 FR 3508) and contained in the 15 CFR edition revised as of January 1, 1979.

the certificate of origin are not solely and exclusively products of their country of origin indicated thereon, a declaration must be appended to the certificate of origin giving the name of the supplier/manufacturer and declaring:

''The undersigned, _____, does hereby declare on behalf of the above-named supplier/manufacturer, that certain parts or components of the goods described in the attached certificate of origin are the products of such country or countries, other than the country named therein as specifically indicated hereunder:

Country of Origin and Percentage of Value of Parts or Components Relative to Total Shipment

1. _____
2. _____
3. _____

Dated: _____

Signature _____

Sworn to before me, this _____ day of _____, 19 ____. Notary Seal.''

INTERPRETATION

It is the Department's position that furnishing a positive certificate of origin, such as the one set out above, falls within the exception contained in §760.3(c) of this part for compliance with the import and shipping document requirements of a boycotting country. See §760.3(c) of this part and examples (i) and (ii) thereunder.

B. *Shipping certificate.* A certificate must be appended to the bill of lading stating: (1) Name of vessel; (2) Nationality of vessel; and (3) Owner of vessel, and declaring:

''The undersigned does hereby declare on behalf of the owner, master, or agent of the above-named vessel that said vessel is not registered in the boycotted country or owned by nationals or residents of the boycotted country and will not call at or pass through any boycotted country port enroute to its boycotting country destination.

''The undersigned further declares that said vessel is otherwise eligible to enter into the ports of the boycotting country in conformity with its laws and regulations.

Sworn to before me, this _____ day of _____, 19 ____. Notary Seal.''

INTERPRETATION

It is the Department's position that furnishing a certificate, such as the one set out above, stating: (1) The name of the vessel, (2) The nationality of the vessel, and (3) The owner of the vessel and further declaring that the vessel: (a) Is not registered in a boycotted country, (b) Is not owned by nationals or residents of a boycotted country, and (c) Will not call at or pass through a boycotted country port enroute to its destination in a boycotting country falls within the exception contained in §760.3(b) of this part for compliance with the import and shipping document requirements of a boycotting country. See §760.3(b) of this part and examples (vii), (viii), and (ix) thereunder.

It is also the Department's position that the owner, charterer, or master of a vessel may certify that the vessel is ''eligible'' or ''otherwise eligible'' to enter into the ports of a boycotting country in conformity with its laws and regulations. Furnishing such a statement pertaining to one's own eligibility offends no prohibition under part 760. See §760.2(f) of this part, example (xiv).

On the other hand, where a boycott is in force, a declaration that a vessel is ''eligible'' or ''otherwise eligible'' to enter the ports of the boycotting country necessarily conveys the information that the vessel is not blacklisted or otherwise restricted from having a business relationship with the boycotting country. See §760.3(b) of this part, examples (vi), (xi), and (xii). Where a person other than the vessel's owner, charterer, or master furnishes such a statement, that is tantamount to his furnishing a statement that he is not doing business with a blacklisted person or is doing business only with nonblacklisted persons. Therefore, it is the Department's position that furnishing such a certification (which does not reflect customary international commercial practice) by anyone other than the owner, charterer, or master of a vessel would fall within the prohibition set forth in §760.2(d) of this part unless it is clear from all the facts and circumstances that the certification is not required for a boycott reason. See §760.2(d)(3) and (4) of this part. However, in accordance with the exception contained in §760.3(c) of this part for compliance with the import and shipping document requirements of a boycotting country, such a United States person may furnish such a certification until June 21, 1978.

C. *Insurance certificate.* A certificate must be appended to the insurance policy stating: (1) Name of insurance company; (2) Address of its principal office; and (3) Country of its incorporation, and declaring:

''The undersigned, _____, does hereby certify on behalf of the above-named insurance company that the said company has a duly qualified and appointed agent or representative in the boycotting country whose name and address appear below:

Name of agent/representative and address in the boycotting country.

Sworn to before me this _____ day of _____, 19____. Notary Seal.''

INTERPRETATION

It is the Department's position that furnishing the name of the insurance company falls within the exception contained in §760.3(c) of this part for compliance with the import and shipping document requirements of a boycotting country. See §760.3(c)(1)(v) of

this part and examples (v) and (x) thereunder. In addition, it is the Department's position that furnishing a certificate, such as the one set out above, stating the address of the insurance company's principal office and its country of incorporation offends no prohibition under part 760 unless the U.S. person furnishing the certificate knows or has reason to know that the information is sought for the purpose of determining that the insurance company is neither headquartered nor incorporated in a boycotted country. See §760.2(d)(1)(i) of this part.

It is also the Department's position that the insurer, himself, may certify that he has a duly qualified and appointed agent or representative in the boycotting country and may furnish the name and address of his agent or representative. Furnishing such a statement pertaining to one's own status offends no prohibition under part 760. See §760.2(f) of this part, example (xiv).

On the other hand, where a boycott is in force, a declaration that an insurer ''has a duly qualified and appointed agent or representative'' in the boycotting country necessarily conveys the information that the insurer is not blacklisted or otherwise restricted from having a business relationship with the boycotting country. See §760.3(c) of this part, example (v). Therefore, it is the Department's position that furnishing such a certification by anyone other than the insurer would fall within the prohibition set forth in §760.2(d) of this part unless it is clear from all the facts and circumstances that the certification is not required for a boycott reason. See §760.2(d) (3) and (4) of this part. However, in accordance with the exception contained in §760.3(c) of this part for compliance with the import and shipping document requirements of a boycotting country, such a U.S. person may furnish such a certification until June 21, 1978.

II. CONTRACTUAL CLAUSES

The new contractual requirements and the Department's interpretation of the applicability of part 760 thereto are as follows:

A. *Contractual clause regarding import laws of boycotting country*. ''In connection with the performance of this contract the Contractor/Supplier acknowledges that the import and customs laws and regulations of the boycotting country shall apply to the furnishing and shipment of any products or components thereof to the boycotting country. The Contractor/Supplier specifically acknowledges that the aforementioned import and customs laws and regulations of the boycotting country prohibit, among other things, the importation into the boycotting country of products or components thereof: (1) Originating in the boycotted country; (2) Manufactured, produced, or furnished by companies organized under the laws of the boycotted country; and (3) Manufactured, produced, or furnished by nationals or residents of the boycotted country.''

INTERPRETATION

It is the Department's position that an agreement, such as the one set out in the first sentence above, that the import and customs requirements of a boycotting country shall apply to the performance of a contract does not, in and of itself, offend any prohibition under Part 760. See §760.2(a)(5) of this part and example (iii) under ''Examples of Agreements To Refuse To Do Business.'' It is also the Department's position that an agreement to comply generally with the import and customs requirements of a boycotting country does not, in and of itself, offend any prohibition under part 760 of this part. See §760.2(a)(5) of this part and examples (iv) and (v) under ''Examples of Agreements To Refuse To Do Business.'' In addition, it is the Department's position that an agreement, such as the one set out in the second sentence above, to comply with the boycotting country's import and customs requirements prohibiting the importation of products or components: (1) Originating in the boycotted country; (2) Manufactured, produced, or furnished by companies organized under the laws of the boycotted country; or (3) Manufactured, produced, or furnished by nationals or residents of the boycotted country falls within the exception contained in §760.3(a) of this part for compliance with the import requirements of a boycotting country. See §760.3(a) of this part and example (ii) thereunder.

The Department notes that, after June 21, 1978, a United States person may not furnish a negative certification regarding the origin of goods or their components even though the certification is furnished in response to the import and shipping document requirements of the boycotting country. See §760.3(c) of this part and examples (i), (ii), and (iii) thereunder, and §760.3(a) of this part and example (ii) thereunder.

B. *Contractual clause regarding unilateral and specific selection*. ''The Government of the boycotting country (or the First Party), in its exclusive power, reserves its right to make the final unilateral and specific selection of any proposed carriers, insurers, suppliers of services to be performed within the boycotting country, or of specific goods to be furnished in accordance with the terms and conditions of this contract.''

INTERPRETATION

It is the Department's position that an agreement, such as the one set out above, falls within the exception contained in §760.3(d) of this part for compliance with unilateral selections. However, the Department notes that whether a U.S. person may subsequently comply or agree to comply with any

particular selection depends upon whether that selection meets all the requirements contained in §760.3(d) of this part for compliance with unilateral selections. For example, the particular selection must be unilateral and specific, particular goods must be specifically identifiable as to their source or origin at the time of their entry into the boycotting country, and all other requirements contained in §760.3(d) of this part must be observed.

SUPPLEMENT NO. 2 TO PART 760—INTERPRETATION

The Department hereby sets forth its views on whether the furnishing of certain shipping and insurance certificates in compliance with boycotting country requirements violates the provisions of section 8 of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2407) and part 760 of the EAR,[1] as follows:

(i) ''The owner, charterer or master of a vessel may certify that the vessel is 'eligible' or 'otherwise eligible' to enter into the ports of a boycotting country in conformity with its laws and regulations;''

(ii) ''The insurer, himself, may certify that he has a duly qualified and appointed agent or representative in the boycotting country and may furnish the name and address of his agent or representative.''

Furnishing such certifications by anyone other than:

(i) The owner, charterer or master of a vessel, or

(ii) The insurer would fall within the prohibition set forth in §760.2(d) of this part, ''unless it is clear from all the facts and circumstances that these certifications are not required for a boycott reason.'' See §760.2(d)(3) and (4) of this part.

The Department has received from the Kingdom of Saudi Arabia a clarification that the shipping and insurance certifications are required by Saudi Arabia in order to:

(i) Demonstrate that there are no applicable restrictions under Saudi laws or regulations pertaining to maritime matters such as the age of the ship, the condition of the ship, and similar matters that would bar entry of the vessel into Saudi ports; and

(ii) Facilitate dealings with insurers by Saudi Arabian importers whose ability to secure expeditious payments in the event of damage to insured goods may be adversely affected by the absence of a qualified agent or representative of the insurer in Saudi Arabia. In the Department's judgment, this clarification constitutes sufficient facts and circumstances to demonstrate that the certifications are not required by Saudi Arabia for boycott reasons.

On the basis of this clarification, it is the Department's position that any United States person may furnish such shipping and insurance certificates required by Saudi Arabia without violating §760.2(d) of this part. Moreover, under these circumstances, receipt of requests for such shipping and insurance certificates from Saudi Arabia is not reportable.

It is still the Department's position that furnishing such a certificate pertaining to one's own eligibility offends no prohibition under part 760. See §760.2(f) of this part, example (xiv). However, absent facts and circumstances clearly indicating that the certifications are required for ordinary commercial reasons as demonstrated by the Saudi clarification, furnishing certifications about the eligibility or blacklist status of any other person would fall within the prohibition set forth in §760.2(d) of this part, and receipt of requests for such certifications is reportable.

It also remains the Department's position that where a United States person asks an insurer or carrier of the exporter's goods to self-certify, such request offends no prohibition under this part. However, where a United States person asks anyone other than an insurer or carrier of the exporter's goods to self-certify, such requests will be considered by the Department as evidence of the requesting person's refusal to do business with those persons who cannot or will not furnish such a self-certification. For example, if an exporter-beneficiary of a letter of credit asks his component suppliers to self-certify, such a request will be considered as evidence of his refusal to do business with those component suppliers who cannot or will not furnish such a self-certification.

The Department wishes to emphasize that notwithstanding the fact that self-certifications are permissible, it will closely scrutinize the activities of all United States persons who provide such self-certifications, including insurers and carriers, to determine that such persons have not taken any prohibited actions or entered into any prohibited agreements in order to be able to furnish such certifications.

SUPPLEMENT NO. 3 TO PART 760—INTERPRETATION

Pursuant to Article 2, Annex II of the Peace Treaty between Egypt and Israel, Egypt's participation in the Arab economic boycott of Israel was formally terminated on January 25, 1980. On the basis of this action,

[1] The Department originally issued this interpretation on April 21, 1978 (43 FR 16969) pursuant to the Export Administration Amendments Act of 1977 (Public Law 95–52) and the regulations on restrictive trade practices and boycotts (15 CFR part 369) published on January 25, 1978 (43 FR 3508) and contained in the 15 CFR edition revised as of January 1, 1979.

it is the Department's position that certain requests for information, action or agreement which were considered boycott-related by implication now cannot be presumed boycott-related and thus would not be prohibited or reportable under the Regulations. For example, a request that an exporter certify that the vessel on which it is shipping its goods is eligible to enter Arab Republic of Egypt ports has been considered a boycott-related request that the exporter could not comply with because Egypt has a boycott in force against Israel (see 43 FR 16969, April 21, 1978 or the 15 CFR edition revised as of January 1, 1979). Such a request after January 25, 1980 would not be presumed boycott-related because the underlying boycott requirement/basis for the certification has been eliminated. Similarly, a U.S. company would not be prohibited from complying with a request received from Egyptian government officials to furnish the place of birth of employees the company is seeking to take to Egypt, because there is no underlying boycott law or policy that would give rise to a presumption that the request was boycott-related.

U.S. persons are reminded that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to the Regulations, irrespective of the country or origin. For example, requests containing references to ''blacklisted companies'', ''Israel boycott list'', ''non-Israeli goods'' or other phrases or words indicating boycott purpose would be subject to the appropriate provisions of the Department's antiboycott regulations.

SUPPLEMENT NO. 4 TO PART 760—INTERPRETATION

The question has arisen how the definition of U.S. commerce in the antiboycott regulations (15 CFR part 760) applies to a shipment of foreign-made goods when U.S.-origin spare parts are included in the shipment. Specifically, if the shipment of foreign goods falls outside the definition of U.S. commerce, will the inclusion of U.S.-origin spare parts bring the entire transaction into U.S. commerce?

Section 760.1(d)(12) of this part provides the general guidelines for determining when U.S.-origin goods shipped from a controlled in fact foreign subsidiary are outside U.S. commerce. The two key tests of that provision are that the goods were (1) acquired without reference to a specific order, and (2) further manufactured, incorporated or reprocessed into another product. Because the application of these two tests to spare parts does not conclusively answer the U.S. commerce question, the Department is presenting this clarification.

In the cases brought to the Department's attention, an order for foreign-origin goods was placed with a controlled in fact foreign subsidiary of a United States company. The foreign goods contained components manufactured in the United States and in other countries, and the order included a request for extras of the U.S. manufactured components (spare parts) to allow the customer to repair the item. Both the foreign manufactured product and the U.S. spare parts were to be shipped from the general inventory of the foreign subsidiary. Since the spare parts, if shipped by themselves, would be in U.S. commerce as that term is defined in the Regulations, the question was whether including them with the foreign manufactured item would bring the entire shipment into U.S. commerce. The Department has decided that it will not and presents the following specific guidance.

As used above, the term ''spare parts'' refers to parts of the quantities and types normally and customarily ordered with a product and kept on hand in the event they are needed to assure prompt repair of the product. Parts, components or accessories that improve or change the basic operations or design characteristics, for example, as to accuracy, capability or productivity, are not spare parts under this definition.

Inclusion of U.S.-origin spare parts in a shipment of products which is otherwise outside U.S. commerce will not bring the transaction into U.S. commerce if the following conditions are met:

(I) The parts included in the shipment are acquired from the United States by the controlled in fact foreign subsidiary without reference to a specific order from or transaction with a person outside the United States;

(II) The parts are identical to the corresponding United States-origin parts which have been manufactured, incorporated into or reprocessed into the completed product;

(III) The parts are of the quantity and type normally and customarily ordered with the completed product and kept on hand by the firm or industry of which the firm is a part to assure prompt repair of the product; and

(IV) The parts are covered by the same order as the completed product and are shipped with or at the same time as the original product.

The Department emphasizes that unless each of the above conditions is met, the inclusion of United States-origin spare parts in an order for a foreign-manufactured or assembled product will bring the entire transaction into the interstate or foreign commerce of the United States for purposes of part 760.

SUPPLEMENT NO. 5 TO PART 760—INTERPRETATION

A. Permissible Furnishing of Information

The information outlined below may be furnished in response to boycott-related requests from boycotting countries or others. This information is, in the view of the Department, not prohibited by the Regulations. Thus, a person does not have to qualify under any of the exceptions to be able to make the following statements. Such statements can be made, however, only by the person indicated and under the circumstances described. These statements should not be used as a point of departure or analogy for determining the permissibility of other types of statements. The Department's view that these statements are not contrary to the prohibitions contained in antiboycott provisions of the Regulations is limited to the specific statement in the specific context indicated.

1. A U.S. person may always provide its own name, address, place of incorporation (''nationality''), and nature of business.

2. A U.S. person may state that it is not on a blacklist, or restricted from doing business in a boycotting country. A company may not make that statement about its subsidiaries or affiliates—only about itself. A U.S. person may not say that there is no reason for it to be blacklisted. To make that statement would provide directly or by implication information that may not be provided. A U.S. person may inquire about the reasons it is blacklisted if it learns that it is on a blacklist (see §760.2(d) of this part example (xv)).

3. A U.S. person may describe in detail its past dealings with boycotting countries; may state in which boycotting countries its trademarks are registered; and may specify in which boycotting countries it is registered or qualified to do business. In general, a U.S. person is free to furnish any information it wishes about the nature and extent of its commercial dealings with boycotting countries.

4. A U.S. person may state that many U.S. firms or individuals have similar names and that it believes that it may be confused with a similarly named entity. A U.S. person may not state that it does or does not have an affiliation or relationship with such similarly named entity.

5. A U.S. person may state that the information requested is a matter of public record in the United States. However, the person may not direct the inquirer to the location of that information, nor may the U.S. person provide or cause to be provided such information.

B. Availability of the Compliance With Local Law Exception to Establish a Foreign Branch

Section 760.3(f) of this part, the Compliance With Local Law exception, permits U.S. persons, who are bona fide residents of a boycotting country, to take certain limited, but otherwise prohibited, actions, if they are required to do so in order to comply with local law.

Among these actions is the furnishing of non-discriminatory information. Examples (iv) through (vi) under ''Examples of Bona Fide Residency'' indicate that a company seeking to become a bona fide resident within a boycotting country may take advantage of the exception for the limited purpose of furnishing information required by local law to obtain resident status. Exactly when and how this exception is available has been the subject of a number of inquiries. It is the Department's view that the following conditions must be met for a non-resident company to be permitted to furnish otherwise prohibited information for the limited purpose of seeking to become a bona fide resident:

1. The company must have a legitimate business reason for seeking to establish a branch or other resident operation in the boycotting country. (Removal from the blacklist does not constitute such a reason.)

2. The local operation it seeks to establish must be similar or comparable in nature and operation to ones the company operates in other parts of the world, unless local law or custom dictates a significantly different form.

3. The person who visits the boycotting country to furnish the information must be the official whose responsibility ordinarily includes the creation and registration of foreign operations (i.e., the chairman of the board cannot be flown in to answer boycott questions unless the chairman of the board is the corporate official who ordinarily goes into a country to handle foreign registrations).

4. The information provided must be that which is ordinarily known to the person establishing the foreign branch. Obviously, at the time of establishment, the foreign branch will have no information of its own knowledge. Rather, the information should be that which the responsible person has of his own knowledge, or that he would have with him as incidental and necessary to the registration and establishment process. As a general rule, such information would not include such things as copies of agreements with boycotted country concerns or detailed information about the person's dealings with blacklisted concerns.

5. It is not necessary that documents prepared in compliance with this exception be drafted or executed within the boycotting

country. The restrictions on the type of information which may be provided and on who may provide it apply regardless of where the papers are prepared or signed.

SUPPLEMENT NO. 6 TO PART 760—INTERPRETATION

The antiboycott regulations prohibit knowing agreements to comply with certain prohibited requests and requirements of boycotting countries, regardless of how these terms are stated. Similarly, the reporting rules require that a boycott related ''solicitation, directive, legend or instruction that asks for information or that asks that a United States person take or refrain from taking a particular action'' be reported. Questions have frequently arisen about how particular requirements in the form of directive or instructions are viewed under the antiboycott regulations, and we believe that it will add clarity to the regulations to provide a written interpretation of how three of these terms are treated under the law. The terms in question appear frequently in letters of credit, but may also be found on purchase orders or other shipping or sale documents. They have been brought to the attention of the Department by numerous persons. The terms are, or are similar to, the following: (1) Goods of boycotted country origin are prohibited; (2) No six-pointed stars may be used on the goods, packing or cases; (3) Neither goods nor packing shall bear any symbols prohibited in the boycotting country.

(a) *Goods of boycotted country origin prohibited.* This term is very common in letters of credit from Kuwait and may also appear from time-to-time in invitations to bid, contracts, or other trade documents. It imposes a condition or requirement compliance with which is prohibited, but permitted by an exception under the Regulations (see §760.2(a) and §760.3(b) of this part). It is reportable by those parties to the letter of credit or other transaction that are required to take or refrain from taking some boycott related action by the request. Thus the bank must report the request because it is a term or condition of the letter of credit that it is handling, and the exporter-beneficiary must report the request because the exporter determines the origin of the goods. The freight forwarder does not have to report this request because the forwarder has no role or obligation in this part of the transaction. See §760.5, examples (xiii)-(xv) of this part.

(b) *No six-pointed stars may be used on the goods, packing or cases.* This term appears from time-to-time on documents from a variety of countries. The Department has taken the position that the six-pointed star is a religious symbol. See §760.2(b), example (viii) of this part. Agreeing to this term is prohibited by the Regulations and not excepted because it constitutes an agreement to furnish information about the religion of a U.S. person. See §760.2(c) of this part. If a person proceeds with a transaction in which this is a condition at any stage of the transaction, that person has agreed to the condition in violation of the Regulations. It is not enough to ignore the condition. Exception must affirmatively be taken to this term or it must be stricken from the documents of the transaction. It is reportable by all parties to the transaction that are restricted by it. For example, unlike the situation described in (a) above, the freight forwarder would have to report this request because his role in the transaction would involve preparation of the packing and cases. The bank and exporter would both have to report, of course, if it were a term in a letter of credit. Each party would be obligated affirmatively to seek an amendment or deletion of the term.

(c) *Neither goods nor packaging shall bear any symbols prohibited in the boycotting country.* This term appears from time-to-time in letters of credit and shipping documents from Saudi Arabia. In our view, it is neither prohibited, nor reportable because it is not boycott-related. There is a wide range of symbols that are prohibited in Saudi Arabia for a variety of reasons, many having to do with that nation's cultural and religious beliefs. On this basis, we do not interpret the term to be boycott related. See §760.2(a)(5) and §760.5(a)(5)(v) of this part.

SUPPLEMENT NO. 7 TO PART 760—INTERPRETATION

Prohibited Refusal To Do Business

When a boycotting country rejects for boycott-related reasons a shipment of goods sold by a United States person, the United States person selling the goods may return them to its inventory or may re-ship them to other markets (the United States person may not return them to the original supplier and demand restitution). The U.S. person may then make a non-boycott based selection of another supplier and provide the goods necessary to meet its obligations to the boycotting customer in that particular transaction without violating §760.2(a) of this part. If the United States person receives another order from the same boycotting country for similar goods, the Department has determined that a boycott-based refusal by a United States person to ship goods from the supplier whose goods were previously rejected would constitute a prohibited refusal to do business under §760.2(a) of this part. The Department will presume that filling such an order with alternative goods is evidence of the person's refusal to deal with the original supplier.

The Department recognizes the limitations this places on future transactions with a

boycotting country once a shipment of goods has been rejected. Because of this, the Department wishes to point out that, when faced with a boycotting country's refusal to permit entry of the particular goods, a United States person may state its obligation to abide by the requirements of United States law and indicate its readiness to comply with the unilateral and specific selection of goods by the boycotting country in accordance with §760.3(c) of this part. That section provides, in pertinent part, as follows:

A United States person may comply or agree to comply in the normal course of business with the unilateral and specific selection by a boycotting country _____ of _____ specific goods, _____ provided that _____ with respect to goods, the items, in the normal course of business, are identifiable as to their source or origin at the time of their entry into the boycotting country by (a) uniqueness of design or appearance or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging.

The United States person may also provide certain services in advance of the unilateral selection by the boycotting country, such as the compilation of lists of qualified suppliers, so long as such services are customary to the type of business the United States person is engaged in, and the services rendered are completely non-exclusionary in character (i.e., the list of qualified suppliers would have to include the supplier whose goods had previously been rejected by the boycotting country, if they were fully qualified). See §760.2(a)(6) of this part for a discussion of the requirements for the provision of these services.

The Department wishes to emphasize that the unilateral selection exception in §760.3(d) of this part will be construed narrowly, and that all its requirements and conditions must be met, including the following:

—Discretion for the selection must be exercised by a boycotting country; or by a national or resident of a boycotting country;
—The selection must be stated in the affirmative specifying a particular supplier of goods;
—While a permissible selection may be boycott based, if the United States person knows or has reason to know that the purpose of the selection is to effect discrimination against any United States person on the basis of race, religion, sex, or national origin, the person may not comply under any circumstances.

The Department cautions United States persons confronted with the problem or concern over the boycott-based rejection of goods shipped to a boycotting country that the adoption of devices such as ''risk of loss'' clauses, or conditions that make the supplier financially liable if his or her goods are rejected by the boycotting country for boycott reasons are presumed by the Department to be evasion of the statute and regulations, and as such are prohibited by §760.4 of this part, unless adopted prior to January 18, 1978. See §760.4(d) of this part.

SUPPLEMENT NO. 8 TO PART 760—INTERPRETATION

Definition of Interstate or Foreign Commerce of the United States

When United States persons (as defined by the antiboycott regulations) located within the United States purchase or sell goods or services located outside the United States, they have engaged in an activity within the foreign commerce of the United States. Although the goods or services may never physically come within the geographic boundaries of the several states or territories of the United States, legal ownership or title is transferred from a foreign nation to the United States person who is located in the United States. In the case of a purchase, subsequent resale would also be within United States commerce.

It is the Department's view that the terms ''sale'' and ''purchase'' as used in the regulations are not limited to those circumstances where the goods or services are physically transferred to the person who acquires title. The EAR define the activities that serve as the transactional basis for U.S. commerce as those involving the ''sale, purchase, or transfer'' of goods or services. In the Department's view, as used in the antiboycott regulations, ''transfer'' contemplates physical movement of the goods or services between the several states or territories and a foreign country, while ''sale'' and ''purchase'' relate to the movement of ownership or title.

This interpretation applies only to those circumstances in which the person located within the United States buys or sells goods or services for its own account. Where the United States person is engaged in the brokerage of foreign goods, i.e., bringing foreign buyers and sellers together and assisting in the transfer of the goods, the sale or purchase itself would not ordinarily be considered to be within U.S. commerce. The brokerage service, however, would be a service provided from the United States to the parties and thus an activity within U.S. commerce and subject to the antiboycott laws. See §760.1(d)(13) of this part.

The Department cautions that United States persons who alter their normal pattern of dealing to eliminate the passage of ownership of the goods or services to or from the several states or territories of the United States in order to avoid the application of the antiboycott regulations would be in violation of §760.4 of this part.

SUPPLEMENT NO. 9 TO PART 760—INTERPRETATION

Activities Exclusively Within a Boycotting Country—Furnishing Information

§ 760.3(h) of this part provides that a United States person who is a bona fide resident of a boycotting country may comply with the laws of that country with respect to his or her activities exclusively within the boycotting country. Among the types of conduct permitted by this exception is ''furnishing information within the host country'' § 760.3(h)(1)(v) of this part. For purposes of the discussion which follows, the Department is assuming that the person in question is a bona fide resident of the boycotting country as defined in § 760.3(f) of this part, and that the information to be provided is required by the laws or regulations of the boycotting country, as also defined in § 760.3(g) of this part. The only issue this interpretation addresses is under what circumstances the provision of information is ''an activity exclusively within the boycotting country.''

The activity of ''furnishing information'' consists of two parts, the acquisition of the information and its subsequent transmittal. Under the terms of this exception, the information may not be acquired outside the country for the purpose of responding to the requirement for information imposed by the boycotting country. Thus, if an American company which is a bona fide resident of a boycotting country is required to provide information about its dealings with other U.S. firms, the company may not ask its parent corporation in the United States for that information, or make any other inquiry outside the boundaries of the boycotting country. The information must be provided to the boycotting country authorities based on information or knowledge available to the company and its personnel located within the boycotting country at the time the inquiry is received. See § 760.3, (h) of this part, examples (iii), (iv), and (v). Much of the information in the company's possession (transaction and corporate records) may have actually originated outside the boycotting country, and much of the information known to the employees may have been acquired outside the boycotting country. This will not cause the information to fall outside the coverage of this exception, if the information was sent to the boycotting country or acquired by the individuals in normal commercial context prior to and unrelated to a boycott inquiry or purpose. It should be noted that if prohibited information (about business relations with a boycotted country, for example) has been forwarded to the affiliate in the boycotting country in anticipation of a possible boycott inquiry from the boycotting country government, the Department will not regard this as information within the knowledge of the bona fide resident under the terms of the exception. However, if the bona fide resident possesses the information prior to receipt of a boycott-related inquiry and obtained it in a normal commercial context, the information can be provided pursuant to this exception notwithstanding the fact that, at some point, the information came into the boycotting country from the outside.

The second part of the analysis of ''furnishing information'' deals with the limitation on the transmittal of the information. It can only be provided within the boundaries of the boycotting country. The bona fide resident may only provide the information to the party that the boycotting country law requires (directly or through an agent or representative within the country) so long as that party is located within the boycotting country. This application of the exception is somewhat easier, since it is relatively simple to determine if the information is to be given to somebody within the country.

Note that in discussing what constitutes furnishing information ''exclusively within'' the boycotting country, the Department does not address the nature of the transaction or activity that the information relates to. It is the Department's position that the nature of the transaction, including the inception or completion of the transaction, is not material in analyzing the availability of this exception.

For example, if a shipment of goods imported into a boycotting country is held up at the time of entry, and information from the bona fide resident within that country is legally required to free those goods, the fact that the information may relate to a transaction that began outside the boycotting country is not material. The availability of the exception will be judged based on the activity of the bona fide resident within the country. If the resident provides that information of his or her own knowledge, and provides it to appropriate parties located exclusively within the country, the exception permits the information to be furnished.

Factual variations may raise questions about the application of this exception and the effect of this interpretation. In an effort to anticipate some of these, the Department has set forth below a number of questions and answers. They are incorporated as a part of this interpretation.

1. Q. Under this exception, can a company which is a U.S. person and a bona fide resident of the boycotting country provide information to the local boycott office?

A. Yes, if local law requires the company to provide this information to the boycott office and all the other requirements are met.

2. Q. If the company knows that the local boycott office will forward the information to the Central Boycott Office, may it still provide the information to the local boycott office?

A. Yes, if it is required by local law to furnish the information to the local boycott office and all the other requirements are met. The company has no control over what happens to the information after it is provided to the proper authorities. (There is obvious potential for evasion here, and the Department will examine such occurrences closely.)

3. Q. Can a U.S. person who is a bona fide resident of Syria furnish information to the Central Boycott Office in Damascus?

A. No, unless the law in Syria specifically requires information to be provided to the Central Boycott Office the exception will not apply. Syria has a local boycott office responsible for enforcing the boycott in that country.

4. Q. If a company which is a U.S. person and a bona fide resident of the boycotting country has an import shipment held up in customs of the boycotting country, and is required to provide information about the shipment to get it out of customs, may the company do so?

A. Yes, assuming all other requirements are met. The act of furnishing the information is the activity taking place exclusively within the boycotting country. The fact that the information is provided corollary to a transaction that originates or terminates outside the boycotting country is not material.

5. Q. If the U.S. person and bona fide resident of the boycotting country is shipping goods out of the boycotting country, and is required to certify to customs officials of the country at the time of export that the goods are not of Israeli origin, may he do so even though the certification relates to an export transaction?

A. Yes, assuming all other requirements are met. See number 4 above.

SUPPLEMENT NO. 10 TO PART 760—INTERPRETATION

(a) The words ''Persian Gulf'' cannot appear on the document.

This term is common in letters of credit from Kuwait and may be found in letters of credit from Bahrain. Although more commonly appearing in letters of credit, the term may also appear in other trade documents.

It is the Department's view that this term reflects a historical dispute between the Arabs and the Iranians over geographic place names which in no way relates to existing economic boycotts. Thus, the term is neither prohibited nor reportable under the Regulations.

(b) Certify that goods are of U.S.A. origin and *contain no foreign parts.*

This term appears periodically on documents from a number of Arab countries. It is the Department's position that the statement is a positive certification of origin and, as such, falls within the exception contained in §760.3(c) of this part for compliance with the import and shipping document requirements of a boycotting country. Even though a negative phrase is contained within the positive clause, the phrase is a non exclusionary, non blacklisting statement. In the Department's view, the additional phrase does not affect the permissible status of the positive certificate, nor does it make the request reportable §760.5(a)(5)(iii) of this part.

(c) Legalization of documents by any Arab consulate except Egyptian Consulate permitted.

This term appears from time to time in letters of credit but also may appear in various other trade documents requiring legalization and thus is not prohibited, and a request to comply with the statement is not reportable. Because a number of Arab states do not have formal diplomatic relations with Egypt, they do not recognize Egyptian embassy actions. The absence of diplomatic relations is the reason for the requirement. In the Department's view this does not constitute an unsanctioned foreign boycott or embargo against Egypt under the terms of the Export Administration Act. Thus the term is not prohibited, and a request to comply with the statement is not reportable.

SUPPLEMENT NO. 11 TO PART 760—INTERPRETATION

Definition of Unsolicited Invitation to Bid

§760.5(a)(4) of this part states in part:

In addition, a United States person who receives an unsolicited invitation to bid, or similar proposal, containing a boycott request has not received a reportable request for purposes of this section where he does not respond to the invitation to bid or other proposal.

The Regulations do not define ''unsolicited'' in this context. Based on review of numerous situations, the Department has developed certain criteria that it applies in determining if an invitation to bid or other proposal received by a U.S. person is in fact unsolicited.

The invitation is not unsolicited if, during a commercially reasonable period of time preceding the issuance of the invitation, a representative of the U.S. person contacted the company or agency involved for the purpose of promoting business on behalf of the company.

The invitation is not unsolicited if the U.S. person has advertised the product or line of

products that are the subject of the invitation in periodicals or publications that ordinarily circulate to the country issuing the invitation during a commercially reasonable period of time preceding the issuance of the invitation.

The invitation is not unsolicited if the U.S. person has sold the same or similar products to the company or agency issuing the invitation within a commercially reasonable period of time before the issuance of the current invitation.

The invitation is not unsolicited if the U.S. person has participated in a trade mission to or trade fair in the country issuing the invitation within a commercially reasonable period of time before the issuance of the invitation.

Under §760.5(a)(4) of this part, the invitation is regarded as not reportable if the U.S. person receiving it does not respond. The Department has determined that a simple acknowledgment of the invitation does not constitute a response for purposes of this rule. However, an acknowledgment that requests inclusion for future invitations will be considered a response, and a report is required.

Where the person in receipt of an invitation containing a boycott term or condition is undecided about a response by the time a report would be required to be filed under the regulations, it is the Department's view that the person must file a report as called for in the Regulations. The person filing the report may indicate at the time of filing that he has not made a decision on the boycott request but must file a supplemental report as called for in the regulations at the time a decision is made (§760.5(a)(6) of this part).

SUPPLEMENT NO. 12 TO PART 760—INTERPRETATION

The Department has taken the position that a U.S. person as defined by §760.1(b) of this part may not make use of an agent to furnish information that the U.S. person is prohibited from furnishing pursuant to §760.2(d) of this part.

Example (v) under §760.4 of this part (Evasion) provides:

A, a U.S. company, is negotiating a long-term contract with boycotting country Y to meet all of Y's medical supply needs. Y informs A that before such a contract can be concluded, A must complete Y's boycott questionnaire. A knows that it is prohibited from answering the questionnaire so it arranges for a local agent in Y to supply the necessary information.

A's action constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

This interpretation deals with the application of the Regulations to a commercial agent registration requirement recently imposed by the government of Saudi Arabia. The requirement provides that nationals of Saudi Arabia seeking to register in Saudi Arabia as commercial agents or representatives of foreign concerns must furnish certain boycott-related information about the foreign concern prior to obtaining approval of the registration.

The requirement has been imposed by the Ministry of Commerce of Saudi Arabia, which is the government agency responsible for regulation of commercial agents and foreign commercial registrations. The Ministry requires the agent or representative to state the following:

Declaration: I, the undersigned, hereby declare, in my capacity as (blank) that (name and address of foreign principal) is not presently on the blacklist of the Office for the Boycott of Israel and that it and all its branches, if any, are bound by the decisions issued by the Boycott Office and do not (1) participate in the capital of, (2) license the manufacture of any products or grant trademarks or tradeware license to, (3) give experience or technical advice to, or (4) have any other relationship with other companies which are prohibited to be dealt with by the Boycott Office. Signed (name of commercial agent/representative/distributor).

It is the Department's view that under the circumstances specifically outlined in this interpretation relating to the nature of the requirement, a U.S. person will not be held responsible for a violation of this part when such statements are provided by its commercial agent or representative, even when such statements are made with the full knowledge of the U.S. person.

Nature of the requirement. For a boycott-related commercial registration requirement to fall within the coverage of this interpretation it must have the following characteristics:

1. The requirement for information imposed by the boycotting country applies to a national or other subject of the boycotting country qualified under the local laws of that country to function as a commercial representative within that country;

2. The registration requirement relates to the registration of the commercial agent's or representative's authority to sell or distribute goods within the boycotting country acquired from the foreign concern;

3. The requirement is a routine part of the registration process and is not applied selectively based on boycott-related criteria;

4. The requirement applies only to a commercial agent or representative in the boycotting country and does not apply to the foreign concern itself; and

5. The requirement is imposed by the agency of the boycotting country responsible for regulating commercial agencies.

The U.S. person whose agent is complying with the registration requirement continues

to be subject to all the terms of the Regulations, and may not provide any prohibited information to the agent for purposes of the agent's compliance with the requirement.

In addition, the authority granted to the commercial agent or representative by the U.S. person must be consistent with standard commercial practices and not involve any grants of authority beyond those incidental to the commercial sales and distributorship responsibilities of the agent.

Because the requirement does not apply to the U.S. person, no reporting obligation under §760.5 of this part would arise.

This interpretation, like all others issued by the Department discussing applications of the antiboycott provisions of the Export Administration Regulations, should be read narrowly. Circumstances that differ in any material way from those discussed in this notice will be considered under the applicable provisions of the Regulations. Persons are particularly advised not to seek to apply this interpretation to circumstances in which U.S. principals seek to use agents to deal with boycott-related or potential blacklisting situations.

SUPPLEMENT NO. 13 TO PART 760—INTERPRETATION

SUMMARY

This interpretation considers boycott-based contractual language dealing with the selection of suppliers and subcontractors. While this language borrows terms from the ''unilateral and specific selection'' exception contained in §760.3(c) of this part, it fails to meet the requirements of that exception. Compliance with the requirements of the language constitutes a violation of the regulatory prohibition of boycott-based refusals to do business.

REGULATORY BACKGROUND

Section 760.2(a) of this part prohibits U.S. persons from refusing or knowingly agreeing to refuse to do business with other persons when such refusal is pursuant to an agreement with, requirement of, or request of a boycotting country. That prohibition does not extend to the performance of management, procurement or other pre-award services, however, notwithstanding knowledge that the ultimate selection may be boycott-based. To be permissible such services: (1) Must be customary for the firm or industry involved and (2) must not exclude others from the transaction or involve other actions based on the boycott. See §760.2(a)(6) of this part, ''Refusals to Do Business'', and example (xiii).

A specific exception is also made in the Regulations for compliance (and agreements to comply) with a unilateral and specific selection of suppliers or subcontractors by a boycotting country buyer. See §760.3(d) of this part. In Supplement No. 1 to part 760, the following form of contractual language was said to fall within that exception for compliance with unilateral and specific selection:

The Government of the boycotting country (or the First Party), in its exclusive power, reserves its right to make the final unilateral and specific selection of any proposed carriers, insurers, suppliers of services to be performed within the boycotting country, or of specific goods to be furnished in accordance with the terms and conditions of this contract.

The Department noted that the actual steps necessary to comply with any selection made under this agreement would also have to meet the requirements of §760.3(c) of this part to claim the benefit of that exception. In other words, the discretion in selecting would have to be exercised exclusively by the boycotting country customer and the selection would have to be stated in the affirmative, naming a particular supplier. See §760.3(d) (4) and (5) of this part.

ANALYSIS OF THE NEW CONTRACTUAL LANGUAGE

The Office of Antiboycott Compliance has learned of the introduction of a new contractual clause into tender documents issued by boycotting country governments. This clause is, in many respects, similar to that dealt with in Supplement No. 1 to part 760, but several critical differences exist.

The clause states:

BOYCOTT OF BOYCOTTED COUNTRY

In connection with the performance of this Agreement, Contractor acknowledges that the import and customs laws and regulations of boycotting country apply to the furnishing and shipment of any products or components thereof to boycotting country. The Contractor specifically acknowledges that the aforementioned import and customs laws and regulations of boycotting country prohibit, among other things, the importation into boycotting country of products or components thereof: (A) Originating in boycotted country; (B) Manufactured, produced and furnish by companies organized under the laws of boycotted country; and (C) Manufactured, produced or furnished by Nationals or Residents of boycotted country.

The Government, in its exclusive power, reserves its right to make the final unilateral and specific selection of any proposed Carriers, Insurers, Suppliers of Services to be performed within boycotting country or of specific goods to be furnished in accordance with the terms and conditions of this Contract.

To assist the Government in exercising its right under the preceding paragraph, Contractor further agrees to provide a complete list of names and addresses of all his Sub-Contractors, Suppliers, Vendors and Consultants and any other suppliers of the service for the project.

The title of this clause makes clear that its provisions are intended to be boycott-related. The first paragraph acknowledges the applicability of certain boycott-related requirements of the boycotting country's laws in language reviewed in part 760, Supplement No. 1, Part II.B. and found to constitute a permissible agreement under the exception contained in §760.3(a) of this part for compliance with the import requirements of a boycotting country. The second and third paragraphs together deal with the procedure for selecting subcontractors and suppliers of services and goods and, in the context of the clause as a whole, must be regarded as motivated by boycott considerations and intended to enable the boycotting country government to make boycott-based selections, including the elimination of blacklisted subcontractors and suppliers.

The question is whether the incorporation into these paragraphs of some language from the ''unilateral and specific selection'' clause approved in Supplement No. 1 to part 760 suffices to take the language outside §760.2(a) of this part's prohibition on boycott-based agreements to refuse to do business. While the first sentence of this clause is consistent with the language discussed in Supplement No. 1 to part 760, the second sentence significantly alters the effect of this clause. The effect is to draw the contractor into the decision-making process, thereby destroying the unilateral character of the selection by the buyer. By agreeing to submit the names of the suppliers it plans to use, the contractor is agreeing to give the boycotting country buyer, who has retained the right of final selection, the ability to reject, for boycott-related reasons, any supplier the contractor has already chosen. Because the requirement appears in the contractual provision dealing with the boycott, the buyer's rejection of any supplier whose name is given to the buyer pursuant to this provision would be presumed to be boycott-based. By signing the contract, and thereby agreeing to comply with all of its provisions, the contractor must either accept the buyer's rejection of any supplier, which is presumed to be boycott-based because of the context of this provision, or breach the contract.

In these circumstances, the contractor's method of choosing its subcontractors and suppliers, in anticipation of the buyer's boycott-based review, cannot be considered a permissible pre-award service because of the presumed intrusion of boycott-based criteria into the selection process. Thus, assuming all other jurisdictional requirements necessary to establish a violation of part 760 are met, the signing of the contract by the contractor constitutes a violation of §760.2(a) of this part because he is agreeing to refuse to do business for boycott reasons.

The apparent attempt to bring this language within the exception for compliance with unilateral and specific selections is ineffective. The language does not place the discretion to choose suppliers in the hands of the boycotting country buyer but divides this discretion between the buyer and his principal contractor. Knowing that the buyer will not accept a boycotted company as supplier or subcontractor, the contractor is asked to use his discretion in selecting a single supplier or subcontractor for each element of the contract. The boycotting country buyer exercises discretion only through accepting or rejecting the selected supplier or contractor as its boycott policies require. In these circumstances it cannot be said that the buyer is exercising right of unilateral and specific selection which meets the criteria of §760.3(c) of this part. For this reason, agreement to the contractual language discussed here would constitute an agreement to refuse to do business with any person rejected by the buyer and would violate §760.2(a) of this part.

SUPPLEMENT NO. 14 TO PART 760—INTERPRETATION

(a) *Contractual clause concerning import, customs and boycott laws of a boycotting country.*

The following language has appeared in tender documents issued by a boycotting country:

Supplier declares his knowledge of the fact that the import, Customs and boycott laws, rules and regulations of [name of boycotting country] apply in importing to [name of boycotting country].

Supplier declares his knowledge of the fact that under these laws, rules and regulations, it is prohibited to import into [name of the boycotting country] any products or parts thereof that originated in [name of boycotted country]; were manufactured, produced or imported by companies formed under the laws of [name of boycotted country]; or were manufactured, produced or imported by nationals or residents of [name of boycotted country].

Agreeing to the above contractual language is a prohibited agreement to refuse to do business, under §760.2(a) of this part. The first paragraph requires broad acknowledgment of the application of the boycotting country's boycott laws, rules and regulations. Unless this language is qualified to apply only to boycott restrictions with which U.S. persons may comply, agreement to it is prohibited. See §760.2(a) of this part, examples (v) and (vi) under ''Agreement to Refuse to Do Business.''

The second paragraph does not limit the scope of the boycott restrictions referenced in the first paragraph. It states that the boycott laws include restrictions on goods originating in the boycotted country; manufactured, produced or supplied by companies organized under the laws of the boycotted country; or manufactured, produced or supplied by nationals or residents of the boycotted country. Each of these restrictions is within the exception for compliance with the import requirements of the boycotting country (§760.3(a) of this part). However, the second paragraph's list of restrictions is not exclusive. Since the boycott laws generally include more than what is listed and permissible under the antiboycott law, U.S. persons may not agree to the quoted clause. For example, a country's boycott laws may prohibit imports of goods manufactured by blacklisted firms. Except as provided by §760.3(g) of this part, agreement to and compliance with this boycott restriction would be prohibited under the antiboycott law.

The above contractual language is distinguished from the contract clause determined to be permissible in supplement 1, Part II, A, by its acknowledgment that the boycott requirements of the boycotting country apply. Although the first sentence of the Supplement 1 clause does not exclude the possible application of boycott laws, it refers only to the import and customs laws of the boycotting country without mentioning the boycott laws as well. As discussed fully in Supplement No. 1 to part 760, compliance with or agreement to the clause quoted there is, therefore, permissible.

The contract clause quoted above, as well as the clause dealt with in Supplement No. 1 to part 760, part II, A, is reportable under §760.6(a)(1) of this part.

(b) *Letter of credit terms removing blacklist certificate requirement if specified vessels used.*

The following terms frequently appear on letters of credit covering shipment to Iraq:

Shipment to be effected by Iraqi State Enterprise for Maritime Transport Vessels or by United Arab Shipping Company (SAB) vessels, if available.

If shipment is effected by any of the above company's [sic] vessels, black list certificate or evidence to that effect is not required.

These terms are not reportable and compliance with them is permissible.

The first sentence, a directive to use Iraqi State Enterprise for Maritime Transport or United Arab Shipping vessels, is neither reportable nor prohibited because it is not considered by the Department to be boycott-related. The apparent reason for the directive is Iraq's preference to have cargo shipped on its own vessels (or, as in the case of United Arab Shipping, on vessels owned by a company in part established and owned by the Iraqi government). Such ''cargo preference'' requirements, calling for the use of an importing or exporting country's own ships, are common throughout the world and are imposed for non-boycott reasons. (See §760.2(a) of this part, example (vii) AGREEMENTS TO REFUSE TO DO BUSINESS.)

In contrast, if the letter of credit contains a list of vessels or carriers that appears to constitute a boycott-related whitelist, a directive to select a vessel from that list would be both reportable and prohibited. When such a directive appears in conjunction with a term removing the blacklist certificate requirement if these vessels are used, the Department will presume that beneficiaries, banks and any other U.S. person receiving the letter of credit know that there is a boycott-related purpose for the directive.

The second sentence of the letter of credit language quoted above does not, by itself, call for a blacklist certificate and is not therefore, reportable. If a term elsewhere on the letter of credit imposes a blacklist certificate requirement, then that other term would be reportable.

(c) *Information not related to a particular transaction in U.S. commerce.*

Under §760.2 (c), (d) and (e), of this part U.S. persons are prohibited, with respect to their activities in U.S. commerce, from furnishing certain information. It is the Department's position that the required nexus with U.S. commerce is established when the furnishing of information itself occurs in U.S. commerce. Even when the furnishing of information is not itself in U.S. commerce, however, the necessary relationship to U.S. commerce will be established if the furnishing of information relates to particular transactions in U.S. commerce or to anticipated transactions in U.S. commerce. See, e.g. §760.2(d), examples (vii), (ix) and (xii) of this part.

The simplest situation occurs where a U.S. person located in the United States furnishes information to a boycotting country. The transfer of information from the United States to a foreign country is itself an activity in U.S. commerce. See §760.1(d)(1)(iv) of this part. In some circumstances, the furnishing of information by a U.S. person located outside the United States may also be an activity in U.S. commerce. For example, the controlled foreign subsidiary of a domestic concern might furnish to a boycotting country information the subsidiary obtained from the U.S.-located parent for that purpose. The subsidiary's furnishing would, in these circumstances, constitute an activity in U.S. commerce. See §760.1(d)(8) of this part.

Where the furnishing of information is not itself in U.S. commerce, the U.S. commerce requirement may be satisfied by the fact that the furnishing is related to an activity in U.S. foreign or domestic commerce. For example, if a shipment of goods by a controlled-in-fact foreign subsidiary of a U.S.

company to a boycotting country gives rise to an inquiry from the boycotting country concerning the subsidiary's relationship with another firm, the Department regards any responsive furnishing of information by the subsidiary as related to the shipment giving rise to the inquiry. If the shipment is in U.S. foreign or domestic commerce, as defined by the regulations, then the Department regards the furnishing to be related to an activity in U.S. commerce and subject to the antiboycott regulations, whether or not the furnishing itself is in U.S. commerce.

In some circumstances, the Department may regard a furnishing of information as related to a broader category of present and prospective transactions. For example, if a controlled-in-fact foreign subsidiary of a U.S. company is requested to furnish information about its commercial dealings and it appears that failure to respond will result in its blacklisting, any responsive furnishing of information will be regarded by the Department as relating to all of the subsidiary's present and anticipated business activities with the inquiring boycotting country. Accordingly, if any of these present or anticipated business activities are in U.S. commerce, the Department will regard the furnishing as related to an activity in U.S. commerce and subject to the antiboycott regulations.

In deciding whether anticipated business activities will be in U.S. commerce, the Department will consider all of the surrounding circumstances. Particular attention will be given to the history of the U.S. person's business activities with the boycotting country and others, the nature of any activities occurring after a furnishing of information occurs and any relevant economic or commercial factors which may affect these activities.

For example, if a U.S. person has no activities with the boycotting country at present but all of its other international activities are in U.S. commerce, as defined by the Regulations, then the Department is likely to regard any furnishing of information by that person for the purpose of securing entry into the boycotting country's market as relating to anticipated activities in U.S. commerce and subject to the antiboycott regulations. Similarly, if subsequent to the furnishing of information to the boycotting country for the purpose of securing entry into its markets, the U.S. person engages in transactions with that country which are in U.S. commerce, the Department is likely to regard the furnishing as related to an activity in U.S. commerce and subject to the antiboycott regulations.

SUPPLEMENT NO. 15 TO PART 760—INTERPRETATION

Section 760.2 (c), (d), and (e) of this part prohibits United States persons from furnishing certain types of information with intent to comply with, further, or support an unsanctioned foreign boycott against a country friendly to the United States. The Department has been asked whether prohibited information may be transmitted—that is, passed to others by a United States person who has not directly or indirectly authored the information—without such transmission constituting a furnishing of information in violation of §760.2 (c), (d), and (e) of this part. Throughout this interpretation, ''transmission'' is defined as the passing on by one person of information initially authored by another. The Department believes that there is no distinction in the EAR between transmitting (as defined above) and furnishing prohibited information under the EAR and that the transmission of prohibited information with the requisite boycott intent is a furnishing of information violative of the EAR. At the same time, however, the circumstances relating to the transmitting party's involvement will be carefully considered in determining whether that party intended to comply with, further, or support an unsanctioned foreign boycott.

The EAR does not deal specifically with the relationship between transmitting and furnishing. However, the restrictions in the EAR on responses to boycott-related conditions, both by direct and indirect actions and whether by primary parties or intermediaries, indicate that U.S. persons who simply transmit prohibited information are to be treated the same under the EAR as those who both author and furnish prohibited information. This has been the Department's position in enforcement actions it has brought.

The few references in the EAR to the transmission of information by third parties are consistent with this position. Two examples, both relating to the prohibition against the furnishing of information about U.S. persons' race, religion, sex, or national origin (§760.2(c) of this part), deal explicitly with transmitting information. These examples (§760.2(c) of this part, example (v), and §760.3(f) of this part, example (vi)) show that, in certain cases, when furnishing certain information is permissible, either because it is not within a prohibition or is excepted from a prohibition, transmitting it is also permissible. These examples concern information that may be furnished by individuals about themselves or their families. The examples show that employers may transmit to a boycotting country visa applications or forms containing information about an employee's race, religion, sex, or national origin if that employee is the source of the information

and authorizes its transmission. In other words, within the limits of ministerial action set forth in these examples, employees' actions in transmitting information are protected by the exception available to the employee. The distinction between permissible and prohibited behavior rests not on the definitional distinction between furnishing and transmitting, but on the excepted nature of the information furnished by the employee. The information originating from the employee does not lose its excepted character because it is transmitted by the employer.

The Department's position regarding the furnishing and transmission of certificates of one's own blacklist status rests on a similar basis and does not support the contention that third parties may transmit prohibited information authored by another. Such self-certifications do not violate any prohibitions in the EAR (see Supplement Nos. 1(I)(B), 2, and 5(A)(2); §760.2(f), example (xiv)). It is the Department's position that it is not prohibited for U.S. persons to transmit such self-certifications completed by others. Once again, because furnishing the self-certification is not prohibited, third parties who transmit the self-certifications offend no prohibition. On the other hand, if a third party authored information about another's blacklist status, the act of transmitting that information would be prohibited.

A third example in the EAR (§760.5, example (xiv) of this part), which also concerns a permissible transmission of boycott-related information, does not support the theory that one may transmit prohibited information authored by another. This example deals with the reporting requirements in §760.5 of this part—not the prohibitions—and merely illustrates that a person who receives and transmits a self-certification has not received a reportable request.

It is also the Department's position that a U.S. person violates the prohibitions against furnishing information by transmitting prohibited information even if that person has received no reportable request in the transaction. For example, where documents accompanying a letter of credit contain prohibited information, a negotiating bank that transmits the documents, with the requisite boycott intent, to an issuing bank has not received a reportable request, but has furnished prohibited information.

While the Department does not regard the suggested distinction between transmitting and furnishing information as meaningful, the facts relating to the third party's involvement may be important in determining whether that party furnished information with the required intent to comply with, further, or support an unsanctioned foreign boycott. For example, if it is a standard business practice for one participant in a transaction to obtain and pass on, without examination, documents prepared by another party, it might be difficult to maintain that the first participant intended to comply with a boycott by passing on information contained in the unexamined documents. Resolution of such intent questions, however, depends upon an analysis of the individual facts and circumstances of the transaction and the Department will continue to engage in such analysis on a case-by-case basis.

This interpretation, like all others issued by the Department discussing applications of the antiboycott provisions of the EAR, should be read narrowly. Circumstances that differ in any material way from those discussed in this interpretation will be considered under the applicable provisions of the Regulations.

SUPPLEMENT NO. 16 TO PART 760—INTERPRETATION

Pursuant to Articles 5, 7, and 26 of the Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan and implementing legislation enacted by Jordan, Jordan's participation in the Arab economic boycott of Israel was formally terminated on August 16, 1995.

On the basis of this action, it is the Department's position that certain requests for information, action or agreement from Jordan which were considered boycott-related by implication now cannot be presumed boycott-related and thus would not be prohibited or reportable under the regulations. For example, a request that an exporter certify that the vessel on which it is shipping its goods is eligible to enter Hashemite Kingdom of Jordan ports has been considered a boycott-related request that the exporter could not comply with because Jordan has had a boycott in force against Israel. Such a request from Jordan after August 16, 1995 would not be presumed boycott-related because the underlying boycott requirement/basis for the certification has been eliminated. Similarly, a U.S. company would not be prohibited from complying with a request received from Jordanian government officials to furnish the place of birth of employees the company is seeking to take to Jordan because there is no underlying boycott law or policy that would give rise to a presumption that the request was boycott-related.

U.S. persons are reminded that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to the regulations, irrespective of the country of origin. For example, requests containing references to ''blacklisted companies'', ''Israel boycott list'', ''non-Israeli goods'' or other phrases or words indicating boycott purpose would be subject to the appropriate provisions of the Department's antiboycott regulations.

PART 762—RECORDKEEPING

Sec.
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762.7 Producing and inspecting records.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

SOURCE: 61 FR 12900, Mar. 25, 1996, unless otherwise noted.

§762.1 Scope.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Transactions subject to this part.* The recordkeeping provisions of this part apply to the following transactions:

(1) Transactions involving restrictive trade practices or boycotts described in part 760 of the EAR;

(2) Exports of commodities, software, or technology from the United States and any known reexports, transshipment, or diversions of items exported from the United States;

(3) Exports to Canada, if, at any stage in the transaction, it appears that a person in a country other than the United States or Canada has an interest therein, or that the item involved is to be reexported, transshipped, or diverted from Canada to another foreign country; or

(4) Any other transactions subject to the EAR, including, but not limited to, the prohibitions against servicing, forwarding and other actions for or on behalf of end-users of proliferation concern contained in §§734.2(b)(7) and 744.6 of the EAR. This part also applies to all negotiations connected with those transactions, except that for export control matters a mere preliminary inquiry or offer to do business and negative response thereto shall not constitute negotiations, unless the inquiry or offer to do business proposes a transaction that a reasonably prudent exporter would believe likely to lead to a violation of the EAA, the EAR or any order, license or authorization issued thereunder.

(b) *Persons subject to this part.* Any person subject to the jurisdiction of the United States who, as principal or agent (including a forwarding agent), participates in any transaction described in paragraph (a) of this section, and any person in the United States or abroad who is required to make and maintain records under any provision of the EAR, shall keep and maintain all records described in §762.2 of this part that are made or obtained by that person and shall produce them in a manner provided by §762.6 of this part.

§762.2 Records to be retained.

(a) *Records required to be retained.* The records required to be retained under this part 762 include the following:

(1) Export control documents, as defined in part 772 of the EAR;

(2) Memoranda;

(3) Notes;

(4) Correspondence;

(5) Contracts;

(6) Invitations to bid;

(7) Books of account;

(8) Financial records;

(9) Restrictive trade practice or boycott documents and reports, and

(10) Other records pertaining to the types of transactions described in §762.1(a) of this part, which are made or obtained by a person described in §762.1(b) of this part.

(b) *Records retention references.* Paragraph (a) of this section describes records that are required to be retained. Other parts, sections, or supplements of the EAR which require the retention of records or contain recordkeeping provisions, include, but are not limited to the following:

(1) Part 736, General Prohibitions;

(2) §732.6, Steps for other requirements;

(3) §740.1, Introduction (to License Exceptions);

(4) §742.12(a)(3), High Performance Computers;

(5) Supplement No. 3 to part 742 High Performance Computers, Safeguards and Related Information;

(6) §742.15;

(7) §740.7, Humanitarian donations (NEED);

(8) § 748.4(a), Disclosure and substantiation of facts on license applications;
(9) § 748.6, General instructions for license applications;
(10) § 748.9, Support documents for license applications;
(11) § 748.10, Import and End-user Certificates;
(12) § 748.11, Statement by Ultimate Consignee and Purchaser;
(13) § 748.13, Delivery Verification (DV);
(14) § 748.2(c), Obtaining forms; mailing addresses;
(15) § 750.7, Issuance of license;
(16) § 750.8, Revocation or suspension of license;
(17) § 750.9, Duplicate licenses;
(18) § 750.10, Transfer of licenses for export;
(19) § 752.7, Direct shipment to customers;
(20) § 752.9, Action on SCL applications;
(21) § 752.10, Changes to the SCL;
(22) § 752.11, Internal Control Programs;
(23) § 752.12, Recordkeeping requirements;
(24) § 752.13, Inspection of records;
(25) § 752.14, System reviews;
(26) § 752.15, Export clearance;
(27) § 754.2(j)(3), Recordkeeping requirements for deep water ballast exchange.
(28) § 754.4, Unprocessed western red cedar;
(29) § 758.1(b)(3), Record and proof of agent's authority;
(30) § 758.3, Shipper's Export Declaration;
(31) § 758.6, Destination control statements;
(32) § 760.6, Restrictive Trade Practices and Boycotts;
(33) § 762.2, Records to be retained;
(34) § 764.2, Violations;
(35) § 764.5, Voluntary self-disclosure; and
(36) § 766.10, Subpoenas.

[61 FR 12900, Mar. 25, 1996, as amended at 61 FR 27258, May 31, 1996; 61 FR 65466, Dec. 13, 1996]

§ 762.3 Records exempt from recordkeeping requirements.

(a) The following types of records have been determined to be exempt from the recordkeeping requirement procedures:
(1) Export information page;
(2) Special export file list;
(3) Vessel log from freight forwarder;
(4) Inspection certificate;
(5) Warranty certificate;
(6) Guarantee certificate;
(7) Packing material certificate;
(8) Goods quality certificate;
(9) Notification to customer of advance meeting;
(10) Letter of indemnity;
(11) Financial release form;
(12) Financial hold form;
(13) Export parts shipping problem form;
(14) Draft number log;
(15) Expense invoice mailing log;
(16) Financial status report;
(17) Bank release of guarantees;
(18) Cash sheet;
(19) Commission payment back-up;
(20) Commissions payable worksheet;
(21) Commissions payable control;
(22) Check request forms;
(23) Accounts receivable correction form;
(24) Check request register;
(25) Commission payment printout;
(26) Engineering fees invoice;
(27) Foreign tax receipt;
(28) Individual customer credit status;
(29) Request for export customers code forms;
(30) Acknowledgement for receipt of funds;
(31) Escalation development form;
(32) Summary quote;
(33) Purchase order review form;
(34) Proposal extensions;
(35) Financial proposal to export customers;
and
(36) Sales summaries.
(b) [Reserved]

[61 FR 12900, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997]

§ 762.4 Original records required.

The regulated person must maintain the original records in the form in which that person receives or creates them unless that person meets all of the conditions of § 762.5 of this part relating to reproduction of records. If the original record does not meet the standards of legibility and readability

described in §762.5 of this part and the regulated person intends to rely on that record to meet the recordkeeping requirements of the EAR, that person must retain the original record.

§762.5 Reproduction of original records.

(a) The regulated person may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(b) In order to maintain the records required by §762.2 of this part, the regulated persons defined in §762.1 of this part may use any photographic, photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(1) The system must be capable of reproducing all records on paper.

(2) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides of paper documents in legible form.

(3) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. (For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.)

(4) The system must preserve the initial image (including both obverse and reverse sides of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(5) The regulated person must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(6) The regulated person must establish written procedures for inspection and quality assurance of records in the system and document the implementation of those procedures.

(7) The system must be complete and contain all records required to be kept by this part or the regulated person must provide a method for correlating, identifying and locating records relating to the same transaction(s) that are kept in other record keeping systems.

(8) The regulated person must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(9) Upon request by the Office of Export Enforcement, the Office of Antiboycott Compliance, or any other agency of competent jurisdiction, the regulated person must furnish, at the examination site, the records, the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record in the system.

(c) *Requirements applicable to systems based on the storage of digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. With respect to records of transactions, including those involving restrictive trade practices or boycott requirements or requests. The system must be able to locate and reproduce all records relating to a particular transaction based on any one of the following criteria:

(1) The name(s) of the parties to the transaction;

(2) Any country(ies) connected with the transaction; or

(3) A document reference number that was on any original document.

(d) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the regulated person must maintain a detailed index of all records in the system that is arranged in such a manner as to allow immediate location of any particular record in the system.

§ 762.6 Period of retention.

(a) *Five year retention period.* All records required to be kept by the EAR must be retained for five years from the latest of the following times:

(1) The export from the United States of the item involved in the transaction to which the records pertain or the provision of financing, transporting or other service for or on behalf of end-users of proliferation concern as described in §§ 736.2(b)(7) and 744.6 of the EAR;

(2) Any known reexport, transshipment, or diversion of such item;

(3) Any other termination of the transaction, whether formally in writing or by any other means; or

(4) In the case of records of pertaining to transactions involving restrictive trade practices or boycotts described in part 760 of the EAR, the date the regulated person receives the boycott-related request or requirement.

(b) *Destruction or disposal of records.* If the Bureau of Export Administration or any other government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned. This prohibition applies to records pertaining to voluntary disclosures made to BXA in accordance with § 765.5(c)(4)(ii) and other records even if such records have been retained for a period of time exceeding that required by paragraph (a) of this section.

§ 762.7 Producing and inspecting records.

(a) *Persons located in the United States.* Persons located in the United States may be asked to produce records that are required to be kept by any provision of the EAR, or any license, order, or authorization issued thereunder and to make them available for inspection and copying by any authorized agent, official, or employee of the Bureau of Export Administration, the U.S. Customs Service, or any other agency of the U.S. Government, without any charge or expense to such agent, official, or employee. The Office of Export Enforcement and the Office of Antiboycott Compliance encourage voluntary cooperation with such requests. When voluntary cooperation is not forthcoming, the Office of Export Enforcement and the Office of Antiboycott Compliance are authorized to issue subpoenas for books, records, and other writings. In instances where a person does not comply with a subpoena, the Department of Commerce may petition a district court to have a subpoena enforced.

(b) *Persons located outside of the United States.* Persons located outside of the United States that are required to keep records by any provision of the EAR or by any license, order, or authorization issued thereunder shall produce all records or reproductions of records required to be kept, and make them available for inspection and copying upon request by an authorized agent, official, or employee of the Bureau of Export Administration, the U.S. Customs Service, or a Foreign Service post, or by any other accredited representative of the U.S. Government, without any charge or expense to such agent, official or employee.

PART 764—ENFORCEMENT AND PROTECTIVE MEASURES

Sec.
764.1 Introduction.
764.2 Violations.
764.3 Sanctions.
764.4 Reporting of violations.
764.5 Voluntary self-disclosure.
764.6 Protective administrative measures.
SUPPLEMENT NO. 1 TO PART 764—STANDARD TERMS OF ORDERS DENYING EXPORT PRIVILEGES
SUPPLEMENT NO. 2 TO PART 764—DENIED PERSONS LIST

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

SOURCE: 61 FR 12902, Mar. 25, 1996, unless otherwise noted.

§ 764.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part specifies conduct that constitutes a violation of the Export Administration Act (EAA) and/or the Export Administration Regulations (EAR) and the sanctions that may be imposed for such violations. Antiboycott violations are described in

part 760 of the EAR, and the violations and sanctions specified in part 764 also apply to conduct relating to part 760, unless otherwise stated. This part describes administrative sanctions that may be imposed by the Bureau of Export Administration (BXA). This part also describes criminal sanctions that may be imposed by a United States court and other sanctions that are neither administrative nor criminal. Information is provided on how to report and disclose violations. Finally, this part identifies protective administrative measures that BXA may take in the exercise of its regulatory authority.

§764.2 Violations.

(a) *Engaging in prohibited conduct.* No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.

(b) *Causing, aiding, or abetting a violation.* No person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder.

(c) *Solicitation and attempt.* No person may solicit or attempt a violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(d) *Conspiracy.* No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(e) *Acting with knowledge of a violation.* No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item.

(f) *Possession with intent to export illegally.* No person may possess any item controlled for national security or foreign policy reasons under sections 5 or 6 of the EAA:

(1) With intent to export or reexport such item in violation of the EAA, the EAR, or any order, license or authorization issued thereunder; or

(2) With knowledge or reason to believe that the item would be so exported or reexported.

(g) *Misrepresentation and concealment of facts.* (1) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to BXA, the United States Customs Service, or an official of any other United States agency, or indirectly through any other person:

(i) In the course of an investigation or other action subject to the EAR; or

(ii) In connection with the preparation, submission, issuance, use, or maintenance of any export control document or restrictive trade practice or boycott request report, as defined in §760.6 of the EAR; or

(iii) For the purpose of or in connection with effecting an export, reexport or other activity subject to the EAR.

(2) All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify BXA and any other relevant agency, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention has occurred or may occur in the future.

(h) *Evasion.* No person may engage in any transaction or take any other action with intent to evade the provisions of the EAA, the EAR, or any order, license or authorization issued thereunder.

(i) *Failure to comply with reporting, recordkeeping requirements.* No person may fail or refuse to comply with any

reporting or recordkeeping requirement of the EAR or of any order, license or authorization issued thereunder.

(j) *License alteration.* Except as specifically authorized in the EAR or in writing by BXA, no person may alter any license, authorization, export control document, or order issued under the EAR.

(k) *Acting contrary to the terms of a denial order.* No person may take any action that is prohibited by a denial order. See § 764.3(a)(2) of this part.

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997]

§ 764.3 Sanctions.

(a) *Administrative.*[1] Violations of the EAA, the EAR, or any order, license or authorization issued thereunder are subject to the administrative sanctions described in this section and to any other liability, sanction, or penalty available under law. The protective administrative measures that are described in § 764.6 of this part are distinct from administrative sanctions.

(1) *Civil penalty.* (i) A civil penalty not to exceed $10,000 may be imposed for each violation, except that a civil penalty not to exceed $100,000 may be imposed for each violation involving national security controls imposed under section 5 of the EAA.

(ii) The payment of any civil penalty may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed.

(iii) The payment of any civil penalty may be deferred or suspended in whole or in part during any probation period that may be imposed. Such deferral or suspension shall not bar the collection of the penalty if the conditions of the deferral, suspension, or probation are not fulfilled.

(2) *Denial of export privileges.* An order may be issued that restricts the ability of the named persons to engage in export and reexport transactions involving items subject to the EAR, or that restricts access by named persons to items subject to the EAR. An order denying export privileges may be imposed either as a sanction for a violation specified in this part or as a protective administrative measure described in § 764.6(c) or (d) of this part. An order denying export privileges may suspend or revoke any or all outstanding licenses issued under the EAR to a person named in the denial order or in which such person has an interest, may deny or restrict exports and reexports by or to such person of any item subject to the EAR, and may restrict dealings in which that person may benefit from any export or reexport of such items. The standard terms of a denial order are set forth in Supplement No. 1 to this part. A non-standard denial order, narrower in scope, may be issued. Authorization to engage in actions otherwise prohibited by a denial order may be given by the Office of Exporter Services, in consultation with the Office of Export Enforcement, following application by a person named in the denial order or by a person seeking permission to deal with a named person.

(3) *Exclusion from practice.* Any person acting as an attorney, accountant, consultant, freight forwarder, or in any other representative capacity for any license application or other matter before BXA may be excluded by order from any or all such activities before BXA.

(b) *Criminal.*[2] (1) *General.* Except as provided in paragraph (b)(2) of this section, whoever knowingly violates or

[1] In the event that any part of the EAR is not under the authority of the EAA, sanctions shall be limited to those provided for by such other authority, but the provisions of this part and of part 766 of the EAR shall apply insofar as not inconsistent with that other authority.

[2] In the event that any part of the EAR is not under the authority of the EAA, sanctions shall be limited to those provided for by such other authority or by 18 U.S.C. 3571, a criminal code provision that establishes a maximum criminal fine for a felony that is the greater of the amount provided by the statute that was violated, or an amount not more than $500,000 for an organization. The Federal Sentencing Guidelines found in § 2M5.1 of Appendix 4 to Title 18 of the United

conspires to or attempts to violate the EAA, EAR, or any order or license issued thereunder, shall be fined not more than five times the value of the exports or reexports involved or $50,000, whichever is greater, or imprisoned not more than five years, or both.

(2) *Willful violations.* (i) Whoever willfully violates or conspires to or attempts to violate any provision of the EAA, the EAR, or any order or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of items involved is, any controlled country or any country to which exports or reexports are controlled for foreign policy purposes, except in the case of an individual, shall be fined not more than five times the value of the export or reexport involved or $1,000,000, whichever is greater; and, in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(ii) Any person who is issued a license under the EAA or the EAR for the export or reexport of any items to a controlled country and who, with knowledge that such export or reexport is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, except in the case of an individual, shall be fined not more than five times the value of the exports or reexports involved or $1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than five years or both.

(iii) Any person who possesses any item with the intent to export or reexport such item in violation of an export control imposed under sections 5 or 6 of the EAA, the EAR, or any order or license issued thereunder, or knowing or having reason to believe that the item would be so exported or reexported, shall, in the case of a violation of an export control imposed under section 5 of the EAA (or the EAR, or any order or license issued thereunder with respect to such control), be subject to the penalties set forth in paragraph (b)(2)(i) of this section and shall in the case of a violation of an export control imposed under section 6 of the EAA (or the EAR, or any order or license issued thereunder with respect to such control), be subject to the penalties set forth in paragraph (b)(1) of this section.

(iv) Any person who takes any action with intent to evade the provisions of the EAA, the EAR, or any order or license issued thereunder, shall be subject to the penalties set forth in paragraph (b)(1) of this section, except that in the case of an evasion of an export control imposed under sections 5 or 6 of the EAA (or the EAR, or any order or license issued thereunder with respect to such control), such person shall be subject to the penalties set forth in paragraph (b)(2)(i) of this section.

(3) *Other criminal sanctions.* Conduct that constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, or that occurs in connection with such a violation, may also be prosecuted under other provisions of law, including 18 U.S.C. 371 (conspiracy), 18 U.S.C. 1001 (false statements), 18 U.S.C. 1341, 1343, and 1346 (mail and wire fraud), and 18 U.S.C. 1956 and 1957 (money laundering).

(c) *Other sanctions.* Conduct that violates the EAA, the EAR, or any order, license or authorization issued thereunder, and other conduct specified in the EAA may be subject to sanctions or other measures in addition to criminal and administrative sanctions under the EAA or EAR. These include, but are not limited to, the following:

(1) *Statutory sanctions.* Statutorily-mandated sanctions may be imposed on account of specified conduct related to weapons proliferation. Such statutory sanctions are not civil or criminal penalties, but restrict imports and procurement (See section 11A of the EAA, Multilateral Export Control Violations, and section 11C of the EAA, Chemical and Biological Weapons Proliferation), or restrict export licenses (See section 11B of the EAA, Missile Proliferation Violations, and the Iran-Iraq Arms Non-Proliferation Act of 1992).

States Code apply, to the extent followed by the court, to sentencing for convictions for violating the EAA.

(2) *Other sanctions and measures*—(i) *Seizure and forfeiture.* Items that have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the EAA, the EAR, or any order, license or authorization issued thereunder, are subject to being seized and detained as are the vessels, vehicles, and aircraft carrying such items. Seized items are subject to forfeiture. (50 U.S.C. app. 2411(g); 22 U.S.C. 401.)

(ii) *Cross-debarment.* (A) The Department of State may deny licenses or approvals for the export or reexport of defense articles and defense services controlled under the Arms Export Control Act to persons indicted or convicted of specified criminal offenses, including violations of the EAA, or to persons denied export privileges by BXA or another agency. (22 CFR 126.7(a) and 127.11(a).)

(B) The Department of Defense, among other agencies, may suspend the right of any person to contract with the United States Government based on export control violations. (Federal Acquisition Regulations 9.407–2.)

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997]

§ 764.4 Reporting of violations.

(a) *Where to report.* If a person learns that an export control violation of the EAR has occurred or may occur, that person may notify:

Office of Export Enforcement, Bureau of Export Administration,U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–4520, Washington, D.C. 20230, Tel: (202) 482–1208, Facsimile: (202) 482–0964

or, for violations of part 760 of the EAR:

Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–6099C, Washington, D.C. 20230, Tel: (202) 482–2381, Facsimile: (202) 482–0913.

(b) *Failure to report violations.* Failure to report potential violations may result in the unwarranted issuance of licenses or exports without the required licenses to the detriment of the interests of the United States.

(c) *Reporting requirement distinguished.* The reporting provisions in paragraph (a) of this section are not ''reporting requirements'' within the meaning of § 764.2(i) of this part.

§ 764.5 Voluntary self-disclosure.

(a) *General policy.* BXA strongly encourages disclosure to OEE if you believe that you may have violated the EAR, or any order, license or authorization issued thereunder. Voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE.

(b) *Limitations.* (1) The provisions of this section do not apply to disclosures of violations relating to part 760 of the EAR.

(2) The provisions of this section apply only when information is provided to OEE for its review in determining whether to take administrative action under part 766 of the EAR for violations of the export control provisions of the EAR.

(3) The provisions of this section apply only when information is received by OEE for review prior to the time that OEE, or any other agency of the United States Government, has learned the same or substantially similar information from another source and has commenced an investigation or inquiry in connection with that information.

(4) While voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is solely within the discretion of OEE, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Voluntary self-disclosure does not prevent transactions from being referred to the Department of Justice for criminal prosecution. In such a case, OEE would notify the Department of Justice of the voluntary self-disclosure, but the consideration of that factor is within the discretion of the Department of Justice.

(5) A firm will not be deemed to have made a disclosure under this section unless the individual making the disclosure did so with the full knowledge

and authorization of the firm's senior management.

(6) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) *Information to be provided.* (1) *General.* Any person wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify OEE as soon as possible after violations are discovered, and then conduct a thorough review of all export-related transactions where violations are suspected.

(2) *Initial notification.* (i) The initial notification should be in writing and be sent to one of the addresses in § 764.5(c)(7) of this part. The notification should include the name of the person making the disclosure and a brief description of the suspected violations. The notification should describe the general nature and extent of the violations. If the person making the disclosure subsequently completes the narrative account required by § 764.5(c)(3) of this part, the disclosure will be deemed to have been made on the date of the initial notification for purposes of § 764.5(b)(3) of this part.

(ii) OEE recognizes that there may be situations where it will not be practical to make an initial notification in writing. For example, written notification may not be practical if a shipment leaves the United States without the required license, yet there is still an opportunity to prevent acquisition of the items by unauthorized persons. In such situations, OEE should be contacted promptly at one of the offices listed in § 764.5(c)(7) of this part.

(3) *Narrative account.* After the initial notification, a thorough review should be conducted of all export-related transactions where possible violations are suspected. OEE recommends that the review cover a period of five years prior to the date of the initial notification. If your review goes back less than five years, you risk failing to discover violations that may later become the subject of an investigation. Any violations not voluntarily disclosed do not receive consideration under this section. However, the failure to make such disclosures will not be treated as a separate violation unless some other section of the EAR or other provision of law requires disclosure. Upon completion of the review, OEE should be furnished with a narrative account that sufficiently describes the suspected violations so that their nature and gravity can be assessed. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood that violations will occur in the future. The narrative account should include:

(i) The kind of violation involved, for example, a shipment without the required license or dealing with a party denied export privileges;

(ii) An explanation of when and how the violations occurred;

(iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations;

(iv) License numbers;

(v) The description, quantity, value in U.S. dollars and ECCN or other classification of the items involved; and

(vi) A description of any mitigating circumstances.

(4) *Supporting documentation.* (i) The narrative account should be accompanied by copies of documents that explain and support it, including:

(A) Licensing documents such as licenses, license applications, import certificates and end-user statements;

(B) Shipping documents such as Shipper's Export Declarations, air waybills and bills of lading; and

(C) Other documents such as letters, facsimiles, telexes and other evidence of written or oral communications, internal memoranda, purchase orders, invoices, letters of credit and brochures.

(ii) Any relevant documents not attached to the narrative account must be retained by the person making the disclosure until OEE requests them, or until a final decision on the disclosed information has been made. After a final decision, the documents should be maintained in accordance with the recordkeeping rules in part 762 of the EAR.

(5) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a corporation or other organization should be signed by an official of the corporation or other organization with the authority to do so. Section 764.2(g) of this part, relating to false or misleading representations, applies in connection with the disclosure of information under this section.

(6) *Oral presentations.* OEE believes that oral presentations are generally not necessary to augment the written narrative account and supporting documentation. If the person making the disclosure believes otherwise, a request for a meeting should be included with the disclosure.

(7) *Where to make voluntary self-disclosures.* The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure may be submitted to:

Office of Export Enforcement, Director, Intelligence Division, U.S. Department of Commerce, P.O. Box 70, Washington, D.C. 20044

Office of Export Enforcement, Director, Intelligence Division, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–4520,Washington, D.C. 20230, Tel: (202) 482–1208, Facsimile: (202) 482–0964,

or to any of the following field offices:

Special Agent in Charge, Boston Field Office, Office of Export Enforcement, New Boston Federal Building, 10 Causeway Street, Room 350, Boston, Massachusetts 02222, Tel: (617) 565–6030, Facsimile: (617) 565–6039

Special Agent in Charge, Chicago Field Office, Office of Export Enforcement, 2400 East Devon, Suite 300, Des Plaines, Illinois 60018, Tel: (312) 353–6640, Facsimile: (312) 353–8008

Special Agent in Charge, Dallas Field Office, Office of Export Enforcement, 525 Griffin Street, Room 622, Dallas, Texas 75202, Tel: (214) 767–9294, Facsimile: (214) 767–9299

Special Agent in Charge, Los Angeles Field Office, Office of Export Enforcement, 2601 Main Street, Suite 310, Irvine, California 92714–6299, Tel: (714) 251–9001, Facsimile: (714) 251–9103

Special Agent in Charge, Miami Field Office, Office of Export Enforcement, 200 East Las Olas Boulevard, Suite 1260, Fort Lauderdale, Florida 33301, Tel: (954) 356–7540, Facsimile: (954) 356–7549

Special Agent in Charge, New York Field Office, Office of Export Enforcement, Teleport II, 2 Teleport Drive, Staten Island, New York 10311–1001, Tel: (718) 370–0070, Facsimile: (718) 370–0826

Special Agent in Charge, San Jose Field Office, Office of Export Enforcement, 96 North 3rd Street, Suite 250, San Jose, California 95112–5572, Tel: (408) 291–4204, Facsimile: (408) 291–4320

Special Agent in Charge, Washington, D.C. Field Office, Office of Export Enforcement, 8001 Forbes Place, Room 201, Springfield, Virginia 22151–0838, Tel: (703) 487–4950, Facsimile: (703) 487–4955.

(d) *Action by the Office of Export Enforcement.* After OEE has been provided with the required narrative and supporting documentation, it will acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact, and take whatever additional action, including further investigation, it deems appropriate. As quickly as the facts and circumstances of a given case permit, OEE may take any of the following actions:

(1) Inform the person making the disclosure that, based on the facts disclosed, it plans to take no action;

(2) Issue a warning letter;

(3) Issue a proposed charging letter pursuant to § 766.18 of the EAR and attempt to settle the matter;

(4) Issue a charging letter pursuant to § 766.3 of the EAR if a settlement is not reached; and/or

(5) Refer the matter to the Department of Justice for criminal prosecution.

(e) *Criteria.* For purposes of determining what administrative action to take and what sanctions, if any, to seek, the fact that a voluntary self-disclosure has been made will be a mitigating factor. OEE will take that factor into account along with other mitigating and aggravating factors when determining what, if any, administrative sanctions should be imposed. The factors that OEE will consider are in its sole discretion, but may include:

(1) The extent to which the purpose of the control is undermined by the transaction;

(2) Whether the transaction would have been authorized had proper application been made;

(3) The quantity and value of the items involved;

(4) Why the violations occurred. For example, OEE may consider whether the violations were intentional or inadvertent; the degree to which the person responsible for the violation making the disclosure was familiar with the EAR; and whether the violator has been the subject of prior administrative or criminal action under the EAA or the EAR;

(5) Whether, as a result of the information provided, OEE is able to prevent any items exported illegally from reaching unauthorized persons or destinations;

(6) The degree of cooperation with the ensuing investigation;

(7) Whether the person has instituted or improved an internal compliance program to reduce the likelihood of future violations.

(f) *Treatment of unlawfully exported items after voluntary self-disclosure.* (1) Any person taking certain actions with knowledge that a violation of the EAA or the EAR has occurred has violated §764.2(e) of this part. Any person who has made a voluntary self-disclosure knows that a violation may have occurred. Therefore, at the time that a voluntary self-disclosure is made, the person making the disclosure may request permission from BXA to engage in the activities described in §764.2(e) of this part that would otherwise be prohibited. If the request is granted by the Office of Exporter Services in consultation with OEE, future activities with respect to those items that would otherwise violate §764.2(e) of this part will not constitute violations. However, even if permission is granted, the person making the voluntary self-disclosure is not absolved from liability for any violations disclosed nor relieved of the obligation to obtain any required reexport authorizations.

(2) A license to reexport items that are the subject of a voluntary self-disclosure, and that have been exported contrary to the provisions of the EAA or the EAR, may be requested from BXA in accordance with the provisions of part 748 of the EAR. If the applicant for reexport authorization knows that the items are the subject of a voluntary self-disclosure, the request should state that a voluntary self-disclosure was made in connection with the export of the commodities for which reexport authorization is sought.

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997]

§764.6 Protective administrative measures.

(a) *License Exception limitation.* As provided in §740.2(b) of the EAR , all License Exceptions are subject to revision, suspension, or revocation.

(b) *Revocation or suspension of licenses.* As provided in §750.8 of the EAR, all licenses are subject to revision, suspension, or revocation.

(c) *Temporary denial orders.* BXA may, in accordance with §766.24 of the EAR, issue an order temporarily denying export privileges when such an order is necessary in the public interest to prevent the occurrence of an imminent violation.

(d) *Denial based on criminal conviction.* BXA may, in accordance with §766.25 of the EAR, issue an order denying the export privileges of any person who has been convicted of an offense specified in §11(h) of the EAA.

SUPPLEMENT NO. 1 TO PART 764—STANDARD TERMS OF ORDERS DENYING EXPORT PRIVILEGES

(a) *General.* Orders denying export privileges may be ''standard'' or ''non-standard.'' This supplement specifies terms of the standard order denying export privileges. All denial orders are published in the FEDERAL REGISTER. The failure by any person to comply with any denial order is a violation of the Export Administration Regulations (EAR). (See General Prohibition Four at §736.2(b)(4) of the EAR; §764.2(k) of this part.) All persons whose export privileges are denied by any form of denial order are identified on the Denied Persons List (Supplement No. 2 to this part), with an indication of whether an order is standard or non-standard denoted in the ''Terms of order'' column. The Denied Persons List also tells you where each denial order can be found in the FEDERAL REGISTER. Reference should be made to the text of the denial order, as published in the FEDERAL REGISTER, to learn the scope of any denial order, including any non-standard denial order.

Denial orders issued prior to March 25, 1996, are to be construed, insofar as possible, as having the same scope and effect as the standard denial order.

The introduction to each denial order shall be specific to that order, and shall include: (1) The name and address of any denied persons and any related persons subject to the denial order; (2) the basis for the denial order, such as final decision following charges of violation, settlement agreement, §11(h) of the EAA, or temporary denial order request; (3) the period of denial, the effective date of the order, whether and for how long any portion of the denial of export privileges is suspended, and any conditions of probation; and (4) whether any or all outstanding licenses issued under the EAR to the person(s) named in the denial order or in which such person(s) has an interest, are suspended or revoked.

(b) *Standard text.* The standard denial order shall provide:

''It is therefore ordered:

First, that [the denied person(s)] may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (EAR), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a denied person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in §766.23 of the EAR, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this order.

Fourth, that this order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

This order, which constitutes the final agency action in this matter, is effective immediately.''

SUPPLEMENT NO. 2 TO PART 764—DENIED PERSONS LIST

(a) *General.* (1) The Denied Persons List identifies those persons denied export privileges by the Bureau of Export Administration (BXA) pursuant to the terms of an order. Part A of the Denied Persons List lists all denied persons in alphabetical order and provides supplementary information, while Part B lists all denied persons by geographic area. Part A of the Denied Persons List is organized into five columns, including the name and address of the denied person, the effective and expiration dates of the order, a brief description of the terms of the order, and a citation to the FEDERAL REGISTER where the terms of the order can be located. Reference should always be made to the text of a denial order when using the Denied Persons List.

(2) Denial orders issued subsequent to March 25, 1996, shall be identified in part A as being standard or non-standard, and denial orders issued prior to March 25, 1996, shall be construed, insofar as possible, as having the same scope and effect as the standard denial order. Non-standard orders are denoted by the phrase ''non-standard'' in the ''Terms of order'' column in part A, standard orders are denoted by the word ''standard,'' and orders issued prior to March 25, 1996, are denoted by the same brief description entered at the time of issuance. Standard orders denying export privileges

contain the standard terms set forth in Supplement No. 1 to part 764.

(3) You are responsible for ensuring that you take no action involving items subject to the Export Administration Regulations (EAR) that is contrary to the terms of a denial order.

(b) *Related persons.* Related persons who are denied export privileges subsequent to [the effective date of the interim EAR] shall appear in part A of the Denied Persons List with a note identifying the denied persons to whom they are related in the column entitled ''Terms of order.''

(c) *Publication.* New and amended denial orders are published in the FEDERAL REGISTER as they are issued. This publication constitutes official notice to the public.

(d) *Updates and availability.* (1) As a convenience for the public, issuance of denial orders is announced in Export Administration Bulletins. Part A of the Denied Persons List is also available electronically on two bulletin boards of Department of Commerce agencies, Fedworld (National Technical Information Service) and the Economic Bulletin Board (Economics and Statistics Administration).

(2) [Reserved]

PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

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AUTHORITY: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

SOURCE: 61 FR 12907, Mar. 25, 1996, unless otherwise noted.

§766.1 Scope.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part describes the procedures for imposing administrative sanctions for violations of the Export Administration Act of 1979, as amended (the EAA), the Export Administration Regulations (EAR), or any order, license or authorization issued thereunder. Parts 760 and 764 of the EAR specify those actions that constitute violations, and part 764 describes the sanctions that apply. In addition to describing the procedures for imposing sanctions, this part describes the procedures for imposing temporary denial orders to prevent imminent violations of the EAA, the EAR, or any order, license or authorization issued thereunder. This part also describes the procedures for taking the discretionary protective administrative action of denying the export privileges of persons who have been convicted of violating any of the statutes, including the EAA, listed in section 11(h) of the EAA. Nothing in this part shall be construed as applying to or limiting other administrative or enforcement action relating to the EAA or the EAR, including the exercise of any investigative authorities conferred by the EAA. This part does not confer any procedural rights or impose any requirements based on the Administrative Procedure Act for proceedings charging violations under the EAA, except as expressly provided for in this part.

§766.2 Definitions.

As used in this part, the following definitions apply:

Administrative law judge. The person authorized to conduct hearings in administrative enforcement proceedings brought under the EAA or to hear appeals from the imposition of temporary denial orders. The term ''judge'' may be used for brevity when it is clear that the reference is to the administrative law judge.

Assistant Secretary. The Assistant Secretary for Export Enforcement, Bureau of Export Administration.

Bureau of Export Administration (BXA). Bureau of Export Administration, United States Department of Commerce, and all of its component units, including, in particular for purposes of this part, the Office of Antiboycott Compliance, the Office of Export Enforcement, and the Office of Exporter Services.

Final decision. A decision or order assessing a civil penalty, denial of export privileges or other sanction, or otherwise disposing of or dismissing a case, which is not subject to further review under this part, but which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

Initial decision. A decision of the administrative law judge in proceedings involving violations relating to part 760 of the EAR, which is subject to appellate review by the Under Secretary for Export Administration, but which becomes the final decision in the absence of such an appeal.

Party. BXA and any person named as a respondent under this part.

Recommended decision. A decision of the administrative law judge in proceedings involving violations other than those relating to part 760 of the EAR, which is subject to review by the Under Secretary of Commerce for Export Administration, who issues a written order affirming, modifying or vacating the recommended decision.

Respondent. Any person named as the subject of a charging letter, proposed charging letter, temporary denial order, or other order proposed or issued under this part.

Under Secretary. The Under Secretary for Export Administration, United States Department of Commerce.

§ 766.3 Institution of administrative enforcement proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement[1] (OEE) or the Director of the Office of Antiboycott Compliance (OAC), as appropriate, may begin administrative enforcement proceedings under this part by issuing a charging letter in the name of BXA. The charging letter shall constitute the formal complaint and will state that there is reason to believe that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred. It will set forth the essential facts about the alleged violation, refer to the specific regulatory or other provisions involved, and give notice of the sanctions available under part 764 of the EAR. The charging letter will inform the respondent that failure to answer the charges as provided in § 766.6 of this part will be treated as a default under § 766.7 of this part, that the respondent is entitled to a hearing if a written demand for one is requested with the answer, and that the respondent may be represented by counsel, or by other authorized representative who has a power of attorney to represent the respondent. A copy of the charging letter shall be filed with the administrative law judge, which filing shall toll the running of the applicable statute of limitations. Charging letters may be amended or supplemented at any time before an answer is filed, or, with permission of the administrative law judge, afterwards. BXA may unilaterally withdraw charging letters at any time, by notifying the respondent and the administrative law judge.

(b) *Notice of issuance of charging letter instituting administrative enforcement proceeding.* A respondent shall be notified of the issuance of a charging letter, or any amendment or supplement thereto:

(1) By mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address;

(2) By leaving a copy with the respondent or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process for the respondent; or

(3) By leaving a copy with a person of suitable age and discretion who resides at the respondent's last known dwelling.

[1] By agreement with the Director of the Office of Strategic Industries and Economic Resource Administration, the Director of the Office of Export Enforcement enforces short supply controls imposed under section 7 of the EAA.

(4) Delivery of a copy of the charging letter, if made in the manner described in paragraph (b)(2) or (3) of this section, shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left. The certificate of service shall be filed with the administrative law judge.

(c) *Date.* The date of service of notice of the issuance of a charging letter instituting an administrative enforcement proceeding, or service of notice of the issuance of a supplement or amendment to a charging letter, is the date of its delivery, or of its attempted delivery if delivery is refused.

§766.4 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee, and a partnership by a partner. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides if not the United States. A respondent personally, or through counsel or other representative, shall file a notice of appearance with the administrative law judge. BXA will be represented by the Office of Chief Counsel for Export Administration, U.S. Department of Commerce.

§766.5 Filing and service of papers other than charging letter.

(a) *Filing.* All papers to be filed shall be addressed to ''EAR Administrative Enforcement Proceedings,'' U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, or such other place as the administrative law judge may designate. Filing by United States mail, first class postage prepaid, by express or equivalent parcel delivery service, or by hand delivery, is acceptable. Filing by mail from a foreign country shall be by airmail. In addition, the administrative law judge may authorize filing of papers by facsimile or other electronic means, provided that a hard copy of any such paper is subsequently filed. A copy of each paper filed shall be simultaneously served on each party.

(b) *Service.* Service shall be made by personal delivery or by mailing one copy of each paper to each party in the proceeding. Service by delivery service or facsimile, in the manner set forth in paragraph (a) of this section, is acceptable. Service on BXA shall be addressed to the Chief Counsel for Export Administration, Room H–3839, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Service on a respondent shall be to the address to which the charging letter was sent or to such other address as respondent may provide. When a party has appeared by counsel or other representative, service on counsel or other representative shall constitute service on that party.

(c) *Date.* The date of filing or service is the day when the papers are deposited in the mail or are delivered in person, by delivery service, or by facsimile.

(d) *Certificate of service.* A certificate of service signed by the party making service, stating the date and manner of service, shall accompany every paper, other than the charging letter, filed and served on parties.

(e) *Computing period of time.* In computing any period of time prescribed or allowed by this part or by order of the administrative law judge or the Under Secretary, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is seven days or less.

§766.6 Answer and demand for hearing.

(a) *When to answer.* The respondent must answer the charging letter within

30 days after being served with notice of the issuance of a charging letter instituting an administrative enforcement proceeding, or within 30 days of notice of any supplement or amendment to a charging letter, unless time is extended under § 766.16 of this part.

(b) *Contents of answer.* The answer must be responsive to the charging letter and must fully set forth the nature of the respondent's defense or defenses. The answer must admit or deny specifically each separate allegation of the charging letter; if the respondent is without knowledge, the answer must so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(c) *Demand for hearing.* If the respondent desires a hearing, a written demand for one must be submitted with the answer. Any demand by BXA for a hearing must be filed with the administrative law judge within 30 days after service of the answer. Failure to make a timely written demand for a hearing shall be deemed a waiver of the party's right to a hearing, except for good cause shown. If no party demands a hearing, the matter will go forward in accordance with the procedures set forth in § 766.15 of this part.

(d) *English language required.* The answer, all other papers, and all documentary evidence must be submitted in English, or translations into English must be filed and served at the same time.

§ 766.7 Default.

(a) *General.* Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BXA's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions. The decision and order shall be subject to review by the Under Secretary in accordance with the applicable procedures set forth in § 766.21 or § 766.22 of this part.

(b) *Petition to set aside default*—(1) *Procedure.* Upon petition filed by a respondent against whom a default order has been issued, which petition is accompanied by an answer meeting the requirements of § 766.6(b) of this part, the Under Secretary may, after giving all parties an opportunity to comment, and for good cause shown, set aside the default and vacate the order entered thereon and remand the matter to the administrative law judge for further proceedings.

(2) *Time limits.* A petition under this section must be made within one year of the date of entry of the order which the petition seeks to have vacated.

§ 766.8 Summary decision.

At any time after a proceeding has been initiated, a party may move for a summary decision disposing of some or all of the issues. The administrative law judge may render an initial or recommended decision and issue or recommend an order if the entire record shows, as to the issue(s) under consideration:

(a) That there is no genuine issue as to any material fact; and

(b) That the moving party is entitled to a summary decision as a matter of law.

§ 766.9 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery apply to the extent consistent with this part and except as otherwise provided by the administrative law judge or by waiver or agreement of the parties. The administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue

burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve on any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may apply to the administrative law judge for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 20 days before the scheduled date of the hearing unless the administrative law judge specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties, and a copy of the certificate of service shall be filed with the administrative law judge. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such additional time as the administrative law judge may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the administrative law judge may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The administrative law judge may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the administrative law judge may make a determination or enter any order in the proceeding as the judge deems reasonable and appropriate. The judge may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In addition, enforcement by a district court of the United States may be sought under section 12(a) of the EAA.

§766.10 Subpoenas.

(a) *Issuance.* Upon the application of any party, supported by a satisfactory showing that there is substantial reason to believe that the evidence would not otherwise be available, the administrative law judge will issue subpoenas requiring the attendance and testimony of witnesses and the production of such books, records or other documentary or physical evidence for the purpose of the hearing, as the judge deems relevant and material to the proceedings, and reasonable in scope.

(b) *Service.* Subpoenas issued by the administrative law judge may be served in any of the methods set forth in §766.5(b) of this part.

(c) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition, unless the administrative law judge determines, for good cause shown, that extraordinary circumstances warrant a shorter time.

§766.11 Matter protected against disclosure.

(a) *Protective measures.* It is often necessary for BXA to receive and consider information and documents that are sensitive from the standpoint of national security, foreign policy, business confidentiality, or investigative concern, and that are to be protected against disclosure. Accordingly, and without limiting the discretion of the administrative law judge to give effect to any other applicable privilege, it is proper for the administrative law judge to limit discovery or introduction of evidence or to issue such protective or

other orders as in the judge's judgment may be consistent with the objective of preventing undue disclosure of the sensitive documents or information. Where the administrative law judge determines that documents containing the sensitive matter need to be made available to a respondent to avoid prejudice, the judge may direct BXA to prepare an unclassified and nonsensitive summary or extract of the documents. The administrative law judge may compare the extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain classified or undisclosed. The summary or extract may be admitted as evidence in the record.

(b) *Arrangements for access.* If the administrative law judge determines that this procedure is unsatisfactory and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the judge may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive information. Such arrangements may include obtaining security clearances, obtaining a national interest determination under section 12(c) of the EAA, or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§ 766.12 Prehearing conference.

(a) The administrative law judge, on the judge's own motion or on request of a party, may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

(1) Simplification of issues;

(2) The necessity or desirability of amendments to pleadings;

(3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(4) Such other matters as may expedite the disposition of the proceedings.

(b) The administrative law judge may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the judge.

(c) If a prehearing conference is impracticable, the administrative law judge may direct the parties to correspond with the judge to achieve the purposes of such a conference.

(d) The administrative law judge will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

§ 766.13 Hearings.

(a) *Scheduling.* The administrative law judge, by agreement with the parties or upon notice to all parties of not less than 30 days, will schedule a hearing. All hearings will be held in Washington, D.C., unless the administrative law judge determines, for good cause shown, that another location would better serve the interests of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the administrative law judge, who may limit attendance at any hearing or portion thereof to the parties, their representatives and witnesses if the judge deems this necessary or advisable in order to protect sensitive matter (see § 766.11 of this part) from improper disclosure. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the administrative law judge to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight.

(c) *Testimony and record.* Witnesses will testify under oath or affirmation. A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, transcribed and filed with the administrative law judge. A respondent may examine the transcript and may obtain a copy by paying any applicable costs. Upon such terms as the administrative law judge deems just, the judge may direct that the testimony of any person be taken by deposition and may admit an affidavit or declaration as evidence, provided that any affidavits or declarations have been filed and served on the parties sufficiently in advance of the hearing to permit a party

to file and serve an objection thereto on the grounds that it is necessary that the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed, and that party's failure to appear will not affect the validity of the hearing or any proceedings or action taken thereafter.

§766.14 Interlocutory review of rulings.

(a) At the request of a party, or on the judge's own initiative, the administrative law judge may certify to the Under Secretary for review a ruling that does not finally dispose of a proceeding, if the administrative law judge determines that immediate review may hasten or facilitate the final disposition of the matter.

(b) Upon certification to the Under Secretary of the interlocutory ruling for review, the parties will have 10 days to file and serve briefs stating their positions, and five days to file and serve replies, following which the Under Secretary will decide the matter promptly.

§766.15 Proceeding without a hearing.

If the parties have waived a hearing, the case will be decided on the record by the administrative law judge. Proceeding without a hearing does not relieve the parties from the necessity of proving the facts supporting their charges or defenses. Affidavits or declarations, depositions, admissions, answers to interrogatories and stipulations may supplement other documentary evidence in the record. The administrative law judge will give each party reasonable opportunity to file rebuttal evidence.

§766.16 Procedural stipulations; extension of time.

(a) *Procedural stipulations.* Unless otherwise ordered, a written stipulation agreed to by all parties and filed with the administrative law judge will modify any procedures established by this part.

(b) *Extension of time.* (1) The parties may extend any applicable time limitation, by stipulation filed with the administrative law judge before the time limitation expires.

(2) The administrative law judge may, on the judge's own initiative or upon application by any party, either before or after the expiration of any applicable time limitation, extend the time within which to file and serve an answer to a charging letter or do any other act required by this part.

§766.17 Decision of the administrative law judge.

(a) *Predecisional matters.* Except for default proceedings under §766.7 of this part, the administrative law judge will give the parties reasonable opportunity to submit the following, which will be made a part of the record:

(1) Exceptions to any ruling by the judge or to the admissibility of evidence proffered at the hearing;

(2) Proposed findings of fact and conclusions of law;

(3) Supporting legal arguments for the exceptions and proposed findings and conclusions submitted; and

(4) A proposed order.

(b) *Decision and order.* After considering the entire record in the proceeding, the administrative law judge will issue a written decision.

(1) *Initial decision.* For proceedings charging violations relating to part 760 of the EAR, the decision rendered shall be an initial decision. The decision will include findings of fact, conclusions of law, and findings as to whether there has been a violation of the EAA, the EAR, or any order, license or authorization issued thereunder. If the administrative law judge finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more charges, the judge shall order dismissal of the charges in whole or in part, as appropriate. If the administrative law judge finds that one or more violations have been committed, the judge may issue an order imposing administrative sanctions, as provided in part 764 of the EAR. The decision and order shall be served on each party, and shall become effective as the final decision of the Department 30 days after service, unless an appeal is filed in accordance with §766.21 of this part.

(2) *Recommended decision.* For proceedings not involving violations relating to part 760 of the EAR, the decision rendered shall be a recommended decision. The decision will include recommended findings of fact, conclusions of law, and findings as to whether there has been a violation of the EAA, the EAR or any order, license or authorization issued thereunder. If the administrative law judge finds that the evidence of record is insufficient to sustain a recommended finding that a violation has occurred with respect to one or more charges, the judge shall recommend dismissal of any such charge. If the administrative law judge finds that one or more violations have been committed, the judge shall recommend an order imposing administrative sanctions, as provided in part 764 of the EAR, or such other action as the judge deems appropriate. The administrative law judge shall immediately certify the record, including the original copy of the recommended decision and order, to the Under Secretary for review in accordance with § 766.22 of this part. The administrative law judge shall also immediately serve the recommended decision on all parties. Because of the time limits established in the EAA for review by the Under Secretary, service upon parties shall be by personal delivery, express mail or other overnight carrier.

(c) *Suspension of sanctions.* Any order imposing administrative sanctions may provide for the suspension of the sanction imposed, in whole or in part and on such terms of probation or other conditions as the administrative law judge or the Under Secretary may specify. Any suspension order may be modified or revoked by the signing official upon application of BXA showing a violation of the probationary terms or other conditions, after service on the respondent of notice of the application in accordance with the service provisions of § 766.3 of this part, and with such opportunity for response as the responsible signing official in his/her discretion may allow. A copy of any order modifying or revoking the suspension shall also be served on the respondent in accordance with the provisions of § 766.3 of this part.

(d) *Time for decision.* Administrative enforcement proceedings not involving violations relating to part 760 of the EAR shall be concluded, including review by the Under Secretary under § 766.22 of this part, within one year of the submission of a charging letter, unless the administrative law judge, for good cause shown, extends such period. The charging letter will be deemed to have been submitted to the administrative law judge on the date the respondent files an answer or on the date BXA files a motion for a default order pursuant to § 766.7(a) of this part, whichever occurs first.

§ 766.18 Settlement.

(a) *Cases may be settled before service of a charging letter.* In cases in which settlement is reached before service of a charging letter, a proposed charging letter will be prepared, and a settlement proposal consisting of a settlement agreement and order will be submitted to the Assistant Secretary for approval and signature. If the Assistant Secretary does not approve the proposal, he/she will notify the parties and the case will proceed as though no settlement proposal had been made. If the Assistant Secretary approves the proposal, he/she will issue an appropriate order, and no action will be required by the administrative law judge.

(b) *Cases may also be settled after service of a charging letter.* (1) If the case is pending before the administrative law judge, the judge shall stay the proceedings for a reasonable period of time, usually not to exceed 30 days, upon notification by the parties that they have entered into good faith settlement negotiations. The administrative law judge may, in his/her discretion, grant additional stays. If settlement is reached, a proposal will be submitted to the Assistant Secretary for approval and signature. If the Assistant Secretary approves the proposal, he/she will issue an appropriate order, and notify the administrative law judge that the case is withdrawn from adjudication. If the Assistant Secretary does not approve the proposal, he/she will notify the parties and the case will proceed to adjudication by the administrative law judge as though no settlement proposal had been made.

(2) If the case is pending before the Under Secretary under §766.21 or §766.22 of this part, the parties may submit a settlement proposal to the Under Secretary for approval and signature. If the Under Secretary approves the proposal, he/she will issue an appropriate order. If the Under Secretary does not approve the proposal, the case will proceed to final decision in accordance with §766.21 or §766.22 of this part, as appropriate.

(c) Any order disposing of a case by settlement may suspend the administrative sanction imposed, in whole or in part, on such terms of probation or other conditions as the signing official may specify. Any such suspension may be modified or revoked by the signing official, in accordance with the procedures set forth in §766.17(c) of this part.

(d) Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this part. This reflects the fact that BXA has neither the authority nor the responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(e) Cases that are settled may not be reopened or appealed.

§766.19 Reopening.

The respondent may petition the administrative law judge within one year of the date of the final decision, except where the decision arises from a default judgment or from a settlement, to reopen an administrative enforcement proceeding to receive any relevant and material evidence which was unknown or unobtainable at the time the proceeding was held. The petition must include a summary of such evidence, the reasons why it is deemed relevant and material, and the reasons why it could not have been presented at the time the proceedings were held. The administrative law judge will grant or deny the petition after providing other parties reasonable opportunity to comment. If the proceeding is reopened, the administrative law judge may make such arrangements as the judge deems appropriate for receiving the new evidence and completing the record. The administrative law judge will then issue a new initial or recommended decision and order, and the case will proceed to final decision and order in accordance with §766.21 or §766.22 of this part, as appropriate.

§766.20 Record for decision and availability of documents.

(a) *General.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings and, for purposes of any appeal under §766.21 of this part or review under §766.22 of this part, the decision of the administrative law judge and such submissions as are provided for by §§766.21 and 766.22 of this part, will constitute the record and the exclusive basis for decision. When a case is settled after the service of a charging letter, the record will consist of any and all of the foregoing, as well as the settlement agreement and the order. When a case is settled before service of a charging letter, the record will consist of the proposed charging letter, the settlement agreement and the order.

(b) *Restricted access.* On the judge's own motion, or on the motion of any party, the administrative law judge may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible for submitting, at the time specified in §766.20(c)(2) of this part, a version of the document proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The administrative law judge may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents*—(1) *Scope.* (i) For proceedings started on or

after October 12, 1979, all charging letters, answers, initial and recommended decisions, and orders disposing of a case will be made available for public inspection in the BXA Freedom of Information Records Inspection Facility, U.S. Department of Commerce, Room H–6624, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request. In addition, all decisions of the Under Secretary on appeal pursuant to § 766.22 of this part and those final orders providing for denial, suspension or revocation of export privileges shall be published in the FEDERAL REGISTER.

(ii) For proceedings started before October 12, 1979, the public availability of the record for decision will be governed by the applicable regulations in effect when the proceedings were begun.

(2) *Timing*—(i) *Antiboycott cases.* For matters relating to part 760 of the EAR, documents are available immediately upon filing, except for any portion of the record for which a request for segregation is made. Parties that seek to restrict access to any portion of the record under paragraph (b) of this section must make such a request, together with the reasons supporting the claim of confidentiality, simultaneously with the submission of material for the record.

(ii) *Other cases.* In all other cases, documents will be available only after the final administrative disposition of the case. In these cases, parties desiring to restrict access to any portion of the record under paragraph (b) of this section must assert their claim of confidentiality, together with the reasons for supporting the claim, before the close of the proceeding.

§ 766.21 Appeals.

(a) *Grounds.* For proceedings charging violations relating to part 760 of the EAR, a party may appeal to the Under Secretary from an order disposing of a proceeding or an order denying a petition to set aside a default or a petition for reopening, on the grounds:

(1) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(2) That a necessary legal conclusion or finding is contrary to law;

(3) That prejudicial procedural error occurred, or

(4) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion. The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal is taken.

(b) *Filing of appeal.* An appeal from an order must be filed with the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H–3898, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, within 30 days after service of the order appealed from. If the Under Secretary cannot act on an appeal for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the appeal.

(c) *Effect of appeal.* The filing of an appeal shall not stay the operation of any order, unless the order by its express terms so provides or unless the Under Secretary, upon application by a party and with opportunity for response, grants a stay.

(d) *Appeal procedure.* The Under Secretary normally will not hold hearings or entertain oral argument on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The decision will be in writing and will be accompanied by an order signed by the Under Secretary giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the administrative law judge or may refer the case back to the administrative law judge for further proceedings.

§766.22 Review by Under Secretary.

(a) *Recommended decision.* For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) *Submissions by parties.* Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) *Final decision.* Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) *Delivery.* The final decision and implementing order shall be served on the parties and will be publicly available in accordance with §766.20 of this part.

(e) *Appeals.* The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. §2412(c)(3).

§766.23 Related persons.

(a) *General.* In order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders, and those that exclude a respondent from practice before BXA.

(b) *Procedures.* If BXA has reason to believe that a person is related to the respondent and that an order that is being sought or that has been issued should be made applicable to that person in order to prevent evasion of the order, BXA shall, except in an *ex parte* proceeding under §766.24(a) of this part, give that person notice in accordance with §766.5(b) of this part and an opportunity to oppose such action. If the official authorized to issue the order against the respondent finds that the order should be made applicable to that person in order to prevent evasion of the order that official shall issue or amend the order accordingly.

(c) *Appeals.* Any person named by BXA in an order as related to the respondent may file an appeal with the administrative law judge. The sole issues to be raised and ruled on in any such appeal are whether the person so named is related to the respondent and whether the order is justified in order to prevent evasion. The recommended decision and order of the administrative law judge shall be reviewed by the Under Secretary in accordance with the procedures set forth in §766.22 of this part.

§766.24 Temporary denials.

(a) *General.* The procedures in this section apply to temporary denial orders issued on or after July 12, 1985. For temporary denial orders issued on or before July 11, 1985, the proceedings will be governed by the applicable regulations in effect at the time the temporary denial orders were issued. Without limiting any other action BXA may take under the EAR with respect

to any application, order, license or authorization issued under the EAA, BXA may ask the Assistant Secretary to issue a temporary denial order on an *ex parte* basis to prevent an imminent violation, as defined in this section, of the EAA, the EAR, or any order, license or authorization issued thereunder. The temporary denial order will deny export privileges to any person named in the order as provided for in § 764.3(a)(2) of the EAR.

(b) *Issuance.* (1) The Assistant Secretary may issue an order temporarily denying to a person any or all of the export privileges described in part 764 of the EAR upon a showing by BXA that the order is necessary in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(2) The temporary denial order shall define the imminent violation and state why it was issued without a hearing. Because all denial orders are public, the description of the imminent violation and the reasons for proceeding on an *ex parte* basis set forth therein shall be stated in a manner that is consistent with national security, foreign policy, business confidentiality, and investigative concerns.

(3) A violation may be ''imminent'' either in time or in degree of likelihood. To establish grounds for the temporary denial order, BXA may show either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations. To indicate the likelihood of future violations, BXA may show that the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent, and that it is appropriate to give notice to companies in the United States and abroad to cease dealing with the person in U.S.-origin items in order to reduce the likelihood that a person under investigation or charges continues to export or acquire abroad such items, risking subsequent disposition contrary to export control requirements. Lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.

(4) The temporary denial order will be issued for a period not exceeding 180 days.

(5) Notice of the issuance of a temporary denial order on an *ex parte* basis shall be given in accordance with § 766.5(b) of this part upon issuance.

(c) *Related persons.* A temporary denial order may be made applicable to related persons in accordance with § 766.23 of this part.

(d) *Renewal.* (1) If, no later than 20 days before the expiration date of a temporary denial order, BXA believes that renewal of the denial order is necessary in the public interest to prevent an imminent violation, BXA may file a written request setting forth the basis for its belief, including any additional or changed circumstances, asking that the Assistant Secretary renew the temporary denial order, with modifications, if any are appropriate, for an additional period not exceeding 180 days. BXA's request shall be delivered to the respondent, or any agent designated for this purpose, in accordance with § 766.5(b) of this part, which will constitute notice of the renewal application.

(2) *Non-resident respondents.* To facilitate timely notice of renewal requests, a respondent not a resident of the United States may designate a local agent for this purpose and provide written notification of such designation to BXA in the manner set forth in § 766.5(b) of this part.

(3) *Hearing.* (i) A respondent may oppose renewal of a temporary denial order by filing with the Assistant Secretary a written submission, supported by appropriate evidence, to be received not later than seven days before the expiration date of such order. For good cause shown, the Assistant Secretary may consider submissions received not later than five days before the expiration date. The Assistant Secretary ordinarily will not allow discovery; however, for good cause shown in respondent's submission, he/she may allow the parties to take limited discovery, consisting of a request for production of

documents. If requested by the respondent in the written submission, the Assistant Secretary shall hold a hearing on the renewal application. The hearing shall be on the record and ordinarily will consist only of oral argument. The only issue to be considered on BXA's request for renewal is whether the temporary denial order should be continued to prevent an imminent violation as defined herein.

(ii) Any person designated as a related person may not oppose issuance or renewal of the temporary denial order, but may file an appeal in accordance with §766.2(3)(c) of this part.

(iii) If no written opposition to BXA's renewal request is received within the specified time, the Assistant Secretary may issue the order renewing the temporary denial order without a hearing.

(4) A temporary denial order may be renewed more than once.

(e) *Appeals*—(1) *Filing*. (i) A respondent may, at any time, file an appeal of the initial or renewed temporary denial order with the administrative law judge.

(ii) The filing of an appeal shall stay neither the effectiveness of the temporary denial order nor any application for renewal, nor will it operate to bar the Assistant Secretary's consideration of any renewal application.

(2) *Grounds*. A respondent may appeal on the grounds that the finding that the order is necessary in the public interest to prevent an imminent violation is unsupported.

(3) *Appeal procedure*. A full written statement in support of the appeal must be filed with the appeal together with appropriate evidence, and be simultaneously served on BXA, which shall have seven days from receipt to file a reply. Service on the administrative law judge shall be addressed to the Office of the Administrative Law Judge, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Service on BXA shall be as set forth in §766.5(b) of this part. The administrative law judge normally will not hold hearings or entertain oral argument on appeals.

(4) *Recommended Decision*. Within 10 working days after an appeal is filed, the administrative law judge shall submit a recommended decision to the Under Secretary, and serve copies on the parties, recommending whether the issuance or the renewal of the temporary denial order should be affirmed, modified or vacated.

(5) *Final decision*. Within five working days after receipt of the recommended decision, the Under Secretary shall issue a written order accepting, rejecting or modifying the recommended decision. Because of the time constraints, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing. The issuance or renewal of the temporary denial order shall be affirmed only if there is reason to believe that the temporary denial order is required in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or other authorization issued under the EAA. The Under Secretary's written order is final and is not subject to judicial review, except as provided in paragraph (g) of this section.

(f) *Delivery*. A copy of any temporary denial order issued or renewed and any final decision on appeal shall be published in the FEDERAL REGISTER and shall be delivered to BXA and to the respondent, or any agent designated for this purpose, and to any related person in the same manner as provided in §766.5 of this part for filing for papers other than a charging letter.

(g) *Judicial review*. A respondent temporarily denied export privileges by order of the Under Secretary may appeal to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. §2412(d)(3).

§766.25 Administrative action denying permission to apply for or use export licenses.

(a) *General*. The Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny permission to apply for or use any license, including any License Exception, to any person who has been convicted of a violation of the EAA, the EAR, or any order, license or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50

U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(b) *Procedure*. Upon notification that a person has been convicted of a violation of one or more of the provisions specified in paragraph (a) of this section, the Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, will determine whether to deny permission to apply for or use any export license, including any License Exception, to any such person. The Director of the Office of Exporter Services will notify each person denied under this section by letter stating that permission to apply for or use export licenses has been denied.

(c) *Criteria*. In determining whether and for how long to deny U.S. export privileges to a person previously convicted of one or more of the statutes set forth in paragraph (a) of this section, the Director of the Office of Exporter Services may take into consideration any relevant information, including, but not limited to, the seriousness of the offense involved in the criminal prosecution, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures.

(d) *Duration*. Any denial of permission to apply for or use export licenses, including any License Exception, under this section shall not exceed 10 years from the date of the conviction of the person who is subject to the denial.

(e) *Effect*. Any person denied permission to apply for and use licenses under this section will be considered a ''person denied export privileges'' for purposes of §736.2(b)(4) (General Prohibition 4—Engage in actions prohibited by a denial order) and §764.2(k) of the EAR.

(f) *Publication*. The name and address(es) of any person denied permission to apply for or use export licenses under this section will be published as described in Supplement No. 2 to part 764 of the EAR, noting that such action was taken pursuant to this section and section 11(h) of the EAA.

(g) *Appeal*. An appeal of an action under this section will be pursuant to part 756 of the EAR.

(h) *Applicability to related person*. The Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may take action in accordance with §766.23 of this part to make applicable to related persons an order that is being sought or that has been issued under this section.

PART 768—FOREIGN AVAILABILITY DETERMINATION PROCEDURES AND CRITERIA

Sec.

768.1 Introduction.
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SUPPLEMENT NO. 1 TO PART 768—EVIDENCE OF FOREIGN AVAILABILITY
SUPPLEMENT NO. 2 TO PART 768—ITEMS ELIGIBLE FOR EXPEDITED LICENSING PROCEDURES [Reserved]

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; Executive Order 13026 (November 15, 1996, 61 FR 58767) Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12915, Mar. 25, 1996, unless otherwise noted.

§768.1 Introduction.

In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C.

(a) *Authority*. Pursuant to sections 5(f) and 5(h) of the Export Administration Act (EAA), the Under Secretary of Commerce for Export Administration directs the Bureau of Export Administration (BXA) in gathering and analyzing all the evidence necessary for the

Secretary to determine foreign availability.

(b) *Scope.* This part applies only to the extent that items are controlled for national security purposes. This part does not apply to encryption items that were formerly controlled on the U.S. Munitions List and that were transferred to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date, which shall not be subject to any mandatory foreign availability review procedures.

(c) *Types of programs.* There are two general programs of foreign availability:

(1) *Foreign availability to controlled countries.* In this category are denied license assessments (see §§768.4(b) and 768.7 of this part) and decontrol assessments (see §§768.4(c) and 768.7 of this part).

(2) *Foreign availability to non-controlled countries.* In this category are denied license assessments, decontrol assessments, and evaluations of eligibility for expedited licensing (see §768.8 of this part).

(d) *Definitions.* The following are definitions of terms used in this part 768:

Allegation. See foreign availability submission.

Assessment. An evidentiary analysis that BXA conducts concerning the foreign availability of a given item based on the assessment criteria, data gathered by BXA, and the data and recommendations submitted by the Departments of Defense and State and other relevant departments and agencies, TAC committees, and industry.

Assessment criteria. Statutorily established criteria that must be assessed for the Secretary to make a determination with respect to foreign availability. They are, available-in-fact, from a non-U.S. source, in sufficient quantity so as to render the control ineffective, and of comparable quality. (See §768.6 of this part).

Available-in-fact. An item is available-in-fact to a country if it is produced within the country or if it may be obtained by that country from a third country. Ordinarily, items will not be considered available-in-fact to non-controlled countries if the items are available only under a validated national security license or a comparable authorization from a country that maintains export controls on such items cooperatively with the United States.

Claimant. Any party who makes a foreign availability submission, excluding TACs.

Comparable quality. An item is of comparable quality to an item controlled under the EAR if it possesses the characteristics specified in the Commerce Control List (CCL) for that item and is alike in key characteristics that include, but are not limited to: (1) Function; (2) technological approach; (3) performance thresholds; (4) maintainability and service life; and (5) any other attribute relevant to the purpose for which the control was placed on the item.

Controlled countries. Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lithuania, Moldova, Mongolia, North Korea, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam and the People's Republic of China.

Decontrol. Removal of license requirements under the EAR.

Decontrol assessment. An assessment of the foreign availability of an item to a country or countries for purposes of determining whether decontrol is warranted. Such assessments may be conducted after BXA receives a foreign availability submission or a TAC certification, or by the Secretary's own initiative.

Denied license assessment. A foreign availability assessment conducted as a result of a claimant's allegation of foreign availability for an item (or items) that BXA has denied or has issued a letter of intent to deny a license. If the Secretary determines that foreign availability exists, BXA's approval of a license will be limited to the items, countries, and quantities in the allegation.

Determination. The Secretary's decision that foreign availability within the meaning of the EAA does or does not exist. (See §768.7 of this part).

Expedited licensing procedure eligibility evaluation. An evaluation that BXA initiates for the purpose of determining whether an item is eligible for the expedited licensing procedure. (See § 768.8 of this part).

Expedited licensing procedures. Under expedited licensing procedures, BXA reviews and processes a license application for the export of an eligible item to a non-controlled country within statutory time limits. Licenses are deemed approved unless BXA denies within the statutory time limits (See § 768.8 of this part).

Foreign availability submission (FAS). An allegation of foreign availability a claimant makes, supported by reasonable evidence, and submits to BXA. (See § 768.5 of this part).

Item. Any commodity, software, or technology.

Items eligible for non-controlled country expedited licensing procedures. The items described in Supplement No. 2 to this part 768 are eligible for the expedited license procedures (See § 768.8 of this part).

National Security Override (NSO). A Presidential decision to maintain export controls on an item notwithstanding its foreign availability as determined under the EAA. The President's decision is based on his/her determination that the absence of the controls would prove detrimental to the national security of the United States. Once the President makes such a decision, the President must actively pursue negotiations to eliminate foreign availability with the governments of the sources of foreign availability. (See § 768.7 of this part).

Non-controlled countries. Any country not defined as a controlled country by this section.

Non-U.S. source/foreign source. A person located outside the jurisdiction of the United States (as defined in part 772 of the EAR).

Reasonable evidence. Relevant information that is credible.

Reliable evidence. Relevant information that is credible and dependable.

Secretary. As used in this part, the Secretary refers to the Secretary of Commerce or his/her designee.

Similar quality. An item is of similar quality to an item that is controlled under the EAR if it is substantially alike in key characteristics that may include, but are not limited to: (1) Function; (2) technological approach; (3) performance thresholds; (4) maintainability and service life; and (5) any other attribute relevant to the purpose for which the control was placed on the item.

Sufficient quantity. The amount of an item that would render the U.S. export control, or the denial of the license in question, ineffective in achieving its purpose. For a controlled country, it is the quantity that meets the military needs of that country so that U.S. exports of the item to that country would not make a significant contribution to its military potential.

Technical Advisory Committee (TAC). A Committee created under section 5(h) of the EAA that advises and assists the Secretary of Commerce, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under the EAA on export control matters related to specific areas of controlled items.

TAC certification. A statement that a TAC submits to BXA, supported by reasonable evidence, documented as in a FAS, that foreign availability to a controlled country exists for an item that falls within the TAC's area of technical expertise.

[61 FR 12915, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996; 62 FR 25469, May 9, 1997]

§ 768.2 Foreign availability described.

(a) *Foreign availability.* Foreign availability exists when the Secretary determines that an item is comparable in quality to an item subject to U.S. national security export controls, and is available-in-fact to a country, from a non-U.S. source, in sufficient quantities to render the U.S. export control of that item or the denial of a license ineffective. For a controlled country, such control or denial is ''ineffective'' when maintaining such control or denying a specific license would not restrict the availability of items that would make a significant contribution to the military potential of the controlled country or combination of

countries detrimental to the national security of the United States (see sections 5(a) and 3(2)(A) of the EAA.)

(b) *Types of foreign availability*. There are two types of foreign availability:

(1) Foreign availability to a controlled country; and

(2) Foreign availability to a non-controlled country.

(NOTE TO PARAGRAPH (B) OF THIS SECTION: See §768.7 of this part for delineation of the foreign availability assessment procedures, and §768.6 of this part for the criteria used in determining foreign availability)

§768.3 Foreign availability assessment.

(a) *Foreign availability assessment.* A foreign availability assessment is an evidentiary analysis that BXA conducts to assess the foreign availability of a given item according to the assessment criteria, based on data submitted by a claimant, the data gathered by BXA, and the data and recommendations submitted by the Departments of Defense and State and other relevant departments and agencies, TAC committees, and industry. BXA uses the results of the analysis in formulating its recommendation to the Secretary on whether foreign availability exists for a given item. If the Secretary determines that foreign availability exists, the Secretary will decontrol the item for national security reasons or approve the license in question if there is no foreign policy reason to deny the license, unless the President exercises a National Security Override (see §768.7 of this part). The effect of any such determination on the effectiveness of foreign policy controls may be considered independent of this part.

(b) *Types of assessments.* There are two types of foreign availability assessments:

(1) Denied license assessment; and

(2) Decontrol assessment.

(c) *Expedited licensing procedures.* See §768.8 of this part for the evaluation of eligibility of an item for the expedited licensing procedures.

[61 FR 12915, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996]

§768.4 Initiation of an assessment.

(a) *Assessment request.* To initiate an assessment, each claimant or TAC must submit a FAS or a TAC Certification to BXA. TACs are authorized to certify foreign availability only to controlled countries. Claimants can allege foreign availability for either controlled or non-controlled countries.

(b) *Denied license assessment.* A claimant whose license application BXA has denied, or for which it has issued a letter of intent to deny on national security grounds, may request that BXA initiate a denied license assessment by submitting a Foreign Availability Submission (FAS) within 90 days after denial of the license. As part of its submission, the claimant must request that the specified license application be approved on the grounds of foreign availability. The evidence must relate to the particular export as described on the license application and to the alleged comparable item. If foreign availability is found, the Secretary will approve the license for the specific items, countries, and quantities listed on the application. The denied license assessment procedure, however, is not intended to result in the removal of the U.S. export control on an item by incrementally providing a country with amounts that, taken together, would constitute a sufficient quantity of an item. The Secretary will not approve on foreign availability grounds a denied license if the approval of such license would itself render the U.S. export control ineffective in achieving its purpose. In the case of a positive determination, the Secretary will determine whether a decontrol assessment is warranted. If so, then BXA will initiate a decontrol assessment.

(c) *Decontrol assessment.* (1) Any claimant may at any time request that BXA initiate a decontrol assessment by a FAS to BXA alleging foreign availability to any country or countries.

(2) A TAC may request that BXA initiate a decontrol assessment at any time by submitting a TAC Certification to BXA that there is foreign availability to a controlled country for items that fall within the area of the TAC's technical expertise.

(3) The Secretary, on his/her own initiative, may initiate a decontrol assessment.

(d) *BXA mailing address.* All foreign availability submissions and TAC certifications should be submitted to: Department of Commerce, Bureau of Export Administration, 14th Street and Pennsylvania Avenue, NW, Room 3877, Washington, DC 20230.

§ 768.5 Contents of foreign availability submissions and Technical Advisory Committee certifications.

(a) All foreign availability submissions must contain, in addition to information on product or technology alleged to be available from foreign sources, at least:

(1) The name of the claimant;

(2) The claimant's mailing and business address;

(3) The claimant's telephone number; and

(4) A contact point and telephone number.

(b) Foreign availability submissions and TAC certifications should contain as much evidence as is available to support the claim, including, but not limited to:

(1) Product names and model designations of the items alleged to be comparable;

(2) Extent to which the alleged comparable item is based on U.S. technology;

(3) Names and locations of the non-U.S. sources and the basis for claiming that the item is a non-U.S. source item;

(4) Key performance elements, attributes, and characteristics of the items on which a qualitative comparison may be made;

(5) Non-U.S. source's production quantities and/or sales of the alleged comparable items and marketing efforts;

(6) Estimated market demand and the economic impact of the control;

(7) Product names, model designations, and value of U.S. controlled parts and components incorporated in the items alleged to be comparable; and

(8) The basis for the claim that the item is available-in-fact to the country or countries for which foreign availability is alleged.

(c) Supporting evidence of foreign availability may include, but is not limited to, the following:

(1) Foreign manufacturers' catalogs, brochures, operation or maintenance manuals;

(2) Articles from reputable trade and technical publications;

(3) Photographs;

(4) Depositions based on eyewitness accounts; and

(5) Other credible evidence.

NOTE TO PARAGRAPH (C) OF THIS SECTION: See Supplement No. 1 to part 768 for additional examples of supporting evidence.

(d) Upon receipt of a FAS or TAC certification, BXA will review it to determine whether there is sufficient evidence to support the belief that foreign availability may exist. If BXA determines the FAS or TAC certification is lacking in supporting evidence, BXA will seek additional evidence from appropriate sources, including the claimant or TAC. BXA will initiate the assessment when it determines that it has sufficient evidence that foreign availability may exist. Claimant and TAC certified assessments will be deemed to be initiated as of the date of such determination.

(e) Claimants and TACs are advised to review the foreign availability assessment criteria described in § 768.6 of this part and the examples of evidence described in Supplement No. 1 to part 768 when assembling supporting evidence for inclusion in the FAS or TAC certification.

§ 768.6 Criteria.

BXA will evaluate the evidence contained in a FAS or TAC certification and all other evidence gathered in the assessment process in accordance with certain criteria that must be met before BXA can recommend a positive determination to the Secretary. The criteria are defined in § 768.1(d) of this part. In order to initiate an assessment, each FAS and TAC certification should address each of these criteria. The criteria are statutorily prescribed and are:

(a) Available-in-fact;

(b) Non-U.S. source;

(c) Sufficient quantity; and

(d) Comparable quality.

§768.7 Procedures.

(a) *Initiation of an assessment.* (1) Once BXA accepts a FAS or TAC certification of foreign availability, BXA will notify the claimant or TAC that it is initiating the assessment.

(2) BXA will publish a FEDERAL REGISTER notice of the initiation of any assessment.

(3) BXA will notify the Departments of Defense and State, the intelligence community, and any other departments, agencies and their contractors that may have information concerning the item on which BXA has initiated an assessment. Each such department, agency, and contractor shall provide BXA all relevant information concerning the item. BXA will invite interested departments and agencies to participate in the assessment process (See paragraph (e) of this section).

(b) *Data gathering.* BXA will seek and consider all available information that bears upon the presence or absence of foreign availability, including but not limited to that evidence described in §768.5 (b) and (c) of this part. As soon as BXA initiates the assessment, it will seek evidence relevant to the assessment, including an analysis of the military needs of a selected country or countries, technical analysis, and intelligence information from the Departments of Defense and State, and other U.S. agencies. Evidence is particularly sought from: industry sources worldwide; other U.S. organizations; foreign governments; commercial, academic and classified data bases; scientific and engineering research and development organizations; and international trade fairs.

(c) *Analysis.* BXA will conduct its analysis by evaluating whether the reasonable and reliable evidence that is relevant to each of the foreign availability criteria provides a sufficient basis to recommend a determination that foreign availability does or does not exist.

(d) *Recommendation and determination.* (1) Upon completion of each assessment, BXA, on the basis of its analysis, will recommend that the Secretary make a determination either that there is or that there is not foreign availability, whichever the evidence supports. The assessment upon which BXA bases its recommendation will accompany the recommendation to the Secretary.

(2) BXA will recommend on the basis of its analysis that the Secretary determine that foreign availability exists to a country when the available evidence demonstrates that an item of comparable quality is available-in-fact to the country, from non-U.S. sources, in sufficient quantity so that continuation of the existing national security export control, or denial of the license application in question on national security grounds, would be ineffective in achieving its purpose. For a controlled country, such control or denial is ''ineffective'' when comparable items are available-in-fact from foreign sources in sufficient quantities so that maintaining such control or denying a license would not be effective in restricting the availability of items that would make a significant contribution to the military potential of any country or combination of countries detrimental to the national security of the United States.

(3) The Secretary will make the determination of foreign availability on the basis of the BXA assessment and recommendation; the Secretary's determination will take into account the evidence provided to BXA, the recommendations of the Secretaries of Defense and State and any other interested agencies, and any other information that the Secretary considers relevant.

(4) For all decontrol and denied license assessments (under section 5(f)(3) of the EAA) initiated by a FAS, the Secretary will make a determination within 4 months of the initiation of the assessment and will notify the claimant. The Secretary will submit positive determinations for review to the appropriate departments and agencies.

(5) The deadlines for determinations based on self-initiated and TAC-initiated assessments are different from the deadlines for claimant-initiated assessments (see paragraphs (f)(2) and (f)(3) of this section).

(e) *Interagency review.* BXA will notify all appropriate U.S. agencies and Departments upon the initiation of an

assessment and will invite their participation in the assessment process. BXA will provide all interested agencies and departments an opportunity to review source material, draft analyses and draft assessments immediately upon their receipt or production. For claimant-initiated assessments, BXA will provide a copy of all positive recommendations and assessments to interested agencies and departments for their review following the Secretary's determination of foreign availability. For self-initiated and TAC-initiated assessments, BXA will provide all interested agencies an opportunity to review and comment on the assessment.

(f) *Notification.* (1) No later than 5 months after the initiation of an assessment based on a FAS (claimant assessments), the Secretary will inform the claimant in writing and will submit for publication in the FEDERAL REGISTER a notice that:

(i) Foreign availability exists, and

(A) The requirement of a license has been removed or the license application in question has been approved; or

(B) The President has determined that for national security purposes the export controls must be maintained or the license application must be denied, notwithstanding foreign availability, and that appropriate steps to eliminate the foreign availability are being initiated; or

(C) In the case of an item controlled multilaterally under the former COCOM regime, the U.S. Government will conduct any necessary consultations concerning the proposed decontrol or approval of the license with the former COCOM regime for a period of up to 4 months from the date of the publication of the determination in the FEDERAL REGISTER (the U.S. Government may remove the license requirement for exports to non-controlled countries pending completion of the former COCOM regime review process); or

(ii) Foreign availability does not exist.

(2) For all TAC certification assessments, the Secretary will make a foreign availability determination within 90 days following initiation of the assessment. BXA will prepare and submit a report to the TAC and to the Congress stating that:

(i) The Secretary has found foreign availability and has removed the license requirement; or

(ii) The Secretary has found foreign availability, but has recommended to the President that negotiations be undertaken to eliminate the foreign availability; or

(iii) The Secretary has not found foreign availability.

(3) There is no statutory deadline for assessments self-initiated by the Secretary or for the resulting determination. However, BXA will make every effort to complete such assessments and determinations promptly.

(g) *Foreign availability to controlled countries.* When the Secretary determines that an item controlled for national security reasons is available to a controlled country and the President does not issue a National Security Override (NSO), BXA will submit the determination to the Department of State, along with a draft proposal for the multilateral decontrol of the item or for the former COCOM regime approval of the license. The Department of State will submit the proposal or the license for former COCOM regime review. The former COCOM regime will have up to 4 months for review of the proposal.

(h) *Foreign availability to non-controlled countries.* If the Secretary determines that foreign availability to non-controlled countries exists, the Secretary will decontrol the item for export to all non-controlled countries where it is found to be available, or approve the license in question, unless the President exercises a National Security Override.

(i) *Negotiations to eliminate foreign availability.* (1) The President may determine that an export control must be maintained notwithstanding the existence of foreign availability. Such a determination is called a National Security Override (NSO) and is based on the President's decision that the absence of the control would prove detrimental to the United States national security. Unless extended (as described in paragraph (i)(7) of this section), an NSO is

effective for 6 months. Where the President invokes an NSO, the U.S. Government will actively pursue negotiations with the government of any source country during the 6 month period to eliminate the availability.

(2) There are two types of National Security Overrides:

(i) An NSO of a determination of foreign availability resulting from an assessment initiated pursuant to section 5(f) of the EAA (claimant and self-initiated assessments); and

(ii) An NSO of a determination of foreign availability resulting from an assessment initiated pursuant to section 5(h) of the EAA (TAC-certification assessments).

(3) For an NSO resulting from an assessment initiated under section 5(f) of the EAA, the Secretary of any agency may recommend that the President exercise the authority under the EAA to retain the controls or deny the license notwithstanding the finding of foreign availability.

(4) For an NSO resulting from an assessment initiated under section 5(h) of the EAA, the Secretary of Commerce may recommend that the President exercise the authority under the EAA to retain the controls notwithstanding the finding of foreign availability.

(5) Under an NSO resulting from an assessment initiated under section 5(f) of the EAA, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives will be notified of the initiation of the required negotiations. The notice will include an explanation of the national security interest that necessitates the retention of controls.

(6) Under an NSO resulting from an assessment initiated under section 5(f) of the EAA, BXA will publish notices in the FEDERAL REGISTER consisting of:

(i) The Secretary's determination of foreign availability;

(ii) The President's decision to exercise the NSO;

(iii) A concise statement of the basis for the President's decision; and

(iv) An estimate of the economic impact of the decision.

(7) The 6 month effective period for an NSO may be extended up to an additional 12 months if, prior to the end of the 6 months, the President certifies to Congress that the negotiations are progressing, and determines that the absence of the controls would continue to be detrimental to the United States national security.

(8) After the conclusion of negotiations, BXA will retain the control only to the extent that foreign availability is eliminated. If foreign availability is not eliminated, BXA will decontrol the item by removing the requirement for a license for the export of the item to the destinations covered by the assessment. To the extent that the negotiations are successful and the foreign availability is eliminated, BXA will remove the license requirement for the export of the item to any country that has agreed to eliminate foreign availability.

(j) *Changes in foreign availability*. If BXA becomes aware of conditions, including new evidence, that affect a previous determination that foreign availability exists or does not exist, BXA may review the conditions. If BXA finds that the foreign availability previously determined no longer exists, or that foreign availability not earlier found now does exist, BXA will make a recommendation to the Secretary of Commerce for the appropriate changes in the control. The Secretary of Commerce will make a determination, and BXA will publish a FEDERAL REGISTER notice of the determination.

§768.8 Eligibility of expedited licensing procedures for non-controlled countries.

(a) BXA determines the eligibility of an item for expedited licensing procedures on the basis of an evaluation of the foreign availability of the item. Eligibility is specific to the items and the countries to which they are found to be available.

(b) BXA will initiate an eligibility evaluation:

(1) On its own initiative;

(2) On receipt of a FAS; or

(3) On receipt of a TAC certification.

(c) Upon initiation of an eligibility evaluation following receipt of either a FAS or TAC certification, BXA will notify the claimant or TAC of the receipt and initiation of an evaluation and

publish a FEDERAL REGISTER notice of the initiation of the evaluation.

(d) The criteria for determining eligibility for expedited licensing procedures are:

(1) The item must be available-in-fact to the specified

non-controlled country from a foreign source;

(2) The item must be of a quality similar to that of the U.S.-controlled item; and

(3) The item must be available-in-fact to the specified non-controlled country without effective restrictions.

(e) Within 30 days of initiation of the evaluation, the Secretary of Commerce will make a determination of foreign availability on the basis of the BXA evaluation and recommendation, taking into consideration the evidence the Secretaries of Defense, State, and other interested agencies provide to BXA and any other information that the Secretary considers relevant.

(f) Within 30 days of the receipt of the FAS or TAC certification, BXA will publish the Secretary's determination in the FEDERAL REGISTER, that the item will or will not be eligible for expedited licensing procedures to the stated countries and, where appropriate, amend Supplement No. 2 to part 768.

(g) Following completion of a self-initiated evaluation, BXA will be notified of the Secretary's determination and, where appropriate, Supplement No. 2 to part 768 will be amended.

(h) Foreign availability submissions and TAC certifications to initiate an expedited licensing procedure evaluation must be clearly designated on their face as a request for expedited licensing procedure and must specify the items, quantities and countries alleged eligible. Submissions and certifications should be sent to: Department of Commerce, Bureau of Export Administration, 14th Street and Pennsylvania Avenue, NW., Room 3877, Washington, DC 20230.

§ 768.9 Appeals of negative foreign availability determinations.

Appeals of negative determinations will be conducted according to the standards and procedures described in part 756 of the EAR. A Presidential decision (NSO) to deny a license or continue controls notwithstanding a determination of foreign availability is not subject to appeal.

§ 768.10 Removal of controls on less sophisticated items.

Where the Secretary has removed national security controls on an item for foreign availability reasons, the Secretary will also remove controls on similar items that are controlled for national security reasons and whose functions, technological approach, performance thresholds, and other attributes that form the basis for national security export controls do not exceed the technical parameters of the item that BXA has decontrolled for foreign availability reasons.

SUPPLEMENT NO. 1 TO PART 768—EVIDENCE OF FOREIGN AVAILABILITY

This supplement provides a list of examples of evidence that the Bureau of Export Administration (BXA) has found to be useful in conducting assessments of foreign availability. A claimant submitting evidence supporting a claim of foreign availability should review this list for suggestions as evidence is collected. Acceptable evidence indicating possible foreign availability is not limited to these examples, nor is any one of these examples, usually, in and of itself, necessarily sufficient to meet a foreign availability criterion. A combination of several types of evidence for each criterion usually is required. A Foreign Availability Submission (FAS) should include as much evidence as possible on all four of the criteria listed below. BXA combines the submitted evidence with the evidence that it collects from other sources. BXA evaluates all evidence, taking into account factors that may include, but are not limited to: Information concerning the source of the evidence, corroborative or contradictory indications, and experience concerning the reliability or reasonableness of such evidence. BXA will assess all relevant evidence to determine whether each of the four criteria has been met. Where possible, all information should be in writing. If information is based on third party documentation, the submitter should provide such documentation to BXA. If information is based on oral statements a third party made, the submitter should provide a memorandum of the conversation to BXA if the submitter cannot obtain a written memorandum from the source. BXA will amend this informational list as it identifies new examples of evidence.

(a) Examples of evidence of foreign availability:

The following are intended as examples of evidence that BXA will consider in evaluating foreign availability. BXA will evaluate all evidence according to the provisions in §768.7(c) of this part in order for it to be used in support of a foreign availability determination. This list is illustrative only.

(1) *Available-in-fact:*

(i) Evidence of marketing of an item in a foreign country (e.g., an advertisement in the media of the foreign country that the item is for sale there);

(ii) Copies of sales receipts demonstrating sales to foreign countries;

(iii) The terms of a contract under which the item has been or is being sold to a foreign country;

(iv) Information, preferably in writing, from an appropriate foreign government official that the government will not deny the sale of an item it produces to another country in accordance with its laws and regulations;

(v) Information, preferably in writing, from a named company official that the company legally can and would sell an item it produces to a foreign country;

(vi) Evidence of actual shipments of the item to foreign countries (e.g., shipping documents, photographs, news reports);

(vii) An eyewitness report of such an item in operation in a foreign country, providing as much information as available, including where possible the make and model of the item and its observed operating characteristics;

(viii) Evidence of the presence of sales personnel or technical service personnel in a foreign country;

(ix) Evidence of production within a foreign country;

(x) Evidence of the item being exhibited at a trade fair in a foreign country, particularly for the purpose of inducing sales of the item to the foreign country;

(xi) A copy of the export control laws or regulations of the source country, showing that the item is not controlled; or

(xii) A catalog or brochure indicating the item is for sale in a specific country.

(2) *Foreign (non-U.S.) source:*

(i) Names of foreign manufacturers of the item including, if possible, addresses and telephone numbers;

(ii) A report from a reputable source of information on commercial relationships that a foreign manufacturer is not linked financially or administratively with a U.S. company;

(iii) A list of the components in the U.S. item and foreign item indicating model numbers and their sources;

(iv) A schematic of the foreign item identifying its components and their sources;

(v) Evidence that the item is a direct product of foreign technology (e.g., a patent law suit lost by a U.S. producer, a foreign patent);

(vi) Evidence of indigenous technology, production facilities, and the capabilities at those facilities; or

(vii) Evidence that the parts and components of the item are of foreign origin or are exempt from U.S. licensing requirements by the parts and components provision §732.4 of the EAR.

(3) *Sufficient quantity:*

(i) Evidence that foreign sources have the item in serial production;

(ii) Evidence that the item or its product is used in civilian applications in foreign countries;

(iii) Evidence that a foreign country is marketing in the specific country an item of its indigenous manufacture;

(iv) Evidence of foreign inventories of the item;

(v) Evidence of excess capacity in a foreign country's production facility;

(vi) Evidence that foreign countries have not targeted the item or are not seeking to purchase it in the West;

(vii) An estimate by a knowledgeable source of the foreign country's needs; or

(viii) An authoritative analysis of the worldwide market (i.e., demand, production rate for the item for various manufacturers, plant capacities, installed tooling, monthly production rates, orders, sales and cumulative sales over 5–6 years).

(4) *Comparable quality:*

(i) A sample of the foreign item;

(ii) Operation or maintenance manuals of the U.S. and foreign items;

(iii) Records or a statement from a user of the foreign item;

(iv) A comparative evaluation, preferably in writing, of the U.S. and foreign items by, for example, a western producer or purchaser of the item, a recognized expert, a reputable trade publication, or independent laboratory;

(v) A comparative list identifying, by manufacturers and model numbers, the key performance components and the materials used in the item that qualitatively affect the performance of the U.S. and foreign items;

(vi) Evidence of the interchangeability of U.S. and foreign items;

(vii) Patent descriptions for the U.S. and foreign items;

(viii) Evidence that the U.S. and foreign items meet a published industry, national, or international standard;

(ix) A report or eyewitness account, by deposition or otherwise, of the foreign item's operation;

(x) Evidence concerning the foreign manufacturers' corporate reputation;

(xi) Comparison of the U.S. and foreign end item(s) made from a specific commodity, tool(s), device(s), or technical data; or

(xii) Evidence of the reputation of the foreign item including, if possible, information on maintenance, repair, performance, and other pertinent factors.

SUPPLEMENT NO. 2 TO PART 768—ITEMS ELIGIBLE FOR EXPEDITED LICENSING PROCEDURES [RESERVED]

PART 770—INTERPRETATIONS

Sec.
770.1 Introduction.
770.2 Commodity interpretations.
770.3 Interpretations related to exports of technology and software to destinations in Country Group D:1.
770.4 Interpretations related to chemical mixtures—*de minimis* exceptions examples.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

SOURCE: 61 FR 12920, Mar. 25, 1996, unless otherwise noted.

§ 770.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part provides commodity, technology, and software interpretations. These interpretations clarify the scope of controls where such scope is not readily apparent from the Commerce Control List (CCL) (see Supplement No. 1 to part 774 of the EAR) and other provisions of the Export Administration Regulations.

§ 770.2 Commodity interpretations.

(a) *Interpretation 1: Anti-friction bearing or bearing systems and specially designed parts.* (1) Anti-friction bearings or bearing systems shipped as spares or replacements are classified under Export Control Classification Numbers (ECCNs) 2A001, 2A002, 2A003, 2A004, 2A005, and 2A006 (ball, roller, or needle-roller bearings and parts). This applies to separate shipments of anti-friction bearings or bearing systems and anti-friction bearings or bearing systems shipped with machinery or equipment for which they are intended to be used as spares or replacement parts.

(2) An anti-friction bearing or bearing system physically incorporated in a segment of a machine or in a complete machine prior to shipment loses its identity as a bearing. In this scenario, the machine or segment of machinery containing the bearing is the item subject to export control requirements.

(3) An anti-friction bearing or bearing system not incorporated in a segment of a machine prior to shipment, but shipped as a component of a complete unassembled (knocked-down) machine, is considered a component of a machine. In this scenario, the complete machine is the item subject to export license requirements.

(b) *Interpretation 2: Classification of ''parts'' of machinery, equipment, or other items*—(1) *An assembled machine or unit of equipment is being exported.* In instances where one or more assembled machines or units of equipment are being exported, the individual component parts that are physically incorporated into the machine or equipment do not require a license. The license or general exception under which the complete machine or unit of equipment is exported will also cover its component parts, provided that the parts are normal and usual components of the machine or equipment being exported, or that the physical incorporation is not used as a device to evade the requirement for a license.

(2) *Parts are exported as spares, replacements, for resale, or for stock.* In instances where parts are exported as spares, replacements, for resale, or for stock, a license is required only if the appropriate entry for the part specifies that a license is required for the intended destination.

(c) *Interpretation 3: Wire or cable cut to length.* (1) Wire or cable may be included as a component of a system or piece of equipment, whether or not the wire or cable is cut to length and whether or not it is fitted with connectors at one or both ends, so long as it is in normal quantity necessary to make the original installation of the equipment and is necessary to its operation.

(2) Wire or cable exported as replacement or spares, or for further manufacture is controlled under the applicable wire or cable ECCN only. This includes wire or cable, whether or not cut to length or fitted with connectors at one or both ends.

(d) *Interpretation 4: Telecommunications equipment and systems.* Control equipment for paging systems (broadcast radio or selectively signalled receiving systems) is defined as circuit switching equipment in Category 5 of the CCL.

(e) *Interpretation 5: Numerical control systems*—(1) *Classification of ''Numerical Control'' Units.* ''Numerical control'' units for machine tools, regardless of their configurations or architectures, are controlled by their functional characteristics as described in ECCN 2B001.a. ''Numerical control'' units include computers with add-on ''motion control boards''. A computer with add-on ''motion control boards'' for machine tools may be controlled under ECCN 2B001.a even when the computer alone without ''motion control boards'' is not subject to licensing requirements under Category 4 and the ''motion control boards'' are not controlled under ECCN 2B001.b.

(2) *Export documentation requirement.* (i) When preparing a license application for a numerical control system, the machine tool and the control unit are classified separately. If either the machine tool or the control unit requires a license, then the entire unit requires a license. If either a machine tool or a control unit is exported separately from the system, the exported component is classified on the license application without regard to the other parts of a possible system.

(ii) When preparing the Shipper's Export Declaration (SED), a system being shipped complete (i.e., machine and control unit), should be reported under the Schedule B number for each machine. When either a control unit or a machine is shipped separately, it should be reported under the Schedule B number appropriate for the individual item being exported.

(f) *Interpretation 6: Parts, accessories, and equipment exported as scrap.* Parts, accessories, or equipment that are being shipped as scrap should be described on the SED in sufficient detail to be identified under the proper ECCN. When commodities declared as parts, accessories, or equipment are shipped in bulk, or are otherwise not packaged, packed, or sorted in accordance with normal trade practices, the Customs Officer may require evidence that the shipment is not scrap. Such evidence may include, but is not limited to, bills of sale, orders and correspondence indicating whether the commodities are scrap or are being exported for use as parts, accessories, or equipment.

(g) *Interpretation 7: Scrap arms, ammunition, and implements of war.* Arms, ammunition, and implements of war, as defined in the U.S. Munitions List, and are under the jurisdiction of the U.S. Department of State (22 CFR parts 120 through 130), except for the following, which are under the jurisdiction of the Department of Commerce:

(1) Cartridge and shell cases that have been rendered useless beyond the possibility of restoration to their original identity by means of excessive heating, flame treatment, mangling, crushing, cutting, or by any other method are ''scrap''.

(2) Cartridge and shell cases that have been sold by the armed services as ''scrap'', whether or not they have been heated, flame-treated, mangled, crushed, cut, or reduced to scrap by any other method.

(3) Other commodities that may have been on the U.S. Munitions List are ''scrap'', and therefore under the jurisdiction of the Department of Commerce, if they have been rendered useless beyond the possibility of restoration to their original identity only by means of mangling, crushing, or cutting. When in doubt as to whether a commodity covered by the Munitions List has been rendered useless, exporters should consult the Office of Defense Trade Controls, U.S. Department of State, Washington, DC 20520, or the Exporter Counseling Division, Office of Exporter Services, Room 1099A, U.S. Department of Commerce, Washington, DC 20230, before reporting a shipment as metal scrap.

(h) *Interpretation 8: Military automotive vehicles and parts for such vehicles*—(1) *Military automotive vehicles.* (i) For purposes of U.S. export controls, military automotive vehicles ''possessing or built to current military specifications differing materially from normal commercial specifications'' may include, but are not limited to, the following characteristics:

(A) Special fittings for mounting ordnance or military equipment;

(B) Bullet-proof glass;

(C) Armor plate;

(D) Fungus preventive treatment;

(E) Twenty-four volt electrical systems;

(F) Shielded electrical system (electronic emission suppression); or

(G) Puncture-proof or run-flat tires.

(ii) *Automotive vehicles fall into two categories.*

(A) *Military automotive vehicles on the Munitions List, new and used.* Automotive vehicles in this category are primarily combat (fighting) vehicles, with or without armor and/or armament, ''designed for specific fighting function.'' These automotive vehicles are licensed for export by the U.S. Department of State (22 CFR parts 120 through 130).

(B) *Military automotive vehicles not on the U.S. Munitions List, new and used.* Automotive vehicles in this category are primarily transport vehicles designed for non-combat military purposes (transporting cargo, personnel and/or equipment, and/or for to wing other vehicles and equipment over land and roads in close support of fighting vehicles and troops). These automotive vehicles are licensed for export by the U.S. Department of Commerce.

(iii) *Parts for military automotive vehicles.* Functional parts are defined as those parts making up the power train of the vehicles, including the electrical system, the cooling system, the fuel system, and the control system (brake and steering mechanism), the front and rear axle assemblies including the wheels, the chassis frame, springs and shock absorbers. Parts specifically designed for military automotive vehicles on the Munitions List are licensed for export by the U.S. Department of State (22 CFR parts 120 through 130).

(iv) *General instructions.* Manufacturers of non-Munitions List automotive vehicles and/or parts will know whether their products meet the conditions described in this paragraph (h). Merchant exporters and other parties who are not sure whether their products (automotive vehicles and/or parts) meet these conditions should check with their suppliers for the required information before making a shipment under general exception or submitting an application to BXA for a license.

(2) [Reserved]

(i) *Interpretation 9: Aircraft, parts, accessories and components.* Aircraft, parts, accessories, and components defined in Categories VIII and IX of the Munitions List are under the export licensing authority of the U.S. Department of State (22 CFR parts 120 through 130). All other aircraft, and parts, accessories and components therefor, are under the export licensing authority of the U.S. Department of Commerce. The following aircraft, parts, accessories and components are under the licensing authority of the U.S. Department of Commerce:

(1) Any aircraft (except an aircraft that has been demilitarized, but including aircraft specified in paragraph (i)(2) of this section) that conforms to a Federal Aviation Agency type certificate in the normal, utility, acrobatic, transport, or restricted category, provided such aircraft has not been equipped with or modified to include military equipment, such as gun mounts, turrets, rocket launchers, or similar equipment designed for military combat or military training purposes.

(2) Only the following military aircraft, demilitarized (aircraft not specifically equipped, reequipped, or modified for military operations):

(i) Cargo, bearing designations ''C–45 through C–118 inclusive,'' and ''C–121'';

(ii) Trainers, bearing a ''T'' designation and using piston engines;

(iii) Utility, bearing a ''U'' designation and using piston engines;

(iv) Liaison, bearing an ''L'' designation; and

(v) Observation, bearing an ''O'' designation and using piston engines.

(3) All reciprocating engines.

(4) Other aircraft engines not specifically designed or modified for military aircraft.

(5) Parts, accessories, and components (including propellers), designed exclusively for aircraft and engines described in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this section.

(6) General purpose parts, accessories, and components usable interchangeably on either military or civil aircraft.

(j) *Interpretation 10: Civil aircraft inertial navigation equipment.* (1) The Department of Commerce has licensing jurisdiction over exports and reexports to all destinations of inertial navigation systems, inertial navigation equipment, and specially designed components therefor for ''civil aircraft''.

(2) The Department of State, retains jurisdiction over all software and technology for inertial navigation systems and navigation equipment, and specially designed components therefor, for shipborne use, underwater use, ground vehicle use, spaceborne use or use other than ''civil aircraft''.

(k) *Interpretation 11: Precursor chemicals.* The following chemicals are controlled by ECCN 1C350. The appropriate Chemical Abstract Service Registry (C.A.S.) number and synonyms, (i.e., alternative names) are included to help you determine whether your chemicals are controlled by this entry. These chemicals require a license to all countries except Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (South), Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Switzerland, and the United Kingdom.

(1) (C.A.S. #1341–49–7) Ammonium hydrogen bifluoride
Acid ammonium fluoride
Ammonium bifluoride
Ammonium difluoride
Ammonium hydrofluoride
Ammonium hydrogen bifluoride
Ammonium hydrogen difluoride
Ammonium monohydrogen difluoride

(2) (C.A.S. #7784–34–1) Arsenic trichloride
Arsenic (III) chloride
Arsenous chloride
Fuming liquid arsenic
Trichloroarsine

(3) (C.A.S. #76–93–7) Benzilic acid
.alpha.,.alpha.-Diphenyl-.alpha.-hydroxyacetic acid
Diphenylglycolic acid
.alpha.,.alpha.-Diphenylglycolic acid
Diphenylhydroxyacetic acid
.alpha.-Hydroxy-2,2-diphenylacetic acid
2-Hydroxy-2,2-diphenylacetic acid
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid
Hydroxydiphenylacetic acid

(4) (C.A.S. #107–07–3) 2-Chloroethanol
2-Chloro-1-ethanol
Chloroethanol
2-Chloroethyl alcohol
Ethene chlorohydrin
Ethylchlorohydrin
Ethylene chlorhydrin
Ethylene chlorohydrin
Glycol chlorohydrin
Glycol monochlorohydrin
2-Hydroxyethyl chloride

(5) (C.A.S. #78–38–6) Diethyl ethylphosphonate Ethylphosphonic acid diethyl ester

(6) (C.A.S. #15715–41–0) Diethyl methylphosphonite
Diethoxymethylphosphine
Diethyl methanephosphonite
0,0-Diethyl methylphosphonite
Methyldiethoxyphosphine
Methylphosphonous acid diethyl ester

(7) (C.A.S. #2404–03–7) Diethyl-N, N-dimethylphosphoro-amidate
N,N-Dimethyl-O,O′-diethyl phosphoramidate
Diethyl dimethylphosphoramidate
Dimethylphosphoramidic acid diethyl ester

(8) (C.A.S. #762–04–9) Diethyl phosphite
Diethoxyphosphine oxide
Diethyl acid phosphite
Diethyl hydrogen phosphite
Diethyo phosphonate
Hydrogen diethyl phosphite

(9) (C.A.S. #100–37–8) N, N-Diethylethanolamine
N,N-Diethyl-2-aminoethanol
Diethyl (2-hydroxyethyl) amine
N,N-Diethyl-N-(.beta.-hydroxyethyl) amine
N,N-Diethyl-2-hydroxyethylamine
Diethylaminoethanol
2-(Diethylamino) ethanol
2-(Diethylamino)ethyl alcohol
N,N-Diethylmonoethanolamine
(2-Hydroxyethyl) diethylamine
2-Hydroxytriethylamine

(10) (C.A.S. #5842–07–9) N,N-Diisopropyl-.beta.-aminoethane thiol
2-(Diisopropylamino) ethanethiol
Diisopropylaminoethanethiol
.beta.-Diisopropylaminoethanethiol
2-(bis(1-Methylethyl)amino) ethanethiol

(11) (C.A.S. #4261–68–1) N, N-Diisopropyl-.2-aminoethyl chloride hydrochloride
(12) (C.A.S. #96–80–0) N,N-Diisopropyl-.beta.-aminoethanol
N,N-Diisopropyl-2-aminoethanol
2-(Diisopropylamino) ethanol
(N,N-Diisopropylamino) ethanol
2-(Diisopropylamino) ethyl alcohol
N,N-Diisopropylethanolamine
(13) (C.A.S. #96–79–7) N,N-Diisopropyl-.beta.-aminoethyl chloride
2-Chloro-N,N-diisopropylethanamine
1-Chloro-N,N-diisopropylaminoethane
2-Chloro-N,N-diisopropylethylamine
N-(2-chloroethyl)-N-(1-methylethyl)-2-propanamine
N-(2-Chloroethyl) diisopropylamine
N,N-Diisopropyl-2-chloroethylamine
1-(Diisopropylamino)-2-cholorethane
2-(Diisopropylamino)ethyl chloride
Diisopropylaminoethyl chloride
.beta.-Diisopropylaminoethyl chloride
(14) (C.A.S. #108–18–9) Diisopropylamine
N,N-Diisopropylamine
N-(1-Methylethyl)-2-propanamine
(15) (C.A.S. #6163–75–3) Dimethyl ethylphosphonate
Dimethyl ethanephosphonate
Ethylphosphonic acid dimethyl ester
(16) (C.A.S. #756–79–6) Dimethyl methylphosphonate
Dimethoxymethyl phosphine oxide
Dimethyl methanephosphonate
Methanephosphonic acid dimethyl ester
Methylphosphonic acid dimethyl ester
(17) (C.A.S. #868–85–9) Dimethyl phosphite
Dimethoxyphosphine oxide
Dimethyl acid phosphite
Dimethyl hydrogen phosphite
Dimethyl phosphonate
Hydrogen dimethyl phosphite
Methyl phosphate
(18) (C.A.S. #124–40–3) Dimethylamine
N-Methyl methanamine
(19) (C.A.S. #506–59–2) Dimethylamine hydrochloride
Dimethylammonium chloride
N-Methyl methanamine hydrochloride
(20) (C.A.S. #57856–11–8) O-Ethyl-2-diisoprophylaminoethyl methylphosphonite (QL)
Methylphosphonous acid 2-(bis(1-methylethyl)amino)ethyl ethyl ester
(21) (C.A.S. #1498–40–4) Ethylphosphonous dichloride
Dichloroethylphosphine
Ethyl phosphonous dichloride
Ethyldichlorophosphine
(22) (C.A.S. #430–78–4) Ethylphosphonus difluoride
Ethyldifluorophosphine
(23) (C.A.S. #1066–50–8) Ethylphosphonyl dichloride
Dichloroethylphosphine oxide
Ethanephosphonyl chloride
Ethylphosphinic dichloride
Ethylphosphonic acid dichloride
Ethylphosphonic dichloride
(24) (C.A.S. #753–98–0) Ethylphosphonyl difluoride
Ethyl difluorophosphite
Ethyldifluorophosphine oxide
Ethylphosphonic difluoride
(25) (C.A.S. #7664–39–3) Hydrogen fluoride
Anhydrous hydrofluoric acid
Fluorhydric acid
Fluorine monohydride
Hydrofluoric acid gas
(26) (C.A.S. #3554–74–3) 3-Hydroxyl-1-methylpiperidine
3-Hydroxy-N-methylpiperidine
1-Methyl-3-hydroxypiperidine
N-Methyl-3-hydroxypiperidine
1-Methyl-3-piperidinol
N-Methyl-3-piperidinol
(27) (C.A.S. #76–89–1) Methyl benzilate
Benzilic acid methyl ester
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid methyl ester
Methyl .alpha.-phenylmandelate
Methyl diphenylglycolate
(28) (C.A.S. #676–83–5) Methylphosphonous dichloride
Dichloromethylphosphine
Methyldichlorophosphine
Methylphosphorus dichloride
(29) (C.A.S. #753–59–3) Methylphosphonous diflouride
Difluoromethylphosphine
Methyldifluorophosphine
(30) (C.A.S. #676–97–1) Methylphosphonyl dichloride
Dichloromethylphosphine oxide
Methanephosphonodichloridic acid
Methanephosphonyl chloride
Methylphosphonic acid dichloride
Methylphosphonic dichloride

Methylphosphonodichloridic acid
Methylphosphonyl chloride
(31) (C.A.S. #676–99–3) Methylphosphonyl difluoride
Difluoromethylphosphine oxide
Methyl difluorophosphite
Methylphosphonic difluoride
(32) (C.A.S. #10025–87–3) Phosphorus oxychloride
Phosphonyl trichloride
Phosphoric chloride
Phosphoric trichloride
Phosphoroxychloride
Phosphoroxytrichloride
Phosphorus chloride oxide
Phosphorus monoxide trichloride
Phosphorus oxide trichloride
Phosphorus oxytrichloride
Phosphorus trichloride oxide
Phosphoryl trichloride
Trichlorophosphine oxide
Trichlorophosphorus oxide
(33) (C.A.S. #10026–13–8) Phosphorus pentachloride
Pentachlorophosphorane
Pentachlorophosphorus
Phosphoric chloride
Phosphorus(V) chloride
Phosphorus perchloride
(34) (C.A.S. #1314–80–3) Phosphorus pentasulfide
Diphosphorus pentasulfide
Phosphoric sulfide
Phosphorus persulfide
Phosphorus sulfide
(35) (C.A.S. #7719–12–2) Phosphorus trichloride
Phosphorus chloride
Trichlorophosphine
(36) C.A.S. #75–97–8) Pinacolone
tert-Butyl methyl ketone
2,2-Dimethyl-3-butanone
3,3-Dimethyl-2-butanone
2,2-Dimethylbutanone
3,3-Dimethylbutanone
1,1-Dimethylethyl methyl ketone
Methyl tert-butyl ketone
Pinacolin
Pinacoline
1,1,1-Trimethylacetone
(37) (C.A.S. #464–07–3) Pinacolyl alcohol
tert-Butyl methyl carbinol
2,2-Dimethyl-3-butanol
3,3-Dimethyl-2-butanol
1-Methyl-2,2-dimethylpropanol
(38) (C.A.S. #151–50–8) Potassium cyanide
(39) (C.A.S. #7789–23–3) Potassium fluoride
Potassium monofluoride
(40) (C.A.S. #7789–29–9) Potassium hydrogen fluoride
Hydrogen potassium difluoride
Hydrogen potassium fluoride
Potassium acid fluoride
Potassium bifluoride
Potassium hydrogen difluoride
Potassium monohydrogen difluoride
(41) (C.A.S. #1619–34–7) 3-Quinuclidinol
1-Azabicyclo(2.2.2)octan-3-ol
3-Hydroxyquinuclidine
(42) (C.A.S. #3731–38–2) 3-Quinuclidinone
1-Azabicyclo(2.2.2)octan-3-one
3-Oxyquinuclidine
Quinuclidone
(43) (C.A.S.) #1333–83–1) Sodium bifluoride
Sodium hydrogen difluoride
Sodium hydrogen fluoride
(44) (C.A.S. #143–33–9) Sodium cyanide
(45) (C.A.S. #7681–49–4) Sodium fluoride
Sodium monofluoride
(46) (C.A.S. #1313–82–2) Sodium sulfide
Disodium monosulfide
Disodium sulfide
Sodium monosulfide
Sodium sulphide
(47) (C.A.S. #10025–67–9) Sulfur Monochloride
(48) (C.A.S. #10545–99–0) Sulfur dicholoride
(49) (C.A.S. #111–48–8) Thiodiglycol
Bis(2-hydroxyethyl) sulfide
Bis(2-hydroxyethyl) thioether
Di(2-hydroxyethyl) sulfide
Diethanol sulfide
2,2′-Dithiobis-(ethanol)
3-Thiapentane-1,5-diol
2,2′-Thiobisethanol
2,2′-Thiodiethanol
Thiodiethylene glycol
2,2′-Thiodiglycol
(50) C.A.S. #7719–09–7) Thionyl chloride
Sulfinyl chloride
Sulfinyl dichloride
Sulfur chloride oxide
Sulfur oxychloride
Sulfurous dichloride
Sulfurous oxychloride
Thionyl dichloride
(51) (C.A.S. #102–71–6) Triethanolamine
Alkanolamine 244
Nitrilotriethanol
2,2′,2″-Nitrilotriethanol
2,2′,2″-Nitrilotris(ethanol)
TEA
TEA (amino alcohol)
Tri (2-hydroxyethyl) amine

Triethanolamin
Tris (.beta.-hydroxyethyl) amine
Tris (2-hydroxyethyl) amine
Trolamine

(52) (C.A.S. #637–39–8) Triethanolamine hydrochloride

(53) (C.A.S. #122–52–1) Triethyl phosphite
Phosphorous acid triethyl ester
Triethoxyphosphine
Tris(ethoxy)phosphine

(54) (C.A.S. #121–45–9) Trimethyl phosphite
Phosphorus acid trimethyl ester
Trimethoxyphosphine

(l) *Interpretation 12: Computers.* (1) Digital computers or computer systems classified under ECCN 4A003.a, .b, or .c, that qualify for ''No License Required'' (NLR) must be evaluated on the basis of CTP alone, to the exclusion of all other technical parameters. Computers controlled in this entry for MT reasons are not eligible for License Exception CTP regardles of the CTP of the computer. Digital computers or computer systems classified under ECCN 4A003.a, .b, or .c that qualify for License Exception CTP must be evaluated on the basis of CTP, to the exclusion of all other technical parameters, except for parameters of Missile Technology concern, or ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a). This License Exception does not authorize the export or reexport of computers controlled for MT purposes regardless of the CTP. Assemblies performing analog-to-digital conversions are evaluated under Category 3—Electronics, ECCN 3A001.a.5.a.

(2) Related equipment classified under ECCN 4A003.d, .e, .f, or .g may be exported or reexported under License Exceptions GBS or CIV. When related equipment is exported or reexported as part of a computer system, NLR or License Exception CTP is available for the computer system and the related equipment, as appropriate.

[61 FR 12920, Mar. 25, 1996, as amended at 61 FR 67450, Dec. 23, 1996; 62 FR 6686, Feb. 12, 1997; 62 FR 25469, 25470, May 9, 1997]

§ 770.3 Interpretations related to exports of technology and software to destinations in Country Group D:1.

(a) *Introduction.* This section is intended to provide you additional guidance on how to determine whether your technology or software would be eligible for a License Exception, may be exported under NLR, or require a license, for export to Country Group D:1.

(b) *Scope of licenses.* The export of technology and software under a license is authorized only to the extent specifically indicated on the face of the license. The only technology and software related to equipment exports that may be exported without a license is technology described in §§ 734.7 through 734.11 of the EAR; operating technology and software described in § 740.8(a) of the EAR; sales technology described in § 740.8(b) of the EAR; and software updates described in § 740.8(c) of the EAR.

(c) *Commingled technology and software.* (1) U.S.-origin technology does not lose its U.S.-origin when it is redrawn, used, consulted, or otherwise commingled abroad in any respect with other technology of any other origin. Therefore, any subsequent or similar technical data prepared or engineered abroad for the design, construction, operation, or maintenance of any plant or equipment, or part thereof, which is based on or utilizes any U.S.-origin technology, is subject to the EAR in the same manner as the original U.S.-origin technology, including license requirements, unless the commingled technology is not subject to the EAR by reason of the *de minimis* exclusions described in § 734.4 of the EAR.

(2) U.S.-origin software that is incorporated into or commingled with foreign-origin software does not lose its U.S.-origin. Such commingled software is subject to the EAR is the same manner as the original U.S.-origin software, including license requirements, unless the commingled software is not subject to the EAR by reason of the *de minimis* exclusions described in § 734.4 of the EAR.

(d) *Certain License Exception.* The following questions and answers are intended to further clarify the scope of

technology and software eligible for a License Exception.

(1)(i) *Question 1.* (A) Our engineers, in installing or repairing equipment, use techniques (experience as well as proprietary knowledge of the internal componentry or specifications of the equipment) that exceed what is provided in the standard manuals or instructions (including training) given to the customer. In some cases, it is also a condition of the license that such information provided to the customer be constrained to the minimum necessary for normal installation, maintenance and operation situations.

(B) Can we send an engineer (with knowledge and experience) to the customer site to perform the installation or repair, under the provisions of License Exception TSU for operation technology and software described in §740.13(a) of the EAR, if it is understood that he is restricted by our normal business practices to performing the work without imparting the knowledge or technology to the customer personnel?

(ii) *Answer 1.* Export of technology includes release of U.S.-origin data in a foreign country, and ''release'' includes ''application to situations abroad of personal knowledge or technical experience acquired in the United States.'' As the release of technology in the circumstances described here would exceed that permitted under the License Exception TSU for operation technology and software described in §740.13(a) of the EAR, a license would be required even though the technician could apply the data without disclosing it to the customer.

(2)(i) *Question 2.* We plan, according to our normal business practices, to train customer engineers to maintain equipment that we have exported under a license, License Exception, or NLR. The training is contractual in nature, provided for a fee, and is scheduled to take place in part in the customer's facility and in part in the U.S. Can we now proceed with this training at both locations under a License Exception?

(ii) *Answer 2.* (A) Provided that this is your normal training, and involves technology contained in your manuals and standard instructions for the exported equipment, and meets the other requirements of License Exception TSU for operation technology and software described in §740.13(a), the training may be provided within the limits of those provisions of License Exception TSU. The location of the training is not significant, as the export occurs at the time and place of the actual transfer or imparting of the technology to the customer's engineers.

(B) Any training beyond that covered under the provisions of License Exception TSU for operation technology and software described in §740.13(a), but specifically represented in your license application as required for this customer installation, and in fact authorized on the face of the license or a separate technology license, may not be undertaken while the license is suspended or revoked.

[61 FR 12920, Mar. 25, 1996, as amended at 61 FR 64286, Dec. 4, 1996; 62 FR 25470, May 9, 1997]

§770.4 Interpretations related to chemical mixtures—de minimis exceptions examples.

(a)(1) *Introduction:* The following are examples for applying the *de minimis* exceptions for chemical mixtures containing precursor and intermediate chemicals controlled under ECCN 1C350.

(2) In ECCN 1C350, Note 2, paragraphs (c) and (d) within the Mixtures Exemptions state that a validated license is required when at least one of the listed chemicals constitutes more than 10% or 25%, respectively, of the weight of the mixture on a solvent free basis.

(b)(1) *Example One.* A mixture contains the following components:

(i) 90% polymer polyol (a liquid raw material used to make polyurethane polymers); and

(ii) 10% Australia Group (AG)-controlled chemical eligible for 25% *de minimis* exemption.

NOTE TO PARAGRAPH (B) OF THIS SECTION: The polymer does not dissolve the AG-controlled chemical.

(2) In this example, the polymer polyol does not dissolve the AG-controlled chemical (the only other component of the mixture). Therefore, the polyol is NOT considered a solvent, and the concentration of the polymer

polyol is included in the concentration calculation. As a result, the AG-controlled chemical's concentration is 10% when calculated on a solvent-free basis (.10/1.00). Accordingly, this concentration is below the threshold concentration of 25% applicable to specific AG-controlled chemicals under the chemical mixtures rule and can be exported under NLR to all destinations except Iran, Sudan, Syria, and Country Group E:2 in Supplement No. 1 to part 740 of the EAR.

(3) To determine the classification of this mixture, it is necessary to determine whether the polymer is capable of functioning as a solvent for the other components of the mixture. If the polymer polyol is capable of functioning as a solvent for the controlled AG chemical, then the polymer component is omitted from the concentration calculation. If the polymer polyol is not capable of functioning as a solvent for the AG chemical, then the polymer component is included in the concentration calculation.

(c)(1) *Example Two:* An automotive coolant (antifreeze) is a mixture of the following components:

(i) 75% ethylene glycol;

(ii) 10% additive package; and

(iii) 15% water.

NOTE TO PARAGRAPH (C) OF THIS SECTION: The ''additive package'' contains an AG-controlled chemical that is eligible for the 10% *de minimis* exemption. This chemical is added as a stabilizer and represents 9% of the total mixture. The remaining components of the additive package are various dyes and stabilizers that represent 1% of the total mixture. Ethylene glycol serves as the basic functional ingredient that prevents the engine block from freezing, and does not dissolve the other components of the mixture. The water is added to keep the mixture in solution.

(2) To determine if this mixture requires a license it is necessary to calculate the concentration of the AG-controlled chemical on a solvent-free basis. Since the water dissolves all of the other components of the mixture, water is considered a ''solvent'' and the quantity of water present is not included in the calculation of the AG-chemical concentration. Consequently, the concentration of the AG chemical is approximately 11% (.09/.85), and the mixture is classified under ECCN 1C350. Accordingly, since this concentration is above the threshold concentration of 10% applicable to this category of AG-controlled chemical under the chemical mixtures rule, a license is required to all destinations except AG member countries.

(d)(1) *Example Three.* A pesticide formulation consists of an AG-controlled chemical that is eligible for the 25% *de minimis* exemption, and an active ingredient that is not AG-controlled. The formulation is diluted with water to allow safe, effective, and economic application. The resulting mixture is 15% AG chemical, 40% active ingredient and 45% water. Although the water is added as a diluent, it dissolves the other components of the mixture.

(2) Since the water dissolves all components in the mixture, it is considered a solvent even though it was added as a diluent. The percent concentration of the AG-controlled chemical calculated on a solvent free basis is .15/.55 = 27%, and the mixture is therefore classified under ECCN 1C350. Accordingly, since this concentration is above the threshold concentration of 25% applicable to this category of AG-controlled chemicals under the chemical mixtures rule, a license is required to all destinations except AG member countries.

(e)(1) *Example Four.* A mixture contains the following components:

(i) 10% water;

(ii) 22% Chemical A;

(iii) 21% Chemical B;

(iv) 20% Chemical C;

(v) 19% Chemical D; and

(vi) 8% Chemical E.

NOTE TO PARAGRAPH (E) OF THIS SECTION: The water is added to dissolve the other components of the mixture. Chemicals A, B, C, and D are AG-controlled chemicals each eligible for 25% *de minimis* exemption. Chemical E is an AG-controlled chemical eligible for 10% *de minimis* exemption.

(2) In this example, water is considered a solvent since it dissolves all components in the mixture. Therefore, the quantity of water present in the mixture is not included in calculating the concentrations of the controlled chemicals on a solvent-free basis. The concentrations of the controlled chemicals are as follows: Chemical A 24%; Chemical B 23%; Chemical C 22%; Chemical D 21%; Chemical E 9%. It is

important to note that in this example, even though the cumulative amount of the mixture (90%) consists of controlled chemicals, each one of the controlled chemicals is below the *de minimis* level for its category. Consequently, this mixture can be exported under NLR to all destinations except Iran, Sudan, Syria, and Country Group E:2 in Supplement No. 1 to part 740 of the EAR.

PART 772—DEFINITIONS OF TERMS

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; Executive Order 13026 (November 15, 1996, 61 FR 58767) Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12925, Mar. 25, 1996, unless otherwise noted.

The following are definitions of terms as used in the Export Administration Regulations (EAR). In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. Those terms in quotation marks refer to terms used on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR). Parenthetical references following the terms in quotation marks (i.e., (Cat 5)) refer to the CCL category in which that term is found.

''*ATM.*'' (Cat 5)—See ''Asynchronous Transfer Mode.''

''*Accuracy.*'' (Cat 2 and 6)—''Accuracy'' is usually measured in terms of inaccuracy. It is defined as the maximum deviation, positive or negative, of an indicated value from an accepted standard or true value.

''*Active flight control systems.*'' (Cat 7)—Function to prevent undesirable ''aircraft'' and ''missile'' motions or structural loads by autonomously processing outputs from multiple sensors and then providing necessary preventive commands to effect automatic control.

''*Active pixel.*'' (Cat 6 and 8)—A maximum (single) element of the solid state array that has a photoelectric transfer function when exposed to light (electromagnetic) radiation.

''*Adaptive control.*'' (Cat 2)—A control system that adjusts the response from conditions detected during the operation (Ref. ISO 2806–1980).

Advisory Committee on Export Policy (ACEP). The ACEP voting members include the Assistant Secretary of Commerce for Export Administration, and Assistant Secretary-level representatives from the Departments of State, Defense, Justice (for encryption exports), Energy, and the Arms Control and Disarmament Agency. The appropriate representatives of the Joint Chiefs of Staff and the Director of the Nonproliferation Center of the Central Intelligence Agency are non-voting members. The Assistant Secretary of Commerce for Export Administration is the Chair. Appropriate acting Assistant Secretary, Deputy Assistant Secretary or equivalent strength of any agency or department may serve in lieu of the Assistant Secretary of the concerned agency or department. Such representatives, regardless of rank, will speak and vote on behalf of their agencies or departments. The ACEP may invite Assistant Secretary-level representatives of other Government agencies or departments (other than those identified above) to participate in the activities of the ACEP when matters of interest to such agencies or departments are under consideration. Decisions are made by majority vote.

''*Aircraft.*'' (Cat 7 and 9)—A fixed wing, swivelwing, rotary wing (helicopter), tilt rotor or tilt-wing airborne vehicle. (See also ''civil aircraft''.)

Airline. Any person engaged primarily in the transport of persons or property by aircraft for compensation or hire, pursuant to authorization by the U.S. Government or a foreign government.

''*Angular position deviation.*'' (Cat 2)—The maximum difference between angular position and the actual, very accurately measured angular position after the workpiece mount of the table has been turned out of its initial position. (Reference: VDI/VDE 2617, Draft: ''Rotary tables on coordinate measuring machines'').

Applicant. That person who, as the principal party in interest in the transaction, has the power and responsibility for determining and controlling the sending of the item out of the country and is thus, in reality, the exporter.

(For additional information see §748.5 of the EAR.) (See also ''U.S. exporter''.)

''*Assembly*.'' (Cat 3 and 4)—A number of electronic components (i.e.,''circuit elements'', ''discrete components'', integrated circuits, etc.) connected together to perform a specific function(s), replaceable as an entity and normally capable of being disassembled.

NOTES: 1. ''Circuit element'': a single active or passive functional part of an electronic circuit, such as one diode,one transistor, one resistor, one capacitor, etc.

2. ''Discrete component'': a separately packaged ''circuit element'' with its own external connections.

''*Asynchronous transfer mode*.'' (ATM) (Cat 5)—A transfer mode in which the information is organized into cells; it is asynchronous in the sense that the recurrence of cells depends on the required or instantaneous bit rate. (CCITT Recommendation L.113)

Australia Group. The members belonging to this group have agreed to adopt controls on dual-use chemicals, i.e., weapons precursors, equipment, and biological microorganisms and related equipment in order to prevent the proliferation of chemical and biological weapons. Member countries as of October 1996 include: Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (South), Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, the United Kingdom, and the United States. See also §742.2 of the EAR.

''*Automatic target tracking*.'' (Cat 6)—A processing technique that automatically determines and provides as output an extrapolated value of the most probable position of the target in real time.

''*Bandwidth of one voice channel*.'' (Cat 5)—In the case of data communication equipment designed to operate in one voice channel of 3,100 Hz, as defined in CCITT Recommendation G.151.

''*Basic gate propagation delay time*.'' (Cat 3)—The propagation delay time value corresponding to the basic gate utilized within a ''family'' of ''monolithic integrated circuits''. This may be specified, for a given ''family'', either as the propagation delay time per typical gate or as the typical propagation delay time per gate.

NOTE: ''Basic gate propagation delay time'' is not to be confused with input/output delay time of a complex ''monolithic integrated circuit''.

''*Basic Scientific Research*.'' (GTN)—Experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.

''*Beat length*.'' (Cat 6)—The distance over which two orthogonally polarized signals, initially in phase, must pass in order to achieve a 2 Pi radian(s) phase difference.

''*Bias*.'' (accelerometer) (Cat 7)—An accelerometer output when no acceleration is applied.

Bill of Lading. The contract of carriage and receipt for items, issued by the carrier. It includes an air waybill, but does not include an inland bill of lading or a domestic air waybill covering movement to port only.

CCL. See Commerce Control List.

CCL Group. The Commerce Control List (CCL) is divided into 10 categories. Each category is subdivided into five groups, designated by the letters A through E: (A) Equipment, assemblies and components; (B) Test, inspection and production equipment; (C) Materials; (D) Software; and (E) Technology. See §738.2(b) of the EAR.

''*CE*.''—See ''Computing Element.''

''*CTP*.''—See ''Composite theoretical performance.'' This term may also appear without quotation marks.

''*Camming*.'' (axial displacement) (Cat 2)—Axial displacement in one revolution of the main spindle measured in a plane perpendicular to the spindle faceplate, at a point next to the circumference of the spindle faceplate (Ref.: ISO 230 Part 1–1986, paragraph 5.63).

Canadian airline. Any citizen of Canada who is authorized by the Canadian Government to engage in business as an airline. For purposes of this definition, a Canadian citizen is:

(a) A natural person who is a citizen of Canada; or

(b) A partnership of which each member is such an individual; or

(c) A Canadian firm incorporated or otherwise organized under the laws of Canada or any Canadian province, having a total foreign stock interest not greater than 40 percent and having the Chairman or Acting Chairman and at least two-thirds of the Directors thereof Canadian citizens.

''*Capable of*.'' (MTCR context)—See ''usable in''.

Category. The Commerce Control List (CCL) is divided into ten categories: (0) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (1) Materials, Chemicals, ''Microorganisms'', and Toxins; (2) Materials Processing; (3) Electronics Design, Development and Production; (4) Computers; (5) Telecommunications and Information Security; (6) Sensors; (7) Navigation and Avionics; (8) Marine; (9) Propulsion Systems, Space Vehicles, and Related Equipment. See §738.2(a) of the EAR.

''*Chemical laser*.'' (Cat 6)—A ''laser'' in which the excited species is produced by the output energy from a chemical reaction.

''*Circulation*.'' (controlled, anti-torque direction control systems) (Cat 7)—Use air blown over aerodynamic surfaces to increase or control the forces generated by the surfaces.

''*Civil aircraft*.'' (Cat 7 and 9)—Only those ''aircraft'' listed by designation in published airworthiness certification lists by the civil aviation authorities to fly commercial civil internal and external routes or for legitimate civil, private or business use. (See also ''aircraft'')

COCOM (Coordinating Committee on Multilateral Export Controls). A multilateral organization that cooperated in restricting strategic exports to controlled countries. COCOM was officially disbanded on March 31, 1994. COCOM members included the NATO countries, except Iceland, plus Japan and Australia.

Commerce Control List (CCL). A list of items under the export control jurisdiction of the Bureau of Export Administration, U.S. Department of Commerce. Note that certain additional items described in part 732 of the EAR are also subject to the EAR. The CCL is found in Supplement No. 1 to part 774 of the EAR.

''*Commingled*.'' (Cat 1)—Filament to filament blending of thermoplastic fibers and reinforcement fibers in order to produce a fiber reinforcement/matrix mix in total fiber form.

''*Comminution*.'' (Cat 1)—A process to reduce a material to particles by crushing or grinding.

Commodity. Any article, material, or supply except technology and software. Note that the provisions of the EAR applicable to the control of software (e.g. publicly available provisions) are not applicable to encryption software. Encryption software is controlled because, like the items controlled under ECCN 5A002, it has a functional capacity to encrypt information on a computer system, and not because of any informational or theoretical value that such software may reflect, contain or represent, or that its export may convey to others abroad.

''*Common channel signalling*.'' (Cat 5)—A signalling method in which a single channel between exchanges conveys, by means of labelled messages, signalling information relating to a multiplicity of circuits or calls and other information such as that used for network management.

''*Communications channel controller*.'' (Cat 5)—The physical interface that controls the flow of synchronous or asynchronous digital information. It is an assembly that can be integrated into computer or telecommunications equipment to provide communications access.

''*Composite*.'' (Cat 1, 6, 8, and 9)—A ''matrix'' and an additional phase or additional phases consisting of particles, whiskers, fibers or any combination thereof, present for a specific purpose or purposes.

''*Composite theoretical performance*.'' (CTP) (Cat 4)—A measure of computational performance given in millions of theoretical operations per second (Mtops), calculated using the aggregation of ''computing elements (CE)''. (See Category 4, Technical Note.) This term may also appear without quotation marks. The formula to calculate the CTP is contained in a technical note titled ''Information on How to Calculate ''Composite Theoretical

Performance'' at the end of Category 4 of the CCL.

''*Compound rotary table.*'' (Cat 2)—A table allowing the workpiece to rotate and tilt about two non-parallel axis that can be coordinated simultaneously for ''contouring control''.

''*Computer using facility.*'' (Cat 4)—The end-user's contiguous and accessible facilities:

(a) Housing the ''computer operating area'' and those end-user functions that are being supported by the stated application of the electronic computer and its related equipment; and

(b) Not extending beyond 1,500 meters in any direction from the center of the ''computer operating area''.

NOTE: ''Computer operating area'': the immediate contiguous and accessible area around the electronic computer, where the normal operating, support and service functions take place.

''*Computing element.*'' (CE) (Cat 4)—The smallest computational unit that produces an arithmetic logic result.

''*Contouring control.*'' (Cat 2)—Two or more numerically controlled motions operating in accordance with instructions that specify the next required position and the required feed rates to that position. These feed rates are varied in relation to each other so that a desired contour is generated (Ref. ISO/DIS 2806—1980).

Controlled country. A list of countries designated controlled for national security purposes found in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR). This list was established under authority delegated to the Secretary of Commerce by Executive Order 12214 of May 2, 1980 pursuant to section 5(b) of the EAA, and including: Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, the People's Republic of China, Estonia, Georgia, Kazakstan, Kyrgyzstan, Laos, Latvia, Lithuania, Moldova, Mongolia, Romania, Russia, Tajikstan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam. Cuba and North Korea are controlled countries, but they are listed in Country Group E:2 (unilateral embargoes) rather than Country Group D:1. This definition does not apply to part 768 of the EAR (Foreign Availability), which provides a dedicated definition.

Controlled in fact. For purposes of the Special Comprehensive License (part 752 of the EAR), controlled in fact is defined as it is under the Restrictive Trade Practices or Boycotts (§760.1(c) of the EAR).

Cooperating country. A country that cooperated with the former COCOM member countries in restricting strategic exports in accordance with COCOM standards. The ''Cooperating Countries'' are: Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Sweden, and Switzerland.

Countries supporting international terrorism. In accordance with section 6(j) of the Export Administration Act of 1979, as amended (EAA), the Secretary of State has determined that the following countries' governments have repeatedly provided support for acts of international terrorism: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

Country Chart. A chart, found in Supplement No. 1 to part 738 of the EAR, that contains certain licensing requirements based on destination and reason for control. In combination with the CCL, the Country Chart indicates when a license is required for any item on the CCL to any country in the world under General Prohibition One (Exports and Reexports in the Form Received), General Prohibition Two (Parts and Components Reexports), and General Prohibition Three (Foreign Produced Direct Product Reexports). See part 736 of the EAR.

Country Groups. For export control purposes, foreign countries are separated into five country groups designated by the symbols A, B, C, D, and E. (See Supplement No. 1 to part 740 of the EAR for a list of countries in each Country Group.)

''*Critical temperature.*'' (Cat 1, 3, and 6)—The ''critical temperature'' (sometimes referred to as the transition temperature) of a specific ''superconductive'' material is the temperature at which the material loses all resistance to the flow of direct electrical current.

''*Cryptanalysis.*'' (Cat 5)—The analysis of a cryptographic system or its inputs and outputs to derive confidential variables or sensitive data including

clear text. (ISO 7498–2–1988(E), paragraph 3.3.18)

''*Cryptography*.'' (Cat 5)—The discipline that embodies principles, means and methods for the transformation of data in order to hide its information content, prevent its undetected modification or prevent its unauthorized use. ''Cryptography'' is limited to the transformation of information using one or more ''secret parameters'' (e.g., crypto variables) and/or associated key management.

NOTE: ''Secret parameter'': a constant or key kept from the knowledge of others or shared only within a group.

Customs officer. The Customs officers in the U.S. Customs Service and postmasters unless the context indicates otherwise.

''*Data signalling rate*.'' (Cat 5)—The rate, as defined in ITU Recommendation 53–36, taking into account that, for non-binary modulation, baud and bit per second are not equal. Bits for coding, checking and synchronization functions are to be included.

NOTES: 1. When determining the ''data signalling rate'', servicing and administrative channels shall be excluded.

2. It is the maximum one-way rate, i.e., the maximum rate in either transmission or reception.

(a) Mirrors:

(1) Mirrors having a single continuous optical reflecting surface that is dynamically deformed by the application of individual torques or forces to compensate for distortions in the optical waveform incident upon the mirror; or

(2) Mirrors having multiple optical reflecting elements that can be individually and dynamically repositioned by the application of torques or forces to compensate for distortions in the optical waveform incident upon the mirror.

(b) Deformable mirrors are also known as adaptive optic mirrors.

''*Datagram*.'' (Cat 4 and 5)—A self-contained, independent entity of data carrying sufficient information to be routed from the source to the destination data terminal equipment without reliance on earlier exchanges between this source and destination data terminal equipment and the transporting network.

Defense Trade Control (DTC). The office at the Department of State, formerly known as the Office of Munitions Control, responsible for reviewing applications to export and reexport items on the U.S. Munitions List. (See 22 CFR parts 120 through 130.)

Denied Persons List. A list, referenced in Supplement No. 2 to part 764 of the EAR, of specific persons that have been denied export privileges, in whole or in part. The full text of each order denying export privileges is published in the FEDERAL REGISTER.

''*Designed or modified*.'' (MTCR context)—Equipment, parts, components, or ''software'' that, as a result of ''development'', or modification, have specified properties that make them fit for a particular application. ''Designed or modified'' equipment, parts, components or ''software'' can be used for other applications. For example, a titanium coated pump designed for a ''missile'' may be used with corrosive fluids other than propellants.

''*Development*.'' (General Technology Note)—''Development'' is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.

''*Diffusion bonding*.'' (Cat 1, 2, and 9)—A solid-state molecular joining of at least two separate metals into a single piece with a joint strength equivalent to that of the weakest material.

''*Digital computer*.'' (Cat 4 and 5)—Equipment that can, in the form of one or more discrete variables:

(a) Accept data;

(b) Store data or instructions in fixed or alterable (writable) storage devices;

(c) Process data by means of a stored sequence of instructions that is modifiable; and

(d) Provide output of data.

NOTE: Modifications of a stored sequence of instructions include replacement of fixed storage devices, but not a physical change in wiring or interconnections.

''*Digital transfer rate*.'' (Cat 5)—The total bit rate of the information that is directly transferred on any type of medium.

''*Direct-acting hydraulic pressing*.'' (Cat 2)—A deformation process that

uses a fluid-filled flexible bladder in direct contact with the workpiece.

''*Drift rate.*'' (gyro) (Cat 7)—The time rate of output deviation from the desired output. It consists of random and systematic components and is expressed as an equivalent input angular displacement per unit time with respect to inertial space.

Dual use. Items that have both commercial and military or proliferation applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items are also subject to the EAR (see §734.2(a) of the EAR).

''*Dynamic adaptive routing.*'' (Cat 5)—Automatic rerouting of traffic based on sensing and analysis of current actual network conditions.

NOTE: This does not include cases of routing decisions taken on predefined information.

''*Dynamic signal analyzers.*'' (Cat 3)—''Signal analyzers'' that use digital sampling and transformation techniques to form a Fourier spectrum display of the given waveform including amplitude and phase information.

Effective control. For purposes of the Special Comprehensive License (SCL), effective control means the exercise of a right, under a contractual agreement between the SCL Holder and the consignee, to determine and control the export of items authorized under an SCL.

''*Electronically steerable phased array antenna.*'' (Cat 6)—An antenna that forms a beam by means of phase coupling, i.e., the beam direction is controlled by the complex excitation coefficients of the radiating elements and the direction of that beam can be varied in azimuth or in elevation, or both, by application, both in transmission and reception, of an electrical signal.

Encryption items. The phrase encryption items includes all encryption commodities, software, and technology that contain encryption features and are subject to the EAR. This does not include encryption items specifically designed, developed, configured, adapted or modified for military applications (including command, control and intelligence applications) which are controlled by the Department of State on the U.S. Munitions List.

Encryption object code. Computer programs containing an encryption source code that has been compiled into a form of code that can be directly executed by a computer to perform an encryption function.

Encryption software. Computer programs that provide capability of encryption functions or confidentiality of information or information systems. Such software includes source code, object code, applications software, or system software.

Encryption source code. A precise set of operating instructions to a computer that, when compiled, allows for the execution of an encryption function on a computer.

''*End-effectors.*'' (Cat 2)—''End-effectors'' include grippers, ''active tooling units'' and any other tooling that is attached to the baseplate on the end of a ''robot'' manipulator arm.

NOTE: ''Active tooling unit'': a device for applying motive power, process energy or sensing to the workpiece.

''*Equivalent Density.*'' (Cat 6)—The mass of an optic per unit optical area projected onto the optical surface.

''*Expert systems.*'' (Cat 4)—Systems providing results by application of rules to data that are stored independently of the ''program'' and capable of any of the following:

(a) Modifying automatically the ''source code'' introduced by the user;

(b) Providing knowledge linked to a class of problems in quasi-natural language; or

(c) Acquiring the knowledge required for their development (symbolic training).

Export. Export means an actual shipment or transmission of items out of the United States. (See §734.2(b) of the EAR.)

Export Administration Act (EAA). Export Administration Act of 1979, as amended, effective October 1, 1979.

Export Administration Regulations (EAR). Regulations set forth in parts 730–774, inclusive, of Title 15 of the Code of Federal Regulations.

Export Administration Review Board (EARB). EARB voting members are the Secretary of Commerce, the Secretary of State, the Secretary of Defense, the

Secretary of Energy, the Attorney General (for encryption exports), and the Director of the Arms Control and Disarmament Agency. The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence are non-voting members. The Secretary of Commerce is the Chair of the EARB. No alternate EARB members may be designated, but the acting head or deputy head of any agency or department may serve in lieu of the head of the concerned agency or department. The EARB may invite the heads of other Government agencies or departments (other than those identified in this definition) to participate in the activities of the EARB when matters of interest to such agencies or departments are under consideration. Decisions are made by majority vote.

Export Control Classification Number (ECCN). The numbers used in Supplement No. 1 to part 774 of the EAR and throughout the EAR. The Export Control Classification Number consists of a set of digits and a letter. Reference §738.2(c) of the EAR for a complete description of each ECCN's composition.

Export control document. A license; application for license; any and all documents submitted in accordance with the requirements of the EAR in support of, or in relation to, a license application; application for International Import Certificate; Delivery Verification Certificate or similar evidence of delivery; Shipper's Export Declaration (SED) presented in connection with shipments to any country; a Dock Receipt or bill of lading issued by any carrier in connection with any export subject to the EAR and any and all documents prepared and submitted by exporters and agents pursuant to the export clearance requirements of part 758 of the EAR; a U.S. exporter's report of request received for information, certification, or other action indicating a restrictive trade practice or boycott imposed by a foreign country against a country friendly to the United States, submitted to the U.S. Department of Commerce in accordance with the provisions of part 760 of the EAR; Customs Form 7512, Transportation Entry and Manifest of Goods, Subject to Customs Inspection and Permit, when used for Transportation and Exportation (T.& E.) or Immediate Exportation (I.E.); and any other document issued by a U.S. Government agency as evidence of the existence of a license for the purpose of loading onto an exporting carrier or otherwise facilitating or effecting an export from the United States or any reexport of any item requiring a license.

Export of satellites. The term export, as applied to satellites controlled by the Department of Commerce, includes the physical movement of a satellite from the United States to another country for any purpose, or the transfer of registration of a satellite or operational control over a satellite from a person resident in the United States to a person resident in another country. Under the Commercial Space Launch Act, a launch of a launch vehicle and payload is not an export for purposes of controlling export.

Exporter. See U.S. exporter.

Exporting carrier. Any instrumentality of water, land, or air transportation by which an export is effected, including any domestic air carrier on which any cargo for export is laden or carried.

''*FMU.*''—See ''flexible manufacturing unit''

''*Family.*'' (Cat 3)—Consists of microprocessor or microcomputer microcircuits that have:

(a) The same architecture;

(b) The same basic instruction set; and

(c) The same basic technology (e.g., only NMOS or only CMOS).

''*Fast select.*'' (Cat 4 and 5)—A facility applicable to virtual calls that allows data terminal equipment to expand the possibility to transmit data in call setup and clearing ''packets'' beyond the basic capabilities of a virtual call.

NOTE: ''Packet'': a group of binary digits including data and call control signals that is switched as a composite whole. The data, call control signals, and possible error control information are arranged in a specified format.

''*Fault tolerance.*'' (Cat 4)—The capability of a computer system, after any malfunction of any of its hardware or ''software'' components, to continue to operate without human intervention,

at a given level of service that provides: continuity of operation, data integrity, and recovery of service within a given time.

''*Fibrous or filamentary materials.*'' (Cat 1 and 8)—The term ''fibrous and filamentary materials'' includes:

(a) Continuous monofilaments;

(b) Continuous yarns and rovings;

(c) Tapes, fabrics, random mats and braids;

(d) Chopped fibers, staple fibers and coherent fiber blankets;

(e) Whiskers, either monocrystalline or polycrystalline, of any length;

(f) Aromatic polyimide pulp.

''*Film type integrated circuit.*'' (Cat 3)—An array of ''circuit elements'' and metallic interconnections formed by deposition of a thick or thin film on an insulating ''substrate''.

NOTE: ''Circuit element'': a single active or passive functional part of an electronic circuit, such as one diode, one transistor, one resistor, one capacitor, etc.

Firm. A corporation, partnership, limited partnership, association, company, trust, or any other kind of organization or body corporate, situated, residing, or doing business in the United States or any foreign country, including any government or agency thereof.

''*Fixed.*'' (Cat 5)—The coding or compression algorithm cannot accept externally supplied parameters (e.g., cryptographic or key variables) and cannot be modified by the user.

''*Flexible manufacturing unit.*'' (FMU), (sometimes also referred to as 'flexible manufacturing system' (FMS) or 'flexible manufacturing cell' (FMC)) (Cat 2)—An entity that includes a combination of at least:

(a) A ''digital computer'' including its own ''main storage'' and its own ''related equipment''; and

(b) Two or more of the following:

(1) A machine tool described in 2B001.c;

(2) A dimensional inspection machine described in Category 2, or another digitally controlled measuring machine controlled by an entry in Category 2;

(3) A ''robot'' controlled by an entry in Category 2 or 8;

(4) Digitally controlled equipment controlled by 1B003, 2B003, or 9B001;

(5) ''Stored program controlled'' equipment controlled by 3B001;

(6) Digitally controlled equipment controlled by 1B001;

(7) Digitally controlled electronic equipment controlled by 3A002.

''*Fluoride fibers.*'' (Cat 6)—Fibers manufactured from bulk fluoride compounds.

''*Focal plane array.*'' (Cat 6)—A linear or two-dimensional planar layer, or combination of planar layers, of individual detector elements, with or without readout electronics, that work in the focal plane.

N.B. This definition does not include a stack of single detector elements or any two, three, or four element detectors provided time delay and integration is not performed within the element.

Foreign government agency. For the purposes of exemption from support documentation (see §748.9 of the EAR), a foreign government agency is defined as follows:

(a) National governmental departments operated by government-paid personnel performing governmental administrative functions; e.g. Finance Ministry, Ministry of Defense, Ministry of Health, etc. (municipal or other local government entities must submit required support documentation); or

(b) National government-owned public service entities; e.g., nationally owned railway, postal, telephone, telegraph, broadcasting, and power systems, etc. The term ''foreign government agency'' does not include government corporations, quasi-government agencies, and state enterprises engaged in commercial, industrial, and manufacturing activities, such as petroleum refineries, mines, steel mills, retail stores, automobile manufacturing plants, airlines, or steamship lines that operate between two or more countries, etc.

Foreign policy control. A control imposed under the EAR for any and all of the following reasons: chemical and biological weapons, nuclear nonproliferation, missile technology, regional stability, crime control, anti-terrorism, United Nations sanctions, and any other reason for control implemented under section 6 of the EAA or other similar authority.

Forwarding agent. The person authorized by an exporter to perform for that exporter services to facilitate the export of items. The forwarding agent need not be a person regularly engaged in the freight forwarding business. The forwarding agent must be designated by the exporter in writing in the power-of-attorney set forth on the Shippers' Export Declaration or in a general power-of-attorney, or other written form, subscribed and sworn to by a duly authorized officer or employee of the exporter.

''Frequency agility.'' (frequency hopping) (Cat 5)—A form of ''spread spectrum'' in which the transmission frequency of a single communication channel is made to change by discrete steps.

''Frequency agility.'' (radar) (Cat 6)—(see ''Radar frequency agility'')

''Frequency switching time.'' (Cat 3 and 5)—The maximum time (i.e., delay), taken by a signal, when switched from one selected output frequency to another selected output frequency, to reach:

(a) A frequency within 100 Hz of the final frequency; or

(b) An output level within 1 dB of the final output level.

''Frequency synthesizer.'' (Cat 3)—Any kind of frequency source or signal generator, regardless of the actual technique used, providing a multiplicity of simultaneous or alternative output frequencies, from one or more outputs, controlled by, derived from or disciplined by a lesser number of standard (or master) frequencies.

''Gas Atomization.'' (Cat 1)—A process to reduce a molten stream of metal alloy to droplets of 500-micrometer diameter or less by a high-pressure gas stream.

''Gateway.'' (Cat 5)—The function, realized by any combination of equipment and ''software'', to carry out the conversion of conventions for representing, processing or communicating information used on one system into the corresponding, but different conventions used in another system.

General prohibitions. The 10 prohibitions found in part 734 of the EAR that prohibit certain exports, reexports, and other conduct, subject to the EAR, absent a license, License Exception, or determination that no license is required (''NLR'').

''Generic software.'' (Cat 5)—A set of instructions for a ''stored program controlled'' switching system that is the same for all switches using that type of switching system.

NOTE: The data base portion is not considered to be a part of the generic ''software''.

''Geographically dispersed.'' (Cat 6)—Sensors are considered geographically dispersed when each location is distant from any other more than 1,500 m in any direction. Mobile sensors are always considered geographically dispersed.

''Global interrupt latency time.'' (Cat 4)—The time taken by the computer system to recognize an interrupt due to the event, service the interrupt and perform a context switch to an alternate memory-resident task waiting on the interrupt.

Hold Without Action (HWA). License applications may be held without action only in the limited circumstances described in §750.4(c) of the EAR.

''Hot isostatic densification.'' (Cat 2)—A process of pressurizing a casting at temperatures exceeding 375 K (102 °C) in a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal force in all directions to reduce or eliminate internal voids in the casting.

''Hybrid computer.'' (Cat 4)—Equipment that can:

(a) Accept data;

(b) Process data, in both analog and digital representation; and

(c) Provide output of data.

''Hybrid integrated circuit.'' (Cat 3)—Any combination of integrated circuit(s), or integrated circuit with ''circuit elements'' or ''discrete components'' connected together to perform (a) specific function(s), and having all of the following criteria:

(a) Containing at least one unencapsulated device;

(b) Connected together using typical IC-production methods;

(c) Replaceable as an entity; and

(d) Not normally capable of being disassembled.

NOTES: 1. ''Circuit element'': a single active or passive functional part of an electronic circuit, such as one diode, one transistor, one resistor, one capacitor, etc.

2. ''Discrete component'': a separately packaged ''circuit element'' with its own external connections.

''ISDN.''—See ''Integrated Services Digital Network''.

''Image enhancement.'' (Cat 4)—The processing of externally derived information-bearing images by algorithms such as time compression, filtering, extraction, selection, correlation, convolution or transformations between domains (e.g., fast Fourier transform or Walsh transform). This does not include algorithms using only linear or rotational transformation of a single image, such as translation, feature extraction, registration or false coloration.

''Information security.'' (Cat 5)—All the means and functions ensuring the accessibility, confidentiality or integrity of information or communications, excluding the means and functions intended to safeguard against malfunctions. This includes ''cryptography'', ''cryptanalysis'', protection against compromising emanations and computer security.

N.B. ''Cryptanalysis'': the analysis of a cryptographic system or its inputs and outputs to derive confidential variables or sensitive data, including clear text. (ISO 7498–2–1988 (E), paragraph 3.3.18)

''Instantaneous bandwidth.'' (Cat 3)—The bandwidth over which output power remains constant within 3 dB without adjustment of other operating parameters.

''Instrumented range.'' (Cat 6)—The specified unambiguous display range of a radar.

''Integrated Services Digital Network.'' (ISDN) (Cat 5)—A unified end-to-end digital network, in which data originating from all types of communication (e.g., voice, text, data, still and moving pictures) are transmitted from one port (terminal) in the exchange (switch) over one access line to and from the subscriber.

Intent to Deny (ITD) letter. A letter informing the applicant:

(a) Of the reason for BXA's decision to deny a license application; and

(b) That the application will be denied 45 days from the date of the ITD letter, unless the applicant provides, and BXA accepts, a reason why the application should not be denied for the stated reason. See §750.6 of the EAR.

''Interconnected radar sensors.'' (Cat 6)—Two or more radar sensors are interconnected when they mutually exchange data in real time.

Intermediate consignee. The intermediate consignee is the bank, forwarding agent, or other intermediary (if any) who acts in a foreign country as an agent for the exporter, the purchaser, or the ultimate consignee, for the purpose of effecting delivery of the items to the ultimate consignee.

''Intrinsic Magnetic Gradiometer.'' (Cat 6)—A single magnetic field gradient sensing element and associated electronics the output of which is a measure of magnetic field gradient. (See also ''Magnetic Gradiometer'')

''Isostatic presses.'' (Cat 2)—Equipment capable of pressurizing a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal pressure in all directions within the cavity upon a workpiece or material.

Item. ''Item'' means ''commodities, software, and technology.'' When the EAR intend to refer specifically to commodities, software, or technology, the text will use the specific reference.

Know. See ''knowledge.''

Knowledge. Knowledge of a circumstance (the term may be a variant, such as ''know,'' ''reason to know,'' or ''reason to believe'') includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts. This definition does not apply to part 760 of the EAR (Restrictive Trade Practices or Boycotts).

''Laser.'' (Cat 2, 3, 5, 6, and 9)—An assembly of components that produce both spatially and temporally coherent light that is amplified by stimulated emission of radiation. See also: ''Chemical laser''; ''Q-switched laser''; ''Super High Power Laser''; and ''Transfer laser''.

Law or regulation relating to export control. Any statute, proclamation, executive order, regulation, rule, license, or order applicable to any conduct involving an export transaction shall be deemed to be a ''law or regulation relating to export control.''

Legible or legibility. Legible and legibility mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals.

License. Authority issued by the Bureau of Export Administration authorizing an export, reexport, or other regulated activity. The term ''license'' does not include authority represented by a ''License Exception.''

License application; application for license. License application and similar wording mean an application to BXA requesting the issuance of a license to the applicant.

License Exception. An authorization described in part 740 of the EAR that allows you to export or reexport, under stated conditions, items subject to the EAR that otherwise would require a license. Unless otherwise indicated, these License Exceptions are not applicable to exports under the licensing jurisdiction of agencies other than the Department of Commerce.

Licensee. The person to whom a license has been issued by BXA. See §750.7(c) of the EAR for a complete definition and identification of a licensee's responsibilities.

''*Linearity.*'' (Cat 2)—''Linearity'' (usually measured in terms of non-linearity) is the maximum deviation of the actual characteristic (average of upscale and downscale readings), positive or negative, from a straight line so positioned as to equalize and minimize the maximum deviations.

''*Local area network.*'' (Cat 4)—A data communication system that:

(a) Allows an arbitrary number of independent ''data devices'' to communicate directly with each other; and

(b) Is confined to a geographical area of moderate size (e.g., office building, plant, campus, warehouse).

NOTE: ''Data device'': equipment capable of transmitting or receiving sequences of digital information.

''*MBTR*''.—See ''maximum bit transfer rate''.

MTCR. See Missile Technology Control Regime.

MTEC. See Missile Technology Export Control Group.

''*Magnetic Gradiometers.*'' (Cat 6)—Are designed to detect the spatial variation of magnetic fields from sources external to the instrument. They consist of multiple ''magnetometers'' and associated electronics the output of which is a measure of magnetic field gradient. (See also ''Intrinsic Magnetic Gradiometer''.)

''*Magnetometers.*'' (Cat 6)—Are designed to detect magnetic fields from sources external to the instrument. They consist of a single magnetic field sensing element and associated electronics the output of which is a measure of the magnetic field.

''*Main storage.*'' (Cat 4)—The primary storage for data or instructions for rapid access by a central processing unit. It consists of the internal storage of a ''digital computer'' and any hierarchical extension thereto, such as cache storage or non-sequentially accessed extended storage.

''*Matrix.*'' (Cat 1, 2, 8, and 9)—A substantially continuous phase that fills the space between particles, whiskers or fibers.

''*Maximum bit transfer rate.*'' (MBTR) (Cat 4)—Of solid state storage equipment: the number of data bits per second transferred between the equipment and its controller. Of a disk drive: the internal data transfer rate calculated as follows:

''MBTR'' (bits per second)=B x R x T, where:

B=Maximum number of data bits per track available to read or write in a single revolution;

R=Revolutions per second;

T=Number of tracks that can be used or written simultaneously.

''*Measurement uncertainty.*'' (Cat 2)—The characteristic parameter that specifies in what range around the output value the correct value of the measurable variable lies with a confidence level of 95%. It includes the uncorrected systematic deviations, the uncorrected backlash, and the random deviations (Ref.: VDI/VDE 2617).

''*Mechanical alloying.*'' (Cat 1)—An alloying process resulting from the bonding, fracturing and rebonding of elemental and master alloy powders by mechanical impact. Non-metallic particles may be incorporated in the alloy by addition of the appropriate powders.

''*Media access unit.*'' (Cat 5)—Equipment that contains one or more communication interfaces (''network access controller'', ''communications channel controller'', modem or computer bus) to connect terminal equipment to a network.

''*Melt Extraction.*'' (Cat 1)—A process to ''solidify rapidly'' and extract a ribbon-like alloy product by the insertion of a short segment of a rotating chilled block into a bath of a molten metal alloy.

NOTE: ''Solidify rapidly'': solidification of molten material at cooling rates exceeding 1,000 K/sec.

''*Melt Spinning.*'' (Cat 1)—A process to ''solidify rapidly'' a molten metal stream impinging upon a rotating chilled block, forming a flake, ribbon or rod-like product.

NOTE: ''Solidify rapidly'': solidification of molten material at cooling rates exceeding 1,000 K/sec.

''*Microprocessor microcircuit.*'' (Cat 3)—A ''monolithic integrated circuit'' or ''multichip integrated circuit'' containing an arithmetic logic unit (ALU) capable of executing a series of general purpose instructions from an external storage.

N.B. 1: The ''microprocessor microcircuit'' normally does not contain integral user-accessible storage, although storage present on-the-chip may be used in performing its logic function.

N.B. 2: This definition includes chip sets that are designed to operate together to provide the function of a ''microprocessor microcircuit''.

''*Microprogram.*'' (Cat 4 and 5)—A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

Missile Technology Control Regime (MTCR). The United States and other nations in this multilateral control regime have agreed to guidelines for restricting the export and reexport of dual-use items that may contribute to the development of missiles. The MTCR Annex lists missile-related equipment and technology controlled either by the Department of Commerce or by the Department of State's Office of Defense Trade Controls (22 CFR parts 120 through 130).

Missile Technology Export Control Group (MTEC). Chaired by the Department of State, the MTEC primarily reviews applications involving items controlled for Missile Technology (MT) reasons. The MTEC also reviews applications involving items not controlled for MT reasons, but destined for a country and/or end-use/end-user of concern.

''*Missiles.*'' (All)—Rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) ''capable of'' delivering at least 500 kilograms payload to a range of at least 300 kilometers.

''*Monolithic integrated circuit.*'' (Cat 3)—A combination of passive or active ''circuit elements'' or both that:

(a) Are formed by means of diffusion processes, implantation processes or deposition processes in or on a single semiconducting piece of material, a so-called 'chip';

(b) Can be considered as indivisibly associated; and

(c) Perform the function(s) of a circuit.

NOTE: ''Circuit element'': a single active or passive functional part of an electronic circuit, such as one diode, one transistor, one resistor, one capacitor, etc.

''*Most immediate storage.*'' (Cat 4)—The portion of the ''main storage'' most directly accessible by the central processing unit:

(a) For single level ''main storage'', the internal storage; or

(b) For hierarchical ''main storage'':

(1) The cache storage;

(2) The instruction stack; or

(3) The data stack.

''*Motion control board.*'' (Cat 2)—An electronic ''assembly'' specially designed to provide a computer system with the capability to coordinate simultaneously the motion of axes of machine tools for ''contouring control''.

''*Multichip integrated circuit*.'' (Cat 3)—Two or more ''monolithic integrated circuits'' bonded to a common ''substrate''.

''*Multi-data-stream processing*.'' (Cat 4)—The ''microprogram'' or equipment architecture technique that permits simultaneous processing of two or more data sequences under the control of one or more instruction sequences by means such as:

(a) Single Instruction Multiple Data (SIMD) architectures such as vector or array processors;

(b) Multiple Single Instruction Multiple Data (MSIMD) architectures;

(c) Multiple Instruction Multiple Data (MIMD) architectures, including those that are tightly coupled, closely coupled or loosely coupled; or

(d) Structured arrays of processing elements, including systolic arrays.

''*Multilevel security*.'' (Cat 5)—A class of system containing information with different sensitivities that simultaneously permits access by users with different security clearances and need-to-know, but prevents users from obtaining access to information for which they lack authorization.

NOTE: ''Multilevel security'' is computer security and not computer reliability that deals with equipment fault prevention or human error prevention in general.

''*Multispectral Imaging Sensors*.'' (Cat 6)—Are capable of simultaneous or serial acquisition of imaging data from two or more discrete spectral bands. Sensors having more than twenty discrete spectral bands are sometimes referred to as hyperspectral imaging sensors.

''*N.E.S.*'' N.E.S or n.e.s. is an abbreviation meaning ''not elsewhere specified''.

NLR. NLR (''no license required'') is a symbol entered on the Shipper's Export Declaration, certifying that no license is required.

NSG. See Nuclear Suppliers Group.

NATO (North Atlantic Treaty Organization). A strategic defensive organization that consists of the following member nations: Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

Net value. The actual selling price, less shipping charges or current market price, whichever is the larger, to the same type of purchaser in the United States.

''*Network access controller*.'' (Cat 4 and 5)—A physical interface to a distributed switching network. It uses a common medium that operates throughout at the same ''digital transfer rate'' using arbitration (e.g., token or carrier sense) for transmission. Independently from any other, it selects data packets or data groups (e.g., IEEE 802) addressed to it. It is an assembly that can be integrated into computer or telecommunications equipment to provide communications access.

''*Neural computer*.'' (Cat 4)—A computational device designed or modified to mimic the behavior of a neuron or a collection of neurons (i.e., a computational device that is distinguished by its hardware capability to modulate the weights and numbers of the interconnections of a multiplicity of computational components based on previous data).

''*Noise level*.'' (Cat 6)—An electrical signal given in terms of power spectral density. The relation between ''noise level'' expressed in peak-to-peak is given by $S^2pp=8N_o(f_2–f^1)$, where S_{pp} is the peak-to-peak value of the signal (e.g., nanoteslas), N_o is the power spectral density (e.g., (nanotesla)^2/Hz) and $(f_2–f_1)$ defines the bandwidth of interest.

Nuclear Suppliers Group (NSG). The United States and other nations in this multilateral control regime have agreed to guidelines for restricting the export or reexport of items with nuclear applications. As of February 1, 1996, members include: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russia, Slovak Republic, Spain, South Africa, Sweden, Switzerland, the United Kingdom, and the United States. See also §742.3 of the EAR.

''*Numerical control*.'' (Cat 2)—The automatic control of a process performed by a device that makes use of

numeric data usually introduced as the operation is in progress (Ref. ISO 2382).

''*Object code.*'' (or object language) (Cat 4)—An equipment executable form of a convenient expression of one or more processes (''source code'' (or source language)) that has been converted by a programming system. (See also ''source code'')

Office of Foreign Assets Control (FAC) or (OFAC). The office at the Department of the Treasury responsible for blocking assets of foreign countries subject to economic sanctions, controlling participation by U.S. persons, including foreign subsidiaries, in transactions with specific countries or nationals of such countries, and administering embargoes on certain countries or areas of countries. (See 31 CFR parts 500 through 590.)

''*Operate autonomously.*'' (Cat 8)—Fully submerged, without snorkel, all systems working and cruising at minimum speed at which the submersible can safely control its depth dynamically by using its depth planes only, with no need for a support vessel or support base on the surface, sea-bed or shore, and containing a propulsion system for submerged or surface use.

Operating Committee (OC). The OC voting members include representatives of appropriate agencies in the Departments of Commerce, State, Defense, Justice (for encryption exports), and Energy and the Arms Control and Disarmament Agency. The appropriate representatives of the Joint Chiefs of Staff and the Director of the Nonproliferation Center of the Central Intelligence Agency are non-voting members. The Department of Commerce representative, appointed by the Secretary, is the Chair of the OC and serves as the Executive Secretary of the Advisory Committee on Export Policy. The OC may invite representatives of other Government agencies or departments (other than those identified in this definition) to participate in the activities of the OC when matters of interest to such agencies or departments are under consideration.

''*Optical amplification.*'' (Cat 5)—In optical communications, an amplification technique that introduces a gain of optical signals that have been generated by a separate optical source, without conversion to electrical signals, i.e., using semiconductor optical amplifiers, optical fiber luminescent amplifiers.

''*Optical computer.*'' (Cat 4)—A computer designed or modified to use light to represent data and whose computational logic elements are based on directly coupled optical devices.

''*Optical fiber preforms.*'' (Cat 5 and 6)—Bars, ingots, or rods of glass, plastic or other materials that have been specially processed for use in fabricating optical fibers. The characteristics of the preform determine the basic parameters of the resultant drawn optical fibers.

''*Optical integrated circuit.*'' (Cat 3)—A ''monolithic integrated circuit'' or a ''hybrid integrated circuit'', containing one or more parts designed to function as photosensor or photoemitter or to perform (an) optical or (an) electro-optical function(s).

''*Optical switching.*'' (Cat 5)—The routing of or switching of signals in optical form without conversion to electrical signals.

''*Overall current density.*'' (Cat 3)—The total number of ampere-turns in the coil (i.e., the sum of the number of turns multiplied by the maximum current carried by each turn) divided by the total cross-section of the coil (comprising the superconducting filaments, the metallic matrix in which the superconducting filaments are embedded, the encapsulating material, any cooling channels, etc.).

''*PABX.*'' (Cat 5)—(See ''Private automatic branch exchange''.)

''*Part program.*'' (Cat. 2)—An ordered set of instructions that is in a language and in a format required to cause operations to be effected under automatic control and that is either written in the form of a machine program on an input medium or prepared as input data for processing in a computer to obtain a machine program (Ref. ISO 2806–1980).

''*Peak power.*'' (Cat 6)—Energy per pulse in Joule divided by the pulse duration in seconds.

Person. A natural person, including a citizen or national of the United States or of any foreign country; any firm; any government, government agency,

government department, or government commission; any labor union; any fraternal or social organization; and any other association or organization whether or not organized for profit. This definition does not apply to part 760 of the EAR (Restrictive Trade Practices or Boycotts).

''*Personalized smart card.*'' (Cat 5)—A smart card containing a microcircuit, in accordance with ISO/IEC 7816, that has been programmed by the issuer and cannot be changed by the user.

Port of export. The port where the cargo to be shipped abroad is laden aboard the exporting carrier. It includes, in the case of an export by mail, the place of mailing.

''*Positioning accuracy.*'' (Cat. 2)—The positioning accuracy of ''numerically controlled'' machine tools is to be determined and presented in accordance with ISO/DIS 230/2, paragraph 2.13, in conjunction with the following requirements:

(a) Test conditions:

(1) For 12 hours before and during measurements, the machine tool and accuracy measuring equipment will be kept at the same ambient temperature. During the pre-measurement time the slides of the machine will be continuously cycled in the same manner that the accuracy measurements will be taken;

(2) The machine shall be equipped with any mechanical, electronic, or software compensation to be exported with the machine;

(3) Accuracy of measuring equipment for the measurements shall be at least four times more accurate than the expected machine tool accuracy;

(4) Power supply for slide drives shall be as follows:

(i) Line voltage variation shall exceed ±10% of nominal rated voltage;

(ii) Frequency variation shall not exceed ±2 Hz of normal frequency;

(iii) Lineouts or interrupted service are not permitted.

(b) Test programs:

(1) Feed rate (velocity of slides) during measurement shall be the rapid traverse rate;

NOTE: In case of machine tools that generate optical quality surfaces, the feedrate shall be equal to or less than 50 mm per minute.

(2) Measurements shall be made in an incremental manner from one limit of the axis travel to the other without returning to the starting position for each move to the target position;

(3) Axes not being measured shall be retained at mid travel during the test of an axis.

(c) Presentation of test results: The results of the measurement must include:

(1) Position accuracy (A); and

(2) The mean reversal error (B).

''*Power management.*'' (Cat 7)—Changing the transmitted power of the altimeter signal so that received power at the ''aircraft'' altitude is always at the minimum necessary to determine the altitude.

''*Principal element.*'' (Cat 4)—An element is a ''principal element'' when its replacement value is more than 35% of the total value of the system of which it is an element. Element value is the price paid for the element by the manufacturer of the system, or by the system integrator. Total value is the normal international selling price to unrelated parties at the point of manufacture or consolidation of shipment.

''*Private automatic branch exchange.*'' (PABX) (Cat 5)—An automatic telephone exchange, typically incorporating a position for an attendant, designed to provide access to the public network and serving extensions in an institution such as a business, government, public service or similar organization.

''*Production.*'' (General Technology Note)—Means all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.

Production facility. As defined by 10 CFR 110.2 of the Nuclear Regulatory Commission Regulations, production facility means any nuclear reactor or plant specially designed or used to produce special nuclear material through the irradiation of source material or special nuclear material, the separation of isotopes or the chemical reprocessing or irradiated source or special nuclear material.

''*Program.*'' (Cat 2, 4, and 5)—A sequence of instructions to carry out a

process in, or convertible into, a form executable by an electronic computer.

''*Proof test.*'' (Cat 5)—On-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20 °C) and relative humidity 40%.

NOTE: Equivalent national standards for executing the ''proof test'' may be used.

Publicly available information. Information that is generally accessible to the interested public in any form and, therefore, not subject to the EAR (See part 732 of the EAR).

Publicly available technology and software. Technology and software that are already published or will be published; arise during, or result from fundamental research; are educational; or are included in certain patent applications (see §734.3(b)(3) of the EAR).

''*Pulse compression.*'' (Cat 6)—The coding and processing of a radar signal pulse of long time duration to one of short time duration, while maintaining the benefits of high pulse energy.

''*Pulse duration.*'' (Cat 6)—Duration of a ''laser'' pulse measured at Full Width Half Intensity (FWHI) levels.

Purchaser. The person abroad who has entered into a transaction with the applicant to purchase an item for delivery to the ultimate consignee. A bank, freight forwarder, forwarding agent, or other intermediary is not a purchaser.

''*Q-switched laser.*'' (Cat 6)—A ''laser'' in which the energy is stored in the population inversion or in the optical resonator and subsequently emitted in a pulse.

RWA. See Return Without Action.

''*Radar frequency agility.*'' (Cat 6)—Any technique that changes, in a pseudo-random sequence, the carrier frequency of a pulsed radar transmitter between pulses or between groups of pulses by an amount equal to or larger than the pulse bandwidth.

''*Radar spread spectrum.*'' (Cat 6)—Any modulation technique for spreading energy originating from a signal with a relatively narrow frequency band, over a much wider band of frequencies, by using random or pseudo-random coding.

''*Range.*'' (Cat 8)—Half the maximum distance a submersible vehicle can cover.

Readable or readability. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.

''*Real-time bandwidth.*'' (Cat 3)—For ''dynamic signal analyzers'', the widest frequency range that the analyzer can output to display or mass storage without causing any discontinuity in the analysis of the input data. For analyzers with more than one channel, the channel configuration yielding the widest ''real-time bandwidth'' shall be used to make the calculation.

''*Real-time Processing.*'' (Cat 2 and 4)—The processing of data by a computer system providing a required level of service, as a function of available resources, within a guaranteed response time, regardless of the load of the system, when stimulated by an external event.

Reasons for Control. Reasons for Control are: Anti-Terrorism (AT), Chemical & Biological Weapons (CB), Crime Control (CC), High Performance Computer (XP), Missile Technology (MT), National Security (NS), Nuclear Nonproliferation (NP), Regional Stability (RS), Short Supply (SS), and United Nations sanctions (UN). Items controlled within a particular ECCN may be controlled for more than one reason.

Reexport. ''Reexport'' means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country. For purposes of the EAR, the export or reexport of items subject to the EAR that will transit through a country or countries, or be transshipped in a country or countries to a new country, or are intended for reexport to the new country, are deemed to be exports to the new country. (See §734.2(b)of the EAR.) In addition, for purposes of satellites controlled by the Department of Commerce, the term ''reexport'' also includes the transfer of registration of a satellite or operational control over a satellite from a party resident in one country to a party resident in another country.

Replacement license. An authorization by the Bureau of Export Administration revising the information, conditions, or riders stated on a license issued by BXA. See §750.7 of the EAR.

''*Required*''. As applied to ''technology'' or ''software'', refers to only that portion of ''technology'' or ''software'' which is peculiarly responsible for achieving or extending the controlled performance levels, characteristics or functions. Such ''required'' ''technology'' or ''software'' may be shared by different products. For example, assume product ''X'' is controlled if it operates at or above 400 MHz and is not controlled if it operates below 400 MHz. If production technologies ''A'', ''B'', and ''C'' allow production at no more than 399 MHz, then technologies ''A'', ''B'', and ''C'' are not ''required'' to produce the controlled product ''X''. If technologies ''A'', ''B'', ''C'', ''D'', and ''E'' are used together, a manufacturer can produce product ''X'' that does not operate at or above 400 MHz. In this example, technologies ''D'' and ''E'' are ''required'' to make the controlled product and are themselves controlled under the General Technology Note. (See the General Technology Note.)

''*Resolution*.'' (Cat 2)—The least increment of a measuring device; on digital instruments, the least significant bit (Ref.: ANSI B–89.1.12).

Return Without Action (RWA). An application may be RWA'd for one of the following reasons:

(a) The applicant has requested the application be returned;

(b) A License Exception applies;

(c) The items are not under Department of Commerce jurisdiction;

(d) Required documentation has not been submitted with the application; or

(e) The applicant cannot be reached after several attempts to request additional information necessary for processing of the application.

''*Robot*.'' (Cat 2 and 8)—A manipulation mechanism, which may be of the continuous path or of the point-to-point variety, may use ''sensors'', and has all the following characteristics:

(a) Is multifunctional;

(b) Is capable of positioning or orienting material, parts, tools or special devices through variable movements in a three dimensional space;

(c) Incorporates three or more closed or open loop servo-devices that may include stepping motors; and

(d) Has ''user-accessible programmability'' by means of teach/playback method or by means of an electronic computer that may be a programmable logic controller, i.e., without mechanical intervention.

NOTE: This definition does not include the following devices:

(a) Manipulation mechanisms that are only manually/teleoperator controllable;

(b) Fixed sequence manipulation mechanisms that are automated moving devices, operating according to mechanically fixed programmed motions. The program is mechanically limited by fixed stops, such as pins or cams. The sequence of motions and the selection of paths or angles are not variable or changeable by mechanical, electronic or electrical means;

(c) Mechanically controlled variable sequence manipulation mechanisms that are automated moving devices, operating according to mechanically fixed programmed motions. The program is mechanically limited by fixed, but adjustable stops, such as pins or cams. The sequence of motions and the selection of paths or angles are variable within the fixed program pattern. Variations or modifications of the program pattern (e.g., changes of pins or exchanges of cams) in one or more motion axes are accomplished only through mechanical operations;

(d) Non-servo-controlled variable sequence manipulation mechanisms that are automated moving devices, operating according to mechanically fixed programmed motions. The program is variable, but the sequence proceeds only by the binary signal from mechanically fixed electrical binary devices or adjustable stops;

(e) Stacker cranes defined as Cartesian coordinate manipulator systems manufactured as an integral part of a vertical array of storage bins and designed to access the contents of those bins for storage or retrieval.

''*Rotary Atomization*.'' (Cat 1)—A process to reduce a stream or pool of molten metal to droplets to a diameter of 500 micrometer or less by centrifugal force.

''*Run-out*.'' (out-of-true running) (Cat 2)—Radial displacement in one revolution of the main spindle measured in a plane perpendicular to the spindle axis at a point on the external or internal revolving surface to be tested (Ref.: ISO 230 Part 1–1986, paragraph 5.61).

''*SDH.*''—See ''synchronous digital hierarchy'' Sensors (Cat. 6)—Detectors of a physical phenomenon, the output of which (after conversion into a signal that can be interpreted by a controller) is able to generate ''programs'' or modify programmed instructions or numerical program data. This includes ''sensors'' with machine vision, infrared imaging, acoustical imaging, tactile feel, inertial position measuring, optical or acoustic ranging or force or torque measuring capabilities.

SNEC. See Subgroup on Nuclear Export Coordination.

''*SONET.*''—See ''synchronous optical network''.

''*Scale factor.*'' (gyro or accelerometer) (Cat 7)—The ratio of change in output to a change in the input intended to be measured. Scale factor is generally evaluated as the slope of the straight line that can be fitted by the method of least squares to input-output data obtained by varying the input cyclically over the input range.

Schedule B numbers. The commodity numbers appearing in the current edition of the Bureau of the Census publication, Schedule B Statistical Classification of Domestic and Foreign Commodities Exported from the United States. (See part 758 of the EAR for information on use of Schedule B numbers.)

''*Settling time.*'' (Cat 3)—The time required for the output to come within one-half bit of the final value when switching between any two levels of the converter.

Shield. Chaired by the Department of State, the Shield primarily reviews applications involving items controlled for Chemical and Biological Weapons (CBW) reasons. The Shield also reviews applications involving items not controlled for CBW reasons, but destined for a country and/or end-use/end-user of concern. See §750.4 of the EAR.

''*Signal analyzers.*'' (Cat 3)—Apparatus capable of measuring and displaying basic properties of the single-frequency components of multi-frequency signals.

''*Signal analyzers.*'' (dynamic) (Cat 3)—(See ''Dynamic signal analyzers''.)

''*Signal processing.*'' (Cat 3, 4 and 5)—The processing of externally derived information-bearing signals by algorithms such as time compression, filtering, extraction, selection, correlation, convolution or transformations between domains (e.g., fast Fourier transform or Walsh transform).

''*Simple educational devices.*'' (Cat 3)—Devices designed for use in teaching basic scientific principles and demonstrating the operation of those principles in educational institutions.

Single shipment. All items moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier, even if these items will be forwarded to one or more ultimate consignees. Items being transported in this manner shall be treated as a single shipment even if the items represent more than one order or are in separate containers.

''*Software.*'' (Cat: all)—A collection of one or more ''programs'' or ''microprograms'' fixed in any tangible medium of expression.

''*Source code.*'' (or source language) (Cat 4)—A convenient expression of one or more processes that may be turned by a programming system into equipment executable form (''object code'' (or object language)).

''*Spacecraft.*'' (Cat 7 and 9)—Active and passive satellites and space probes.

''*Space qualified.*'' (Cat 3 and 6)—Products designed, manufactured and tested to meet the special electrical, mechanical or environmental requirements for use in the launch and deployment of satellites or high-altitude flight systems operating at altitudes of 100 km or higher.

Specially Designated National (SDN). Any person who is determined by the Secretary of the Treasury to be a specially designated national for any reason under regulations issued by the Office of Foreign Assets Control (see 31 CFR parts 500 through 590).

Specially Designated Terrorist (STN). Any person who is determined by the Secretary of the Treasury to be a specially designated terrorist under notices or regulations issued by the Office of Foreign Assets Control (see 31 CFR chapter V).

''*Specially designed.*'' (MTCR context)—Equipment, parts, components or ''software'' that, as a result of ''development'', have unique properties

that distinguish them for certain predetermined purposes. For example, a piece of equipment that is ''specially designed'' for use in a ''missile'' will only be considered so if it has no other function or use. Similarly, a piece of manufacturing equipment that is ''specially designed'' to produce a certain type of component will only be considered such if it is not capable of producing other types of components.

''*Specific modulus.*'' (Cat 1)—Young's modulus in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296 ± 2) K ((23 ± 2) °C) and a relative humidity of (50 ± 5)%.

''*Specific tensile strength.*'' (Cat 1)—Ultimate tensile strength in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296 ± 2) K ((23 ± 2) °C) and relative humidity of (50 ± 5)%.

''*Spectral efficiency.*'' (Cat 5)—A figure of merit parametrized to characterize the efficiency of transmission system that uses complex modulation schemes such as QAM (quadrature amplitude modulation), Trellis coding, QSPK (Q-phased shift key), etc. It is defined as follows:

$$\text{Spectral efficiency} = \frac{\text{''Digital transfer rate''} \ \text{(bits/second)}}{\text{6 dB spectrum bandwidth (Hz).}}$$

''*Splat Quenching.*'' (Cat 1)—A process to ''solidify rapidly'' a molten metal stream impinging upon a chilled block, forming a flake-like product.

NOTE: ''Solidify rapidly'': solidification of molten material at cooling rates exceeding 1,000 K/sec.

''*Spread spectrum.*'' (Cat 5)—The technique whereby energy in a relatively narrow-band communication channel is spread over a much wider energy spectrum.

''*Spread spectrum radar.*'' (Cat 6)—(see ''Radar spread spectrum'')

''*Sputtering.*'' (Cat 4)—An overlay coating process wherein positively charged ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on the substrate.

NOTE: Triode, magnetron or radio frequency sputtering to increase adhesion of coating and rate of deposition are ordinary modifications of the process.

''*Stability.*'' (Cat 7)—Standard deviation (1 sigma) of the variation of a particular parameter from its calibrated value measured under stable temperature conditions. This can be expressed as a function of time.

''*Stored program controlled.*'' (Cat 2, 3, and 5)—A control using instructions stored in an electronic storage that a processor can execute in order to direct the performance of predetermined functions.

NOTE: Equipment may be ''stored program controlled'' whether the electronic storage is internal or external to the equipment.

Subgroup on Nuclear Export Coordination (SNEC). Chaired by the Department of State, the SNEC primarily reviews applications involving items controlled for nuclear nonproliferation (NP) reasons. The SNEC also reviews applications involving items not controlled for NP reasons, but destined for a country and/or end-use/end-user of NP concern.

Subject to the EAR. A term used in the EAR to describe those commodities, software, technology, and activities over which the Bureau of Export Administration (BXA) exercises regulatory jurisdiction under the EAR (See §734.2(a) of the EAR).

''*Substrate.*'' (Cat 3)—A sheet of base material with or without an interconnection pattern and on which or within which ''discrete components'' or integrated circuits or both can be located.

NOTE: ''Discrete component'': a separately packaged ''circuit element'' with its own external connections.

''*Substrate blanks.*'' (Cat 6)—Monolithic compounds with dimensions suitable for the production of optical elements such as mirrors or optical windows.

''*Superalloys.*'' (Cat 2 and 9)—Nickel−, cobalt−, or iron-base alloys having strengths superior to any alloys in the AISI 300 series at temperatures over 922 K (694 degrees C) under severe environmental and operating conditions.

''*Superconductive.*'' (Cat 1, 3, 6, and 8)—Materials, i.e., metals, alloys, or compounds that can lose all electrical resistance, i.e., that can attain infinite electrical conductivity and carry very large electrical currents without Joule heating.

NOTE: The ''superconductive'' state of a material is individually characterized by a ''critical temperature'', a critical magnetic field that is a function of temperature, and a critical current density that is a function of both magnetic field and temperature.

''*Super High Power Laser.*'' (SHPL) (Cat 6)—A ''laser'' capable of delivering (the total or any portion of) the output energy exceeding 1 kJ within 50 ms or having an average or CW power exceeding 20 kW.

''*Superplastic forming.*'' (Cat 1 and 2)—A deformation process using heat for metals that are normally characterized by low elongation (less than 20%) at the breaking point as determined at room temperature by conventional tensile strength testing, in order to achieve elongations during processing that are at least 2 times those values.

''*Swept frequency network analyzers.*'' (Cat 3)—Involve the automatic measurement of equivalent circuit parameters over a range of frequencies, involving swept frequency measurement techniques, but not continuous wave point-to-point measurements.

''*Switch fabric.*'' (Cat 5)—That hardware and associated ''software'' that provides the physical or virtual connection path for in-transit message traffic being switched.

''*Synchronous digital hierarchy.*'' (SDH) (Cat 5)—A digital hierarchy providing a means to manage, multiplex, and access various forms of digital traffic using a synchronous transmission format on different types of media. The format is based on the Synchronous Transport Module (STM) that is defined by CCITT Recommendation G.703, G.707, G.708, G.709 and others yet to be published. The first level rate of ''SDH'' is 155.52 Mbits/s.

''*Synchronous optical network.*'' (SONET) (Cat 5)—A network providing a means to manage, multiplex and access various forms of digital traffic using a synchronous transmission format on fiber optics. The format is the North America version of ''SDH'' and also uses the Synchronous Transport Module (STM). However, it uses the Synchronous Transport Signal (STS) as the basic transport module with a first level rate of 51.81 Mbits/s. The SONET standards are being integrated into those of ''SDH''.

''*Systems tracks.*'' (Cat 6)—Processed, correlated (fusion of radar target data to flight plan position) and updated aircraft flight position report available to the Air Traffic Control center controllers.

''*Systolic array computer.*'' (Cat 4)—A computer where the flow and modification of the data is dynamically controllable at the logic gate level by the user.

''*Technology.*'' (General Technology Note)—Specific information necessary for the ''development'', ''production'', or ''use'' of a product. The information takes the form of ''technical data'' or ''technical assistance''. Controlled ''technology'' is defined in the General Technology Note and in the Commerce Control List (Supplement No. 1 to part 774 of the EAR).

N.B.: Technical assistance—May take forms such as instruction, skills training, working knowledge, consulting services.

NOTE: ''Technical assistance'' may involve transfer of ''technical data''.

''*Technical data.*''—May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

''*Telecommunication transmission equipment.*'' (Cat 5)—

(a) Categorized as follows, or combinations thereof:

(1) Radio equipment (e.g., transmitters, receivers and transceivers);

(2) Line terminating equipment;

(3) Intermediate amplifier equipment;

(4) Repeater equipment;

(5) Regenerator equipment;

(6) Translation encoders (transcoders);

(7) Multiplex equipment (statistical multiplex included);

(8) Modulators/demodulators (modems);

(9) Transmultiplex equipment (see CCITT Rec. G701);

(10) ''Stored program controlled'' digital crossconnection equipment;

(11) ''Gateways'' and bridges;

(12) ''Media'' access units; and

(b) Designed for use in single or multi-channel communication via:

(1) Wire (line);

(2) Coaxial cable;

(3) Optical fiber cable;

(4) Electromagnetic radiation.

''*Terminal interface equipment.*'' (Cat 4)—Equipment at which information enters or leaves the telecommunication systems, e.g., telephone, data device, computer, facsimile device.

''*Three dimensional Vector Rate.*'' (Cat 4)—The number of vectors generated per second that have 10 pixel poly line vectors, clip tested, randomly oriented, with either integer or floating point X-Y-Z coordinate values (whichever produces the maximum rate).

''*Tilting spindle.*'' (Cat 2)—A tool-handling spindle that alters, during the machining process, the angular position of its center line with respect to any other axis.

''*Time constant.*'' (Cat 6)—The time taken from the application of a light stimulus for the current increment to reach a value of 1–1/e times the final value (i.e., 63% of the final value).

''*Total digital transfer rate.*'' (Cat 5)—The number of bits, including line coding, overhead and so forth per unit time passing between corresponding equipment in a digital transmission system. (See also ''digital transfer rate''.)

Transfer. A transfer to any person of items subject to the EAR either within the United States or outside of the United States with the knowledge or intent that the items will be shipped, transferred, or transmitted to an unauthorized recipient.

''*Transfer laser.*'' (Cat 6)—A ''laser'' in which the lasting species is excited through the transfer of energy by collision of a non-lasing atom or molecule with a lasing atom or molecule species.

''*Tunable.*'' (Cat 6)—The ability of a ''laser'' to produce a continuous output at all wavelengths over a range of several ''laser'' transitions. A line selectable ''laser'' produces discrete wavelengths within one ''laser'' transition and is not considered ''tunable''.

''*Two dimensional Vector Rate.*'' (Cat 4)—The number vectors generated per second that have 10 pixel poly line vectors, clip tested, randomly oriented, with either integer or floating point X-Y coordinate values (whichever produces the maximum rate).

U.S. exporter. That person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States. (See also ''applicant''.)

U.S. person. (a) For purposes of §744.6 of the EAR, the term U.S. person includes:

(1) Any individual who is a citizen of the United States, a permanent resident alien of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3);

(2) Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and

(3) Any person in the United States.

(b) See also parts 746 and 760 of the EAR for definitions of ''U.S. person'' that are specific to those parts.

Ultimate consignee. The person located abroad who is the true party in interest in actually receiving the export or reexport for the designated end-use. (See §748.5(e) of the EAR.)

United States. Unless otherwise stated, the 50 States, including offshore areas within their jurisdiction pursuant to section 3 of the Submerged Lands Act (43 U.S.C. 1311), the District of Columbia, Puerto Rico, and all territories, dependencies, and possessions of the United States, including foreign trade zones established pursuant to 19 U.S.C. 81A–81U, and also including the outer continental shelf, as defined in

section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

United States airline. Any citizen of the United States who is authorized by the U.S. Government to engage in business as an airline. For purposes of this definition, a U.S. citizen is:

(a) An individual who is a citizen of the United States or one of its possessions; or

(b) A partnership of which each member is such an individual; or

(c) A corporation or association created or organized under the laws of the United States, or of any State, Territory, or possession of the United States, of which the president and two-thirds of the board of directors and other managing officers thereof are such individuals and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

''*Usable in or Capable of.*'' (MTCR context)—Equipment, parts, components or ''software'' that are suitable for a particular purpose. There is no need for the equipment, parts, components or ''software'' to have been configured, modified or specified for the particular purpose. For example, any military specification memory circuit would be ''capable of'' operation in a guidance system.

''*Use.*'' (General Technology Note)—Operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.

''*User-accessible programmability.*'' (Cat 4, 5, and 6)—The facility allowing a user to insert, modify, or replace ''programs'' by means other than:

(a) A physical change in wiring or interconnections; or

(b) The setting of function controls including entry of parameters.

Utilization facility. (a) As defined by 10 CFR 110.2 of the Nuclear Regulatory Commission Regulations, utilization facility means a nuclear reactor, other than one that is a production facility, any of the following major components of a nuclear reactor: Pressure vessels designed to contain the core of a nuclear reactor, other than one that is a production facility, and the following major components of a nuclear reactor:

(1) Primary coolant pumps;

(2) Fuel charging or discharging machines; and

(3) Control rods.

(b) Utilization facility does not include the steam turbine generator portion of a nuclear power plant.

''*Vacuum Atomization.*'' (Cat 1)—A process to reduce a molten stream of metal to droplets of a diameter of 500 micrometer or less by the rapid evolution of a dissolved gas upon exposure to a vacuum.

''*Variable geometry airfoils.*'' (Cat 7)—Use trailing edge flaps or tabs, or leading edge slats or pivoted nose droop, the position of which can be controlled in flight.

''*Vector Rate.*'' (Cat 4)—See: ''Two dimensional Vector Rate''; ''Three dimensional Vector Rate''.

You. Any person, including a natural person, including a citizen of the United States or any foreign country; any firm; any government, government agency, government department, or government commission; any labor union; any fraternal or social organization; and any other association or organization whether or not organized for profit.

[61 FR 12925, Mar. 25, 1996, as amended at 61 FR 68586, Dec. 30, 1996; 62 FR 6686, Feb. 12, 1997; 62 FR 25470, May 9, 1997]

PART 774—THE COMMERCE CONTROL LIST

Sec.
774.1 Introduction.
774.2 [Reserved]
SUPPLEMENT NO. 1 TO PART 774—THE COMMERCE CONTROL LIST
SUPPLEMENT NO. 2 TO PART 774—GENERAL TECHNOLOGY AND SOFTWARE NOTES
SUPPLEMENT NO. 3 TO PART 774—CROSS-REFERENCE LIST

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

SOURCE: 61 FR 12937, Mar. 25, 1996, unless otherwise noted.

§ 774.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL) that includes items (commodities, software, and technology) subject to the authority of BXA. The CCL does not include those items exclusively controlled for export by another department or agency of the U.S. Government. In instances where other agencies administer controls over related items, entries in the CCL will contain a reference to these controls. Those items subject to the EAR but not specified on the CCL are identified by the designator ''EAR99''. See § 734.2(a) of the EAR for items that are ''subject to the EAR''. You should consult part 738 of the EAR for an explanation of the organization of the CCL and its relationship to the Country Chart.

The CCL is contained in Supplement No. 1 to this part, and Supplement No. 2 to this part contains the General Technology and Software Notes relevant to entries contained in the CCL.

§ 774.2 [Reserved]

SUPPLEMENT NO. 1 TO PART 774—THE COMMERCE CONTROL LIST

Category 0—Nuclear Materials, Facilities & Equipment and Miscellaneous

A. EQUIPMENT, ASSEMBLIES AND COMPONENTS

0A018 Items on the International Munitions List.

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT, UN

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
RS applies to 0A918.c	RS Column 2
AT applies to entire entry	AT Column 1
UN applies to entire entry	Rwanda

LICENSE EXCEPTIONS

LVS: $5000 for 0A918.a and b; $3000 for 0A918.c; $1500 for 0A918.d through .f; and $0 for entire entry for Rwanda

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: 0A918.a, .b, and .c in $ value; 0A18.d, .e, and .f in number

Related Controls: N/A

Related Definitions: N/A

Items: a. Power controlled searchlights and control units therefor, designed for military use, and equipment mounting such units; and specially designed parts and accessories therefor;

b. Construction equipment built to military specifications, specially designed for airborne transport; and specially designed parts and accessories therefor;

c. Specially designed components and parts for ammunition, except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines (all of which are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR parts 120 through 130.)

d. Bayonets;

e. Muzzle-loading (black powder) firearms;

NOTE: Antique small arms dating prior to 1890 and their reproductions are not controlled by this ECCN 0A918.

f. Military helmets, except:

f.1. Conventional steel helmets other than those described by 0A918f.2 below.

f.2. Helmets, made of any material, equipped with communications hardware, optional sights, slewing devices or mechanisms to protect against thermal flash or lasers.

NOTE: Helmets described in 0A918.f.1 are controlled by 0A988. Helmets described in 0A918.f.2 are controlled by the U.S. Department of State, Office of Defense Trade Controls (See 22 CFR part 121, Category X).

0A980 Horses by sea.

LICENSE REQUIREMENTS

Reason for Control: SS

SS applies to entire entry. For licensing requirements (and possible License Exceptions), proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

0A982 Saps; thumbcuffs, leg irons, shackles, and handcuffs; straight jackets, plastic handcuffs, police helmets and shields; and parts and accessories, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0A983 Specially designed implements of torture and thumbscrews; and parts and accessories, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC

CC applies to entire entry. A license is required for ALL destinations, regardless of end-use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See part 742 of the EAR for additional information.)

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0A984 Shotguns, barrel length 18 inches (45.72 cm) inches or over; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC, UN

Control(s)	*Country Chart*
CC applies to shotguns with a barrel length over 18 in. (45.72 cm) but less than 24 in. (60.96 cm) or buckshot shotgun shells controlled by this entry, regardless of end-user	CC Column 1
CC applies to shotguns with a barrel length over 24 in. (60.96 cm), regardless of end-user	CC Column 2
CC applies to shotguns with a barrel length over 24 in. (60.96 cm) if for sale or resale to police or law enforcement	CC Column 3
UN applies to entire entry	Rwanda

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: This entry does not control shotguns with a barrel length of less than 18 inches (45.72 cm). See 22 CFR part 121, Category I. These items are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0A985 Optical sighting devices for shotguns controlled by 0A984; discharge type arms (for example, stun guns, shock batons, electric cattle prods, immobilization guns and projectiles, etc.) except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC, UN

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1
UN applies to entire entry	Rwanda

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0A986 Shotgun shells, except buckshot shotgun shells, and parts.

LICENSE REQUIREMENTS

Reason for Control: UN

UN applies to entire entry. A license is required for items controlled by this entry to Cuba, Libya, North Korea and Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

NOTE: Exports from the U.S. and transhipments to Iran must be licensed by the Department of Treasury, Office of Foreign Assets Control. (See §746.7 of the EAR for additional information on this requirement.)

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0A988 Conventional military steel helmets as described by 0A018.f.1; and machetes.

LICENSE REQUIREMENTS

Reason for Control: UN

UN applies to entire entry. A license is required for items controlled by this entry to

Cuba, Libya, North Korea and Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

NOTE: Exports from the U.S. and transhipments to Iran must be licensed by the Department of Treasury, Office of Foreign Assets Control. (See to §746.7 of the EAR for additional information on this requirement.)

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

0B001 Valves, specially designed or prepared for gaseous diffusion separation process, that are wholly made of or lined with aluminum, aluminum alloys, nickel, or alloy containing 60 percent by weight or more nickel, 40 mm (1.6 in.) or more in diameter, with bellows seals, and specially designed parts and components therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) This CCL entry controls only a subset of the items contained on the corresponding EU List number (e.g., 0B001.b). The items not included in this CCL entry are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110.) (2) Specially designed or prepared valves for gaseous diffusion separation process are also subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0B003 Plants for the production of uranium hexaflouride (UF_6) and specially designed or prepared equipment (including UF_6 purification equipment), and specially designed parts and accessories therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: This entry does not control nuclear plants (i.e., fuel fabrication facilities, enrichment facilities, reprocessing facilities, and heavy water production facilities). Nuclear plants are subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)
Related Definitions: N/A
Items: a. Plants for the production of UF_6;

b. Equipment and components, as follows, specially designed or prepared for UF_6 production:

b.1. Fluorination and hydrofluorination screw and fluid bed reactors and flame towers;

b.2. Distillation equipment for the purification of UF_6.

0B008 Reactor and power plant simulators and analytical models for reactor and power plant simulators, models or mock-ups.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: Nuclear equipment is also subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

C. MATERIALS

0C006 Nickel powder and porous nickel metal.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilogram
Related Controls: Nickel powders which are specially prepared for the manufacture of gaseous diffusion barriers are subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)
Related Definitions: N/A
Items: a. Powder with a nickel purity content of 99.0% or greater and a mean particle size of less than 10 micrometers measured by the American Society for Testing and Materials (ASTM) B 330 standard, except filamentary nickel powders;

b. Porous nickel metal produced from materials controlled by 0C006.a except single porous nickel metal sheets not exceeding 1000 cm^2 per sheet.

NOTE: 0C006.b controls porous metal formed by compacting and sintering the material controlled by 0C006.a to form a metal material with fine pores interconnected throughout the structure.

D. SOFTWARE

0D001 "Software" specially designed or modified for the "development", "production" or "use" of items controlled by 0B001, 0B003, 0B008 or 0C006.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

0E001 "Technology" according to the General Technology Note for the "development", "production" or "use" of items controlled by 0B001, 0B003, 0B008 or 0C006.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0E018 "Technology" for the "development", "production", or "use" of items controlled by 0A018.b through 0A018.e.

LICENSE REQUIREMENTS

Reason for Control: NS, AT, UN

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	Rwanda

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0E984 "Technology" for the "development" or "production" of shotguns controlled by 0A984 and buckshot shotgun shells.

LICENSE REQUIREMENTS

Reason for Control: CC, UN

Control(s)	*Country Chart*
CC applies to ''technology'' for shotguns with a barrel length over 18 in. (45.72 cm) but less than 24 in. (60.96 cm) and shotgun shells, regardless of end-user	CC Column 1
CC applies to ''technology'' for shotguns with a barrel length over 24 in. (60.96 cm), regardless of end-user	CC Column 2
CC applies to ''technology'' for shotguns with a barrel length over 24 in. (60.96 cm) if for sale or resale to police or law enforcement	CC Column 3
UN applies to entire entry	Rwanda

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

Category 1—Materials, Chemicals, ''Microorganisms,'' and Toxins

A. EQUIPMENT, ASSEMBLIES AND COMPONENTS

1A001 Components made from fluorinated compounds.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Seals, gaskets, sealants or fuel bladders specially designed for aircraft or aerospace use made from more than 50% of any of the materials controlled by 1C009.b or .c;

b. Piezoelectric polymers and copolymers made from vinylidene fluoride:

b.1. In sheet or film form; and

b.2. With a thickness exceeding 200 micrometer;

c. Seals, gaskets, valve seats, bladders or diaphragms made from fluoroelastomers containing at least one vinylether monomer, specially designed for aircraft, aerospace or missile use.

1A002 "Composite" structures or laminates.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to ''composite'' structures that are specially designed for missile applications (including specially designed subsystems and components)	MT Column 1
NP applies to 1A002.b	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definition: This entry does not control ''composite'' structures or laminates made from epoxy resin impregnated carbon ''fibrous or filamentary materials'' for the repair of aircraft structures of laminates, provided that the size does not exceed one square meter (1 m^2).
Items: a. Having an organic ''matrix'' and made from materials controlled by 1C010.c, .d or .e; or

b. Having a metal or carbon ''matrix'' and made from:

b.1. Carbon ''fibrous and filamentary materials'' with:

b.1.a. A ''specific modulus'' exceeding 10.15×10^6 m; and

b.1.b. A ''specific tensile strength'' exceeding 17.7×10^4 m; or

b.2. Materials controlled by 1C010.c.

TECHNICAL NOTES: 1. Specific modulus: Young's modulus in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) K ((23±2) °C) and a relative humidity of (50±5)%.

2. Specific tensile strength: ultimate tensile strength in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) K ((23±2) °C) and a relative humidity of (50±5)%.

1A003 Manufactures of non-fluorinated polymeric substances controlled by 1C008.a, in film, sheet, tape or ribbon form.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $200
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. With a thickness exceeding 0.254 mm; or

b. Coated or laminated with carbon, graphite, metals or magnetic substances.

1A102 Resaturated pyrolized carbon-carbon materials designed for systems controlled by 9A004.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: (1) See 9A110 for controls on ''composite'' structures or laminates usable in missile systems. (2) The corresponding EU number contains a reference to 9A104. Items controlled by the EU under 9A104 are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121).
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1A202 "Composite" structures, other than those controlled by 1A002, in the form of tubes with an inside diameter of between 75 mm and 400 mm made with "fibrous or filamentary materials" controlled by 1C010.a or .b or 1C210.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1A225 Platinized catalysts specially designed or prepared for promoting the hydrogen isotope exchange reaction between hydrogen and water for the recovery of tritium from heavy water or for the production of heavy water.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1A226 Specialized packings for use in separating heavy water from ordinary water and made of phosphor bronze mesh (chemically treated to improve wettability) and designed for use in vacuum distillation towers.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1A227 High density (lead glass or other) radiation shielding windows greater than 0.09 m^2 on cold area and with a density greater than 3 g/cm^3 and a thickness of 100 mm or greater; and specially designed frames therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: Nuclear equipment is also subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1A290 Depleted uranium (any uranium containing less than 0.711% of the isotope U–235) in shipments of more than 1,000 kilograms in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: (1) This entry does not control depleted uranium in fabricated forms for use in munitions. See 22 CFR part 121 for depleted uranium subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (2) All forms of depleted uranium not specifically described in this entry, or in the above note, are subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1A984 Chemical agents, including tear gas formulation containing 1 percent or less of orthochlorobenzalmalononitrile (CS), or 1 percent or less of chloroacetophenone (CN), except in individual containers with a net weight of 20 grams or less; smoke bombs; non-irritant smoke flares, canisters, grenades and charges; other pyrotechnic articles having dual military and commercial use; and fingerprinting powders, dyes and inks.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1A988 Bulletproof and bullet resistant vests.

LICENSE REQUIREMENTS

Reason for Control: UN
UN applies to entire entry. A license is required for items controlled by this entry to Cuba, Libya, North Korea and Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

NOTE: Exports from the U.S. and transhipments to Iran must be licensed by the Department of the Treasury, Office of Foreign Assets Control. (See §746.7 of the EAR for additional information on this requirement.)

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: Bulletproof and bullet resistant vests (body armor) are also subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR 121.1, Category X.)
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

1B001 Equipment for the "production" of fibers, prepregs, preforms or "composites" controlled by 1A002 or 1C010, and specially designed components and accessories therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	*Country chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry EXCEPT 1B001.d.4 and .f	MT Column 1
NP applies to filament winding machines described in 1B001.a that are capable of winding cylindrical rotors having a diameter between 75 mm (3 in) and 400 mm (16 in) and lengths of 600 mm (24 in) or greater; AND coordinating and programming controls and precision mandrels for these filament winding machines	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A for 1B001.a; $5000 for all other items
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Filament winding machines of which the motions for positioning, wrapping and winding fibers are coordinated and programmed in three or more axes, specially designed for the manufacture of ''composite'' structures or laminates from ''fibrous and filamentary materials'';

b. Tape-laying or tow-placement machines of which the motions for positioning and laying tape, tows or sheets can be coordinated and programmed in two or more axes, specially designed for the manufacture of ''composite'' airframe or ''missile'' structures;

c. Multi-directional, multidimensional weaving machines or interlacing machines, including adapters and modification kits, for weaving, interlacing or braiding fibers to manufacture ''composite'' structures, except textile machinery not modified for the above end-uses;

d. Equipment specially designed or adapted for the ''production'' of ''fibrous or filamentary materials''; as follows:

d.1. Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, pitch or polycarbosilane) into carbon fibers or silicon carbide fibers, including special equipment to strain the fiber during heating;

d.2. Equipment for the chemical vapor deposition of elements or compounds on heated filamentary substrates to manufacture silicon carbide fibers;

d.3. Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide);

d.4. Equipment for converting aluminum containing precursor fibers into alumina fibers by heat treatment;

e. Equipment for producing prepregs controlled by 1C010.e by the hot melt method;

f. Non-destructive inspection equipment capable of inspecting defects three dimensionally, using ultrasonic or X-ray tomography and specially designed for ''composite'' materials;

1B002 Systems and components therefor specially designed for producing metal alloys, metal alloy powder or alloyed materials controlled by 1C002.a.2, 1C002.b, or 1C002.c.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1B003 Tools, dies, molds or fixtures, for "superplastic forming" or "diffusion bonding" titanium or aluminum or their alloys, specially designed for the manufacture of equipment described in this entry.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components in $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Airframe or aerospace structures;

b. Aircraft or aerospace engines; or

c. Specially designed components for those structures or engines.

1B018 Equipment on the International Munitions List.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, RS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to equipment for the ''production'' of rocket propellants	MT Column 1
RS applies to 1B018.a	RS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000 for 1B018.a for countries WITHOUT an ''X'' in RS Column 2 on the Country Chart contained in Supplement No. 1 to part 738 of the EAR; $5000 for 1B018.b
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Equipment for the ''production'' of military explosives and solid propellants.

a.1. Complete installations;

a.2. Specialized components (for example, dehydration presses; extrusion presses for the extrusion of small arms, cannon and rocket propellants; cutting machines for the sizing of extruded propellants; sweetie barrels (tumblers) 6 feet and over in diameter and having over 500 pounds product capacity; and continuous mixers for solid propellants); or

a.3. Nitrators, continuous types; and

a.4. Specially designed parts and accessories therefor.

b. Environmental chambers capable of pressures below (10^{-4}) Torr, and specially designed components therefor.

1B101 Equipment, other than that controlled by 1B001, for the production of structural composites and specially designed components and accessories thereof.

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
NP applies to 1B101.a only	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: Components and accessories controlled by this entry include moulds, mandrels, dies, fixtures and tooling for the preform processing, curing, casting, sintering or bonding of composite structures, laminates and manufactures thereof.
Items: a. Filament winding machines, of which the motions for positioning, wrapping and winding fibers can be coordinated and programmed in three or more axes, designed for the manufacture of ''composite'' structures or laminates from ''fibrous or filamentary materials''.

b. Tape-laying machines, of which the motions for positioning and laying tape or sheets can be coordinated and programmed in two or more axes, designed for the manufacture of ''composite'' airframe or ''missile'' structures.

c. Equipment designed or modified for the ''production'' of ''fibrous or filamentary materials'', as follows:

c.1. Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, or polycarbosilane) including special equipment to strain the fiber during heating;

c.2. Equipment for the chemical vapor deposition of elements or compounds on heated filament substrates; and

c.3. Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide).

d. Equipment designed or modified for special fiber surface treatment or for producing prepregs and preforms, not controlled by 9A110.

NOTE: Equipment covered by 1B101.d includes but is not limited to rollers, tension stretchers, coating equipment, cutting equipment, and clicker dies.

1B115 Equipment for the "production", handling and acceptance testing of propellants or propellant constituents specified in 1C115.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components in $ value
Related Controls: (1) For other equipment for ''production'', handling, mixing, curing, casting, pressing, machining, extruding or acceptance testing of solid propellants or propellant constituents, including but not limited to: equipment for the ''production'' of atomized or spherical metallic powder in a controlled environment; and fluid energy mills for grinding or milling ammonium perchlorate, RDX, or HMX; (2) Equipment for ''production'', handling, or acceptance testing of liquid propellants or propellant constituents; and (3) Specially designed components for the items described in 1B115.a is subject to the export licensing authority of the Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)
Related Definitions: N/A
Items: a. Batch mixers and continuous mixers, as follows, capable of mixing solid propellants or propellant constituents under vacuum in the range from 0 kPa to 13.326 kPa, and with temperature control capability of the mixing chamber:

a.1. Batch mixers having:

a.1.a. A total volumetric capacity of 110 liters (30 gallons) or more; and

a.1.b. At least one mixing/kneading shaft mounted off center;

a.2. Continuous mixers having:

a.2.a. Two or more mixing/kneading shafts; and

a.2.b. Capability to open the mixing chamber.

1B116 Specially designed nozzles for producing pyrolitically derived materials formed on a mold, mandrel or other substrate from precursor gases that decompose in the 1573 K (1300 °C) to 3,173 K (2900 °C) temperature range at pressures of 130 Pa to 20 kPa.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1B201 Filament winding machines, other than those specified in 1B001 or 1B101, in which the motions for positioning, wrapping, and winding fibers are coordinated and programmed in two or more axes, specially designed to fabricate "composite" structures or laminates from "fibrous and filamentary materials" and capable of winding cylindrical rotors of diameters between 75 mm (3 in.) and 400 mm (16 in.) and lengths of 600 mm (24 in.) or greater; coordinating and programming controls therefor; and precision mandrels therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1B225 Electrolytic cells for fluorine production with a production capacity greater than 250 g of fluorine per hour.

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1B226 Electromagnetic isotope separators designed for, or equipped with, single or multiple ion sources capable of providing a total ion beam current of 50 mA or greater.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: Isotope separators specially designed or prepared for separating uranium isotopes are subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)
Related Definitions: This entry controls; (a) separators capable of enriching stable isotopes; and, (b) seperators with the ion sources and collectors both in the magnetic field and those configurations in which they are external to the field.
Items: The list of items controlled is contained in the ECCN heading.

1B227 Ammonia synthesis converters or ammonia synthesis units in which the synthesis gas (nitrogen and hydrogen) is withdrawn from an ammonia/hydrogen high-pressure exchange column and the synthesized ammonia is returned to that column.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: N/A
Items: The list of items controlled is contained in the ECCN heading.

1B228 Hydrogen-cryogenic distillation columns having all of the following characteristics.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: Heavy water production equipment is also subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)
Related Definitions: N/A
Items: a. Designed to operate at internal temperatures of 35 K (−238 °C) or less;

b. Designed to operate at internal pressure of 0.5 to 5 Mpa (5 to 50 atmospheres);

c. Constructed of fine-grain stainless steels of the 300 series with low sulfur content or equivalent cryogenic and H_2-compatible materials; and

NOTE: Fine-grain stainless steels in this ECCN are defined to be fine-grain austenitic stainless steels with an ASTM (or equivalent standard) grain size number of 5 or greater.

d. With internal diameters of 1 m or greater and effective lengths of 5 m or greater.

1B229 Water-hydrogen sulfide exchange tray columns constructed from fine carbon steel with a diameter of 1.8 m (6 ft) or greater that can operate at a nominal pressure of 2 MPa (300 psi) or greater, and internal contactors therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) This entry does not control columns specially designed or prepared for the production of heavy water controlled on the NSG Trigger List (INFCIRC/254/part 2). See 10 CFR part 110 for heavy water production equipment subject to the export licensing authority of the Nuclear Regulatory Commission.

Related Definition: (1) 1B229 includes internal contactors of the columns are segmented trays with an effective assembled diameter of 1.8 m (6 ft.) or greater, are designed to facilitate countercurrent contacting and constructed of materials resistant to corrosion by hydrogen sulfide/water mixtures. These may be sieve trays, valve trays, bubble cap trays or turbogrid trays. (2) Fine carbon steel in this entry is defined to be steel with the austenitic ASTM (or equivalent standard) grain size number of 5 or greater. (3) Materials resistant to corrosion by hydrogen sulfide/water mixtures in this entry are defined to be stainless steels with a carbon content of 0.03% or less.

Items: The list of items controlled is contained in the ECCN heading.

1B230 Pumps circulating solutions of diluted or concentrated potassium amide catalyst in liquid ammonia (KNH_2/NH_3) having all of the following characteristics.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: Heavy water production equipment is also subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)

Related Definitions: N/A

Items: a. Airtight (i.e., hermetically sealed);

b. For concentrated potassium amide solutions (1% or greater), operating pressure of 1.5 to 60 MPa (15 to 600 atmospheres [atm]); or for dilute potassium amide solution (less than 1%), operating pressure of 20 to 60 MPa (200 to 600 atm); and

c. A capacity greater than 8.5 m^3/h (5 cubic feet per minute).

1B231 Tritium facilities, plants and equipment.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: This entry does not control tritium, tritium compounds, and mixtures containing tritium, or products or devices thereof. See 10 CFR part 110 for tritium subject to the export licensing authority of the Nuclear Regulatory Commission.

Related Definitions: N/A

Items: a. Facilities or plants for the production, recovery, extraction, concentration, or handling of tritium;

b. Equipment for tritium facilities or plants, as follows:

b.1. Hydrogen or helium refrigeration units capable of cooling to 23 K (−250 °C) or less, with heat removal capacity greater than 150 watts; or

b.2. Hydrogen isotope storage and purification systems using metal hydrides as the storage, or purification medium.

1B232 Turboexpanders or turboexpander-compressor sets designed for operation below 35K and a throughput of hydrogen gas of 1000 kg/hr or greater.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

C. MATERIALS

1C001 Materials specially designed for use as absorbers of electromagnetic waves, or intrinsically conductive polymers.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Materials for absorbing frequencies exceeding 2×10^8 Hz but less than 3×10^{12} Hz, except materials as follows:

a.1. Hair type absorbers, constructed of natural or synthetic fibers, with non-magnetic loading to provide absorption;

a.2. Absorbers having no magnetic loss and whose incident surface is non-planar in shape, including pyramids, cones, wedges and convoluted surfaces;

a.3. Planar absorbers:

a.3.a. Made from:

a.3.a.1. Plastic foam materials (flexible or non-flexible) with carbon-loading, or organic materials, including binders, providing more than 5% echo compared with metal over a bandwidth exceeding ±15% of the center frequency of the incident energy, and not capable of withstanding temperatures exceeding 450 K (177 °C); or

a.3.a.2. Ceramic materials providing more than 20% echo compared with metal over a bandwidth exceeding ± 15% of the center frequency of the incident energy, and not capable of withstanding temperatures exceeding 800 K (527 °C);

TECHNICAL NOTE: Absorption test samples for 1C001.a.3.a should be a square at least 5 wavelengths of center frequency on a side and positioned in the far field of the radiating element.

a.3.b. Tensile strength less than 7×10^6 N/m^2; and

a.3.c. Compressive strength less than 14×10^6 N/m^2;

a.4. Planar absorbers made of sintered ferrite, with:

a.4.a. A specific gravity exceeding 4.4; and

a.4.b. A maximum operating temperature of 548 K (275 °C);

NOTE: Nothing in 1C001.a releases magnetic materials to provide absorption when contained in paint.

b. Materials for absorbing frequencies exceeding 1.5×10^{14} Hz but less than 3.7×10^{14} Hz and not transparent to visible light;

c. Intrinsically conductive polymeric materials with a bulk electrical conductivity exceeding 10,000 S/m (Siemens per meter) or a sheet (surface) resistivity of less than 100 ohms/square, based on any of the following polymers:

c.1. Polyaniline;

c.2. Polypyrrole;

c.3. Polythiophene;

c.4. Poly phenylene-vinylene;

c.5. Poly thienylene-vinylene;

TECHNICAL NOTE: Bulk electrical conductivity and sheet (surface) resistivity should be determined using ASTM D–257 or equivalents.

1C002 Metal alloys, metal alloy powder or alloyed materials.

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
NP applies to 1C002.a.2.c or a.2.d if they exceed the parameters stated in 1C202	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definition: This entry does not control metal alloys, metal alloy powder or alloyed materials for coating substrates.
Items: a. Metal alloys, as follows:

a.1. Nickel or titanium-based alloys in the form of aluminides, as follows, in crude or semi-fabricated forms:

a.1.a. Nickel aluminides containing 10 weight percent or more aluminum;

a.1.b. Titanium aluminides containing 12 weight percent or more aluminum;

a.2. Metal alloys, as follows, made from metal alloy powder or particulate material controlled by 1C002.b:

a.2.a. Nickel alloys with:

a.2.a.1. A stress-rupture life of 10,000 hours or longer at 923 K (650 °C) and at a stress of 550 MPa; or

a.2.a.2. A low cycle fatigue life of 10,000 cycles or more at 823 K (550 °C) at a maximum stress of 700 MPa;

a.2.b. Niobium alloys with:

a.2.b.1. A stress-rupture life of 10,000 hours or longer at 1,073 K (800 °C) and at a stress of 400 MPa; or

a.2.b.2. A low cycle fatigue life of 10,000 cycles or more at 973 K (700 °C) at a maximum stress of 700 MPa;

a.2.c. Titanium alloys with:

a.2.c.1. A stress-rupture life of 10,000 hours or longer at 723 K (450 °C) and at a stress of 200 MPa; or

a.2.c.2. A low cycle fatigue life of 10,000 cycles or more at 723 K (450 °C) at a maximum stress of 400 MPa;

a.2.d. Aluminum alloys with a tensile strength of:

a.2.d.1. 240 MPa or more at 473 K (200 °C); or

a.2.d.2. 415 MPa or more at 298 K (25 °C);

a.2.e. Magnesium alloys with a tensile strength of 345 MPa or more and a corrosion rate of less than 1 mm/year in 3% sodium chloride aqueous solution measured in accordance with ASTM standard G–31 or equivalents;

TECHNICAL NOTES: 1. The metal alloys in 1C002.a are those containing a higher percentage by weight of the stated metal than of any other element.

2. Stress-rupture life should be measured in accordance with ASTM standard E–139 or equivalents.

3. Low cycle fatigue life should be measured in accordance with ASTM Standard E–606 'Recommended Practice for Constant-Amplitude Low-Cycle Fatigue Testing' or equivalents. Testing should be axial with an average stress ratio equal to 1 and a stress-concentration factor (K_t) equal to 1. The average stress is defined as maximum stress minus minimum stress divided by maximum stress.

b. Metal alloy powder or particulate material for materials controlled by 1C002.a, as follows:

b.1. Made from any of the following composition systems:

TECHNICAL NOTE: X in the following equals one or more alloying elements.

b.1.a. Nickel alloys (Ni-Al-X, Ni-X-Al) qualified for turbine engine parts or components, i.e. with less than 3 non-metallic particles (introduced during the manufacturing process) larger than 100 micrometer in 10^9 alloy particles;

b.1.b. Niobium alloys (Nb-Al-X or Nb-X-Al, Nb-Si-X or Nb-X-Si, Nb-Ti-X or Nb-X-Ti);

b.1.c. Titanium alloys (Ti-Al-X or Ti-X-Al);

b.1.d. Aluminum alloys (Al-Mg-X or Al-X-Mg, Al-Zn-X or Al-X-Zn, Al-Fe-X or Al-X-Fe); or

b.1.e. Magnesium alloys (Mg-Al-X or Mg-X-Al); and

TECHNICAL NOTE: X equals one or more alloying elements.

b.2. Made in a controlled environment by any of the following processes:

b.2.a. ''Vacuum atomization'';

b.2.b. ''Gas atomization'';

b.2.c. ''Rotary atomization'';

b.2.d. ''Splat quenching'';

b.2.e. ''Melt spinning'' and ''comminution'';

b.2.f. ''Melt extraction'' and ''comminution''; or

b.2.g. ''Mechanical alloying'';

c. Alloyed materials, in the form of uncomminuted flakes, ribbons or thin rods produced in a controlled environment by ''splat quenching,'' ''melt spinning'' or ''melt extraction'', used in the manufacture of metal alloy powder or particulate material controlled by 1C002.b;

1C003 Magnetic metals, of all types and of whatever form, having any of the following characteristics.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED:

Unit: Kilograms

Related Controls: N/A

Related Definitions: N/A

Items: a. Initial relative permeability 120,000 or more and thickness 0.05 mm or less;

TECHNICAL NOTE: Measurement of initial permeability must be performed on fully annealed materials.

b. Magnetostrictive alloys with:

b.1. A saturation magnetostriction of more than 5×10^{-4}; or

b.2. A magnetomechanical coupling factor (k) of more than 0.8; or

c. Amorphous alloy strips with:

c.1. A composition having a minimum of 75 weight percent of iron, cobalt or nickel; and

c.2. A saturation magnetic induction (B_s) of 1.6 T or more, and:

c.2.a. A strip thickness of 0.02 mm or less; or

c.2.b. An electrical resistivity of 2×10^{-4} ohmcm or more.

1C004 Uranium titanium alloys or tungsten alloys with a "matrix" based on iron, nickel or copper.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: N/A
Related Definitions: N/A
Items: a. A density exceeding 17.5 g/cm³;
b. An elastic limit exceeding 1,250 MPa;
c. An ultimate tensile strength exceeding 1,270 MPa; and
d. An elongation exceeding 8%.

1C005 "Superconductive" "composite" conductors in lengths exceeding 100 m or with a mass exceeding 100 g.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS:
LVS: $1500
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Multifilamentary ''superconductive'' ''composite'' conductors containing one or more niobium-titanium filaments:
a.1. Embedded in a ''matrix'' other than a copper or copper based mixed ''matrix''; or
a.2. With a cross-section area less than 0.28×10^{-4} mm² (i.e., 6 micrometer in diameter for circular filaments);
b. ''Superconductive'' ''composite'' conductors consisting of one or more ''superconductive'' filaments other than niobium-titanium:
b.1. With a ''critical temperature'' at zero magnetic induction exceeding 9.85 K (−263.31 °C) but less than 24 K (−249.16 °C);
b.2. With a cross-section of less than 0.28×10^{-4} mm²; and
b.3. Which remain in the ''superconductive'' state at a temperature of 4.2 K (−268.96 °C) when exposed to a magnetic field corresponding to a magnetic induction of 12 T.

1C006 Fluids and lubricating materials.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Barrels (55 U.S. gallons/ 209 liters)
Related Controls: N/A
Related Definitions: N/A
Items: a. Hydraulic fluids containing, as their principal ingredients, any of the following compounds or materials:
a.1. Synthetic hydrocarbon oils or silahydrocarbon oils with:
a.1.a. A flash point exceeding 477 K (204 °C);
a.1.b. A pour point at 239 K (−34 °C) or less;
a.1.c. A viscosity index of 75 or more; and
a.1.d. A thermal stability at 616 K (343 °C); or

NOTE: For the purpose of 1C006.a.1, silahydrocarbon oils contain exclusively silicon, hydrogen and carbon.

a.2. Chlorofluorocarbons with:
a.2.a. No flash point;
a.2.b. An autogenous ignition temperature exceeding 977 K (704 °C);
a.2.c. A pour point at 219 K (−54 °C) or less;
a.2.d. A viscosity index of 80 or more; and
a.2.e. A boiling point at 473 K (200 °C) or higher;

NOTE: For the purpose of 1C006.a.2, chlorofluorocarbons contain exclusively carbon, fluorine and chlorine.

b. Lubricating materials containing, as their principal ingredients, any of the following compounds or materials:
b.1. Phenylene or alkylphenylene ethers or thio-ethers, or their mixtures, containing more than two ether or thio-ether functions or mixtures thereof; or
b.2. Fluorinated silicone fluids with a kinematic viscosity of less than 5,000 mm²/s (5,000 centistokes) measured at 298 K (25 °C);
c. Damping or flotation fluids with a purity exceeding 99.8%, containing less than 25 particles of 200 micrometer or larger in size per 100 ml and made from at least 85% of any of the following compounds or materials:
c.1. Dibromotetrafluoroethane;
c.2. Polychlorotrifluoroethylene (oily and waxy modifications only); or
c.3. Polybromotrifluoroethylene;

TECHNICAL NOTE: For the purpose of 1C006:
a. Flash point is determined using the Cleveland Open Cup Method described in ASTM D–92 or equivalents.
b. Pour point is determined using the method described in ASTM D–97 or equivalents.
c. Viscosity index is determined using the method described in ASTM D–2270 or equivalents.
d. Thermal stability is determined by the following test procedure or equivalents: Twenty ml of the fluid under test is placed in a 46 ml type 317 stainless steel chamber containing one each of 12.5 mm (nominal) diameter balls of M–10 tool steel, 52100 steel and naval bronze (60% Cu, 39% Zn, 0.75% Sn). The chamber is purged with nitrogen, sealed at atmospheric pressure and the temperature raised to and maintained at 644±6 K (371±6 °C) for six hours. The specimen will be considered thermally stable if, on completion of the above procedure, all of the following conditions are met:
1. The loss in weight of each ball is less than 10 mg/mm² of ball surface;
2. The change in original viscosity as determined at 311 K (38 °C) is less than 25%; and
3. The total acid or base number is less than 0.40.
1e. Autogenous ignition temperature is determined using the method described in ASTM E–659 or equivalents.

1C007 Ceramic base materials, non-"composite" ceramic materials, ceramic "matrix" "composite" materials and precursor materials.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to items described in 1C007.d (dielectric constant less than 6 at frequencies from 100Hz to 10,000 MH_Z) for use in missile radomes	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000, except N/A for 1C007.e
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Base materials of single or complex borides of titanium having total metallic impurities, excluding intentional additions, of less than 5,000 ppm, an average particle size equal to or less than 5 micrometer and no more than 10% of the particles larger than 10 micrometer;

b. Non-''composite'' ceramic materials in crude or semi-fabricated form, composed of borides of titanium with a density of 98% or more of the theoretical density, except abrasives;

c. Ceramic-ceramic ''composite'' materials with a glass or oxide-''matrix'' and reinforced with fibers from any of the following systems:

c.1. Si–N;

c.2. Si–C;

c.3. Si–Al–O–N; or

c.4. Si–O–N;

d. Ceramic-ceramic ''composite'' materials, with or without a continuous metallic phase, containing finely dispersed particles or phases of any fibrous or whisker-like material, where carbides or nitrides of silicon, zirconium or boron form the ''matrix'';

e. Precursor materials (i.e., special purpose polymeric or metallo-organic materials) for producing any phase or phases of the materials controlled by 1C007.c, as follows:

e.1. Polydiorganosilanes (for producing silicon carbide);

e.2. Polysilazanes (for producing silicon nitride); or

e.3. Polycarbosilazanes (for producing ceramics with silicon, carbon and nitrogen components).

1C008 Non-fluorinated polymeric substances.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $200
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a.1. Bismaleimides;

a.2. Aromatic polyamide-imides;

a.3. Aromatic polyimides;

a.4. Aromatic polyetherimides having a glass transition temperature (T_g) exceeding 503 K (230 °C) as measured by the wet method.

NOTE: 1C008.a does not control non-fusible compression molding powders or molded forms.

b. Thermoplastic liquid crystal copolymers having a heat distortion temperature exceeding 523 K (250 °C) measured according to ASTM D–648, method A, or equivalents, with a load of 1.82 N/mm² and composed of:

b.1. Either of the following:

b.1.a. Phenylene, biphenylene or naphthalene; or

b.1.b. Methyl, tertiary-butyl or phenyl substituted phenylene, biphenylene or naphthalene; and

b.2. Any of the following acids:

b.2.a. Terephthalic acid;

b.2.b. 6-hydroxy-2 naphthoic acid; or

b.2.c. 4-hydroxybenzoic acid;

c. Polyarylene ether ketones, as follows:

c.1. Polyether ether ketone (PEEK);

c.2. Polyether ketone ketone (PEKK);

c.3. Polyether ketone (PEK);

c.4. Polyether ketone ether ketone ketone (PEKEKK);

d. Polyarylene ketones;

e. Polyarylene sulphides, where the arylene group is biphenylene, triphenylene or combinations thereof;

f. Polybiphenylenethersulphone.

1C009 Unprocessed fluorinated compounds.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A

Items: a. Copolymers of vinylidene fluoride having 75% or more beta crystalline structure without stretching;

b. Fluorinated polyimides containing 30% or more of combined fluorine;

c. Fluorinated phosphazene elastomers containing 30% or more of combined fluorine.

1C010 "Fibrous and filamentary materials" that may be used in organic "matrix", metallic "matrix" or carbon "matrix" "composite" structures or laminates.

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
NP applies to 1C010.a, .b, .c, and e.1	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500, except for 1C010.a, .b, .c and e.1
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Organic ''fibrous and filamentary materials'' (except polyethylene) with:

a.1. A ''specific modulus'' exceeding 12.7×10^6m; and

a.2. A ''specific tensile strength'' exceeding 23.5×10^4m;

b. Carbon ''fibrous and filamentary materials'' with:

b.1. A ''specific modulus'' exceeding 12.7×10^6m; and

b.2. A ''specific tensile strength'' exceeding 23.5×10^4m;

TECHNICAL NOTE: Properties for materials described in 1C010.b should be determined using Suppliers of Advance Composite Materials Association (SACMA) recommended methods SRM 12 to 17, or equivalent tow tests, such as Japanese Industrial Standard JIS–R–7601, Paragraph 6.6.2., and based on lot average.

NOTE: 1C010.b does not control fabric made from ''fibrous or filamentary materials'' for the repair of aircraft structures or laminates, in which the size of individual sheets does not exceed 50 cm×90 cm.

c. Inorganic ''fibrous or filamentary materials'' with:

c.1. A ''specific modulus'' exceeding 2.54×106 m; and

c.2. A melting, decomposition or sublimation point exceeding 1,922 K (1,649 °C) in an inert environment; except

NOTE: 1C010.c does not control:
1. Discontinuous, multiphase, polycrystalline alumina fibers in chopped fiber or random mat form, containing 3 weight percent or more silica, with a ''specific modulus'' of less than 10×10^6 m;
2. Molybdenum and molybdenum alloy fibers;
3. Boron fibers;
4. Discontinuous ceramic fibers with a melting, decomposition or sublimation point lower than 2,043 K (1,770 °C) in an inert environment.

d. ''Fibrous or filamentary materials'':

d.1. Composed of any of the following:

d.1.a. Polyetherimides controlled by 1C008.a; or

d.1.b. Materials controlled by 1C008.b, .c, .d, .e, or .f; or

d.2. Composed of materials controlled by 1C010.d.1.a or .b and ''commingled'' with other fibers controlled by 1C010.a, b, or c;

e. Resin- or pitch-impregnated fibers (prepregs), metal or carbon-coated fibers (preforms) or ''carbon fiber preforms'', as follows:

e.1. Made from ''fibrous or filamentary materials'' controlled by 1C010.a, .b, or .c; or

e.2. Made from organic or carbon ''fibrous or filamentary materials'':

e.2.a. With a ''specific tensile strength'' exceeding 17.7×10^4m;

e.2.b. With a ''specific modulus'' exceeding 10.15×10^6m;

e.2.c. Not controlled by 1C010.a or .b; and

e.2.d. When impregnated with materials controlled by 1C008 or 1C009.b, or with phenolic or epoxy resins, having a glass transition temperature (T_g) exceeding 383 K (110 °C).

NOTE: 1C010.e does not control epoxy resin matrix impregnated carbon ''fibrous or filamentary materials'' (prepregs) for the repair of aircraft structures or laminates, in which the size of individual sheets of prepreg does not exceed 50 cm×90cm.

1C018 Materials on the International Munitions List.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: Yes for items listed in Advisory Note to 1C018
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Ethyl and Methyl centralites.

b. NN-Diphenylurea (unsymmetrical diphenylurea).

c. Methyl-NN-diphenylurea (methyl unsymmetrical diphenylurea).

d. Ethyl-NN-diphenylurea (ethyl unsymmetrical diphenylurea).

e. Ethyl phenyl urethane.

f. Diphenyl urethane.

g. Diortho tolyl-urethane.

h. 2-Nitrodiphenylamine.

i. p-Nitromethylaniline.

j. 2,2' Dinitropropanol.

k. Bis(2,2' dinitropropyl) formal and acetal.

l. 3-Nitraza-1,5 pentane diisocyanate.

m. Guanidine nitrate.

n. Hydrogen peroxide in concentrations of 85%.

o. Charges specially designed for civilian applications, containing military explosives, except those items described in 1C992.

TECHNICAL NOTE: Military high explosives are solid, liquid or gaseous substances or mixtures of substances that, in their application as primary, booster, or main charges in warheads, demolition and other military applications, are required to detonate.

ADVISORY NOTE: Licenses are likely to be approved for export and reexport to satisfactory end-users in Country Group D:1 of certain explosive substances and mixtures in reasonable quantities for civilian or industrial purposes when made into cartridges or charges of an exclusively civilian or industrial nature, such as propellants for sporting purposes or shooting gallery practice; cartridges for riveting guns; and explosive charges for agricultural purposes, public works, mines, quarries or oil-well drilling. The following are the substances or mixtures to which this procedure applies:

a. Nitrate-based (40 percent or more) and provided they do not contain more than 40 percent nitroglycol/nitroglycerin or no more than 16 percent TNT;

b. Nitrocellulose with a nitrogen content of over 12.2 percent;

c. Nitroglycerin;

d. Single base nitrocellulose;

e. Sodium azide and other inorganic azides.

1C101 Materials and devices for reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures other than those controlled by 1C001, usable in "missiles" and their subsystems.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: Materials controlled by this entry include: (a) structural materials and coatings specially designed for reduced radar reflectivity; (b) coatings, including paints, specially designed for reduced or tailored reflectivity or emissivity in the microwave, infrared or ultraviolet spectra. This entry does not control coatings when specially used for the thermal control of satellites.
Items: The list of items controlled is contained in the ECCN heading.

1C107 Graphite and ceramic materials.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Fine grain recrystallized bulk graphites (with a bulk density of at least 1.72 g/cm^3 measured at 288 K (15 °C) and having a particle size of 100 micrometers or less), pyrolytic, or fibrous reinforced graphites usable for rocket nozzles and reentry vehicle nose tips; and

b. Ceramic ''composite'' materials (dielectric constant less than 6 at frequencies from 100 Hz to 10,000 MHz) for use in radomes, and bulk machinable silicon-carbide reinforced unfired ceramic, useable for nose tips.

1C115 Propellants and constituent chemicals for propellants.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: The following materials, whether or not encapsulated in aluminum, beryllium, magnesium, or zirconium are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls: (See 22 CFR part 121, Category V): (a) Spherical aluminum powder with particles of uniform diameter 60×10^{-6} m (60 micrometers) or less and an aluminum content of 97 percent or greater; (b) Metal fuels in particle sizes less than 60×10^{-6} m (60 microns), whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99 percent or more of: Boron; magnesium; zirconium; alloys of boron, magnesium or zirconium; beryllium; or iron powder with average particle size of 3×10^{-6} m (3 microns) or less produced by hydrogen reduction of iron oxide.
Related Definitions: N/A
Items: a. Fuel substances:

a.1. Spherical aluminum powder, as follows:

a.1.a. Spherical aluminum powder with particles of uniform diameter less than 500×10^{-6} m (500 micrometers), but greater than 60×10^{-6} m (60 micrometers), and an aluminum content of 97 percent by weight or greater;

a.1.b. Spherical aluminum powder with particles of uniform diameter 60×10^{-6} m (60 micrometers) or less, and an aluminum content of 97 percent by weight or greater, but less than 99 percent;

a.2. Metal fuels containing beryllium, boron, magnesium, zirconium, or alloys of boron, magnesium, or zirconium, as follows:

a.2.a. Metal fuels in particle sizes less than 500×10^{-6} m (500 microns), but equal to or greater than 60×10^{-6} m (60 microns), whether spherical, atomized, spheroidal, flaked or ground, consisting of 97 percent by weight or more of beryllium, boron, magnesium, zirconium, and alloys of boron, magnesium, or zirconium;

a.2.b. Metal fuels in particle sizes less than 60×10^{-6} m (60 microns), whether spherical, atomized, spheroidal, flaked or ground, consisting of 97 percent by weight or more, but less than 99 percent, of beryllium, boron, magnesium, zirconium, and alloys of boron, magnesium, or zirconium;

a.3. Metal fuels in particle sizes less than 500×10^{-6} m (500 microns), whether spherical, atomized, spheroidal, flaked or ground, consisting of 97 percent by weight or more of alloys of beryllium.

a.4. Liquid oxidizer substances:

a.4.a. Dinitrogen trioxide;

a.4.b. Nitrogen dioxide/dinitrogen tetroxide;

a.4.c. Dinitrogen pentoxide;

b. Polymeric substances:

b.1. Carboxy-terminated polybutadiene (CTPB);

b.2. Commercial grade Hydroxy-terminated polybutadiene (HTPB);

NOTE: Military grade (i.e., Hydroxy-terminated polybutadiene (HTPB) with a hydroxyl functionality greater than or equal to 2.2 but less than or equal to 2.4, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30 °C of less than 47 poise) is controlled by the Office of Defense Trade Controls, U.S. Department of State (see Category V of the USML (22 CFR part 121)).

b.3. Polybutadiene-acrylic acid (PBAA);

b.4. Polybutadiene-acrylic acid-acrylonitrile (PBAN).

c. Other propellant additives and agents:

c.1. Burning rate modifiers as follows: Butacene;

c.2. Nitrate esters and nitrated plasticizers as follows:

c.2.a. Triethylene glycol dinitrate (TEGDN);

c.2.b. Trimethylolethane trinitrate (TMETN);

c.2.c. Diethylene glycol dinitrate (DEGDN);

c.3. Stabilizers, as follows: 2-nitrodiphenylamine.

1C116 Maraging steels (steels generally characterized by high nickel, very low carbon content and the use of substitutional elements or precipitates to produce age-hardening), other than those controlled by 1C216, having an Ultimate Tensile Strength of 1500 MPa or greater measured at 293 K (20 °C), in the form of sheet, plate, or tubing with a wall or plate thickness equal to or less than 5.0mm (0.2 inch).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C117 Tungsten, molybdenum, and alloys of these metals in the form of uniform spherical or atomized particles of 500 micrometer diameter or less with a purity of 97% or higher for fabrication of rocket motor components; i.e., heat shields, nozzle substrates, nozzle throats, and thrust vector control surfaces.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C202 Aluminum and titanium alloys in the form of tubes or cylindrical solid forms (including forgings) with an outside diameter of more than 75 mm (3 inches).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls:
Related Definition: The phrase ''alloys capable of'' encompasses before and after heat treatment.
Items: a. Aluminum alloys capable of an ultimate tensile strength of 460 MPa ($.46\times10^9$ N/m^2) or more at 293 K (20 °C);

b. Titanium alloys capable of an ultimate tensile strength of 900 MPa (0.9×10^9 N/m^2) (130,500 lbs./in^2) or more at 293 K (20 °C).

1C210 "Fibrous and filamentary materials" not controlled by 1C010.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: See 9A110 for fiber prepregs.
Related Definitions: For the purpose of this entry, the term ''fibrous or filamentary materials'' means continuous monofilaments, yarns, rovings, tows or tapes.

Defintions for other terms used in this entry:

Filament or Monofilament is the smallest increment of fiber, usually several μ m in diameter.

Strand is a bundle of filaments (typically over 200) arranged approximately parallel.

Roving is a bundle (typically 12–120) of approximately parallel strands.

Yarn is a bundle of twisted strands.

Tow is a bundle of filaments, usually approximately parallel.

Tape is a material constructed of interlaced or unidirectional filaments, strands, rovings, tows or yarns, etc., usually preimpregnated with resin.

Specific modulus is the Young's modulus in N/m^2 divided by the specific weight in N/m^3, measured at a temperature of 23±2 °C and a relative humidity of 50±5 percent.

Specific tensile strength is the ultimate tensile strength in N/m^2 divided by specific weight in N/m^3, measured at a temperature of 23±2 °C and a relative humidity of 50±5 percent.

Items: a. Carbon and aramid ''fibrous and filamentary materials'' having:

a.1. A ''specific modulus'' of 12.7×10^6 m or greater; or

a.2. A ''specific tensile strength'' of 23.5×10^4 m or greater; or

NOTE: 1C210.a does not include aramid ''fibrous or filamentary materials'' having 0.25 percent or more by weight of an ester based fiber surface modifier.

b. Glass ''fibrous and filamentary materials'' having:

b.1. A ''specific modulus'' of 3.18×10^6 m or greater; and

b.2. A ''specific tensile strength'' of 7.62×10^4 m or greater; or

c. Thermoset resin impregnated continuous yarns, rovings, tows or tapes with a width no greater than 15 mm (prepregs), made from carbon or glass ''fibrous or filamentary materials'' described in 1C210.a or .b;

NOTE: The resin forms the matrix of the composite.

1C216 Maraging steel capable of an ultimate tensile strength of 2050 MPa (2.050×10^9 N/m^2) (300,000 lbs./in^2) or more at 293 K (20 °C), except forms in which no linear dimension exceeds 75 mm (3 inches).

LICENSE REQUIREMENTS

Reason for Control: NP, MT, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
MT applies to maraging steels controlled by this entry that also meet the specifications of 1C116	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: The phrase ''maraging steel capable of'' encompasses maraging steel before or after heat treatment.
Items: The list of items controlled is contained in the ECCN heading.

1C225 Boron and boron compounds, mixtures, and loaded materials in which the boron-10 isotope is more than 20% by weight of the total boron content.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C226 Parts made of tungsten, tungsten carbide, or tungsten alloys (greater than 90% tungsten) having a mass greater than 20 kg and a hollow cylindrical symmetry (including cylinder segments) with an inside diameter greater than 100 mm (4 in.), but less than 300 mm (12 in.), except parts specially designed for use as weights or gamma-ray collimators.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C227 Calcium (high purity) containing both less than 1,000 parts per million by weight of metallic impurities other than magnesium and less than 10 parts per million of boron.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C228 Magnesium (high purity) containing both less than 200 parts per million by weight of metallic impurities other than calcium and less than 10 parts per million of boron.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C229 High purity (99.99% or greater) bismuth with very low silver content (less than 10 parts per million).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C230 Beryllium.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: This entry does not control: (a) Metal windows for X-ray machines, or for bore-hole logging devices; (b) Oxide shapes in fabricated or semi-fabricated forms specially designed for electronic component parts or as substrates for electronic circuits; and, (c) Beryl (silicate of beryllium and aluminum) in the form of emeralds or aquamarines.
Items: a. Beryllium metal;

b. Alloys containing more than 50% beryllium by weight;

c. Beryllium compounds;

d. Manufactures of beryllium metal, alloys, or compounds described in 1C230.a, .b, or .c; or

e. Waste and scrap from beryllium metal, alloys, compounds, or manufactures thereof described in 1C230.a, .b, .c or .d.

1C231 Hafnium.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Hafnium metal;

b. Alloys and compounds of hafnium containing more than 60 percent hafnium by weight; or

c. Manufactures of hafnium metal, alloys, or compounds described in 1C231.a or .b.

1C232 Helium-3 or helium isotopically enriched in the helium-3 isotope, mixtures containing helium-3, and products or devices containing any of the foregoing, except; a product or device containing less than 1g of helium-3.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Liters
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C233 Lithium.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Lithium enriched in the 6 isotope (^{6}Li) to greater than 7.5 atom percent, alloys, compounds or mixtures containing lithium enriched in the 6 isotope, and products or devices containing any of the foregoing; except thermoluminescent dosimeters.

NOTE: The natural occurrence of the 6 isotope in lithium is 7.5 atom percent.

b. [Reserved]

1C234 Zirconium, with a hafnium content of less than 1 part hafnium to 500 parts zirconium by weight.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: Zirconium metal and alloys in the form of tubes or assemblies of tubes, specially designed or prepared for use in a reactor are subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)

This entry does not control zirconium in the form of foil or strip having a thickness not exceeding 0.10 mm (0.004 in.).

Items: a. Zirconium metal;

b. Alloys containing more than 50% zirconium by weight;

c. Compounds;

d. Manufactures of zirconium metal, alloys, or compounds described in 1C234.a, .b, or .c; or

e. Waste and scrap from zirconium metal, alloys, compounds, or manufactures thereof controlled by 1C234.a, .b, .c, or .d;

ADVISORY NOTE: (Not eligible for License Exception GBS) Licenses are likely to be approved for export and reexport to satisfactory end-users in Country Group D:1 of the following:

a. Finished parts made of zirconium metal or alloys, specially designed for an identified civil research or power reactor facility, provided that:

a.1. None of the parts contains fissile materials; and

a.2. The importing country has agreed to the application of the Safeguards of the International Atomic Energy Agency (IAEA) in connection with the nuclear reactor facility;

b. Contained zirconium metal, or parts made therefrom, in individual shipments not exceeding 100 kg, when intended for use in, or in support of, an identified civil research or power reactor facility, in connection with which it is contemplated that IAEA Safeguards would be applied.

N.B.: The provisions of this Advisory Note notwithstanding, current law prohibits approval to nuclear production or utilization facilities in the People's Republic of China.

1C236 Alpha-emitting radionuclides having an alpha half-life of 10 days or greater, but less than 200 years, including compounds and mixtures containing these radionuclides with a total alpha activity of 1 curie per kilogram (37 GBq) or greater; except devices containing less than 3.7 GBq (100 millicuries) of alpha activity per device.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Millicuries
Related Controls: Alpha emitting radionuclides are subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)
Related Definition: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C237 Radium-226, radium-226 compounds, or mixtures containing radium-226, and products or devices containing any of the foregoing; except medical applicators, or a product or device containing not more than 0.37 GBq (10 millicuries) of radium-226 in any form.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C238 Chlorine trifluoride ($C1F_3$).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C350 Chemicals, that may be used as precursors for toxic chemical agents.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 2
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: 1. *SAMPLE SHIPMENTS:* Certain sample shipments of chemicals controlled under ECCN 1C350 may be made without a license, as provided by the following: a. Chemicals Not Eligible: The following chemicals are not eligible for sample shipments: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), and Methylphosphonyl difluoride (C.A.S. #676–99–3).

b. Countries Not Eligible: The following countries are not eligible to receive sample shipments: Cuba, Iran, Libya, North Korea, Sudan, Syria.

c. Sample Shipments: A license is not required for sample shipments when the cumulative total of these shipments does not exceed a 55-gallon container or 200 kg of each chemical to any one consignee per calendar year. Multiple sample shipments, in any quantity, not exceeding the totals indicated in this paragraph may be exported without a license, in accordance with the provisions of this NOTE 1. A consignee that receives a sample shipment under this exclusion may not resell, transfer or reexport the sample shipment, but may use the sample shipment for any other legal purpose unrelated to chemical weapons. However, a sample shipment received under this exclusion remains subject to all General Prohibitions including the end-use restriction described in §744.4 of the EAR.

d. The exporter is required to submit a quarterly written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery (titled ''Report of Sample Shipments of Chemical Precursors'' at the top of the first page) and identify the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee's name and address, and the date exported. The report must be sent to the U.S. Department of Commerce, Bureau of Export Administration, Room 2705, Washington, DC 20230, Attn: ''Report of Sample Shipments of Chemical Precursors''.

2. *MIXTURES*: Mixtures controlled by this entry that contain certain concentrations of precursor and intermediate chemicals are subject to the following licensing requirements:

a. A license is required, regardless of the concentrations in the mixture, for the following chemicals: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0) and Methylphosphonyl difluoride (C.A.S. #676–99–3);

b. A license is required when at least one of the following chemicals constitutes more than 10 percent of the weight of the mixture on a solvent free basis: Arsenic trichloride (C.A.S. #7784–34–1), Benzilic acid (C.A.S. #76–93–7), Diethyl ethylphosphonate (C.A.S. #78–38–6), Diethyl methylphosphonite (C.A.S. #15715–41–0), Diethyl-N,N-dimethylphosphoroamidate (C.A.S. #2404–03–7), N,N-Diisopropyl-beta-aminoethane thiol (C.A.S. #5842–07–9), N,N-Diisopropyl-2-aminoethyl chloride hydrochloride (C.A.S. #4261–68–1), N,N-Diisopropyl-beta-aminoethanol (C.A.S. #96–80–0), N,N-Diisopropyl-beta-aminoethyl chloride (C.A.S. #96–79–7), Dimethyl ethylphosphonate (C.A.S. #6163–75–3), Dimethyl methylphosphonate (C.A.S. #756–79–6), Ethylphosphonous dichloride [Ethylphosphinyl dichloride] (C.A.S. #1498–40–4), Ethylphosphonus difluoride [Ethylphosphinyl difluoride] (C.A.S. #430–78–4), Ethylphosphonyl dichloride (C.A.S. #1066–50–8), Methylphosphonous dichloride [Methylphosphinyl dicloride] (C.A.S. #676–83–5), Methylphosphonous difluoride [Methylphosphinyl difluoride] (C.A.S. #753–59–3), Methylphosphonyl dichloride (C.A.S. #676–97–1), Pinacolyl alcohol (C.A.S. #464–07–3), 3-Quinuclidinol (C.A.S. #1619–34–7), and Thiodiglycol (C.A.S. #111–48–8); (Related ECCN: 1C995)

c. A license is required when at least one of all other chemicals in the List of Items Controlled constitutes more than 25 percent of the weight of the mixture on a solvent free basis (related ECCN: 1C995); and

d. A license is not required under this entry for mixtures when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are controlled by ECCN EAR99.

e. Calculation of concentrations of AG-controlled chemicals.

1. Usual Commercial Purposes. In calculating the percentage of an AG controlled chemical in a mixture (solution), any other chemical must be excluded if it was not added for usual commercial purposes, but was added for the sole purpose of circumventing the Export Administration Regulations.

2. ''Solvent Free Basis Requirement.'' When calculating the percentage, by weight, of components in a chemical mixture, you must exclude from the calculation any component of the mixture that acts as a solvent.

3. Solvent—For purposes of this ECCN ''A substance capable of dissolving another substance to form a uniformly dispersed mixture (solutiony''.

- Solvents are liquids at standard temperature and pressure (STP).
- In no instance is an AG controlled chemical considered a ''solvent''.
- All ingredients of mixtures are expressed in terms of weight.
- The solvent component of the mixture converts it into a solution.

3. *Trace Quantities:*

a. A license is required for mixtures containing any amount (including trace quantities) of the following chemicals: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), and Methylphosphonyl difluoride (C.A.S. #676–99–3).

b. Except as noted in paragraph (a) of this Note, a license is *not* required under this entry for mixtures that contain a cumulative total concentration of no more than 10,000 parts by weight (pbw) per million of all precursor or intermediate chemicals listed in this entry. The calculation for this paragraph (b) should not be done on a solvent-free basis (related ECCN: 1C995).

c. Countries Not Eligible: The following countries are not eligible for exports under this Trace Quantities Note: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

4. *COMPOUNDS:* A license is not required under this entry for chemical compounds created with any chemicals identified in this ECCN 1C350, unless those compounds are also identified in this entry.

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Liters or kilograms, as appropriate
Related Controls: N/A
Related Definition: See part 770.2(k) of the EAR for synonyms for the chemicals listed in this entry.
Items: a. Precursor Chemicals, as follows:

a.1. (C.A.S. #1341–49–7) Ammonium hydrogen fluoride;

a.2. (C.A.S. #7784–34–1) Arsenic trichloride;

a.3. (C.A.S. #76–93–7) Benzilic acid;

a.4. (C.A.S. #107–07–3) 2-Chloroethanol;

a.5. (C.A.S. #78–38–6) Diethyl ethylphosphonate;

a.6. (C.A.S. #15715–41–0) Diethyl methylphosphonite;

a.7. (C.A.S. #2404–03–7) Diethyl-N,N-dimethylphosphoroamidate;

a.8. (C.A.S. #762–04–9) Diethyl phosphite;

a.9. (C.A.S. #100–37–8) N,N-Diethylethanolamine;
a.10. (C.A.S. #5842–07–9) N,N-Diisopropyl-.beta.-aminoethanethiol;
a.11. (C.A.S. #4261–68–1) N,N-Diisopropyl-.2.-aminoethyl chloride hydrochloride;
a.12. (C.A.S. #96–80–0) N,N-Diisopropyl-.beta.-aminoethanol;
a.13. (C.A.S. #96–79–7), N,N-Diisopropyl-.beta.-aminoethyl chloride;
a.14. (C.A.S. #108–18–9) Diisopropylamine;
a.15. (C.A.S. #6163–75–3) Dimethyl ethylphosphonate;
a.16. (C.A.S. #756–79–6) Dimethyl methylphosphonate;
a.17. (C.A.S. #868–85–9) Dimethyl phosphite (dimethyl hyrogen phosphite);
a.18. (C.A.S. #124–40–3) Dimethylamine;
a.19. (C.A.S. #506–59–2) Dimethylamine hydrochloride;
a.20. (C.A.S. #57856–11–8) 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL);
a.21. (C.A.S. #1498–40–4) Ethylphosphonous dichloride [Ethylphosphinyl dichloride];/c
a.22. (C.A.S. #430–78–4) Ethylphosphonus difluoride [Ethylphosphinyl difluoride];
a.23. (C.A.S. #1066–50–8) Ethylphosphonyl dichloride;
a.24. (C.A.S. #753–98–0) Ethylphosphonyl difluoride;
a.25. (C.A.S. #7664–39–3) Hydrogen fluoride;
a.26. (C.A.S. #3554–74–3) 3-Hydroxyl-1-methylpiperidine;
a.27. (C.A.S. #76–89–1) Methyl benzilate;
a.28. (C.A.S. #676–83–5) Methylphosphonous dichloride [Methylphosphinyl dicloride];
a.29. (C.A.S. #753–59–3) Methylphosphonous difluoride [Methylphosphinyl difluoride];
a.30. (C.A.S. #676–97–1) Methylphosphonyl dichloride;
a.31. (C.A.S. #676–99–3) Methylphosphonyl difluoride;
a.32. (C.A.S. #10025–87–3) Phosphorus oxychloride;
a.33. (C.A.S. #10026–13–8) Phosphorus pentachloride;
a.34. (C.A.S. #1314–80–3) Phosphorus pentasulfide;
a.35. (C.A.S. #7719–12–2) Phosphorus trichloride;
a.36. (C.A.S. #75–97–8) Pinacolone;
a.37. (C.A.S. #464–07–3) Pinacolyl alcohol;
a.38. (C.A.S. #151–50–8) Potassium cyanide;
a.39. (C.A.S. #7789–23–3) Potassium fluoride;
a.40. (C.A.S. #7789–29–9) Potassium hydrogen fluoride;
a.41. (C.A.S. #1619–34–7) 3–Quinuclidinol;
a.42. (C.A.S. #3731–38–2) 3–Quinuclidinone;
a.43. (C.A.S. #1333–83–1) Sodium bifluoride;
a.44. (C.A.S. #143–33–9) Sodium cyanide;
a.45. (C.A.S. #7681–49–4) Sodium fluoride;
a.46. (C.A.S. #1313–82–2) Sodium sulfide;
a.47. (C.A.S. #10025–67–9) Sulfur monochloride;
a.48. (C.A.S. #10545–99–0) Sulfur dichloride;
a.49. (C.A.S. #111–48–8) Thiodiglycol;
a.50. (C.A.S. #7719–09–7) Thionyl chloride;
a.51. (C.A.S. #102–71–6) Triethanolamine;
a.52. (C.A.S. #637–39–8) Triethanolamine hydrochloride;
a.53. (C.A.S. #122–52–1) Triethyl phosphite; and
a.54. (C.A.S. #121–45–9) Trimethyl phosphite.
b. Reserved.

1C351 Human pathogens, zoonoses, and "toxins".

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: All vaccines and ''immunotoxins'' are excluded from the scope of this entry. See ECCN 1C996.
Related Definition: (1) For the purposes of this entry ''immunotoxin'' is defined as an antibody-toxin conjugate intended to destroy specific target cells (e.g., tumor cells) that bear antigens homologous to the antibody. (2) For the purposes of this entry ''subunit'' is defined as a portion of the ''toxin''.
Items: a. Viruses, as follows:
a.1. Chikungunya virus
a.2. Congo-Crimean haemorrhagic fever virus;
a.3. Dengue fever virus;
a.4. Eastern equine encephalitis virus;
a.5. Ebola virus;
a.6. Hantaan virus;
a.7. Japanese encephalitis virus;
a.8. Junin virus;
a.9. Lassa fever virus
a.10. Lymphocytic choriomeningitis virus;
a.11. Machupo virus;
a.12. Marburg virus;
a.13. Monkey pox virus;
a.14. Rift Valley fever virus;
a.15. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);
a.16. Variola virus;
a.17. Venezuelan equine encephalitis virus;
a.18. Western equine encephalitis virus;
a.19. White pox; or
a.20. Yellow fever virus.
b. Rickettsiae, as follows:
b.1. Bartonella quintana (Rochalimea quintana, Rickettsia quintana);
b.2. Coxiella burnetii;
b.3. Rickettsia prowasecki; or
b.4. Rickettsia rickettsii.
c. Bacteria, as follows:

c.1. Bacillus anthracis;
c.2. Brucella abortus;
c.3. Brucella melitensis;
c.4. Brucella suis;
c.5. Burkholderia mallei (Pseudomonas mallei);
c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);
c.7. Chlamydia psittaci;
c.8. Clostridium botulinum;
c.9. Francisella tularensis;
c.10. Salmonella typhi;
c.11. Shigella dysenteriae;
c.12. Vibrio cholerae;
c.13. Yersinia pestis.
d. ''Toxins'', as follows: and subunits thereof:
d.1. Botulinum toxins;
d.2. Clostridium perfringens toxins;
d.3. Conotoxin;
d.4. Microcystin (cyanogenosin);
d.5. Ricin;
d.6. Saxitoxin;
d.7. Shiga toxin;
d.8. Staphylococcus aureus toxins;
d.9. Tetrodotoxin; or
d.10. Verotoxin.

1C352 Animal pathogens.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country chart*
CB applies to entire entry	CB Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: All vaccines are excluded from the scope of this entry. See ECCN 1C996.
Related Definition: N/A
Items: a. Viruses, as follows:
a.1. African swine fever virus;
a.2. Avian influenza virus that are;
a.2.a. Defined in EC Directive 92/40/EC as having high pathogenicity, as follows:
a.2.a.1. Type A viruses with an IVPI (intravenous pathogenicity index) in 6 week old chickens of greater than 1.2; or
a.2.a.2. Type A viruses H5 or H7 subtype for which nucleotide sequencing has demonstrated multiple basic amino acids at the cleavage site of haemegglutinin.
a.2.b. Reserved.
a.3. Bluetongue virus;
a.4. Foot and mouth disease virus;
a.5. Goat pox virus;
a.6. Herpes virus (Aujeszky's disease);
a.7. Hog cholera virus;
a.8. Lyssa virus;
a.9. Newcastle disease virus
a.10. Peste des petits ruminants virus;
a.11. Porcine enterovirus type 9;
a.12. Rinderpest virus;
a.13. Sheep pox virus;
a.14. Teschen disease virus;
a.15. Vesicular stomatitis virus; and
b. Bacteria, as follows:
b.1. Mycoplasma mycoides;
b.2. Reserved.

1C353 Genetically modified "microorganisms".

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: All vacines are excluded from the scope of this entry. See ECCN 1C996.
Related Definition: N/A
Items: a. Genetically modified ''microorganisms'' or genetic elements that contain nucleic acid sequences associated with pathogenicity derived from organisms identified in ECCNs 1C351.a to .c, 1C352, or 1C354.
b. Genetically modified ''microorganisms'' or genetic elements that contain nucleic acid sequences coding for any of the ''toxins'', or their subunits, controlled by 1C351.,d

1C354 Plant pathogens.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: All vaccines are excluded from the scope of this entry. See ECCN 1C996.
Related Definitions: N/A
Items: a. Bacteria, as follows:
a.1. Xanthonomas albilineas;
a.2. Xanthonomas campestris pv. citri;
b. Fungi, as follows:
b.1. Colletotrichum coffeanum var. virulans;
b.2. Cochliobolus miyabeanus (Helminthosporium oryzae);
b.3. Microcyclus ulei (syn. Dothidella ulei);

b.4. Puccinia graminis (syn. Puccinia graminis f. sp. tritici);

b.5. Puccinia striiformis (syn. Puccinia glumarum); or

b.6. Pyricularia grisea/Pyricularia oryzae.

1C980 Inorganic chemicals listed in Supplement No. 1 to part 754 of the EAR that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR produced or derived commodities.

LICENSE REQUIREMENTS

Reason for Control: SS

SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

LIST OF ITEMS CONTROLLED

Unit: Barrels/Liters
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C981 Crude petroleum including reconstituted crude petroleum, tar sands & crude shale oil listed in Supplement No. 1 to part 754 of the EAR.

LICENSE REQUIREMENTS

Reason for Control: SS

SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

LIST OF ITEMS CONTROLLED

Unit: Barrels/Liters
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C982 Other petroleum products listed in Supplement No. 1 to part 754 of the EAR that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR produced or derived commodities.

LICENSE REQUIREMENTS

Reason for Control: SS

SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C983 Natural gas liquids and other natural gas derivatives listed in Supplement No. 1 to part 754 of the EAR that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR produced or derived commodities.

LICENSE REQUIREMENTS

Reason for Control: SS

SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

LIST OF ITEMS CONTROLLED

Unit: Barrels/Liters
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C984 Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy) listed in Supplement No. 1 to part 754 of the EAR that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR produced or derived commodities.

LICENSE REQUIREMENTS

Reason for Control: SS

SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

LIST OF ITEMS CONTROLLED

Unit: Millions of cubic feet
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C988 Western red cedar (thuja plicata), logs and timber, and rough, dressed and worked lumber containing wane listed in Supplement No. 2 to part 754 of the EAR.

LICENSE REQUIREMENTS

Reason for Control: SS

SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

LIST OF ITEMS CONTROLLED

Unit: Million board feet scribner
Related Controls: N/A

Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C991 Vaccines containing items controlled by ECCNs 1C351, 1C352, 1C353 and 1C354, and immunotoxins.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Related Definitions: For the purposes of this entry ''immunotoxin'' is defined as an antibody-toxin conjugate intended to destroy specific target cells (e.g., tumor cells) that bear antigens homologous to the antibody.
Items: The list of items controlled is contained in the ECCN heading.

1C992 Oil well perforators.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Materials in number
Related Controls: N/A
Related Definitions: N/A
Items: 1a. Shaped charges specially designed for oil well operations, utilizing one charge functioning along a single axis, that upon detonation produce a hole, and:

a.1. Contain any formulation of RDX, PYX, PETN, HNS, or HMX; and

a.2. Have only a uniformly shaped conical liner with an included angle of 90 degrees or less; and

a.3. Have a total explosive mass of no more than 90 grams; and

a.4. Have a diameter not exceeding three inches.

1C993 Fibrous and filamentary materials, not controlled by 1C010 or 1C210, for use in "composite" structures and with a specific modulus of 3.18 x 10^6 m or greater and a specific tensile strength of 7.62 x 10^4 m or greater.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C994 Fluorocarbon electronic cooling fluids.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: Fluorocarbon electronic cooling fluids made from at least 85% of any of the following:

a. Monomeric or polymeric forms of perfluoropolyalkylether-friazines or perfluoroaliphatic-ethers;

b. Perfluoroalkylamines; or

c. Perfluorocycloalkanes or perfluoroalkanes with all of the following characteristics:

c.1. Density of 298K (25 °C) of 1.5 g/ml or more;

c.2. In a liquid state at 273K; (0 °C); and

c.3. Containing 60% or more by weight of fluorine.

1C995 Mixtures containing precursor and intermediate chemicals used in the "production" of chemical warfare agents that are not controlled by ECCN 1C350.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Kilograms.
Related Controls: N/A.

Related Definition: For calculation of *de minimis* quantities of controlled chemicals in mixtures, see License Requirement Notes 2 and 3 under ECCN 1C350, and §770.4 of the EAR.

Items: The list of items controlled is contained in the ECCN heading.

D. SOFTWARE

1D001 "Software" specially designed or modified for the "development", "production", or "use" of items controlled by 1B001 to 1B003.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to ''software'' for the ''development'', ''production'', or ''use'' of items controlled by 1B001 for MT reasons	MT Column 1
NP applies to ''software'' for the ''development'', ''production'' or ''use'' of items controlled by 1B001 for NP reasons	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: Yes

TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1D002 "Software" for the "development" of organic matrix, metal matrix or carbon matrix laminates or "composites".

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to ''software'' specially designed or modified for the ''development'' of ''composites'' controlled by 1A, 1B or 1C entries for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: Yes

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1D018 "Software" specially designed or modified for the "development", "production", or "use" of items controlled by 1B018.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to ''software'' for the ''development'', ''production'', or ''use'' of items controlled by 1B018 for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1D101 Other "software" not controlled by 1D001, 1D002, 1D103, and 1D018 specially designed for the "development", "production", or "use" of items controlled by 1A, 1B, and 1C for MT reasons.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1D103 "Software" specially designed for analysis of reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1D201 "Software" specially designed or modified for the "use" of items controlled by 1B101 or 1B201 for NP reasons.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1D390 "Software" for process control that is specifically configured to control or initiate "production" of chemicals controlled by ECCN 1C350.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Items: The list of items controlled is contained in the ECCN heading.

1D993 "Software" specially designed for the "development", "production", or "use" of equipment or materials controlled by 1C210.b, 1C993, 1C994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

1E001 "Technology" according to the General Technology Note for the "development" or "production" of items controlled by 1A001.b, 1A001.c, 1A002, 1A003, 1A102, 1B or 1C (except 1C980 to 1C984, 1C988 and 1C991 to 1C995).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, CB, AT

Control(s)	*Country Chart*
NS applies to ''technology'' for items controlled by 1A001.b and .c, 1A002, 1A003, 1B001 to 1B003, 1B018, 1B225, 1C001 to 1C010, 1C018, 1C230, 1C231, 1C233, or 1C234	NS Column 1
MT applies to ''technology'' for items controlled by 1A002, 1A102, 1B001, 1B018, 1B101, 1B115, 1B116, 1C001, 1C007, 1C101, 1C107, 1C115 to 1C117, or 1C216 for MT reasons	MT Column 1
NP applies to ''technology'' for items controlled by 1A002, 1B001, 1B101, 1B201, 1B225 to 1B232, 1C001, 1C010, 1C202, 1C210, 1C216, 1C225 to 1C234, 1C236 to 1C238 for NP reasons	NP Column 1
CB applies to ''technology'' for items controlled by 1C351, 1C352, 1C353, or 1C354	CB Column 1
CB applies to ''technology'' for materials controlled by 1C350	CB Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: The corresponding EU number captures controls related to 1C235. This EU entry is not contained on the CCL and is subject to the export licensing authority of the Nuclear Regulatory Commission (See 10 CFR part 110.)
Items: The list of items controlled is contained in the ECCN heading.

1E002 Other "technology".

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Technology'' for the ''development'' or ''production'' of polybenzothiazoles or polybenzoxazoles;

b. ''Technology'' for the ''development'' or ''production'' of fluoroelastomer compounds containing at least one vinylether monomer;

c. ''Technology'' for the design or ''production'' of the following base materials or non-''composite'' ceramic materials:

c.1. Base materials having all the following characteristics:

c.1.a. Any of the following compositions:

c.1.a.1. Single or complex oxides of zirconium and complex oxides of silicon or aluminium;

c.1.a.2. Single nitrides of boron (cubic crystalline forms);

c.1.a.3. Single or complex carbides of silicon or boron; or

c.1.a.4. Single or complex nitrides of silicon;

c.1.b. Total metallic impurities, excluding intentional additions, of less than:

c.1.b.1. 1,000 ppm for single oxides or carbides; or

c.1.b.2. 5,000 ppm for complex compounds or single nitrides; and

c.1.c.1. Average particle size equal to or less than 5 micrometer and no more than 10% of the particles larger than 10 micrometer; or

N.B.: For zirconia, these limits are 1 micrometer and 5 micrometer respectively;

c.1.c.2.a. Platelets with a length to thickness ratio exceeding 5;

c.1.c.2.b. Whiskers with a length to diameter ratio exceeding 10 for diameters less than 2 micrometer; and

c.1.c.2.c. Continuous or chopped fibers less than 10 micrometer in diameter.

c.2. Non-''composite'' ceramic materials, except abrasives, composed of the materials described in 1E002.c.1;

d. ''Technology'' for the ''production'' of aromatic polyamide fibers;

e. ''Technology'' for the installation, maintenance or repair of materials controlled by 1C001;

f. ''Technology'' for the repair of ''composite'' structures, laminates or materials controlled by 1A002, 1C007.c, or 1C007.d.

NOTE: 1E002.f does not control ''technology'' for the repair of ''civil aircraft'' structures using carbon ''fibrous or filamentary materials'' and epoxy resins, contained in aircraft manufacturers' manuals.

1E101 "Technology" according to the General Technology Note for the "use" of items controlled by 1A102, 1B001, 1B101, 1B115, 1B116, 1C001, 1C101, 1C107 or 1C115 to 1C117 for MT reasons.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1E103 "Technology" (including processing conditions) and procedures for the regulation of temperature, pressures or atmosphere in autoclaves or hydroclaves when used for the "production" of "composites" or partially processed "composites".

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1E104 "Technology" for producing pyrolytically derived materials formed on a mould, mandrel, or other substrate from precursor gases that decompose at 1,300 °C to 2,900 °C temperature range at pressures of 130 Pa (1 mm Hg) to 20 kPa (150 mm Hg).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: This entry includes ''technology'' for the composition of precursor gasses, flow-rates and process control schedules and parameters.

Items: The list of items controlled is contained in the ECCN heading.

1E201 "Technology" according to the General Technology Note for the "use" of items controlled by 1A002, 1A202, 1A225 to 1A227, 1A290, 1B001.a, 1B101, 1B201, 1B225 to 1B232, 1C002.a.2.c or a.2.d, 1C010.b, 1C202, 1C210, 1C216, 1C225 to 1C239 or 1D201 for NP reasons.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E202 "Technology" according to the General Technology Note for the "development" or "production" of items controlled by 1A202 or 1A225 to 1A227, or 1A290.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E203 "Technology" according to the General Technology Note for the "development" of "software" controlled by 1D201.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E350 "Technology" for the "use" of chemicals controlled by 1C350 and for facilities designed or intended to produce chemicals controlled by 1C350.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. Overall plant design;
b. Design, specification, or procurement of equipment;
c. Supervision of construction, installation, or operation of complete plant or components thereof;
d. Training of personnel; and
e. Consultation on specific problems involving such facilities.

1E351 "Technology" for the "use" of microbiological materials controlled by 1C351, 1C352, 1C353, or 1C354.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E391 "Technology" for the disposal of chemicals or microbiological materials controlled by 1C350, 1C351, 1C352, 1C353, or 1C354.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to ''technology'' for the disposal of items controlled by 1C351, 1C352, 1C353, or 1C354	CB Column 1
CB applies to ''technology'' for the disposal of items controlled by 1C350	CB Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E994 "Technology" for the "development", "production", or "use" of fibrous and filamentary materials controlled by 1C993 or fluorocarbon electronic cooling fluids controlled by 1C994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

Category 2—Materials Processing

A. EQUIPMENT, ASSEMBLIES AND COMPONENTS

2A001 Ball bearings or solid roller bearings (except tapered roller bearings) having tolerances specified by the manufacturer in accordance with ABEC 7, ABEC 7P, or ABEC 7T or ISO Standard Class 4 or better (or equivalents) and having any of the following characteristics.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: Yes
CIV: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: Quiet running bearings are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category VI.)
Related Definitions: (*1.*) This entry does not control balls with tolerance specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse. (*2.*) (a) DN is the product of the bearing bore diameter in mm and the bearing rotational velocity in rpm. (b) Operating temperatures include those temperatures obtained when a gas turbine engine has stopped after operation. (*3.*) Annular Bearing Engineers Committee (ABEC)
Items: a. Rings, balls or rollers made from monel or beryllium;

b. Manufactured for use at operating temperatures above 573 K (300 °C) either by using special materials or by special heat treatment; or

c. With lubricating elements or component modifications that, according to the manufacturer's specifications, are specially designed to enable the bearings to operate at speeds exceeding 2.3 million DN.

2A002 Other ball bearings or solid roller bearings (except tapered roller bearings) having tolerances specified by the manufacturer in accordance with ABEC 9, ABEC 9P or ISO Standard Class 2 or better (or equivalents).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: Yes
CIV: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: (1) This entry does not control balls with tolerance specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse. (2)(a) DN is the product of the bearing bore diameter in mm and the bearing rotational velocity in rpm. (b) Operating temperatures include those temperatures obtained when a gas turbine engine has stopped after operation. (3) Annular Bearing Engineers Committee (ABEC)
Items: The list of items controlled is contained in the ECCN heading.

2A003 Solid tapered roller bearings, having tolerances specified by the manufacturer in accordance with ANSI/AFBMA Class 00 (inch) or Class A (metric) or better (or equivalents) and having either of the following characteristics.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: Yes
CIV: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: (1) This entry does not control balls with tolerance specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse. (2)(a) DN is the product of the bearing bore diameter in mm and the bearing rotational velocity in rpm. (b) Operating temperatures include those temperatures obtained when a gas turbine engine has stopped after operation. (3) American National Standards Institute (ANSI); Anti-Friction Bearing Manufacturers Association (AFBMA)

Items: a. With lubricating elements or component modifications that, according to the manufacturer's specifications, are specially designed to enable the bearings to operate at speeds exceeding 2.3 million DN; or

b. Manufactured for use at operating temperatures below 219 K (−54 °C) or above 423 K (150 °C).

2A004 Gas-lubricated foil bearing manufactured for use at operating temperatures of 561 K (288 °C) or higher and a unit load capacity exceeding 1 MPa.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: Yes

CIV: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: (a) DN is the product of the bearing bore diameter in mm and the bearing rotational velocity in rpm. (b) Operating temperatures include those temperatures obtained when a gas turbine engine has stopped after operation.

Items: The list of items controlled is contained in the ECCN heading.

2A005 Active magnetic bearing systems.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: (a) DN is the product of the bearing bore diameter in mm and the bearing rotational velocity in rpm. (b) Operating temperatures include those temperatures obtained when a gas turbine engine has stopped after operation.

Items: The list of items controlled is contained in the ECCN heading.

2A006 Fabric-lined self-aligning or fabric-lined journal sliding bearings manufactured for use at operating temperatures below 219 K(−54 °C) or above 423 K (150 °C).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: Yes

CIV: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definition: (a) DN is the product of the bearing bore diameter in mm and the bearing rotational velocity in rpm. (b) Operating temperatures include those temperatures obtained when a gas turbine engine has stopped after operation.

Items: The list of items controlled is contained in the ECCN heading.

2A225 Crucibles made of materials resistant to liquid actinide metals.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. Crucibles with a volume between 150 ml and 8 liters, and made of or coated with any of the following materials having a purity of 98% or greater:

a.1. Calcium fluoride (CaF_2);

a.2. Calcium zirconate (metazirconate) ($CaZrO_3$);

a.3. Cerium sulfide ($Ce_2 S_3$);

a.4. Erbium oxide (erbia) ($Er_2 O_3$);

a.5. Hafnium oxide (hafnia) (HfO_2);

a.6. Magnesium oxide (MgO);

a.7. Nitrided niobium-titanium-tungsten alloy (approximately 50% Nb, 30% Ti, and 20% W);

a.8. Yttrium oxide (yttria) (Y_2O_3); or

a.9. Zirconium oxide (zirconia) (ZrO_2);

b. Crucibles with a volume between 50 ml and 2 liters, and made of or lined with tantalum, having a purity of 99.9% or greater;

c. Crucibles with a volume between 50 ml and 2 liters and made of or lined with tantalum (having a purity of 98% or greater) or coated with tantalum carbide, nitride, boride (or any combination of these).

2A226 Valves not controlled by 0B001 that are 5 mm (0.2 in.) or greater in nominal size, with a bellows seal, wholly made of or lined with aluminum, aluminum alloy, nickel, or alloy containing 60% or more nickel, either manually or automatically operated.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: Valves are also subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)

Related Definition: For valves with different inlet and outlet diameter, the nominal size parameter above refers to the smallest diameter.

Items: The list of items controlled is contained in the ECCN heading.

2A290 Generators and other equipment specially designed, prepared, or intended for use with nuclear plants.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: Nuclear equipment is also subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)

Related Definitions: N/A

Items: a. Generators, turbine-generator sets, steam turbines, heat exchangers, and heat exchanger type condensers designed or intended for use in a nuclear reactor;

b. Process control systems intended for use with the equipment controlled by 2A290.a.

2A291 Equipment related to nuclear material handling and processing and to nuclear reactors.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: Nuclear equipment is also subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)

Related Definitions: N/A

Items: a. Process control systems, except those controlled by 2A290.b, intended for use with nuclear reactors.

b. Casks that are specially designed for transportation of high-level radioactive material and that weigh more than 1,000 kg.

c. Commodities, parts and accessories specially designed or prepared for use with nuclear plants (e.g., snubbers, airlocks, reactor and fuel inspection equipment) except items licensed by the Nuclear Regulatory Commission, pursuant to 10 CFR part 110.

2A292 Piping, fittings and valves made of, or lined with, stainless steel, copper-nickel alloy or other alloy steel containing 10% or more nickel and/or chromium.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Pressure tubes, pipes, and fittings in kilograms; valves in number; parts and accessories in $ value

Related Controls: Piping, fittings, and valves are also subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)

Related Definitions: N/A

Items: a. Pressure tube, pipe, and fittings of 200 mm (8 inches) or more inside diameter, and suitable for operation at pressures of 3.4 MPa (500 psi) or greater;

b. Pipe valves having all of the following characteristics:

b.1. A pipe size connection of 8 inches or more inside diameter;

b.2. Rated at 1,500 psi or more;

c. Parts, n.e.s.

2A293 Pumps designed to move molten metals by electromagnetic forces.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2A993 Explosive detection systems, consisting of an automated device, or combination of devices, with the ability to detect the presence of different types of explosives, in passenger checked baggage, without need for human skill, vigilance, or judgment.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2A994 Portable electric generators and specially designed parts.

LICENSE REQUIREMENTS

Reason for Control: AT

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya, and North Korea. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

NOTE: Exports from the U.S. and transhipments to Iran must be licensed by the Department of Treasury, Office of Foreign Assets Control. (See §742.8 and §746.7 of the EAR for additional information on this requirement.)

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

NOTE FOR CATEGORY 2B: 2B001 to 2B009 do not control measuring interferometer systems, without closed or open loop feedback, containing a ''laser'' to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.

2B001 "Numerical control" units, "motion control boards", specially designed for "numerical control" applications on machine tools, machine tools, and specially designed components therefore.

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
NP applies to entire entry	NP Column 1
Except as noted below: 2B001.a and .b unless controlled ''software'' in 2D001 or 2D002.b resides therein, 2B001.c.1.b.1 (turning machines only), c.1.b.2, c.1.b.3, c.1.b.4, c.1.b.5.b.2 (except bar machines (Swissturn), limited to machining only bar feed through, if maximum diameter is equal to or less than 42mm and there is no capability of mounting chucks. Machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm), c.1.b.6, c.2. and c.4, turning machines with capacity ≤35 mm in diameter, milling machines with greater than 2 meters travel and worse than 30 micron accuracy, or crankshaft and camshaft grinding machines	
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: Yes, for items described in Advisory Note 1
CIV: Yes, for items described in Advisory Note 1

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items:

TECHNICAL NOTES: 1. Secondary parallel contouring axes, e.g., the w-axis on horizontal boring mills or a secondary rotary axis the center line

of which is parallel to the primary rotary axis, are not counted in the total number of contouring axes.

NOTE: Rotary axes need not rotate over 360°. A rotary axis can be driven by a linear device, e.g., a screw or a rack-and-pinion.

2. Axis nomenclature shall be in accordance with International Standard ISO 841, Numerical Control Machines—Axis and Motion Nomenclature.

a. ''Numerical control'' units for machine tools, as follows, and specially designed components therefor:

a.1. Having more than four interpolating axes that can be coordinated simultaneously for ''contouring control''; or

a.2. Having two, three or four interpolating axes that can be coordinated simultaneously for ''contouring control'' and:

a.2.a. Capable of ''real-time processing'' of data to modify, during the machining operation, tool path, feed rate and spindle data by either:

a.2.a.1. Automatic calculation and modification of part program data for machining in two or more axes by means of measuring cycles and access to source data; or

a.2.a.2. ''Adaptive control'' with more than one physical variable measured and processing by means of a computing model (strategy) to change one or more machining instructions to optimize the process; or

a.2.b. Capable of receiving directly (on-line) and processing computer-aided-design (CAD) data for internal preparation of machine instructions; or

a.2.c. Capable, without modification, according to the manufacturer's technical specifications, of accepting additional boards which would permit an increase above the control levels specified in 2B001, in the number of interpolating axes that can be coordinated simultaneously for ''contouring control'', even if they do not contain these additional boards;

NOTE: 2B001.a does not control ''numerical control'' units if:

a. Modified for and incorporated in uncontrolled machines; or

b. Specially designed for uncontrolled machines.

b. ''Motion control boards'' specially designed for machine tools and having any of the following characteristics:

b.1. Interpolation in more than four axes;

b.2. Capable of ''real time processing'' as described in 2B001.a.2.a; or

b.3. Capable of receiving and processing CAD data as described in 2B001.a.2.b;

c. Machine tools, as follows, for removing or cutting metals, ceramics or composites, that, according to the manufacturer's technical specifications, can be equipped with electronic devices for simultaneous ''contouring control'' in two or more axes:

c.1. Machine tools for turning, grinding, milling or any combination thereof that:

c.1.a. Have two or more axes that can be coordinated simultaneously for ''contouring control''; and

c.1.b. Have any of the following characteristics:

c.1.b.1. Two or more contouring rotary axes;

TECHNICAL NOTE: The c-axis on jig grinders used to maintain grinding wheels normal to the work surface is not considered a contouring rotary axis.

c.1.b.2. One or more contouring ''tilting spindles'';

NOTE: 2B001.c.1.b.2 applies to machine tools for grinding or milling only.

c.1.b.3. ''Camming'' (axial displacement) in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

NOTE: 2B001.c.1.b.3 applies to machine tools for turning only.

c.1.b.4. ''Run out'' (out-of-true running) in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

c.1.b.5. The ''positioning accuracies'', with all compensations available, are less (better) than:

c.1.b.5.a. 0.001° on any rotary axis; or

c.1.b.5.b.1. 0.004 mm along any linear axis (overall positioning) for grinding machines;

c.1.b.5.b.2. 0.006 mm along any linear axis (overall positioning) for turning or milling machines;

N.B.: 2B001.c.1.b.5 does not control milling or turning machine tools with a positioning accuracy along one axis, with all compensations available, equal to or greater (worse) than 0.005 mm.

TECHNICAL NOTE: The positioning accuracy of ''numerically controlled'' machine tools is to be determined and presented in accordance with ISO/DIS 230/2, paragraph 2.13, in conjunction with the requirements below:

a. Test conditions (paragraph 3):

1. For 12 hours before and during measurements, the machine tool and accuracy measuring equipment will be kept at the same ambient temperature. During the premeasurement time the slides of the machine will be continuously cycled in the same manner that the accuracy measurements will be taken;

2. The machine shall be equipped with any mechanical, electronic, or software compensation to be exported with the machine;

3. Accuracy of measuring equipment for the measurements shall be at least four times more accurate than the expected machine tool accuracy;

4. Power supply for slide drives shall be as follows:

a. Line voltage variation shall not exceed ±10% of nominal rated voltage;

b. Frequency variation shall not exceed ±2 Hz of normal frequency;

c. Lineouts or interrupted service are not permitted.

b. Test program (paragraph 4):

1. Feed rate (velocity of slides) during measurement shall be the rapid traverse rate;

NOTE: In the case of machine tools that generate optical quality surfaces, the feedrate shall be equal to or less than 50 mm per minute.

2. Measurements shall be made in an incremental manner from one limit of the axis travel to the other without returning to the starting position for each move to the target position;

3. Axes not being measured shall be retained at mid travel during test of an axis.

c. Presentation of test results (paragraph 2): The results of the measurement must include:

1. Positioning accuracy (A); and

2. The mean reversal error (B).

c.1.b.6.a A ''positioning accuracy'' less (better) than 0.007 mm; and

c.1.b.6.b. A slide motion from rest for all slides within 20% of a motion command input for inputs of less than 0.5 micrometer;

TECHNICAL NOTE: Minimum increment of motion test (slide motion from rest): The test is conducted only if the machine tool is equipped with a control unit the minimum increment of which is less (better) than 0.5 micrometer. Prepare the machine for testing in accordance with ISO 230.2 paragraphs 3.1, 3.2, 3.3. Conduct the test on each axis (slide) of the machine tool as follows:

1. Move the axis over at least 50% of the maximum travel in plus and minus directions twice at maximum feed rate, rapid traverse rate or jog control;
2. Wait at least 10 seconds;
3. With manual data input, input the minimum programmable increment of the control unit;
4. Measure the axis movement;
5. Clear the control unit with the servo null, reset or whatever clears any signal (voltage) in the servo loop;
6. Repeat steps 2 to 5 five times, twice in the same direction of the axis travel and three times in the opposite direction of travel for a total of six test points;
7. If the axis movement is between 80% and 120% of the minimum programmable input for four of the six test points, the machine is controlled. For rotary axes, the measurement is taken 200 mm from the center of rotation.

NOTE 1: 2B001.c.1 does not control cylindrical external, internal, and external-internal grinding machines having all of the following characteristics:

a. Not centerless (shoe-type) grinding machines;
b. Limited to cylindrical grinding;
c. A maximum workpiece capacity of 150 mm diameter or length;
d. Only two axes which can be coordinated simultaneously for ''contouring control''; and
e. No contouring c axis.

NOTE 2: 2B001.c.1 does not control machines designed specifically as jig grinders having both of the following characteristics:

a. Axes limited to x, y, c and a, where the c-axis is used to maintain the grinding wheel normal to the work surface and the a-axis is configured to grind barrel cams; and
b. A spindle ''run out'' not less (not better) than 0.0006 mm.

NOTE 3: 2B001.c.1 does not control tool or cutter grinding machines having all of the following characteristics:

a. Shipped as a complete system with ''software'' specially designed for the production of tools or cutters;
b. No more than two rotary axes that can be coordinated simultaneously for ''contouring control'';
c. ''Run out'' (out-of-true running) in one revolution of the spindle not less (not better) than 0.0006 mm total indicator reading (TIR); and
d. The ''positioning accuracies'', with all compensations available, are not less (not better) than:
1. 0.004 mm along any linear axis for overall positioning; or
2. 0.001° on any rotary axis.

c.2. Electrical discharge machines (EDM) of the wire feed type that have five or more axes that can be coordinated simultaneously for ''contouring control'';

c.3. Electrical discharge machines (EDM) of the non-wire type that have two or more rotary axes that can be coordinated simultaneously for ''contouring control'';

c.4. Machine tools for removing metals, ceramics or composites:

c.4.a. By means of:

c.4.a.1. Water or other liquid jets, including those employing abrasive additives;

c.4.a.2. Electron beam; or

c.4.a.3. ''Laser'' beam; and

c.4.b. Having two or more rotary axes that:

c.4.b.1. Can be coordinated simultaneously for ''contouring control''; and

c.4.b.2. Have a ''positioning accuracy'' of less (better) than 0.003 °C.

TECHNICAL NOTE: Machines capable of being simultaneously coordinated for contouring control in two or more rotary axes or one or more ''tilting spindles'', remain controlled regardless of the number of simultaneously coordinated contouring axes that can be controlled by the ''numerical control'' unit attached to the machine.

2B002 Non-"numerically controlled" machine tools for generating optical quality surfaces.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: a. Turning machines using a single point cutting tool and having all of the following characteristics:

a.1. Slide ''positioning accuracy'' less (better) than 0.0005 mm per 300 mm of travel;

a.2. Bidirectional slide positioning ''repeatability'' less (better) than 0.00025 mm per 300 mm of travel;

a.3. Spindle ''run out'' and ''camming'' less (better) than 0.0004 mm total indicator reading (TIR);

a.4. Angular deviation of the slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over full travel; and

a.5. Slide perpendicularity less (better) than 0.001 mm per 300 mm of travel;

TECHNICAL NOTE: The bidirectional slide positioning ''repeatability'' (R) of an axis is the maximum value of the repeatability of positioning at any position along or around the axis determined using the procedure and under the conditions specified in part 2.11 of ISO 230/2: 1988.

b. Fly cutting machines having both of the following characteristics:

b.1. Spindle ''run out'' and ''camming'' less (better) than 0.004 mm TIR; and

b.2. Angular deviation of slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over full travel.

2B003 "Numerically controlled" or manual machine tools specially designed for cutting, finishing, grinding or honing either of the following classes of bevel or parallel axis hardened (R_c = 40 or more) gears, and specially designed components, controls and accessories therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000

GBS: Yes for 2B003.a

CIV: Yes for 2B003.a

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. Hardened bevel gears finished to a quality of better than American Gear Manufacturers Association (AGMA) 13 (equivalent to ISO 1328 class 4); or

b. Hardened spur, helical and double-helical gears with a pitch diameter exceeding 1,250 mm and a face width of 15% of pitch diameter or larger finished to a quality of AGMA 14 or better (equivalent to ISO 1328 class 3).

2B004 Hot "isostatic presses" and specially designed dies, molds, components, accessories and controls therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. Having a controlled thermal environment within the closed cavity and possessing a chamber cavity with an inside diameter of 406 mm or more; and

b. Having:

b.1. A maximum working pressure exceeding 207 MPa;

b.2. A controlled thermal environment exceeding 1,773 K (1,500 °C); or

b.3. A facility for hydrocarbon impregnation and removal of resultant gaseous degradation products.

TECHNICAL NOTE: The inside chamber dimension is that of the chamber in which both the working temperature and the working pressure are achieved and does not include fixtures. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated furnace chamber, depending on which of the two chambers is located inside the other.

2B005 Equipment specially designed for deposition, processing and in-process control of inorganic overlays, coatings and surface modification, for non-electronic substrates, by processes shown in the Table and associated Notes following 2E003.d, and specially designed automated handling, positioning, manipulation and control components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. ''Stored program controlled'' chemical vapor deposition (CVD) production equipment with both of the following:

a.1. Process modified for one of the following:

a.1.a. Pulsating CVD;

a.1.b. Controlled nucleation thermal decomposition (CNTD); or

a.1.c. Plasma enhanced or plasma assisted CVD; and

a.2. Either of the following:

a.2.a. Incorporating high vacuum (equal to or less than 0.01 Pa) rotating seals; or

a.2.b. Incorporating *in situ* coating thickness control;

b. ''Stored program controlled'' ion implantation production equipment having beam currents of 5 mA or more;

c. ''Stored program controlled'' electron beam physical vapor deposition (EB–PVD) production equipment incorporating:

c.1. Power systems rated for over 80 kW;

c.2. A liquid pool level ''laser'' control system that regulates precisely the ingots feed rate; and

c.3. A computer controlled rate monitor operating on the principle of photo-luminescence of the ionized atoms in the evaporant stream to control the deposition rate of a coating containing two or more elements;

d. ''Stored program controlled'' plasma spraying production equipment having either of the following characteristics:

d.1. Operating at reduced pressure controlled atmosphere (equal to or less than 10 kPa measured above and within 300 mm of the gun nozzle exit) in a vacuum chamber capable of evacuation down to 0.01 Pa prior to the spraying process; or

d.2. Incorporating *in situ* coating thickness control;

e. ''Stored program controlled'' sputter deposition production equipment capable of current densities of 0.1 mA/mm² or higher at a deposition rate of 15 micrometer/hr or more;

f. ''Stored program controlled'' cathodic arc deposition production equipment incorporating a grid of electromagnets for steering control of the arc spot on the cathode;

g. ''Stored program controlled'' ion plating production equipment allowing for the *in situ* measurement of either:

g.1. Coating thickness on the substrate and rate control; or

g.2. Optical characteristics.

NOTE: 2B005.g does not control standard ion plating coating equipment for cutting or machining tools.

2B006 Dimensional inspection or measuring systems or equipment.

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
NP applies to 2B006.a, b and .c	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definition: This entry does not control measuring interferometer systems, without closed or open loop feedback, containing a ''laser'' to measure slide movement errors of machine tools, dimensional inspection machines or similar equipment.
Items: a. Computer controlled, ''numerically controlled'' or ''stored program controlled'' dimensional inspection machines, having both of the following characteristics:

a.1. Two or more axes; and

a.2. A one dimensional length ''measurement uncertainty'' equal to or less (better) than (1.25+L/1,000) micrometer tested with a probe with an ''accuracy'' of less (better) than 0.2 micrometer (L is the measured length in mm);

b. Linear and angular displacement measuring instruments, as follows:

b.1. Linear measuring instruments having any of the following characteristics:

b.1.a. Non-contact type measuring systems with a ''resolution'' equal to or less (better) than 0.2 micrometer within a measuring range up to 0.2 mm;

b.1.b. Linear voltage differential transformer systems with both of the following characteristics:

b.1.b.1. ''Linearity'' equal to or less (better) than 0.1% within a measuring range up to 5 mm; and

b.1.b.2. Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ±1 K; or

b.1.c. Measuring systems having both of the following characteristics:

b.1.c.1. Containing a ''laser''; and

b.1.c.2. Maintaining, for at least 12 hours, over a temperature range of ±1 K around a standard temperature and at a standard pressure:

b.1.c.2.a. A ''resolution'' over their full scale of 0.1 micrometer or less (better); and

b.1.c.2.b. A ''measurement uncertainty'' equal to or less (better) than (0.2+L/2,000) micrometer (L is the measured length in mm);

b.2. Angular measuring instruments having an ''angular position deviation'' equal to or less (better) than 0.00025°;

NOTE: 2B006.b.2 does not control optical instruments, such as autocollimators, using collimated light to detect angular displacement of a mirror.

c. Systems for simultaneous linear-angular inspection of hemishells, having both of the following characteristics:

c.1. ''Measurement uncertainty'' along any linear axis equal to or less (better) than 3.5 micrometer per 5 mm; and

c.2. ''Angular position deviation'' equal to or less (better) than 0.02°;

d. Equipment for measuring surface irregularities, by measuring optical scatter as a function of angle, with a sensitivity of 0.5 nm or less (better);

NOTES: 1. Machine tools that can be used as measuring machines are controlled if they meet or exceed the criteria specified for the machine tool function or the measuring machine function.

2. A machine described in 2B006 is controlled if it exceeds the control threshold anywhere within its operating range.

TECHNICAL NOTES: 1. The probe used in determining the ''measurement uncertainty'' of a dimensional inspection system shall be as described in VDI/VDE 2617 Parts 2, 3, and 4.

2. All measurement values in 2B006 represent permissible positive and negative deviations from the target value, i.e., not total band.

2B007 "Robots", and specially designed controllers and "end-effectors" therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
NP applies to 2B007.b and .c and to specially designed controllers and ''endeffectors'' therefor.	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000, except 2B007.b and .c
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A
Related Definitions: N/A
Items: a. Capable in real time of full three-dimensional image processing or full three-dimensional scene analysis to generate or modify ''programs'' or to generate or modify numerical program data;

NOTE: The scene analysis limitation does not include approximation of the third dimension by viewing at a given angle, or limited grey scale interpretation for the perception of depth or texture for the approved tasks (2½ D).

b. Specially designed to comply with safety standards applicable to explosive munitions environments (i.e.) meeting electrical code ratings for high explosives); or

c. Specially designed or rated as radiation hardened to withstand greater than 5×10^4 grays(Silicon) (5×10^6 rad(Silicon)) without operational degradation.

2B008 Assemblies, units or inserts specially designed for machine tools, or for equipment controlled by 2B006 or 2B007.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: This entry does not control measuring interferometer systems, without closed or open loop feedback, containing a laser to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.
Items: a. Spindle assemblies, consisting of spindles and bearings as a minimal assembly, with radial (''run out'') or axial (''camming'') axis motion in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

b. Linear position feedback units, e.g., inductive type devices, graduated scales, infrared systems or ''laser'' systems, having an overall ''accuracy'' less (better) than $(800 + (600 \times L \times 10^{-3}))$nm (L equals the effective length in mm);

c. Rotary position feedback units, e.g., inductive type devices, graduated scales, infrared systems or ''laser'' systems, having an ''accuracy'' less (better) than 0.00025°;

d. Slide way assemblies consisting of a minimal assembly of ways, bed and slide having all of the following characteristics:

d.1. A yaw, pitch or roll of less (better) than 2 seconds of arc TIR (reference: ISO/DIS 230/1) over full travel;

d.2. A horizontal straightness of less (better) than 2 micrometer per 300 mm length; and

d.3. A vertical straightness of less (better) than 2 micrometer per 300 mm length;

e. Single point diamond cutting tool inserts, having all of the following characteristics:

e.1. Flawless and chip-free cutting edge when magnified 400 times in any direction;

e.2. Cutting radius from 0.1 to 5 mm inclusive; and

e.3. Cutting radius out-of-roundness less (better) than 0.002 mm TIR.

2B009 Specially designed printed circuit boards with mounted components, or "compound rotary tables" or "tilting spindles", capable of upgrading, according to the manufacturer's specifications, "numerical control" units, machine tools or feed-back devices to or above the levels specified in ECCNs 2B001, 2B002, 2B003, 2B004, 2B005, 2B006, 2B007, or 2B008.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2B018 Equipment on the International Munitions List.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, RS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) usable in systems that are controlled for MT reasons including their propulsion systems and components, and pyrolytic deposition and densification equipment	MT Column 1
RS applies to entire entry	RS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: Yes for Advisory Note in this entry to 2B018

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in § value

Related Controls: N/A

Related Definitions: N/A

Items: Specialized machinery, equipment, gear, and specially designed parts and accessories therefor, including but not limited to the following, that are specially designed for the examination, manufacture, testing, and checking of arms, appliances, machines, and implements of war:

a. Armor plate drilling machines, other than radial drilling machines;

b. Armor plate planing machines;

c. Armor plate quenching presses;

d. Centrifugal casting machines capable of casting tubes 6 feet (183 cm) or more in length, with a wall thickness of 2 inches (5 cm) and over;

e. Gun barrel rifling and broaching machines, and tools therefor;

f. Gun barrel rifling machines;

g. Gun barrel trepanning machines;

h. Gun boring and turning machines;

i. Gun honing machines of 6 feet (183 cm) stroke or more;

j. Gun jump screw lathes;

k. Gun rifling machines;

l. Gun straightening presses;

m. Induction hardening machines for tank turret rings and sprockets;

n. Jigs and fixtures and other metal-working implements or accessories of the kinds exclusively designed for use in the manufacture of firearms, ordnance, and other stores and appliances for land, sea, or aerial warfare;

o. Small arms chambering machines;

p. Small arms deep hole drilling machines and drills therefor;

q. Small arms rifling machines;

r. Small arms spill boring machines;

s. Tank turret bearing grinding machines.

ADVISORY NOTE: Licenses are likely to be approved, as administrative exceptions, for export and reexport to Country Group D:1 of equipment used to determine the safety data of explosives, as required by the International Convention on the Transport of Dangerous Goods (C.I.M.) articles 3 and 4 in Annex 1 RID, provided that such equipment will be used only by the railway authorities of current C.I.M. members, or by the Government-accredited testing facilities in those countries, for the testing of explosives to transport safety standards, of the following description:

a. Equipment for determining the ignition and deflagration temperatures;

b. Equipment for steel-shell tests;

c. Drophammers not exceeding 20 kg in weight for determining the sensitivity of explosives to shock;

d. Equipment for determining the friction sensitivity of explosives when exposed to charges not exceeding 36 kg in weight.

2B104 Equipment and process controls designed or modified for densification and pyrolysis of structural composite rocket nozzles and reentry vehicle nose tips.

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
NP applies to 2B104.a	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number

Related Controls: N/A

Related Definitions: N/A

Items: a. ''Isostatic presses'' other than those controlled by 2B004 having all of the following characteristics:

a.1. Capable of achieving a maximum working pressure of 10,000 psi (69 MPa) or greater;

a.2. Designed to achieve and maintain a controlled thermal environment of 873 K (600 °C) or greater; and

a.3. Possessing a chamber cavity with an inside diameter of 254 mm or greater;

b. Chemical vapor deposition furnaces designed or modified for the densification of carbon-carbon composites.

2B115 Flow forming machines, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
NP applies to 2B115.a	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: N/A

Related Definition: This entry controls only spin-forming machines combining the functions of spin-forming and flow-forming.

Items: a. Flow-forming and spin-forming machines, and specially designed components therefor, that according to the manufacturer's technical specifications, can be equipped with ''numerical control'' units or a computer control; *and*

b. Having more than two axes that can be coordinated simultaneously for ''contouring control''.

2B116 Vibration test systems, equipment, and components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3,000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: NOTE: The term ''digital control'' refers to equipment, the functions of which are, partly or entirely, automatically controlled by stored and digitally coded electrical signals.
Items: a. Vibration test systems employing feedback or closed loop techniques and incorporating a digital controller, capable of vibrating a system at 10 g RMS or more over the entire range 20 Hz to 2,000 Hz and imparting forces of 50 kN (11,250 lbs.), measured ''bare table'', or greater;

NOTE: NP controls in 2B116.a apply to electrodynamic vibration test systems, employing feedback or closed loop control techniques and incorporating a digital controller, capable of vibrating at 10 g RMS or more between 20 Hz and 2000 Hz and imparting forces of 50 kN (11,250 lbs.) measured ''bare table,'' or greater.

b. Digital controllers, combined with specially designed vibration test ''software'', with a real-time bandwidth greater than 5 kHz and designed for use with vibration test systems described in 2B116.a;

c. Vibration thrusters (shaker units), with or without associated amplifiers, capable of imparting a force of 50 kN (11,250 lbs.), measured ''bare table'', or greater, and usable in vibration test systems described in 2B116.a;

d. Test piece support structures and electronic units designed to combine multiple shaker units into a complete shaker system capable of providing an effective combined force of 50 kN, measured ''bare table'', or greater, and usable in vibration test systems described in 2B116.a.

2B204 "Isostatic presses," not controlled by 2B004 or 2B104, capable of achieving a maximum working pressure of 10,000 psi (69 MPa) or greater and having a chamber cavity with an inside diameter in excess of 152 mm (6 inches) and specially designed dies and moulds, and controls therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definition: N/A
Items: The list of items controlled is contained in the ECCN heading.

2B207 "Robots", and "end-effectors", other than those controlled by 2B007, specially designed to comply with safety standards applicable to handling explosives (i.e., meeting electrical code ratings for high explosives) and specially designed controllers therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2B215 Flow-forming and spin-forming machines other than those controlled by 2B115, and rotor-forming mandrels.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definition: This entry controls only spin-forming machines combining the functions of spin-forming and flow-forming.
Items: a. Having three or more rollers (active or guiding); and

a.1. According to the manufacturer's technical specifications, can be equipped with ''numerical control'' units or a computer control;

b. Rotor-forming mandrels designed to form cylindrical rotors of inside diameter between 75 mm (3 in.) and 400 mm (16 in.).

NOTE: This entry includes machines which have only a single roller designed to deform metal plus two auxiliary rollers which support the mandrel, but do not participate directly in the deformation process.

2B225 Remote manipulators that can be used to provide remote actions in radiochemical separation operations and hot cells.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: Remote manipulators provide translation of human operator actions to a remote operating arm and terminal fixture. They may be of a 'master/slave' type or operated by joystick or keypad.
Items: a. Having a capability of penetrating 0.6 m or more of hot cell wall (through-the-wall operation); or

b. Having a capability of bridging over the top of a hot cell wall with a thickness of 0.6 m or more (over-the-wall operation)

2B226 Vacuum and controlled environment (inert gas) induction) furnaces capable of operating above 1,123 K (850°C) and having induction coils 600 mm or less in diameter and designed for power inputs of 5 kW or more, and power supplies specially designed therefor with a specified power output of 5 kW or more.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: This entry does not control furnaces designed for semiconductor wafer manufacturing or processing.
Items: The list of items controlled is contained in the ECCN heading.

2B227 Vacuum and controlled atmosphere metallurgical melting and casting furnaces, and specially configured computer control and monitoring systems therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: This entry does not control furnaces designed for semiconductor wafer manufacturing or processing.
Items: a. Arc remelt and casting furnaces with consumable electrode capacities between 1,000 cm^3 and 20,000 cm^3, and capable of operating with melting temperatures above 1,973 K (1,700 °C);

b. Electron beam melting and plasma atomization and melting furnaces with a power of 50 kW or greater and capable of operating with melting temperatures above 1,473 K (1,200 °C).

2B228 Rotor fabrication and assembly equipment and bellows-forming mandrels and dies.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: N/A
Items: a. Rotor assembly equipment (e.g., precision mandrels, clamps, and shrink fit machines) for assembly of gas centrifuge rotor tube sections, baffles, and end caps.

b. Rotor straightening equipment for alignment of gas centrifuge rotor tube sections to a common axis;

TECHNICAL NOTE: Normally such equipment will consist of precision measuring probes linked to a computer that subsequently controls the action of, for example, pneumatic rams used for aligning the rotor tube sections.

c. Bellows-forming mandrels and dies for producing single-convolution bellows (bellows made of high-strength aluminum alloys, maraging steel, or high-strength filamentary

materials) that have all of the following dimensions:

c.1. 75 mm to 400 mm (3 in. to 6 in.) inside diameter;

c.2. 12.7 mm (0.5 in) or more in length; *and*

c.3. Single convolution depth more than 2 mm (0.08 in.).

2B229 Centrifugal balancing machines, fixed or portable, horizontal or vertical.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Designed for balancing flexible rotors having a length of 600 mm (24 in.) or more and having all of the following characteristics:

a.1. A swing or journal diameter of 75 mm (3 in.) or more;

a.2. Mass capability for 0.9 kg (2 lb.) to 23 kg (50 lb.); and

a.3. Capable of balancing speed of more than 5,000 rpm;

b. Designed for balancing hollow cylindrical rotor components, and having all of the following characteristics:

b.1. A journal diameter of 75 mm (3 in.) or more;

b.2. Mass capability from 0.9 kg (2 lb.) to 23 kg (50 lb.);

b.3. Capable of balancing to a residual imbalance of 0.010 kg-mm/kg per plane or better; and

b.4. Belt drive type.

2B230 Pressure transducers which are capable of measuring absolute pressure at any point in the range 0 to 13 kPa, with pressure sensing elements made of or protected by nickel, nickel alloys with more than 60% nickel by weight, aluminum or aluminum alloys.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: (1) Pressure transducers are devices that convert pressure measurements into an electrical signal. (2) For the purposes of this entry, ''accuracy'' includes non-linearity, hysteresis and repeatability at ambient temperature.
Items: a. Transducers with a full scale of less than 13 kPa and an accuracy of better than ±1% of full scale;

b. Transducers with a full scale of 13 kPa or greater and an accuracy of better than ±130 Pa.

2B231 Vacuum pumps with an input throat size of 38 cm (15 in.) or greater with a pumping speed of 15,000 liters/second or greater and capable of producing an ultimate vacuum better than 10^4 Torr (1.33×10^{-4} mbar).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: Vacuum pumps for gaseous diffusion separation process are subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)
Related Definition: (1) The ultimate vacuum is determined at the input of the pump with the input of the pump blocked off. (2) The pumping speed is determined at the measurement point with nitrogen gas or air.
Items: The list of items controlled is contained in the ECCN heading.

2B232 Multistage light gas guns or other high-velocity gun systems (coil, electromagnetic, electrothermal, or other advanced systems) capable of accelerating projectiles to 2 km/s or greater and specialized components therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A

Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2B290 "Numerically controlled" machine tools not controlled by 2B001.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in § value
Related Controls: N/A
Related Definition: N/A
Items: a. Turning machines or combination turning/milling machines that are capable of machining diameters greater than 2.5 meters.
b. [Reserved]

2B350 Chemical manufacturing facilities and equipment.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 3
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: The controls in this entry do not apply to equipment that is; a.) specially designed for use in civil applications (e.g., food processing, pulp and paper processing, or water purification); AND b.) inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the flow of chemical weapons precursors controlled by 1C350.
Related Definition: For purposes of this entry the term ''chemical warfare agents'' are those agents subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR Part 121, Category XIV)
Items: a. Chemical processing equipment described in paragraph a.1 having any of the flow contact surfaces described in paragraph a.2:
a.1. Chemical processing equipment, as follows:
a.1.a. Reaction vessels or reactors, with or without agitators, with a total internal (geometric) volume greater than 0.1 m^3 (100 liters) and less than 20 m^3 (20,000 liters);
a.1.b Agitators for use in reaction vessels or reactors described in 2B350.a.1.a;
a.1.c. Storage tanks, containers or receivers with a total internal (geometric) volume greater than 0.1 m^3 (100 1);
a.1.d. Heat exchangers or condensers with a heat transfer surface area less than 20 m^2;
a.1.e. Distillation or absorption columns having a diameter greater than 0.1 m;
a.1.f. Multiple seal valves incorporating a leak detection port, bellows-seal valves, non-return (check) valves or diaphragm valves; or
a.1.g. Multi-walled piping incorporating a leak detection port;
a.2. Where all surfaces that come into direct contact with the chemical(s) being processed or contained are made from any of the following materials:
a.2.a. Nickel, or alloys with more than 40% nickel by weight;
a.2.b. Alloys with more than 25% nickel and 20% chromium by weight;
a.2.c. Fluoropolymers;
a.2.d. Glass or glass-lined (including vitrified or enamelled coating);
a.2.e. Graphite (for heat exchangers or condensers, distillation or absorption columns, or multi-walled piping only);
a.2.f. Tantalum or tantalum alloys;
a.2.g. Titanium or titanium alloys; or
a.2.h. Zirconium or zirconium alloys.
b. Remotely operated filling equipment in which all surfaces that come into direct contact with the chemical(s) being processed are made from any of the following materials:
b.1. Nickel, or alloys with more than 40% nickel by weight; or
b.2. Alloys with more than 25% nickel and 20% chromium by weight.
c. Multi-seal, canned drive, magnetic, bellows, or diaphragm pumps, with manufacturer's specified maximum flow-rate greater than 0.6m^3/h, or vacuum pumps with the manufacturer's specified maximum flow-rate greater than 5 m^3/h (under standard temperature (0 °C) and pressure (101.30 kPa) conditions) in which all surfaces that come into direct contact with the chemical(s) being processed are made from any of the following materials:
c.1. Nickel, or alloys with more than 40% nickel by weight;
c.2. Alloys with more than 25% nickel and 20% chromium by weight;
c.3. Fluoropolymers;
c.4. Glass or glass-lined (including vitrified or enamelled coating);
c.5. Graphite;
c.6. Tantalum or tantalum alloys;
c.7. Titanium or titanium alloys;
c.8. Zirconium or zirconium alloys;
c.9. Ceramics; or

c.10. Ferrosilicon.

d. Incinerators that are designed to destroy chemical warfare agents, or chemical weapons precursors controlled by ECCN 1C350, having specially designed waste supply systems, special handling facilities with an average combustion chamber temperature greater than 1000 °C in which all surfaces in the waste supply system that come into direct contact with the waste products are made from or lined with any of the following materials:

d.1. Nickel, or alloys with more than 40% nickel by weight;

d.2. Alloys with more than 25% nickel and 20% chromium by weight; or

d.3. Ceramics.

2B351 Toxic gas monitoring system; and dedicated detectors therefor.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 3
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: a. Designed for continuous operation and usable for detecting chemical warfare agents controlled on the U.S. Munitions List (See 22 CFR part 121) or chemical weapons precursors controlled by ECCN 1C350, or detecting organic compounds containing phosphorus, sulphur, fluorine, or chlorine, or their compounds, at a concentration less than 0.3 mg/m³; and

b. Designed for the detection of chemical compounds having a cholinesterase-inhibiting activity.

2B352 Biological equipment.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 3
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: a. Complete containment facilities at P3 or P4 containment level;

TECHNICAL NOTE: P3 or P4 (BL3, BL4, L3, L4) containment levels are as specified in the WHO Laboratory Biosafety Manual (Geneva, 1983).

b. Fermenters capable of cultivation of pathogenic micro-organisms, viruses or for toxin production, without the propagation of aerosols, having a capacity equal to or greater than 100 liters.

TECHNICAL NOTE: Fermenters include bioreactors, chemostats, and continuous-flow systems.

c. Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols, and having all of the following characteristics:

c.1. A flow rate greater than 100 liters per hour;

c.2. Components of polished stainless steel or titanium;

c.3. Double or multiple sealing joints within the stream containment area;

c.4. Capable of *in situ* stream sterilization in a closed state.

TECHNICAL NOTE: Centifugal separators include decanters.

d. Cross-flow filtration equipment capable of continuous separation of pathogenic microorganisms, viruses, toxins, and cell cultures without the propagation of aerosols, having all of the following characteristics:

d.1. Equal to or greater than 5 square meters;

d.2. Capable of *in situ* sterilization.

e. Steam sterilizable freeze-drying equipment with a condenser capacity greater than 50 kgs. but less than 1,000 kgs. of ice in 24 hours.

f. Equipment that incorporates or is contained in P3 or P4 containment housing, as follows:

f.1. Independently ventilated protective full or half suits; and

f.2. Class III biological safety cabinets or isolators with similar performance standards;

NOTE: In this entry, isolators include flexible isolators, dry boxes, anaerobic chambers and glove boxes.

g. Chambers designed for aerosol challenge testing with microorganisms, viruses, or toxins and having a capacity of 1 m³ or greater.

2B985 Equipment specially designed for manufacturing shotgun shells; and ammunition hand-loading equipment for both cartridges and shotgun shells.

LICENSE REQUIREMENTS

Reason for Control: UN

UN applies to entire entry. A license is required for items controlled by this entry to Cuba, Libya, North Korea and Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

NOTE: Exports from the U.S. and transhipments to Iran must be licensed by the Department of Treasury, Office of Foreign Assets Control. (See to §746.7 of the EAR for additional information on this requirement.)

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2B991 Numerical control units for machine tools and "numerically controlled" machine tools, n.e.s

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Numerical control'' units for machine tools:

a.1. Having four interpolating axes that can be coordinated simultaneously for ''contouring control''; or

a.2. Having two or more axes that can be coordinated simultaneously for ''contouring control'' and a minimum programmable increment better (less) than 0.001 mm;

b. ''Numerically controlled'' machine tools that, according to the manufacturer's technical specifications, can be equipped with electronic devices for simultaneous ''contouring control'' in two or more axes and that have both of the following characteristics:

b.1. Two or more axes that can be coordinated simultaneously for contouring control; and

b.2. ''Positioning accuracies'', with all compensations available:

b.2.a. Better than 0.020 mm, but no better than 0.004 mm along any linear axis (overall positioning) for grinding machines;

b.2.b. Better than 0.020 mm, but no better than 0.006 mm along any linear axis (overall positioning) for milling machines; or

b.2.c. Better than 0.020 mm, but no better than 0.010 mm along any linear axis (overall positioning) for turning machines.

2B992 Manual dimensional inspection machines with two or more axes, and measurement uncertainty equal to or less (better) than (3 + L/300) micrometer in any axes (L measured length in mm).

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED:

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2B993 Gearmaking and/or finishing machinery not controlled by 2B003 capable of producing gears to a quality level of better than AGMA 11.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED:

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2B994 "Robots" not controlled by 2B007 or 2B207 that are capable of employing feedback information in real-time processing from one or more sensors to generate or modify "programs" or to generate or modify numerical program data.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

C. MATERIALS [RESERVED]

D. SOFTWARE

2D001 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A001 to 2A007 or 2B001 to 2B009.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to ''software'' for equipment controlled by 2B004	MT Column 1
NP applies to ''software'' for equipment controlled by 2B001, 2B004, 2B006, 2B007 for NP reasons	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2D002 Specific "software."

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
NP applies to 2D002.b	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: § value
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Software'' to provide ''adaptive control'' and having both of the following characteristics:

a.1. For ''flexible manufacturing units'' (FMUs) which consist at least of equipment described in b.1 and b.2 of the definition of ''flexible manufacturing unit'' contained in part 772 of the EAR; and

a.2. Capable of generating or modifying, in ''real time processing'', programs or data by using the signals obtained simultaneously by means of at least two detection techniques, such as:

a.2.a. Machine vision (optical ranging);

a.2.b. Infrared imaging;

a.2.c. Acoustical imaging (acoustical ranging);

a.2.d. Tactile measurement;

a.2.e. Inertial positioning;

a.2.f. Force measurement;

a.2.g. Torque measurement;

NOTE: 2D002.a does not control ''software'' which only provides rescheduling of functionally identical equipment within ''flexible manufacturing units'' using pre-stored part programs and a pre-stored strategy for the distribution of the part programs.

b. ''Software'' for electronic devices other than those described in 2B001.a or b, which provides the ''numerical control'' capability of the equipment controlled by 2B001.

2D018 "Software" for the "development", "production" or "use" of equipment controlled by 2B018.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to ''software'' for equipment controlled by 2B018 for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2D101 "Software" for the "development", "production", or "use" of items controlled by 2B104, 2B115 or 2B116.

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2D201 "Software" specially designed for the "development", "production" or "use" of items controlled by 2B204, 2B207, 2B215, 2B227 or 2B229.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2D290 "Software" specially designed or modified for the "development", "production" or "use" of items controlled by 2A290, 2A291 or 2B290.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to ''software'' for equipment controlled by 2A291 or 2B290	NP Column 1
NP applies to ''software'' for equipment controlled by 2A290	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2D992 "Software" specially designed for the "development" or "production" of equipment controlled by 2B992.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2D993 "Software" specially designed for the "development", "production", or "use" of equipment controlled by 2B991, 2B993, or 2B994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2D994 "Software" specially designed for the "development" or "production" of portable electric generators controlled by 2A994.

LICENSE REQUIREMENTS

Reason for Control: AT

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya, and North Korea. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

NOTE: Exports from the U.S. and transhipments to Iran must be licensed by the Department of Treasury, Office of Foreign Assets Control. (See §742.8 and §746.7 for additional information on this requirement.)

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

2E001 "Technology" according to the General Technology Note for the "development" of items controlled by 2A (except 2A993 and 2A994) or 2B (except 2B018, 2B991 to 2B994) 2D (except 2D018, 2D992 to 2D994)

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, CB, AT

Control(s)	*Country Chart*
NS applies to ''technology'' for items controlled by 2A001 to 2A006, 2B001 to 2B009, 2D001 or 2D002	NS Column 1
MT applies to ''technology'' for items controlled by 2B004, 2B018 or 2B116, 2D001 or 2D101 for MT reasons	MT Column 1
NP applies to ''technology'' for items controlled by 2A292, 2A293, 2B001, 2B004, 2B006, 2B007, 2B104, 2B215, 2B225, 2B226, 2B228, 2B229, 2B231, 2B290, 2D001, 2D002 or 2D201 for NP reasons	NP Column 1
NP applies to ''technology'' for equipment controlled by 2A290	NP Column 2
CB applies to ''technology'' for equipment controlled by 2B350 to 2B352	CB Column 3
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2E002 "Technology" according to the General Technology Note for the "production" of items controlled by 2A (except 2A993 and 2A994) or 2B (except 2B018, 2B991 to 2B994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, CB, AT

Control(s)	*Country Chart*
NS applies to ''technology'' for equipment controlled by 2A001 to 2A006, 2B001 to 2B009	NS Column 1
MT applies to ''technology'' for equipment controlled by 2B004, 2B018, and 2B116 for MT reasons	MT Column 1
NP applies to ''technology'' for equipment controlled by 2A292, 2A293, 2B001, 2B004, 2B006, 2B007, 2B104, 2B215, 2B225, 2B226, 2B228, 2B229, 2B231, 2B290 NP reasons	NP Column 1
NP applies to ''technology'' for equipment controlled by 2A290	NP Column 2
CB applies to ''technology'' for equipment controlled by 2B350 to 2b352	CB Column 3
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2E003 Other "technology".

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
NP applies to ''technology'' controlled by 2E003.a.1 or a.3.	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes, except 2E003.a.1, a.3, .b, and .d

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Technology'':

a.1 For the ''development'' of interactive graphics as an integrated part in ''numerical control'' units for preparation or modification of part programs;

a.2 For the ''development'' of generators of machine tool instructions (e.g., part programs) from design data residing inside ''numerical control'' units;

a.3 For the ''development'' of integration ''software'' for incorporation of expert systems for advanced decision support of shop floor operations into ''numerical control'' units;

b. ''Technology'' for metal-working manufacturing processes, as follows:

b.1. ''Technology'' for the design of tools, dies or fixtures specially designed for the following processes:

b.1.a. ''Superplastic forming'';

b.1.b. ''Diffusion bonding'';

b.1.c. ''Direct-acting hydraulic pressing'';

b.2. ''Technology'' consisting of process methods or parameters as listed below used to control:

b.2.a. ''Superplastic forming'' of aluminium alloys, titanium alloys or ''superalloys'':

b.2.a.1. Surface preparation;

b.2.a.2. Strain rate;

b.2.a.3. Temperature;

b.2.a.4. Pressure;

b.2.b. ''Diffusion bonding'' of ''superalloys'' or titanium alloys:

b.2.b.1. Surface preparation;

b.2.b.2. Temperature;

b.2.b.3. Pressure;

b.2.c. ''Direct-acting hydraulic pressing'' of aluminium alloys or titanium alloys:

b.2.c.1. Pressure;

b.2.c.2. Cycle time;

b.2.d. ''Hot isostatic densification'' of titanium alloys, aluminium alloys or ''superalloys'':

b.2.d.1. Temperature;

b.2.d.2. Pressure;

b.2.d.3. Cycle time;

c. ''Technology'' for the ''development'' or ''production'' of hydraulic stretch-forming machines and dies therefor, for the manufacture of airframe structures;

d. ''Technology'' for:

d.1 The application of inorganic overlay coatings or inorganic surface modification coatings, specified in column 3 of the following Table;

d.2 To non-electronic substrates, specified in column 2 of the following Table;

d.3 By processes specified in column 1 of the following Table and defined in the Technical Note;

CATEGORY 2E—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES

1. Coating Process (1)	*2. Substrate*	*3. Resultant Coating*
A. Chemical Vapor Deposition (CDV)	''Superalloys''	Aluminides for internal passages
	Ceramics and Low-expansion glasses (14)	Silicides Carbides Dielectric layers (15)
	Carbon-carbon, Ceramic, and Metal matrix composites.	Silicides Carbides Refractory metals Mixtures thereof (4) Dielectric layers (15)
	Cemented tungsten carbide (16), Silicon carbide	Aluminides Alloyed aluminides (2) Carbides Tungsten Mixtures thereof (4) Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Dielectric layers (15)
	Sensor window materials (9)	Dielectric layers (15)
B. Thermal-Evaporation Physical Vapor Deposition (TE–PVD)		
1. Physical Vapor Deposition (PVD): Electron-Beam (EB–PVB).	''Superalloys''	Alloyed silicides Alloyed aluminides (2) MCrAlx (5) Modified zirconia (12) Silicides Aluminides Mixtures thereof (4)
	Ceramics and Low-expansion glasses (14)	Dielectric layers (15)
	Corrosion resistant steel (7)	MCrAlx (5) Modified zirconia (12) Mixtures thereof (4)
	Carbon-carbon, Ceramic and Metal matrix composites.	Silicides Carbides Refractory metals Mixtures thereof (4) Dielectric layers (15)
	Cemented tungsten carbide (16), Silicon carbide	Carbides Tungsten Mixtures thereof (4) Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Dielectric layers (15) Borides
	Sensor window materials (9)	Dielectric layers (15)
	Titanium alloys (13)	Borides Nitrides
2. Ion assisted resistive heating Physical Vapor Deposition (Ion Plating).	Ceramics and Low-expansion glasses (14)	Dielectric layers (15)
	Carbon-carbon, Ceramic and Metal matrix composites.	Dielectric layers (15)
	Cemented tungsten carbide (16), Silicon carbide	Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Dielectric layers (15)
	Sensor window materials (9)	Dielectric layers (15)
3. Physical Vapor Deposition: ''laser'' evaporation.	Ceramics and Low-expansion glasses (14)	Silicides Dielectric layers (15)
	Carbon-carbon, Ceramic and Metal matrix composites.	Dielectric layers (15)
	Cemented tungsten carbide (16), Silicon carbide	Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Dielectric layers (15)
	Sensor window materials (9)	Dielectric layers (15)
4. Physical Vapor Deposition: cathodic arc discharge.	''Superalloys''	Alloyed silicides Alloyed aluminides (2) MCrAlx (5)
	Polymers (11) and Organic matrix composites	Borides Carbides Nitrides

CATEGORY 2E—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES—Continued

1. Coating Process (1)	*2. Substrate*	*3. Resultant Coating*
C. Pack cementation (see A above for out-of-pack cementation) (10)	Carbon-carbon, Ceramic and Metal matrix composites.	Silicides Carbides Mixtures thereof (4)
	Titanium alloys (13)	Silicides Aluminides Alloyed aluminides (2)
	Refractory metals and alloys (8).	
D. Plasma spraying	Superalloys	MCrAlx (5) Modified zirconia (12) Mixtures thereof (4) Abradable Nickel-Graphite Abradable Ni-Cr-Al- Bentonite Abradable Al-Si-Polyester Alloyed aluminides (2)
	Aluminum alloys (6)	MCrAlx (5) Modified zirconia (12) Silicides Mixtures thereof (4)
	Refractory metals and alloys (8)	Aluminides Silicides Carbides
	Corrosion resistant steel (7)	Modified zirconia (12) Mixtures thereof (4)
	Titanium alloys (13)	Carbides Aluminides Silicides Alloyed aluminides (2) Abradable Nickel-Graphite Abradable Ni-Cr-Al- Bentonite Abradable Al-Si-Polyester
E. Slurry Deposition	Refractory metals and alloys (8)	Fused silicides Fused aluminides except for resistance heating elements
	Carbon-carbon, Ceramic and Metal matrix composites.	Silicides Carbides Mixtures thereof (4)
F. Sputter Deposition	''Superalloys''	Alloyed silicides Alloyed aluminides (2) Noble metal modified aluminides (3) MCrAlx (5) Modified zirconia (12) Platinum Mixtures thereof (4)
	Ceramics and Low-expansion glasses (14)	Silicides Platinum Mixtures thereof (4) Dielectric layers (15)
	Titanium alloys (13)	Borides Nitrides Oxides Silicides Aluminides Alloyed aluminides (2) Carbides
	Carbon-carbon, Ceramic and Metal matrix composites.	Silicides Carbides Refractory metals Mixtures thereof (4) Dielectric layers (15)

CATEGORY 2E—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES—Continued

1. Coating Process (1)	*2. Substrate*	*3. Resultant Coating*
	Cemented tungsten carbide (16), Silicon carbide	Carbides Tungsten Mixtures thereof (4) Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Borides Dielectric layers (15)
	Sensor window materials (9)	Dielectric layers (15)
	Refractory metals and alloys (8)	Aluminides Silicides Oxides Carbides
G. Ion Implantation	High temperature bearing steels	Additions of Chromium, Tantalum, or Niobium (Columbium)
	Titanium alloys (15)	Borides Nitrides
	Beryllium and Beryllium alloys	Borides
	Cemented tungsten carbide (16)	Carbides Nitrides

NOTES TO TABLE ON DEPOSITION TECHNIQUES

1. The term ''coating process'' includes coating repair and refurbishing as well as original coating.

2. The term ''alloyed aluminide'' coating includes single or multiple-step coatings in which an element or elements are deposited prior to or during application of the aluminide coating, even if these elements are deposited by another coating process. It does not, however, include the multiple use of single-step pack cementation processes to achieve alloyed aluminides.

3. The term 'noble metal modified aluminide' coating includes multiple-step coatings in which the noble metal or noble metals are laid down by some other coating process prior to application of the aluminide coating.

4. Mixtures consist of infiltrated material, graded compositions, co-deposits and multi-layer deposits and are obtained by one or more of the coating processes specified in the Table.

5. MCrAlX refers to a coating alloy where M equals cobalt, iron, nickel or combinations thereof and X equals hafnium, yttrium, silicon, tantalum in any amount or other intentional additions over 0.01 weight percent in various proportions and combinations, except:

a. CoCrAlY coatings which contain less than 22 weight percent of chromium, less than 7 weight percent of aluminium and less than 2 weight percent of yttrium;

b. CoCrAlY coatings which contain 22 to 24 weight percent of chromium, 10 to 12 weight percent of aluminium and 0.5 to 0.7 weight percent of yttrium; or

c. NiCrAlY coatings which contain 21 to 23 weight percent of chromium, 10 to 12 weight percent of aluminium and 0.9 to 1.1 weight percent of yttrium.

6. The term ''aluminium alloys'' refers to alloys having an ultimate tensile strength of 190 MPa or more measured at 293 K (20 °C).

7. The term 'corrosion resistant steel' refers to AISI (American Iron and Steel Institute) 300 series or equivalent standard steels.

8. Refractory metals consist of the following metals and their alloys: niobium (columbium), molybdenum, tungsten and tantalum.

9. Sensor window materials, as follows: alumina, silicon, germanium, zinc sulphide, zinc selenide, gallium arsenide and the following metal halides: potassium iodide, potassium fluoride, or sensor window materials of more than 40 mm diameter for thallium bromide and thallium chlorobromide.

10. ''Technology'' for single-step pack cementation of solid airfoils is not controlled by this Category.

11. Polymers, as follows: polyimide, polyester, polysulfide, polycarbonates and polyurethanes.

12. Modified zirconia refers to additions of other metal oxides, e.g., calcia, magnesia, yttria, hafnia, rare earth oxides, etc., to zirconia in order to stabilize certain crystallographic phases and phase compositions. Thermal barrier coatings made of zirconia, modified with calcia or magnesia by mixing or fusion, are not controlled.

13. Titanium alloys refers to aerospace alloys having an ultimate tensile strength of 900 MPa or more measured at 293 K (20 °C).

14. Low-expansion glasses refers to glasses which have a coefficient of thermal expansion of 1×10^{-7} K^{-1} or less measured at 293 K (20 °C).

15. Dielectric layers are coatings constructed of multi-layers of insulator materials in which the interference properties of

a design composed of materials of various refractive indices are used to reflect, transmit or absorb various wavelength bands. Dielectric layers refers to more than four dielectric layers or dielectric/metal composite layers.

16. Cemented tungsten carbide does not include cutting and forming tool materials consisting of tungsten carbide/(cobalt, nickel), titanium carbide/(cobalt, nickel), chromium carbide/nickel-chromium and chromium arbide/nickel.

TECHNICAL NOTE TO TABLE ON DEPOSITION TECHNIQUES

Processes specified in Column 1 of the Table are defined as follows:

a. Chemical Vapor Deposition (CVD) is an overlay coating or surface modification coating process wherein a metal, alloy, composite, dielectric or ceramic is deposited upon a heated substrate. Gaseous reactants are decomposed or combined in the vicinity of a substrate resulting in the deposition of the desired elemental, alloy or compound material on the substrate. Energy for this decomposition or chemical reaction process may be provided by the heat of the substrate, a glow discharge plasma, or ''laser'' irradiation.

NOTE 1: CVD includes the following processes: directed gas flow out-of-pack deposition, pulsating CVD, controlled nucleation thermal decomposition (CNTD), plasma enhanced or plasma assisted CVD processes.

NOTE 2: Pack denotes a substrate immersed in a powder mixture.

NOTE 3: The gaseous reactants used in the out-of-pack process are produced using the same basic reactions and parameters as the pack cementation process, except that the substrate to be coated is not in contact with the powder mixture.

b. Thermal Evaporation-Physical Vapor Deposition (TE–PVD) is an overlay coating process conducted in a vacuum with a pressure less than 0.1 Pa wherein a source of thermal energy is used to vaporize the coating material. This process results in the condensation, or deposition, of the evaporated species onto appropriately positioned substrates. The addition of gases to the vacuum chamber during the coating process to synthesize compound coatings is an ordinary modification of the process. The use of ion or electron beams, or plasma, to activate or assist the coating's deposition is also a common modification in this technique. The use of monitors to provide in-process measurement of optical characteristics and thickness of coatings can be a feature of these processes. Specific TE-PVD processes are as follows:

1. Electron Beam PVD uses an electron beam to heat and evaporate the material which forms the coating;

2. Resistive Heating PVD employs electrically resistive heating sources capable of producing a controlled and uniform flux of evaporated coating species;

3. ''Laser'' Evaporation uses either pulsed or continuous wave ''laser'' beams to heat the material which forms the coating;

4. Cathodic Arc Deposition employs a consumable cathode of the material which forms the coating and has an arc discharge established on the surface by a momentary contact of a ground trigger. Controlled motion of arcing erodes the cathode surface creating a highly ionized plasma. The anode can be either a cone attached to the periphery of the cathode, through an insulator, or the chamber. Substrate biasing is used for non line-of-sight deposition.

NOTE: This definition does not include random cathodic arc deposition with non-biased substrates.

c. Ion Plating is a special modification of a general TE–PVD process in which a plasma or an ion source is used to ionize the species to be deposited, and a negative bias is applied to the substrate in order to facilitate the extraction of the species to be deposited from the plasma. The introduction of reactive species, evaporation of solids within the process chamber, and the use of monitors to provide in-process measurement of optical characteristics and thicknesses of coatings are ordinary modifications of the process.

d. Pack Cementation is a surface modification coating or overlay coating process wherein a substrate is immersed in a powder mixture (a pack), that consists of:

1. The metallic powders that are to be deposited (usually aluminum, chromium, silicon or combinations thereof);

2. An activator (normally a halide salt); and

3. An inert powder, most frequently alumina. The substrate and powder mixture is contained within a retort which is heated to between 1,030 K (757 °C) to 1,375 K (1,102 °C) for sufficient time to deposit the coating.

e. Plasma Spraying is an overlay coating process wherein a gun (spray torch) which produces and controls a plasma accepts powder or wire coating materials, melts them and propels them towards a substrate, whereon an integrally bonded coating is formed. Plasma spraying constitutes either low pressure plasma spraying or high velocity plasma spraying carried out underwater.

NOTE 1: Low pressure means less than ambient atmospheric pressure.

NOTE 2: High velocity refers to nozzle-exit gas velocity exceeding 750 m/s calculated at 293 K (20 °C) at 0.1 MPa.

f. Slurry Deposition is a surface modification coating or overlay coating process wherein a metallic or ceramic powder with an organic binder is suspended in a liquid and is applied to a substrate by either spraying, dipping or painting, subsequent air or oven drying, and heat treatment to obtain the desired coating.

g. Sputter Deposition is an overlay coating process based on a momentum transfer phenomenon, wherein positive ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on an appropriately positioned substrate.

NOTE 1: The Table refers only to triode, magnetron or reactive sputter deposition which is used to increase adhesion of the coating and rate of deposition and to radio frequency (RF) augmented sputter deposition used to permit vaporization of non-metallic coating materials.

NOTE 2: Low-energy ion beams (less than 5 keV) can be used to activate the deposition.

h. Ion Implantation is a surface modification coating process in which the element to be alloyed is ionized, accelerated through a potential gradient and implanted into the surface region of the substrate. This includes processes in which ion implantation is performed simultaneously with electron beam physical vapor deposition or sputter deposition.

ACCOMPANYING TECHNICAL INFORMATION TO TABLE ON DEPOSITION TECHNIQUES

1. ''Technology'' for pretreatments of the substrates listed in the Table, as follows:
a. Chemical stripping and cleaning bath cycle parameters, as follows:
1. Bath composition;
a. For the removal of old or defective coating corrosion product or foreign deposits;
b. For preparation of virgin substrates;
2. Time in bath;
3. Temperature of bath;
4. Number and sequences of wash cycles;
b. Visual and macroscopic criteria for acceptance of the cleaned part;
c. Heat treatment cycle parameters, as follows:
1. Atmosphere parameters, as follows:
a. Composition of the atmosphere;
b. Pressure of the atmosphere;
2. Temperature for heat treatment;
3. Time of heat treatment;
d. Substrate surface preparation parameters, as follows:
1. Grit blasting parameters, as follows:
a. Grit composition;
b. Grit size and shape;
c. Grit velocity;
2. Time and sequence of cleaning cycle after grit blast;
3. Surface finish parameters;
e. Masking technique parameters, as follows:
1. Material of mask;
2. Location of mask;
2. ''Technology'' for in situ quality assurance techniques for evaluation of the coating processes listed in the Table, as follows:
a. Atmosphere parameters, as follows:
1. Composition of the atmosphere;
2. Pressure of the atmosphere;
b. Time parameters;
c. Temperature parameters;
d. Thickness parameters;
e. Index of refraction parameters;
3. ''Technology'' for post deposition treatments of the coated substrates listed in the Table, as follows:
a. Shot peening parameters, as follows:
1. Shot composition;
2. Shot size;
3. Shot velocity;
b. Post shot peening cleaning parameters;
c. Heat treatment cycle parameters, as follows:
1. Atmosphere parameters, as follows:
a. Composition of the atmosphere;
b. Pressure of the atmosphere;
2. Time-temperature cycles;
d. Post heat treatment visual and macroscopic criteria for acceptance of the coated substrates;
4. ''Technology'' for quality assurance techniques for the evaluation of the coated substrates listed in the Table, as follows:
a. Statistical sampling criteria;
b. Microscopic criteria for:
1. Magnification;
2. Coating thickness uniformity;
3. Coating integrity;
4. Coating composition;
5. Coating and substrates bonding;
6. Microstructural uniformity.
c. Criteria for optical properties assessment:
1. Reflectance;
2. Transmission;
3. Absorption;
4. Scatter;
5. ''Technology'' and parameters related to specific coating and surface modification processes listed in the Table, as follows:
a. For Chemical Vapor Deposition:
1. Coating source composition and formulation;
2. Carrier gas composition;
3. Substrate temperature;
4. Time-temperature-pressure cycles;
5. Gas control and part manipulation;
b. For Thermal Evaporation—Physical Vapor Deposition:
1. Ingot or coating material source composition;
2. Substrate temperature;
3. Reactive gas composition;
4. Ingot feed rate or material vaporization rate;
5. Time-temperature-pressure cycles;
6. Beam and part manipulation;
7. ''Laser'' parameters, as follows:
a. Wave length;
b. Power density;
c. Pulse length;
d. Repetition ratio;
e. Source;
f. Substrate orientation;
c. For Pack Cementation:
1. Pack composition and formulation;

2. Carrier gas composition;
3. Time-temperature-pressure cycles;
d. For Plasma Spraying:
1. Powder composition, preparation and size distributions;
2. Feed gas composition and parameters;
3. Substrate temperature;
4. Gun power parameters;
5. Spray distance;
6. Spray angle;
7. Cover gas composition, pressure and flow rates;
8. Gun control and part manipulation;
e. For Sputter Deposition:
1. Target composition and fabrication;
2. Geometrical positioning of part and target;
3. Reactive gas composition;
4. Electrical bias;
5. Time-temperature-pressure cycles;
6. Triode power;
7. Part manipulation;
f. For Ion Implantation:
1. Beam control and part manipulation;
2. Ion source design details;
3. Control techniques for ion beam and deposition rate parameters;
4. Time-temperature-pressure cycles.
g. For Ion Plating:
1. Beam control and part manipulation;
2. Ion source design details;
3. Control techniques for ion beam and deposition rate parameters;
4. Time-temperature-pressure cycles;
5. Coating material feed rate and vaporization rate;
6. Substrate temperature;
7. Substrate bias parameters.

2E018 "Technology" for the "use" of equipment controlled by 2B018.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to ''technology'' for equipment controlled by 2B018 for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2E101 "Technology" according to the General Technology Note for the "use" of items or "software" controlled by 2B004, 2B104, 2B115, 2B116 or 2D101.

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
NP applies to 2B004 and 2B104.a	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2E201 "Technology" according to the General Technology Note for the "use" of items or "software" controlled by 2A225, 2A226, 2B001, 2B006, 2B007, 2B204, 2B207, 2B215, 2B225 to 2B232 or 2D201 for NP reasons.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2E290 "Technology" according to the General Technology Note for the "use" of items controlled by 2A290, 2A291, 2A292, 2A293, 2A294, 29295 and 2B290.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to ''technology'' for equipment controlled by 2A291 to 2A295 or 2B290	NP Column 1
NP applies to ''technology'' for equipment controlled by 2A290	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2E301 "Technology" for "use" of items controlled by 2B350, 2B351 and 2B352.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 3
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The lists of items controlled are contained in the ECCN headings.

2E993 "Technology" for the "use" of equipment controlled by 2B991, 2B992, 2B993, or 2B994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

2E994 "Technology" for the "use" of portable electric generators controlled by 2A994.

LICENSE REQUIREMENTS

Reason for Control: AT

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya, and North Korea. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

NOTE: Exports from the U.S. and transshipments to Iran must be licensed by the Department of Treasury, Office of Foreign Assets Control. (See §742.8 and §746.7 of the EAR for additional information on this requirement.)

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

ADVISORY NOTES FOR CATEGORY 2

ADVISORY NOTE 1: Licenses are likely to be approved, as administrative exceptions, to satisfactory end-users in the People's Republic of China of machine tools for milling controlled by 2B001.c.1 to civil end-users other than nuclear and aerospace, provided that they are not controlled by 2B001.c.1.b.1, c.1.b.4, c.1.b.5, or c.1.b.6.

ADVISORY NOTE 2: Licenses are likely to be approved, as administrative exceptions, to satisfactory end-users in Country Group D:1 of equipment controlled by 2B006.b.1 to civil end-users not engaged in aerospace or nuclear activities.

Category 3—Electronics Design, Development and Production

A. EQUIPMENT, ASSEMBLIES AND COMPONENTS

NOTE 1: The control status of equipment, devices and components described in Category 3A, other than those described in 3A001.a.3 to a.10, or 3A001.a.12, that are specially designed for or that have the same functional characteristics as other equipment are determined by the control status of the other equipment.

NOTE 2: The control status of integrated circuits described in 3A001.a.3 to a.9 or 3A001.a.12 that are unalterably programmed or designed for a specific function for other equipment is determined by the control status of the other equipment.

N.B.: When the manufacturer or applicant cannot determine the control status of the other equipment, the control status of the integrated circuits is determined in 3A001.a.3 to a.9 or 3A001.a.12. If the integrated circuit is a silicon-based ''microcomputer microcircuit'' or a microcontroller microcircuit described in 3A001.a.3 having an operand (data) word length of 8 bits or less, the control status of the integrated circuit is determined in 3A001.a.3.

3A001 Electronic devices and components.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to 3A001.a.1.a	MT Column 1
NP applies to 3A001.e.5	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500: 3A001.c; $3000: 3A001.b.1, b.2, b.3, .d, .e and .f; $5000: 3A001.a, and .b.4 to b.7

GBS: Yes, except 3A001.a.1, b.1, b.3 to b.7, c to f

CIV: Yes, except 3A001.a.1, a.2, a.5, a.6, a.9, a.10, and a.12, .b, .c, .d, .e, and .f

LIST OF ITEMS CONTROLLED

Unit: Number

Related Controls: N/A

Related Definitions: N/A

Items: a. General purpose integrated circuits, as follows:

NOTES: 1. The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

2. Integrated circuits include the following types:
''Monolithic integrated circuits'';
''Hybrid integrated circuits'';
''Multichip integrated circuits'';
''Film type integrated circuits'', including silicon-on-sapphire integrated circuits;
''Optical integrated circuits''.

a.1. Integrated circuits, designed or rated as radiation hardened to withstand either of the following:

a.1.a. A total dose of 5×10^5 Rads (Si), or higher; or

a.1.b. A dose rate upset of 5×10^8 Rads (Si)/s or higher;

a.2. Integrated circuits described in 3A00l.a.3 to a.10 or 3A00l.a.12, as follow:

a.2.a. Rated for operation at an ambient temperature above 398 K (+125 °C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55 °C); or

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55 °C) to 398 K (+125 °C);

NOTE: 3A00l.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. ''Microprocessor microcircuits'', ''microcomputer microcircuits'' and microcontroller microcircuits, having any of the following:

NOTE: 3A00l.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a An arithmetic logic unit with an access width of 32 bit or more and a ''composite theoretical performance'' (''CTP'') of 80 million theoretical operations per second (Mtops) or more;

a.3.b. Manufactured from a compound semiconductor and operating a clock frequency exceeding 40 MHz; or

a.3.c. More than one data or instruction bus or serial communication port for external interconnection in a parallel processor with a transfer rate exceeding 2.5 Mbyte/s;

a.4. Electrically erasable programmable read-only memories (EEPROMs), static random-access memories (SRAMs), and storage integrated circuits manufactured from a compound semiconductor, as follows:

a.4.a. Electrically erasable programmable read-only memories (EEPROMs) with a storage capacity:

a.4.a.1. Exceeding 16 Mbit per package for flash memory types; or

a.4.a.2. Exceeding either of the following limits for all other EEPROM types:

a.4.a.2.a. 4 Mbit per package; or

a.4.a.2.b. 1 Mbit per package and having a maximum access time of less than 80 ns;

a.4.b. Static random-access memories (SRAMs) with a storage capacity:

a.4.b.1. Exceeding 4 Mbit per package; or

b.4.b.2. Exceeding 1 Mbit per package and having a maximum access time of less than 20 ns;

a.4.c. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bits or more, but less than 12 bits, with a total conversion time to maximum resolution of less than 10 ns;

a.5.a.2. A resolution of 12 bits with a total conversion time to maximum resolution of less than 200 ns; or

a.5.a.3. A resolution of more than 12 bits with a total conversion time to maximum resolution of less than 2 microseconds;

a.5.b. Digital-to-analog converters with a resolution of 12 bits or more, and a ''settling time'' of less than 10 ns;

a.6. Electro-optical or ''optical integrated circuits'' for ''signal processing'' having all of the following:

a.6.a. One or more internal ''laser'' diodes;

a.6.b. One or more internal light detecting elements; and

a.6.c. Optical waveguides;

a.7. Field programmable gate arrays having either of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates); or

a.7.b. A typical ''basic gate propagation delay time'' of less than 0.4 ns;

a.8. Field programmable logic arrays having either of the following:

a.8.a. An equivalent usable gate count of more than 30,000 (2 input gates); or

b. A toggle frequency exceeding 133 MHz;

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 144 terminals;

a.10.b. A typical ''basic gate propagation delay time'' of less than 0.4 ns; or

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to a.l0 or 3A001.a.12, based upon any compound semiconductor and having either of the following:

a.11.a. An equivalent gate count of more than 300 (2 input gates); or

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having any of the following characteristics:

a.12.a. A rated execution time for a 1,024 point complex FFT of less than 1 ms;

a.12.b. A rated execution time for an N-point complex FFT of other than 1,024 points of less than N $\log_2$ N/10,240 ms, where N is the number of points; or

a.12.c. A butterfly throughput of more than 5.12 MHz;

b. Microwave or millimeter wave devices:

b.1. Electronic vacuum tubes and cathodes, as follows:

(Frequency agile magnetron tubes are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. See 22 CFR part 121, Category XI.)

NOTE: 3A001.b.1 does not control tubes designed or rated to operate in the Standard Civil Telecommunications Bands at frequencies not exceeding 31 GHz.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1 Operating at frequencies higher than 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with an ''instantaneous bandwidth'' of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An ''instantaneous bandwidth'' of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An ''instantaneous bandwidth'' of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; or

b.1.a.4.c. ''Space qualified'';

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes for electronic tubes, with either of the following:

b.1.c.1. Having a turn on time to rated emission of less than 3 seconds; or

b.1.c.2. Producing a continuous emission current density at rated operating conditions exceeding 5 A/cm^2;

b.2. Microwave integrated circuits or modules containing ''monolithic integrated circuits'' operating at frequencies exceeding 3 GHz;

NOTE: 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in the Standard Civil Telecommunications Bands at frequencies not exceeding 31 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, as follows:

b.4.a. Operating at frequencies exceeding 10.5 GHz and having an ''instantaneous bandwidth'' of more than half an octave; or

b.4.b. Operating at frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 microseconds with either:

b.5.a. A band-pass bandwidth of more than 0.5 % of center frequency; or

b.5.b. A band-stop bandwidth of less than 0.5 percent of center frequency;

b.6. Microwave assemblies capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the control limits stated therein;

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., ''signal processing'' devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency 2.5 GHz or less, and:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in microseconds and bandwidth in MHz) of more than 100; or

c.1.b.3. A dispersive delay of more than 10 microseconds; or

c.1.c. A carrier frequency exceeding 1 GHz and a bandwidth of 250 MHz or more;

c.2. Bulk (volume) acoustic wave devices (i.e., ''signal processing'' devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic ''signal processing'' devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices or circuits containing components, manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents, with any of the following:

d.1. Electromagnetic amplification:

d.1.a. At frequencies equal to or less than 31 GHz with a noise figure of less than 0.5 dB; or

d.1.b. At frequencies exceeding 31 GHz;

d.2. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and

power dissipation per gate (in watts) of less than 10^{-14} J; or

d.3. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries, as follows:

NOTE: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm^3 (e.g., standard C-cells or R 14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

TECHNICAL NOTE: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. ''Space qualified'' and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28 °C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527 °C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal, to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; and

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kv;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; and

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. ''Superconductive'' electromagnets or solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; and

e.3.c. Rated for a magnetic induction of more than 8 T or ''overall current density'' in the winding of more than 300 A/mm^2;

NOTE: 3A001.e.3. does not control ''superconductive'' electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.4. Circuits or systems for electromagnetic energy storage, containing components manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature of at least one of their ''superconductive'' constituents, having all of the following:

e.4.a. Resonant operating frequencies exceeding 1 MHz;

e.4.b. A stored energy density of 1 MJ/m^3 or more; and

3.4.c. A discharge time of less than 1 ms; e.5. Flash discharge type X-ray systems, and tubes therefor, having all of the following:

e.5.a. A peak power exceeding 500 MW;

e.5.b. An output voltage exceeding 500 kV; and

e.5.c. A pulse width of less than 0.2 microsecond;

f. Rotary input type shaft absolute position encoders having either of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; or

f.2. An accuracy better than ±2.5 seconds of arc.

3A002 General purpose electronic equipment.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000: 3A002.a, .e, .f, .g; $5000: 3A002.b to d, and 3A002.h

GBS: Yes for 3A002.a.1. 3A002.h and a.2, .b, d.2, as described in Advisory Note 1 to Category 3

CIV: Yes for 3A002.h, and a.1, a.2, .b, d.2, as described in Advisory Note 1 to Category 3

LIST OF ITEMS CONTROLLED

Unit: Number

Related Controls: N/A

Related Definitions: N/A

Items: a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (e.g., using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; or

a.1.c. A time displacement (base) error, measured in accordance with applicable Inter Range Instrumentation Group (IRIG) or Electronic Industries Association (EIA) documents, of less than ±0.1 microsecond;

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 180 Mbit/s, except those specially designed for television recording using a signal format as standardized or recommended by the International Radio Consultative Committee (CCIR) or the International Technical Commission (IEC) for civil television applications;

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having either of the following characteristics:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbits/s; or

a.3. b. ''Space qualified'';

NOTE: 3A002.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, with a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders with both of the following characteristics:

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; and

a.5.b. A continuous throughput of 2 Gbits/s or more;

TECHNICAL NOTE: For those instruments with a parallel bus architecture, the continuous throughput rates the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

b. ''Frequency synthesizer'' ''electronic assemblies'' having a ''frequency switching time'' from one selected frequency to another of less than 1 ms;

c. ''Signal analyzers'', as follows:

c.1. Capable of analyzing frequencies exceeding 31 GHz;

c.2. ''Dynamic signal analyzers'' with a ''real-time bandwidth'' exceeding 25.6 kHz, except those using only constant percentage bandwidth filters (also known as octave or fractional octave filters);

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31 GHz;

d.2. A ''frequency switching time'' from one selected frequency to another of less than 1 ms; or

d.3. A single sideband (SSB) phase noise better than $-(126+20\log_{10} F-20 \log_{10} f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

NOTE: 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 31 GHz;

NOTE: 3A002.e does not control ''swept frequency network analyzers'' with a maximum operating frequency not exceeding 40 GHz and that do not contain a data bus for remote control interfacing.

f. Microwave test receivers with both of the following:

f.1. A maximum operating frequency exceeding 31 GHz; and

f.2. Capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having either of the following characteristics:

g.1. Long term stability (aging) less (better) than 1×10^{-11}/month; or

g.2. ''Space qualified'';

NOTE: 3A002.g.1 does not control non-''space qualified'' rubidium standards.

h. Emulators for microcircuits controlled by 3A001.a.3 or 3A001.a.9.

NOTE: 3A002.h does not control emulators designed for a ''family'' that contains at least one device not controlled by 3A001.a.3 or 3A001.a.9.

3A101 Electronic equipment, devices and components, other than those specified in 3A001.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5,000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number

Related Controls: The corresponding EU list number controls analog-to-digital converters, usable in ''missiles'', designed to meet military specifications for ruggedized equipment in 1A101.a. These items are not controlled by this CCL entry. These items are subject to the export licensing authority of the U.S. Departement of State, Office of Defense Trade Controls (See 22 CFR 121.16, Item 14—Category II).

Related Definitions: N/A

Items: a. [Reserved]

b. Accelerators capable of delivering electromagnetic radiation produced by bremsstrahlung from accelerated electrons of 2Mev or greater, and systems containing those accelerators, excluding that equipment specially designed for medical purposes.

3A201 Electronic components, other than those specified in 3A001.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls:
Related Definition: This entry does not control magnets that are specially designed for and exported as parts of medical nuclear magnetic resonance (NMR) imaging systems. Such parts may be exported in separate shipments from different sources, provided that the related export control documents clearly specify that the parts are for medical NMR imaging systems that are being exported.
Items: a. Capacitors with the following characteristics:

a.1. Voltage rating greater than 1.4 kV, energy storage greater than 10J, capacitance greater than 500 nF and series inductance less than 50 nH; or

a.2. Voltage rating greater than 750 V, capacitance greater than 250 nF and series inductance less than 10 nH;

b. Superconducting solenoidal electromagnets with all of the following characteristics:

b.1. Capable of creating magnetic fields of more than 2 teslas (20 kilogauss);

b.2. With an L/D ratio (length divided by inner diameter) greater than 2;

b.3. With an inner diameter of more than 300 mm; *and*

b.4. With a magnetic field uniform to better than 1% over the central 50% of the inner volume;

c. Flash X-ray generators or pulsed electron accelerators with peak energy of 500 keV or greater, as follows; except: Accelerators that are component parts of devices designed for purposes other than electron beam or X-ray radiation (electron microscopy, for example) and those designed for medical purposes:

c.1. Having an accelerator peak electron energy of 500 keV or greater but less than 25 MeV and with a figure of merit (K) of 0.25 or greater, where K is defined as: $K=1.7\times10^3 V^{2.65} Q$, where V is the peak electron energy in million electron volts and Q is the total accelerated charge in coulombs if the accelerator beam pulse duration is less than or equal to 1 microsecond; if the accelerator beam pulse duration is greater than 1 microsecond, Q is the maximum accelerated charge in 1 microsecond [Q equals the integral of i with respect to t, over the lesser of 1 microsecond or the time duration of the beam pulse (Q=[integral] idt), where i is beam current in amperes and t is time in seconds]; or

c.2. Having an accelerator peak electron energy of 25 MeV or greater and a peak power greater than 50 MW. [Peak power=(peak potential in volts)×(peak beam current in amperes)].

TECHNICAL NOTES: a. Time duration of the beam pulse - In machines, based on microwave accelerating cavities, the time duration of the beam pulse is the lesser of 1 microsecond or the duration of the bunched beam packet resulting from one microwave modulator pulse.

b. Peak beam current—In machines based on microwave accelerating cavities, the peak beam current is the average current in the time duration of a bunched beam packet.

3A225 Frequency changers (also known as converters or inverters) or generators, having all of the following characteristics.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: Frequency changers (also known as converters or inverters) especially designed or prepared to supply motor stators and having the characteristics described in 3A225.b and .d, together with a total harmonic distortion of less than 2 percent and an efficiency of greater than 80 percent are subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)
Related Definition: Motor stators are especially designed or prepared ring-shaped stators for high-speed multiphase AC hysteresis (or reluctance) motors for synchronous operation within a vacuum in the frequency range of 600 Hz to 2,000 Hz, and a power range of 50 VA to 1,000 VA. The stators consist of multiphase windings on a laminated low-loss iron core comprising thin layers typically to 2.0 mm (.008 in) thick or less.
Items: a. A multisphase output capable of providing power of 40 W or more;

b. Capable of operating in the frequency range between 600 and 2,000 Hz;

c. Total harmonic distortion below 10%; and

d. Frequency control better than 0.1%.

3A226 Direct current high-power supplies capable of continuously producing, over a time period of 8 hours, 100 V or greater with a current output of 500 A or greater and with a current or voltage regulation better than 0.1%.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3A227 High-voltage direct current power supplies capable of continuously producing, over a time period of 8 hours, 20,000 V or greater with a current output of 1 A or greater and with a current or voltage regulation better than 0.1%.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3A228 Switching devices.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: a. Cold-cathode tubes (including gas krytron tubes and vacuum sprytron tubes), whether gas filled or not, operating similarly to a spark gap, containing three or more electrodes, and having all of the following characteristics:

a.1. Anode peak voltage rating of 2,500 V or more;

a.2. Anode peak current rating of 100 A or more; and

a.3. Anode delay time of 10 microseconds or less;

b. Triggered spark-gaps having an anode delay time of 15 microseconds or less and rated for a peak current of 500 A or more;

c. Modules or assemblies with a fast switching function having all of the following characteristics:

c.1. Anode peak voltage rating greater than 2,000 V;

c.2. Anode peak current rating of 500 A or more; and

c.3. Turn-on time of 1 microseconds or less.

3A229 Firing sets and equivalent high-current pulse generators (for detonators controlled by 3A232).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: a. Explosive detonator firing sets designed to drive multiple detonators of the type controlled by ECCN 3A232;

b. Modular electrical pulse generators (pulsers) designed for portable, mobile, or ruggedized use (including xenon flash-lamp drivers) having all the following characteristics:

b.1. Capable of delivering their energy in less than 15 microseconds;

b.2. Having an output greater than 100 A; and

b.3. Having a ''rise time'' of less than 10 microseconds into loads of less than 40 ohms.

TECHNICAL NOTE: ''Rise time'' is defined as the time interval from 10% to 90% current amplitude when driving a resistive load.

b.4. Enclosed in a dust-tight enclosure;

b.5. No dimension greater than 254 mm (10 in.);

b.6. Weight less than 25 kg (55 lb.); and

b.7. Specified for use over an extended temperature range (223 K [−50 °C] to 373 K [100 °C]) or specified as suitable for aerospace use.

3A230 High-speed pulse generators with output voltages greater than 6 volts into a less than 55 ohm resistive load, and with pulse transition times less than 500 picoseconds (defined as the time interval between 10% and 90% voltage amplitude).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3A231 Neutron generator systems, including tubes, designed for operation without an external vacuum system, and utilizing electrostatic acceleration to induce a tritium-deuterium nuclear reaction.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number, parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3A232 Detonators and multipoint initiation systems (exploding bridge wire, slapper, etc.).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definition: Detonators using only primary explosives, such as lead azide, are not controlled by this entry.
Items: a. Electrically driven explosive detonators, as follows:

a.1. Exploding bridge (EB);
a.2. Exploding bridge wire (EBW);
a.3. Slapper;
a.4. Exploding foil initiators (EFI)

b. Arrangements using single or multiple detonators designed to nearly simultaneously initiate an expolsive surface (over greater than 5,000 mm^2) from a single firing signal (with an initiation timing spread over the surface of less than 2.5 microseconds).

TECHNICAL NOTE: The detonators controlled by 3A232 utilize a small electrical conductor (bridge, bridgewire, or foil) that explosively vaporizes when a fast, high-current electrical pulse is passed through it. In nonslapper types, the exploding conductor starts a chemical detonation in a contacting high-explosive material such as PETN (pentaerythritoltetranitrate). In slapper detonators, the explosive vaporization of the electrical conductor drives a flyer or slapper across a gap, and the impact of the slapper on an explosive starts a chemical detonation. The slapper in some designs is driven by magnetic force. The term exploding foil detonator may refer to either an EB or a slapper-type detonator. Also, the word initiator is sometimes used in place of the word detonator.

3A233 Mass spectrometers capable of measuring ions of 230 atomic mass units or greater and having a resolution of better than 2 parts in 230, and ion sources therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: Specially designed or prepared magnetic or quadruple mass spectrometers that have the following characteristics and are capable of taking on-line samples of feed, product, or tails from UF_6 gas streams are subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.): (a) Unit resolution for mass greater than 320; (b) Ion sources that are constructed of or lined with nichrome or that are monel or nickel-plated; (c) Electron bombardment ionization sources; (d) Having a collector system suitable for isotopic analysis.
Related Definitions: N/A
Items: a. Inductively coupled plasma mass spectrometers (ICP/MS);

b. Glow discharge mass spectrometers (GDMS);

c. Thermal ionization mass spectrometers (TIMS);

d. Electron bombardment mass spectrometers that have a source chamber constructed from, or lined with or plated with materials resistent to UF_6;

e. Molecular beam mass spectrometers that:

e.1. Have a source chamber constructed from, or lined with or plated with stainless steel or molybdenum and have a cold trap capable of cooling to 193 K (−80 °C) or less; or

e.2. Have a source chamber constructed from, or lined with or plated with materials resistant to UF_6; or

f. Mass spectrometers equipped with a microfluorination ion source designed for use with actinides or actinide fluorides.

3A292 Oscilloscopes and transient recorders other than those controlled by 3A002.a.5, and specially designed components therefor

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: (a) Specially designed components specified in this item are the following, for analog oscilloscopes:

1. Plug-in units;
2. External amplifiers;
3. Pre-amplifiers;
4. Sampling devices;
5. Cathode ray tubes.

(b) For the purpose this entry, ''Bandwidth'' is defined as the band of frequencies over which the deflection on the cathode ray tube does not fall below 70.7% of that at the maximum point measured with a constant input voltage to the oscilloscope amplifier.

Items

a. Non-modular analog oscilloscopes having a bandwidth of 1 GHz or greater;

b. Modular analog oscilloscope systems having either of the following characteristics:

b.1. A mainframe with a bandwidth of 1 GHz or greater; or

b.2. Plug-in modules with an individual bandwidth of 4 GHz or greater;

c. Analog sampling oscilloscopes for the analysis of recurring phenomena with an effective bandwidth greater than 4 GHz;

d. Digital oscilloscopes and transient recorders using analog-to-digital conversion techniques, capable of storing transients by sequentially sampling one-shot input signals at successive intervals of less than 1 ns (greater than 1 giga-sample per second), digitizing to 8 bits or greater resolution, and storing 256 or more samples.

3A980 Voice print identification and analysis equipment and parts, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3A981 Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; electronic monitoring restraint devices; and specially designed parts and accessories, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3A992 Electronic devices and components not controlled by 3A001.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits having a clock frequency exceeding 25 MHz;

b. Storage integrated circuits not controlled by 3A001, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 1 Mbit per package; or

b.1.b. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; or

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Field programmable logic arrays not controlled by 3A001 having either of the following:

c.1. An equivalent gate count of more than 5,000 (2 input gates); or

c.2. A toggle frequency exceeding 100 MHz;

d. Travelling wave tubes, pulsed or continuous wave, not controlled by 3A001, as follows:

d.1. Coupled cavity tubes, or derivatives thereof;

d.2. Helix tubes, or derivatives thereof, with any of the following:

d.a.1. An ''instantaneous bandwidth'' of half an octave or more; and

d.a.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

d.2.b.1 An ''instantaneous bandwidth'' of less than half an octave; and

d.2.b.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

e. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

f. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., ''signal processing'' devices employing elastic waves in materials), not controlled by 3A001, having either of the following:

f.1. A carrier frequency exceeding 1 GHz; or

f.2. A carrier frequency of 1 GHz or less, and

f.2.a. A frequency side-lobe rejection exceeding 55 dB;

f.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; or

f.2.c. A dispersive delay of more than 10 microseconds.

g. Batteries not controlled by 3A001, as follows:

NOTE: 3A992.g does not control batteries with volumes equal to or less than 26 cm^3 (e.g., standard C-cells or UM–2 batteries).

g.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

g.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

TECHNICAL NOTE: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

g.3. ''Space qualified'' or radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28 °C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527 °C);

h. ''Superconductive'' electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, not controlled by 3A001, having all of the following:

NOTE: 3A992.h does not control ''superconductive'' electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

h.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

h.2. Inner diameter of the current carrying windings of more than 250 mm; and

h.3. Rated for a magnetic induction of more than 8T or ''overall current density'' in the winding of more than 300 A/mm^2.

3A993 Electronic test equipment in Category 3A n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1000 for Syria only
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3A994 General purpose electronic equipment not controlled by 3A002.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: a. Digital instrumentation magnetic tape data recorders not controlled by 3A002 having any of the following characteristics;

a.1. A maximum digital interface transfer rate exceeding 60 Mbit/s and employing helical scan techniques;

a.2. A maximum digital interface transfer rate exceeding 120 Mbit/s and employing fixed head techniques; or

a.3. ''Space qualified'';

b. Equipment, not controlled by 3A002, with a maximum digital interface transfer rate exceeding 60 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

c. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500A or more.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

3B001 "Stored program controlled" equipment for epitaxial growth.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $500
GBS: Yes, except 3B001 .b and .c
CIV: Yes for equipment controlled by 3B001.a as described in Advisory Note 1.d

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: a. Capable of producing a layer thickness uniform to less than ±2.5% across a distance of 75 mm or more;

b. Metal organic chemical vapour deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C003 or 3C004;

c. Molecular beam epitaxial growth equipment using gas sources.

3B002 "Stored program controlled" equipment designed for ion implanation, having the following characteristics.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $500
GBS: Yes
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: a. An accelerating voltage exceeding 200 keV;

b. Specially designed and optimized to operate at accelerating voltages of less than 10 keV;

c. Direct write capability; or

d. Capable of high energy oxygen implant into a heated semiconductor material ''substrate''.

3B003 "Stored program controlled" anisotropic plasma dry etching equipment.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $500
GBS: Yes
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: a. With cassette-to-cassette operation and load-locks, and having either of the following:

a.1. Magnetic confinement; or

a.1. Electron cyclotron resonance (ECR);

b. Specially designed for equipment controlled by 3B005 and having either of the following:

b.1. Magnetic confinement; or

b.2. Electron cyclotron resonance (ECR).

3B004 "Stored program controlled" plasma enchanced CVD equipment.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $500
GBS: Yes
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: a. With cassette-to-cassette operation and load-locks, and having either of the following:

a.1. Magnetic confinement; or

a.2. Electron cyclotron resonance (ECR);

b. Specially designed for equipment controlled by 3B005 and having either of the following:

b.1. Magnetic confinement; or

b.2. Electron cyclotron resonance (ECR);

3B005 "Stored program controlled" automatic loading multi-chamber central wafer handling systems, having interfaces for wafer input and output, to which more than two pieces of semiconductor processing equipment are to be connected, to form an integrated system in a vacuum environment for sequential multiple wafer processing.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $500
GBS: Yes, except when connected with equipment controlled by 3B001.b and .c or 3B006
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: This entry does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.
Items: The list of items controlled is contained in the ECCN heading.

3B006 "Stored program controlled" lithography equipment.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $500
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: a. Align and expose step and repeat equipment for wafer processing using photo-optical or X-ray methods, having either of the following:

a.1. A light source wavelength shorter than 400 nm;

a.2. Capable of producing a pattern with a minimum resolvable feature size of 0.7 micrometers or less when calculated by the following formula:

$$\text{MRF} = \frac{(\text{wavelength in micrometer}) \times (\text{K factor})}{\text{numerical aperture}}$$

where:

MRF is the minimum resolvable feature size; the K factor = 0.7; and wavlength is the exposure light source wavelength;

b. Equipment specially designed for mask making or semiconductor device processing using deflected focussed electron beam, ion beam or ''laser'' beam, with any of the following:

b.1. A spot size smaller than 0.2 micrometer;

b.2. Capable of producing a pattern with a feature size of less than 1 micrometer; or

b.3. An overlay accuracy of better than ±0.20 micrometer (3 sigma).

3B007 Masks or reticles.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $500
GBS: Yes
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A

Items: a. For integrated circuits controlled by 3A001;

b. Multi-layer masks with a phase shift layer.

3B008 "Stored program controlled" test equipment, specially designed for testing semiconductor devices and unencapsulated dice.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $500
GBS: Yes
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: a. For testing S-parameters of transistor devices at frequencies exceeding 31 GHz;

b. For testing integrated circuits, capable of performing functional (truth table) testing at a pattern rate of more than 40 MHz;

NOTE: 3B008.b does not control test equipment specially designed for testing:
1. "Electronic assemblies" or a class of "electronic assemblies" for home or entertainment applications;
2. Non-controlled electronic components, "electronic assemblies" or integrated circuits.

c. For testing microwave integrated circuits at frequencies exceeding 3 GHz;

NOTE: 3B008.c does not control test equipment specially designed for testing microwave integrated circuits operating solely in the Standard Civil Telecommunication Bands at frequencies not exceeding 31 GHz.

d. Electron beam systems designed for operation at or below 3 keV, or "laser" beam systems, for the non-contactive probing of powered-up semiconductor devices, with both of the following:

d.1. Stroboscopic capability with either beam-blanking or detector strobing; and

d.2. An electron spectrometer for voltage measurement with a resolution of less than 0.5 V.

NOTE: 3B008.d does not control scanning electron microscopes, except when specially designed and instrumented for the non-contactive probing of powered-up semiconductor devices.

3B991 Equipment not controlled by 3B001 for the manufacture or testing of electronic components and materials, and specially designed components and accessories therefor.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: a. Equipment specially designed for the manufacture or testing of electron tubes, optical elements and specially designed components therefor controlled by 3A001;

b. Equipment specially designed for the manufacture or testing of semiconductor devices, integrated circuits and "assemblies", as follows, and systems incorporating or having the characteristics of such equipment:

NOTE: 3B991.b also controls equipment used or modified for use in the manufacture or testing of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of 3B991.b, as follows:

NOTE: 3B991 does not control quartz furnace tubes, furnace liners, paddles, boats (except specially designed caged boats), bubblers, cassettes or crucibles specially designed for the processing equipment controlled by 3B991.b.1.

b.1.a. Equipment for producing polycrystalline silicon and materials controlled by 3C001;

b.1.b. Equipment specially designed for purifying or processing III/V and II/VI semiconductor materials controlled by 3C001, 3C002, 3C003, or 3C004, except crystal pullers, for which see 3B991.b.1.c below;

b.1.c. Crystal pullers and furnaces, as follows:

NOTE: 3B991.b.1.c does not control diffusion and oxidation furnaces.

b.1.c.1. Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 m^2 per minute;

b.1.c.2. "Stored programme controlled" crystal pullers having any of the following characteristics:

b.1.c.2.a. Rechargeable without replacing the crucible container;

b.1.c.2.b. Capable of operation at pressures above 2.5 x 105 Pa; or

b.1.c.2.c. Capable of pulling crystals of a diameter exceeding 100 mm;

b.1.d. "Stored program controlled" equipment for epitaxial growth having any of the following characteristics:

b.1.d.1. Capable of producing a layer thickness uniformity across the wafer of equal to or better than +3.5%;

b.1.d.2. Rotation of individual wafers during processing; or

b.1.e. Molecular beam epitaxial growth equipment;

b.1.f. ''Magnetically enhanced'' ''sputtering'' equipment with specially designed integral load locks capable of transferring wafers in an isolated vacuum environment;

b.1.g. Equipment specially designed for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

b.1.g.1. Patterning capability;

b.1.g.2. Accelerating voltage for more than 200 keV; or

b.1.g.3. Capable of high energy oxygen implant into a heated ''substrate'';

b.1.h. ''Stored program controlled'' equipment for the selective removal (etching) by means of anisotropic dry methods (e.g., plasma), as follows:

b.1.h.1. Batch types having either of the following:

b.1.h.1.a. End-point detection, other than optical emission spectroscopy types; or

b.1.h.1.b. Reactor operational (etching) pressure of 26.66 Pa or less;

b.1.h.2. Single wafer types having any of the following:

b.1.h.2.a. End-point detection, other than optical emission spectroscopy types;

b.1.h.2.b. Reactor operational (etching) pressure of 26.66 Pa or less; or

b.1.h.2.c. Cassette-to-cassette and load locks wafer handling;

NOTES: 1. ''Batch types'' refers to machines not specially designed for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, e.g., RF power, temperature, etch gas species, flow rates.

2. ''Single wafer types'' refers to machines specially designed for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, e.g., RF power or end point, can be independently determined for each individual wafer.

b.1.i. ''Chemical vapor deposition'' (CVD) equipment, e.g., plasma-enhanced CVD (PECVD) or photo-enhanced CVD, for semiconductor device manufacturing, having either of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon:

b.1.i.1. ''Chemical vapor deposition'' equipment operating below 105 Pa; or

b.1.i.2. PECVD equipment operating either below 60 Pa (450 millitorr) or having automatic cassette-to-cassette and load lock wafer handling;

NOTE: 3B991.b.1.i does not control low pressure ''chemical vapor deposition'' (LPCVD) systems or reactive ''sputtering'' equipment.

b.1.j. Electron beam systems specially designed or modified for mask making or semiconductor device processing having any of the following characteristics:

b.1.j.1. Electrostatic beam deflection;

b.1.j.2. Shaped, non-Gaussian beam profile;

b.1.j.3. Digital-to-analog conversion rate exceeding 3 MHz;

b.1.j.4. Digital-to-analog conversion accuracy exceeding 12 bit; or

b.1.j.5. Target-to-beam position feedback control precision of 1 micrometer or finer;

NOTE: 3B991.b.1.j does not control electron beam deposition systems or general purpose scanning electron microscopes.

b.1.k. Surface finishing equipment for the processing of semiconductor wafers as follows:

b.1.k.1. Specially designed equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; or

b.1.k.2. Specially designed equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

NOTE: 3B991.b.1.k does not control single-side lapping and polishing equipment for wafer surface finishing.

b.1.l. Interconnection equipment which includes common single or multiple vacuum chambers specially designed to permit the integration of any equipment controlled by 3B991 into a complete system;

b.1.m. ''Stored program controlled'' equipment using ''lasers'' for the repair or trimming of ''monolithic integrated circuits'' with either of the following characteristics:

b.1.m.1. Positioning accuracy less than ±1 micrometer; or

b.1.m.2. Spot size (kerf width) less than 3 micrometer.

b.2. Masks, mask ''substrates'', mask-making equipment and image transfer equipment for the manufacture of devices and components as specified in the heading of 3B991, as follows:

NOTE: The term ''masks'' refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.

b.2.a. Finished masks, reticles and designs therefor, except:

b.2.a.1. Finished masks or reticles for the production of unembargoed integrated circuits; or

b.2.a.2. Masks or reticles, having both of the following characteristics:

b.2.a.2.a. Their design is based on geometries of 2.5 micrometer or more; and

b.2.a.2.b. The design does not include special features to alter the intended use by means of production equipment or ''software'';

b.2.b. Mask ''substrates'' as follows:

b.2.b.1. Hard surface (e.g., chromium, silicon, molybdenum) coated ''substrates'' (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm×125 mm; or

b.2.b.2. ''Substrates'' specially designed for X-ray masks;

b.2.c. Equipment, other than general purpose computers, specially designed for computer aided design (CAD) of semiconductor devices or integrated circuits;

b.2.d. Equipment or machines, as follows, for mask or reticle fabrication:

b.2.d.1. Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm×100 mm, or capable of producing a single exposure larger than 6 mm×6 mm in the image (i.e., focal) plane, or capable of producing line widths of less than 2.5 micrometer in the photoresist on the ''substrate'';

b.2.d.2. Mask or reticle fabrication equipment using ion or ''laser'' beam lithography capable of producing line widths of less than 2.5 micrometer; or

b.2.d.3. Equipment or holders for altering masks or reticles or adding pellicles to remove defects;

NOTE: 3B991.b.2.d.1 and b.2.d.2 do not control mask fabrication equipment using photo-optical methods which was either commercially available before the 1st January, 1980, or has a performance no better than such equipment.

b.2.e. ''Stored program controlled'' equipment for the inspection of masks, reticles or pellicles with:

b.2.e.1. A resolution of 0.25 micrometer or finer; and

b.2.e.2. A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

NOTE: 3B991.b.2.e does not control general purpose scanning electron microscopes except when specially designed and instrumented for automatic pattern inspection.

b.2.f. Align and expose equipment for wafer production using photo-optical methods, including both projection image transfer equipment and step and repeat equipment, capable of performing any of the following functions:

NOTE: 3B991.b.2.f does not control photo-optical contact and proximity mask align and expose equipment or contact image transfer equipment.

b.2.f.1. Production of a pattern size of less than 2.5 micrometer;

b.2.f.2. Alignment with a precision finer than ±0.25 micrometer (3 sigma); or

b.2.f.3. Machine-to-machine overlay no better than +0.3 micrometer;

b.2.g. Electron beam, ion beam or X-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometer;

NOTE: For focussed, deflected-beam systems (direct write systems), see 3B91.b.1.j or b.10.

b.2.h. Equipment using ''lasers'' for direct write on wafers capable of producing patterns less than 2.5 micrometer.

b.3. ''Stored program controlled'' inspection equipment for the automatic detection of defects, errors or contaminants of 0.6 micrometer or less in or on processed wafers, ''substrates'', other than printed circuit boards or chips, using optical image acquisition techniques for pattern comparison;

NOTE: 3B991.b.3 does not control general purpose scanning electron microscopes, except when specially designed and instrumented for automatic pattern inspection.

b.4. Specially designed ''stored program controlled'' measuring and analysis equipment, as follows:

b.4.a. Specially designed for the measurement of oxygen or carbon content in semiconductor materials;

b.4.b. Equipment for line width measurement with a resolution of 1 micrometer or finer;

b.4.c. Specially designed flatness measurement instruments capable of measuring deviations from flatness of 10 micrometer or less with a resolution of 1 micrometer or finer.

b.5. Equipment for the assembly of integrated circuits, as follows:

b.5.a. ''Stored program controlled'' die bonders having all of the following characteristics:

b.5.a.1. Specially designed for ''hybrid integrated circuits'';

b.5.a.2. X–Y stage positioning travel exceeding 37.5×37.5 mm; and

b.5.a.3. Placement accuracy in the X–Y plane of finer than + 10 micrometer;

b.5.b. ''Stored program controlled'' equipment for producing multiple bonds in a single operation (e.g., beam lead bonders, chip carrier bonders, tape bonders);

b.5.c. Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled by 3A001 and that have a throughput equal to or more than one package per minute.

NOTE: 3B991.b.5. does not control general purpose resistance type spot welders.

b.6. ''Stored program controlled'' wafer probing equipment having any of the following characteristics:

b.6.a. Positioning accuracy finer than 3.5 micrometer;

b.6.b. Capable of testing devices having more than 68 terminals; or

b.6.c. Capable of testing at a frequency exceeding 1 GHz;

b.7. Test equipment as follows:

b.7.a. ''Stored program controlled'' equipment specially designed for testing discrete semiconductor devices and unencapsulated dice, capable of testing at frequencies exceeding 18 GHz;

TECHNICAL NOTE: Discrete semiconductor devices include photocells and solar cells.

b.7.b. ''Stored program controlled'' equipment specially designed for testing integrated circuits and ''assemblies'' thereof, capable of functional testing:

b.7.b.1. At a pattern rate exceeding 20 MHz; or

b.7.b.2. At a pattern rate exceeding 10 MHz but not exceeding 20 MHz and capable of testing packages of more than 68 terminals;

NOTE: 3B991.b.7.b. does not control equipment specially designed for testing integrated circuits not controlled by 3A001 or 3A991.

NOTES: 1. 3B991.b.7.b does not control test equipment specially designed for testing ''assemblies'' or a class of ''assemblies'' for home and entertainment applications.

2. 3B991.b.7.b does not control test equipment specially designed for testing electronic components, ''assemblies'' and integrated circuits not controlled by 3A001 or 3A991 provided such test equipment does not incorporate computing facilities with ''user accessible programmability''.

b.7.c. Equipment specially designed for determining the performance of focal-plane arrays at wavelengths of more than 1,200 nm, using ''stored program controlled'' measurements or computer aided evaluation and having any of the following characteristics:

b.7.c.1. Using scanning light spot diameters of less than 0.12 mm;

b.7.c.2. Designed for measuring photosensitive performance parameters and for evaluating frequency response, modulation transfer function, uniformity of responsivity or noise; or

b.7.c.3. Designed for evaluating arrays capable of creating images with more than 32 x 32 line elements;

b.8. Filters for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometer or smaller per 0.02832 m 3 and filter materials therefor;

b.9. Electron beam test systems, capable of operating at or below 3,000 eV, for non-contactive probing of powered-up semiconductor devices having any of the following:

b.9.a. Stroboscopic capability with either beam blanking or detector strobing;

b.9.b. An electron spectrometer for voltage measurements with a resolution of less than 0.5 V; or

b.9.c. Electrical tests fixtures for performance analysis of integrated circuits;

NOTE: 3B991.b.9 does not control scanning electron microscopes, except when specially designed and instrumented for non-contactive probing of a powered-up semiconductor device.

b.10. ''Stored program controlled'' multifunctional focused ion beam systems specially designed for manufacturing, repairing, physical layout analysis and testing of masks or semiconductor devices and having either of the following characteristics:

b.10.a. Target-to-beam position feedback control precision of 1 micrometer or finer; or

b.10.b. Digital-to-analog conversion accuracy exceeding 12 bit;

b.11. Particle measuring systems employing ''lasers'' designed for measuring particle size and concentration in air having both of the following characteristics:

b.11.a. Capable of measuring particle sizes of 0.2 micrometer or less at a flow rate of 0.02832 m3 per minute or more; and

b.11.b. Capable of characterizing Class 10 clean air or better.

C. MATERIALS

3C001 Hetero-epitaxial materials consisting of a "substrate" with stacked epitaxially grown multiple layers.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3,000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Silicon;

b. Germanium; or

c. III/V compounds of gallium or indium.

TECHNICAL NOTE: III/V compounds are polycrystalline or binary or complex monocrystalline products consisting of elements of groups IIIA and VA of Mendeleyev's periodic classification table (gallium arsenide, gallium-aluminium arsenide, indium phosphide, etc.).

3C002 Resist materials, and "substrates" coated with controlled resists.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: Yes for 3C002.a as described in Advisory Note 1.e
CIV: Yes for 3C002.a as described in Advisory Note 1.e

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Positive resists for semiconductor lithography specially adjusted (optimized) for use at wavelengths below 370 nm;

b. All resists, for use with electron beams or ion beams, with a sensitivity of 0.01 microcoulomb/mm2 or better;

c. All resists, for use with X-rays, with a sensitivity of 2.5 mJ/mm2 or better;

d. All resists optimized for surface imaging technologies, including silyated resists.

TECHNICAL NOTE: Silyation techniques are defined as processes incorporating oxidation of the resist surface to enhance performance for both wet and dry developing.

3C003 Organo-inorganic compounds.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3,000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: This entry controls only compounds whose metallic, partly metallic or non-metallic element is directly linked to carbon in the organic part of the molecule.
Items: a. Organo-metallic compounds of aluminum, gallium or indium having a purity (metal basis) better than 99.999%; or

b. Organo-arsenic, organo-antimony and organo-phosphorus compounds having a purity (inorganic element basis) better than 99.999% percent.

3C004 Hydrides of phosphorus, arsenic or antimony, having a purity better than 99.999%, even diluted in inert gases or hydrogen.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: This entry does not control hydrides containing less than 20% molar or more of inert gases or hydrogen.
Items: The list of items controlled is contained in the ECCN heading.

D. SOFTWARE

3D001 "Software" specially designed for the "development" or "production" of equipment controlled by 3A001.a.1.a, 3A001.b to 3A001.f, 3A002, 3A101 or 3B (except 3B991).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	*Country Chart*
NS applies to ''software'' for equipment controlled by 3A001.b to 3A001.f, 3A002, and 3B001 to 3B008	NS Column 1
MT applies to ''software'' for equipment controlled by 3A001.a.1.a or 3A101	MT Column 1
NP applies to ''software'' for equipment controlled by 3A001.e.5	NP Column 1
At applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes, except 3A001.e.5

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3D002 "Software" specially designed for the "use" of "stored program controlled" items controlled by 3B (except 3B991).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3D003 Computer-aided-design (CAD) "software" for semiconductor device or integrated circuits, having any of the following.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: (a) This entry does not control ''software'' specially designed for schematic entry, logic simulation, placing and routing, layout verification or pattern generation tape. (b) Libraries, design attributes or associated data for the design

of semiconductor devices or integrated circuits are considered as ''technology''.

Items: a. Design rules or circuit verification rules;

b. Simulation of the physically laid out circuits; or

c. Lithographic processing simulators for design.

TECHNICAL NOTE: A lithographic processing simulator is a ''software'' package used in the design phase to define the sequence of lithographic, etching and deposition steps for translating masking patterns into specific topographical patterns in conductors, dielectrics or semiconductor material.

3D101 "Software" specially designed for the "use" of items controlled by 3A101.b.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A Items: The list of items controlled is contained in the ECCN heading.

3D980 "Software" specially designed for the "development", "production", or "use" of items controlled by 3A980 and 3A981.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

3D994 "Software" specially designed for the "development", "production", or "use" of electronic devices or components controlled by 3A992, electronic test equipment controlled by 3A993, general purpose electronic equipment controlled by 3A994, or manufacturing and test equipment controlled by 3B991.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

3E001 "Technology" according to the General Technology Note for the "development" or "production" of items controlled by 3A (except 3A292, 3A980, 3A981, and 3A992 to 3A994), 3B (except 3B991) or 3C

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	*Country Chart*
NS applies to ''technology'' for items controlled by 3A001, 3A002, 3B001 to 3B008 or 3C001 to 3C004.	NS Column 1
MT applies to ''technology'' for equipment controlled by 3A001 or 3A101 for MT reasons.	MT Column 1
NP applies to ''technology'' for equipment controlled by 3A001, 3A201, 3A225 to 3A233 for NP reasons.	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except 3A001.a.1.a and e.5

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definition: This entry does not control ''technology'' for the ''development'' or ''production'' of: (a) Microwave transistors operating at frequencies below 31 GHz; (b) Integrated circuits controlled by 3A001.a.3 to a.12, having both of the following characteristics using ''technology'' of one micrometer or more, AND not incorporating multi-layer structures. This does not preclude the export and reexport of multilayer ''technology'' for devices incorporating a maximum of two metal layers and two polysilicon layers.

Items: The list of items controlled is contained in the ECCN heading.

3E002 Other "technology" for the "development" or "production" of items described in this entry.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well or super lattice devices;

c. ''Superconductive'' electronic devices;

d. ''Substrates'' of films of diamond for electronic components.

3E101 "Technology" according to the General Technology Note for the "use" of equipment controlled by 3A001.a.1.a or 3A101.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3E201 "Technology" according to the General Technology Note for the "use" of items controlled by 3A001.e.2, e.3, and e.5, 3A201, 3A225 to 3A233

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3E292 "Technology" according to the General Technology Note for the "development", "production", or "use" of items controlled by 3A292

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3E980 "Technology" specially designed for "development", "production", or "use" of items controlled by 3A980 and 3A981.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3E994 "Technology" for the "development", "production", or "use" of electronic devices or components controlled by 3A992, electronic test equipment controlled by 3A993, general purpose electronic equipment controlled by 3A994, or manufacturing and test equipment controlled by 3B991.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

ADVISORY NOTES FOR CATEGORY 3

ADVISORY NOTE 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of:

a. Analog instrumentation magnetic tape recorders controlled by 3A002.a.1, provided that all of the following conditions are met:

1. Bandwidths do not exceed:

a. 4 MHz per track and have up to 28 tracks; or

b. 2 MHz per track and have up to 42 tracks;

2. Tape speed does not exceed 6.1 m/s;

3. They are not designed for underwater use;

4. They are not ruggedized for military use; and

5. Recording density does not exceed 653.2 magnetic flux sine waves per mm;

b. Video magnetic tape recorders specially designed for civil television recording;

c. Instrument ''frequency synthesizers'' or synthesized signal generators controlled by 3A002.b or 3A002.d.2, and specially designed components or accessories therefor, having:

1. A synthesized output frequency of 2.6 GHz or less; and

2. A ''frequency switching time'' of 0.3 ms or more;

d. Epitaxial reactors controlled by 3B001.a, except those also controlled by 3B001.b or 3B001.c;

e. Positive resists not optimized for photolithography at a wavelength of less than 365 nm, provided that they are not controlled by 3C002.b to 3C002.d.

ADVISORY NOTE 2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group D:1 of items controlled by 3A001.a.4.a or a.4.b.

ADVISORY NOTE 3: Licenses are likely to be approved for exports and reexports to satisfactory end-uses in Country Group D:1 of items controlled by 3A231, including tubes, provided that they are for civil use.

N.B.: The provisions of this Advisory Note notwithstanding, current law prohibits approval to nuclear production or utilization facilities in the People's Republic of China.

Category 4—Computers

NOTE 1: Computers, related equipment or ''software'' performing telecommunications or ''local area network'' functions must also be evaluated against the performance characteristics in Category 5 (Part I. Telecommunications).

N.B. 1: Control units that directly interconnect the buses or channels of central processing units, ''main storage'' or disk controllers, are not regarded as telecommunications equipment described in Category 5 (Part I. Telecommunications).

N.B. 2: For the control status of ''software'' that provides routing or switching of ''datagram'' or ''fast select'' packets (i.e., packet by packet route selection) or for ''software'' specially designed for packet switching, see Category 5 (Part I. Telecommunications).

NOTE 2: Computers, related equipment or ''software'' performing cryptographic, cryptanalytic, certifiable multi-level security or certifiable user isolation functions, or that limit electronmagnetic compatibility (EMC), must also be evaluated against the performance characteristics in Category 5 (Part II. ''Information Security'').

A. EQUIPMENT, ASSEMBLIES AND COMPONENTS

4A001 Electronic computers and related equipment, and "electronic assemblies" and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT, NP, XP

Control(s)	*Country chart*
NS applies to entire entry	NS Column 2
MT applies to 4A001.a	MT Column 1
AT applies to entire entry	AT Column 1

NP applies to electronic computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to electronic computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See §742.12 of the EAR for additional information.

See §742.12 of the EAR for additional information.

LICENSE EXCEPTIONS

LVS: $5,000 for 4A001.a; N/A for 4A001.b

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: Equipment designed or rated for transient ionizing radiation is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category XI.)

Related Definitions: N/A

Items: a. Specially designed to have either of the following characteristics:

a.1. Rated for operation at an ambient temperature below 228 K (−45 °C) or above 358 K (85 °C);

NOTE: The temperature limits in 4A001.a.1. do not apply to computers specially designed for civil automobile and railway train applications.

a.2. Radiation-hardened to exceed any of the following specifications:

a.2.a. Total Dose: 5×10^5 Rads (Si);

a.2.b. Dose Rate Upset: 5×10^8 Rads (Si)/sec;

a.2.c. Single Event Upse: 1×10^{-7} Error/bit/day; or

b. Having characteristics or performing functions exceeding the limits in Category 5 (Part II. ''Information Security'').

4A002 "Hybrid computers", and "electronic assemblies" and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT, NP, XP

Control(s)	*Country chart*
NS applies to entire entry	NS Column 2
MT applies to hybrid computers combined with specially designed ''software'', for modeling, simulation, or design integration of complete rocket systems and unmanned air vehicle systems that are usable in systems controlled for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1

NP applies to hybrid computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to hybrid computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See §742.12 of the EAR for additional information.

LICENSE EXCEPTIONS

LVS: $,5,000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. Containing ''digital computers'' controlled by 4A003;

b. Containing analog-to-digital converters having both of the following characteristics:

b.1. 32 channels or more; and

b.2. A resolution of 14 bits (plus sign bit) or more with a conversion rate of 200,000 conversions/s or more.

4A003 "Digital computers", "electronic assemblies", and related equipment therefor, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, CC. AT, NP, XP

Control(s)	*Country chart*
NS applies to 4A003.b and .c	NS Column 1
NS applies to 4A003.a, d, .e, .f, and .g	NS Column 2
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006	MT Column 1
CC applies to digital computers for computerized fingerprint equipment	CC Column 1
AT applies to entire entry (refer to 4A994 for controls on computers with a CTP ≥ 6 but ≤ to 260 Mtops)	AT Column 1

NP applies to digital computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to digital computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See §742.12 of the EAR for additional information.

NOTE: For all destinations, except Cuba, Iran, Iraq, Libya, N.Korea, Sudan, and Syria, no license is required (NLR) for computers with a CTP between 260 and 2,000 Mtops., and for assemblies described in 4A003.c that are not capable of exceeding a CTP of 2,000 Mtops in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

LICENSE EXCEPTIONS

LVS: $5000

GBS: Yes, for 4A003.d, .e, .f, and .g and specially designed components therefor, exported separately or as part of a system

CTP: Yes, for computers controlled by 4A003.a, .b and .c, to the exclusion of other technical parameters, with the exception of parameters specified as controlled for Missile Technology (MT) concerns or 4A003.e (equipment performing analog-to-digital conversions exceeding the limits of 3A001.a.5.a). See §740.7 of the EAR.

CIV: Yes, for 4A003.d (having a 3–D vector rate less than 10 M vectors/sec), .e, .f and .g

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: N/A

Related Definitions: N/A

Items:

NOTE 1: 4A003 includes vector processors, array processors, digital signal processors, logic processors, and equipment for ''image enhancement'' or ''signal processing''.

NOTE 2: The control status of the ''digital computers'' or related equipment described in 4A003 is governed by the control status of other equipment or systems provided:

a. The ''digital computers'' or related equipment are essential for the operation of the other equipment or systems;

b. The ''digital computers'' or related equipment are not a ''principal element'' of the other equipment or systems; and

N.B. 1: The control status of ''signal processing'' or ''image enhancement'' equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the ''principal element'' criterion.

N.B. 2: For the control status of ''digital computers'' or related equipment for telecommunications equipment, see the telecommunications entries in Category 5.

c. The ''technology'' for the ''digital computers'' and related equipment is governed by 4E.

a. Designed or modified for ''fault tolerance'';

NOTE: For the purposes of 4A003.a, ''digital computers'' and related equipment are not considered to be designed or modified for ''fault tolerance'', if they use:

1. Error detection or correction algorithms in ''main storage'';
2. The interconnection of two ''digital computers'' so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;
3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or
4. The synchronization of two central processing units by ''software'' so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. ''Digital computers'' having a ''Composite Theoretical Performance'' (''CTP'') exceeding 260 million composite theoretical operations per second (Mtops);

c. ''Electronic assemblies'' specially designed or modified to be capable of enhancing performance by aggregation of ''computing elements'', so that the ''CTP'' of the aggregation exceeds the limit in 4A003.b.

NOTE 1: 4A003.c applies only to ''electronic assemblies'' and programmable interconnections not exceeding the limits in 4A003.b, when shipped as unintegrated ''electronic assemblies''. It does not apply to ''electronic assemblies'' inherently limited by nature of their design for use as related equipment controlled by 4A003.d to 4A003.f.

NOTE 2: 4A003.c does not control ''electronic assemblies'' specially designed for a product or family of products whose maximum configuration does not exceed the limits of 4A003.b.

d. Graphics accelerators or graphics coprocessors exceeding a ''3–D Vector Rate'' of 1,600,000;

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;

f. Equipment containing ''terminal interface equipment'' exceeding the limits in 5A001.b.3;

NOTE: For the purposes of 4A003.f, ''terminal interface equipment'' includes ''local area network'' interfaces, modems and other communications interfaces. ''Local area network'' interfaces are evaluated as ''network access controllers''.

g. Equipment, specially designed to provide for the external interconnection of ''digital computers'' or associated equipment, that allows communications at data rates exceeding 80 Mbytes/s.

NOTE: 4A003.g does not control internal interconnection equipment (e.g., backplanes, buses) or passive interconnection equipment.

4A004 Computers, and specially designed related equipment, "electronic assemblies" and components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5,000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Systolic array computers'';
b. ''Neural computers''; and
c. ''Optical computers''.

4A101 Analog computers, "digital computers", or digital differential analyzers, other than those controlled by 4A001.a.1, designed or modified for use in missiles, having either of the following characteristics.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: a. Rated for continuous operation at temperatures from below −45 °C to above +55 °C; or
b. Designed as ruggedized or ''radiation hardened''.

4A980 Computers for fingerprint equipment, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

4A994 Computers, "electronic assemblies", and related equipment not controlled by 4A001, 4A002, or 4A003, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Electronic computers and related equipment, and ''electronic assemblies'' and specially designed components therefor, rated for operation at an ambient temperature above 343 K (70 °C);

b. ''Digital computers'' having a ''composite theoretical performance'' (''CTP'') equal to or greater than 6 million theoretical operations per second (Mtops);

c. ''Assemblies'' not controlled by 4A003 that are specially designed or modified to enhance performance by aggregation of ''computing elements'' (''CEs''), as follows:

c.1. Designed to be capable of aggregation in configurations of 16 or more ''computing elements'' (''CEs''); or

c.2. Having a sum of maximum data rates on all channels available for connection to associated processors exceeding 40 million Bytes/s;

NOTE 1: 4A994.c applies only to ''electronic assemblies'' and programmable interconnections with a ''CTP'' not exceeding the limits in 4A994.b, when shipped as unintegrated ''electronic assemblies''. It does not apply to ''electronic assemblies'' inherently limited by nature of their design for use as related equipment controlled by 4A994.

NOTE 2: 4A994.c does not control any ''electronic assembly'' specially designed for a product or family of products whose maximum configuration does not exceed the limits of 4A994.b.

d. Disk drives and solid state storage equipment:

d.1. Magnetic, erasable optical or magneto-optical disk drives with a ''maximum bit transfer rate'' exceeding 25 million bit/s;

d.2. Solid state storage equipment, other than ''main storage'' (also known as solid state disks or RAM disks), with a ''maximum bit transfer rate'' exceeding 36 million bit/s;

e. Input/output control units designed for use with equipment controlled by 4A994.d;

f. Equipment for ''signal processing'' or ''image enhancement'', not controlled by 4A003, having a ''composite theoretical performance'' (''CTP'') exceeding 8.5 million theoretical operations per second (Mtops);

g. Graphics accelerators or graphics co-processors, not controlled by 4A003, that exceeds a ''3–D vector rate'' of 400,000 or, if supported by 2–D vectors only, a ''2–D vector rate'' of 600,000;

NOTE 1: The provisions of 4A994.g do not apply to work stations designed for and limited to:
a. Graphic arts (e.g., printing, publishing); and
b. The display of two-dimensional vectors.

h. Color displays or monitors having more than 120 resolvable elements per cm in the direction of the maximum pixel density;

NOTE 1: 4A994.h does not control displays or monitors not specially designed for electronic computers.

NOTE 2: Displays specially designed for air traffic control (ATC) systems are treated as specially designed components for ATC systems under Category 6.

i. Equipment containing ''terminal interface equipment'' exceeding the limits in 5A991.

NOTE: For the purposes of 4A994.i, ''terminal interface equipment'' includes ''local area network'' interfaces, modems and other communications interfaces. ''Local area network'' interfaces are evaluated as ''network access controllers''.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

4B994 Equipment for the "development" and "production" of magnetic and optical storage equipment.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: This entry does not control general-purpose sputtering equipment.
Items: a. Equipment specially designed for the application of magnetic coating to controlled non-flexible (rigid) magnetic or magneto-optical media;

b. ''Stored program controlled'' equipment specially designed for monitoring, grading, exercising or testing controlled rigid magnetic media;

c. Equipment specially designed for the ''production'' or alignment of heads or head/disk assemblies for controlled rigid magnetic and magneto-optical storage, and electromechanical or optical components therefor.

C. MATERIALS

4C994 Materials specially formulated for and required for the fabrication of head/disk assemblies for controlled magnetic and magneto-optical hard disk drives.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

D. SOFTWARE

4D001 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 4A001 to 4A004, 4A101, or "software" controlled by 4D001 to 4D003.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, CC, AT, NP, XP.

Control(s)	*Country chart*
NS applies to ''software'' for equipment controlled by 4A001 to 4A004, 4D001 to 4D003	NS Column 1
MT applies to ''software'' for equipment controlled by 4A001 to 4A003 or 4A101 for MT reasons	MT Column 1
CC applies to ''software'' for equipment controlled by 4A003 for CC reasons	CC Column 1
AT applies to entire entry	AT Column 1

NP applies to ''software'' for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''software'' for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.12 of the EAR for information on applicable licensing review policies.

LICENSE EXCEPTIONS

CIV: Yes, (see Advisory Notes 2 and 3 to Category 4)
TSR: Yes, except for computers requiring a license.

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

4D002 "Software" specially designed or modified to support "technology" controlled by 4E001 or 4E002.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT, NP, XP.

Control(s)	*Country chart*
NS applies to entire entry	NS Column 1
MT applies to ''software'' for equipment controlled by 4A001 to 4A003 or 4A101 for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1

NP applies to ''software'' for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''software'' for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.12 of the EAR for information on applicable licensing review policies.

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes, except ''software'' specifically designed or modified to support ''technology'' for computers requiring a license.

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

4D003 Specific "software", as described in this entry.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes, except 4D003.c

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Operating system ''software'', ''software'' ''development'' tools and compilers specially designed for ''multi-data-stream processing'' equipment, in ''source code'';

b. ''Expert systems'' or ''software'' for ''expert system'' inference engines providing both:

b.1. Time dependent rules; and

b.2. Primitives to handle the time characteristics of the rules and the facts;

c. ''Software'' having characteristics or performing functions exceeding the limits in the ''information security'' entries in Category 5;

d. Operating systems specially designed for ''real time processing'' equipment that guarantees a ''global interrupt latency time'' of less than 20 microseconds.

4D980 "Software" specially designed for the "development", "production", or "use" of items controlled by 4A980.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

4D993 "Program" proof and validation "software", "software" allowing the automatic generation of "source codes", and operating systems not controlled by 4D003 that are specially designed for real time processing equipment.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Program'' proof and validation ''software'' using mathematical and analytical techniques and designed or modified for ''programs'' having more than 500,000 ''source code'' instructions;

b. ''Software'' allowing the automatic generation of ''source codes'' from data acquired on line from external sensors described in the Commerce Control List;

c. Operating systems not controlled by 4D003 that are specially designed for ''real time processing'' equipment that guarantees a ''global interrupt latency time'' of less than 30 microseconds.

4D994 "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 4A994, 4B994 and materials controlled by 4C994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

4E001 "Technology" according to the General Technology Note, for the "development", "production" or "use" of equipment controlled by 4A001 to 4A004, 4A101 or "software" controlled by 4D (except 4A980, 4A993 or 4A994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, CC, AT, NP, XP.

Control(s)	*Country chart*
NS applies to ''technology'' for equipment controlled by 4A001 to 4A004, 4D001 to 4D003	NS Column 1
MT applies to ''technology'' for equipment controlled by 4A001 to 4A003, 4A101 4D001 or 4D002 for MT reasons	MT Column 1
CC applies to ''technology'' for equipment controlled by 4A003 for CC reasons	CC Column 1
AT applies to entire entry	AT Column 1

NP applies to ''technology'' for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''technology'' for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See §742.12 of the EAR for information on applicable licensing review policies.

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes, except ''technology'' for computers with a CTP > 2,000 Mtops.

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

4E002 Other "technology".

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Technology'' for the ''development'' or ''production'' of equipment designed for ''multi-data-stream processing'' where the ''CTP'' exceeds 120 Mtops;

b. ''Technology'' ''required'' for the ''development'' or ''production'' of magnetic hard disk drives with a Maximum Bit Transfer Rate (''MBTR'') exceeding 47 Mbits/s.

4E980 "Technology" for the "development", "production", or "use" of items controlled by 4A980.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

4E992 "Technology" for the "development", "production", or "use" of equipment controlled by 4A994 and 4B994, materials controlled by 4C994, or "software" controlled by 4D992, 4D993, or 4D994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

4E993 "Technology" for the "development" or "production" of graphics accelerators or equipment designed for "multi-data-stream processing" and "technology" "required" for the "development" or "production" of magnetic hard disk drives.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Technology'' for the ''development'' or ''production'' of graphics accelerators not controlled by 4A003.d or 4A994.g;

b. ''Technology'', not controlled by 4E002.a, for the ''development'' or ''production'' of equipment designed for ''multi-data-stream processing'';

c. ''Technology'', not controlled by 4E002.b, ''required'' for the ''development'' or ''production'' of magnetic hard disk drives with a ''maximum bit transfer rate'' (''MBTR'') exceeding 11 Mbit/s.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

ADVISORY NOTES FOR CATEGORY 4

ADVISORY NOTE 1: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Romania of the items controlled by Category 4 for national security reasons, except:

a. Computers controlled by 4A001 or 4A002;

b. ''Digital computers'' controlled by 4A003.b having a ''composite theoretical performance (''CPT'') exceeding 100 million theoretical operations per second (Mtops);

c. Computers controlled by 4A004, and specially related equipment, ''electronic assemblies'' and components therefor;

d. ''Software'' specially designed and ''technology'' ''required'' for the equipment described in this Advisory Note 1 .a, .b, or .c that are controlled by 4D or 4E.

ADVISORY NOTE 2: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in the People's Republic of China of ''digital computers'', specially designed components and related equipment therefor, controlled by 4A003.b, .d, .e, .f, or ''software'' controlled by 4D001, provided that:

a. They will be operated by civil end-users for civil applications;

b. They are exported or reexported as complete systems or enhancements to previously exported systems up to the limits in this Advisory Note 2.d;

c. They have been primarily designed and used for non-strategic applications;

d. The ''CTP'' of the ''digital computers'' does not exceed 20 Mtops;

e. Equipment containing ''terminal interface equipment'' does not exceed:

1. The limits of Advisory Note 3 to Category 5, Section I (Telecommunications);

2. The limits of 5A002.c.2; or

3. A ''digital transfer rate'' of 100 Mbits/s on the common media for ''network access controllers'' and related equipment controlled by 5A002.c.3; and

f. Any controlled ''software'' is the minimum required for the ''use'' of the approved ''digital computers'' and related equipment.

ADVISORY NOTE 3: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Country Group D:1 of ''digital computers'', ''electronic assemblies'' or related equipment controlled by 4A003, or specially designed components therefor, and ''software'' controlled by 4D001, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. They do not exceed any of the following limits:

1. The ''CTP'' of the ''digital computers'' does not exceed 1,000 Mtops;

2. The ''3–D vector rate'' does not exceed 3 million;

3. The total data transfer rate of equipment controlled by 4A003.g does not exceed 400 MB/second;

d. When exported as enhancements, the enhanced ''digital computer'' does not exceed the limit in this Advisory Note 3.c;

e. Exports of items covered by this Advisory Note 3 shall be subject to the following restrictions:

1. The equipment will be used primarily for the specific non-strategic application for which the export or reexport has been approved; and

2. The equipment will not be used for the design, ''development'', or ''production'' of items controlled for national security reasons; and

3. The exporter or reexporter shall report promptly any evidence of the removal or diversion of the equipment from authorized purposes related to the specific license;

f. For systems where the ''CTP'' exceeds 520 Mtops, the following conditions apply:

1. The licensee or the designated representative of the licensee, who must be from a country other than that listed in Country Group D:1, must have the right of access to all the equipment and may carry out inspections;

2. The licensee, upon the request of the BXA, must carry out inspections to establish that all the equipment and systems exported or reexported under the provisions of this Advisory Note:

a. Are being used for the intended civil purposes; and

b. Are still located at the installation sites. The licensee shall report the findings from the inspection to the BXA (at P.O. Box 273, Washington, D.C. 20044) within one month after completing the inspection.

ADVISORY NOTE 4: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Country Group D:1 of equipment controlled by 4A003.g, provided that it is exported or reexported for ''use'' in interconnecting peripheral equipment to ''digital computers'' not controlled by 4A003.b.

Information on How to Calculate ''Composite Theoretical Performance'' (''CTP''):

TECHNICAL NOTE: ''Composite Theoretical Performance'' (CTP).

ABBREVIATIONS USED IN THIS TECHNICAL NOTE

CE ''computing element'' (typically an arithmetic logical unit)
FP floating point
XP fixed point
t execution time
XOR exclusive OR
CPU central processing unit
TP theoretical performance (of a single CE)
CTP ''composite theoretical performance'' (multiple CEs)
R effective calculating rate
WL word length
L word length adjustment
* multiply

Execution time 't' is expressed in microseconds, TP and ''CTP'' are expressed in Mtops (millions of theoretical operations per second) and WL is expressed in bits.

OUTLINE OF ''CTP'' CALCULATION METHOD

''CTP'' is a measure of computational performance given in millions of theoretical operations per second (Mtops). In calculating the ''Composite Theoretical Performance'' (''CTP'') of an aggregation of ''Computing Elements'' (''CEs''), the following three steps are required:

1. Calculate the effective calculating rate (R) for each ''computing element'' (''CE'');

2. Apply the word length adjustment (L) to the effective calculating rate (R), resulting in a Theoretical Performance (TP) for each ''computing element'' (''CE'');

3. If there is more than one ''computing element'' (''CE''), combine the Theoretical Performances (TPs), resulting in a ''Composite Theoretical Performance'' (''CTP'') for the aggregation. Details for these steps are given in the following section.

NOTE 1: For aggregations of multiple ''computing elements'' (''CEs'') that have both shared and unshared memory subsystems, the calculation of ''CTP'' is completed hierarchically, in two steps: first, aggregate the group of ''computing elements'' (''CEs'') sharing memory, second calculate the ''CTP'' of the groups using the calculation method for multiple ''computing elements'' (''CEs'') not sharing memory.

NOTE 2: ''Computing elements'' (''CEs'') that are limited to input/output and peripheral functions (e.g., disk drive, communication and video display controllers) are not aggregated into the ''CTP'' calculation.

The following table shows the method of calculating the ''Effective Calculating Rate'' (R) for each ''Computing Element'' (''CE''):

Step 1: *The effective calculating rate R.* For Computing Elements (CEs) Implementing: Effective calculating Rate, R

NOTE: Every ''CE'' must be evaluated independently

$$\text{XP only}\left(R_{xp}\right)$$

$$\frac{1}{3*\left(t_{xp\,add}\right)}$$

If no add is implemented use:

$$\frac{1}{\left(t_{xp\,mult}\right)}$$

If neither add nor multiply is implemented use the fastest available arithmetic operation as follows:

$$\frac{1}{\left(3\times t_{xp}\right)}$$

See Notes X and Y.

$$\text{FP only}\left(R_{fp}\right)$$

$$\text{Max}\frac{1}{t_{fp\,add}},\frac{1}{t_{fp\,mult}}$$

See Notes X and Y.

Both FP and XP (R).

Calculate both R_{xp}, R_{fp}.

For simple logic processors not implementing any of the specified arithmetic operations.

$$\frac{1}{3\times t_{log}}$$

Where t_{log} is the execute time of the XOR, or for logic hardware not implementing the XOR, the fastest simple logic operation.

See Notes X and Z.

For special logic processors not using any of the specified arithmetic or logic operations. $R = R^t$ x WL/64

Where R is the number of results per second, WL is the number of bits upon which the logic operation occurs, and 64 is a factor to normalize to a 64 bit operation.

NOTE W: For a pipelined ''CE'' capable of executing up to one arithmetic or logic operation every clock cycle after the pipeline is full, a pipelined rate can be established. The effective calculating rate (R) for such a ''CE'' is the faster of the pipelined rate or non-pipelined execution rate.

NOTE X: For a ''CE'' that performs multiple operations of a specific type in a single cycle (e.g., two additions per cycle or two identical logic operations per cycle), the execution time t is given by:

$$t=\frac{\text{cycle time}}{\text{the number of arithmetic operations per machine cycle}}$$

''Computing elements'' (''CEs'') that perform different types of arithmetic or logic operations in a single machine cycle are to be treated as multiple separate ''computing elements'' (''CEs'') performing simultaneously (e.g., a ''CE'' performing an addition and a multiplication in one cycle is to be treated as two ''CEs'', the first performing an addition in one cycle and the second performing a multiplication in one cycle).

If a single ''Computing element'' (''CE'') has both scalar function and vector function, use the shorter execution time value.

NOTE Y: For the ''CE'' that does not implement FP add or FP multiply, but that performs FP divide:

$$R_{tp}=\frac{1}{t_{fp\,divide}};$$

If the ''CE'' implements FP reciprocal, but not FP add, FP multiply or FP divide, then:

$$R_{fp}=\frac{1}{t_{fp\,reciprocal}}.$$

If the divide is not implemented, the fp reciprocal should be used.

If none of the specified instructions is implemented, the effective floating point (FP) rate is 0.

NOTE Z: In simple logic operations, a single instruction performs a single logic manipulation of no more than two operands of given lengths. In complex logic operations, a single instruction performs multiple logic manipulations to produce one or more results from two or more operands.

Rates should be calculated for all supported operand lengths considering both

pipelined operations (if supported), and non-pipelined operations, using the fastest executing instruction for each operand length based on:

1. Pipelined or register-to-register operations. Exclude extraordinarily short execution times generated for operations on a predetermined operand or operands (for example, multiplication by 0 or 1). If no register-to-register operations are implemented, continue with (2).

2. The faster of register-to-memory or memory-to-register operations; if these also do not exist, then continue with (3).

3. Memory-to-memory.

In each case above, use the shortest execution time certified by the manufacturer.

Step 2: *TP for each supported operand length WL:*

Adjust the effective rate R (or R^t) by the word length adjustment L as follows:

$$TP = R \times L, \text{ where } L = \left(\frac{1}{3} + WL/96\right).$$

NOTE: The word length WL used in these calculations is the operand length in bits. (If an operation uses operands of different lengths, select the largest word length.)

The combination of a mantissa ALU and an exponent ALU of a floating point processor or unit is considered to be one ''computing Element'' (''CE'') with a Word Length (WL) equal to the number of bits in the data representation (typically 32 or 64) for purposes of the ''Composite Theoretical Performance'' (''CTP'') calculations.

This adjustment is not applied to specialized logic processors that do not use XOR instructions. In this case TP = R.

Select the maximum resulting value of TP for:

Each XP-only ''CE'' (R_{xp});

Each FP-only ''CE'' (R_{fp});

Each combined FP and XP ''CE'' (R);

Each simple logic processor not implementing any of the specified arithmetic operations; and

Each special logic processor not using any of the specified arithmetic or logic operations.

Step 3: *''CTP'' for aggregations of ''CEs'', including CPU's:*

For a CPU with a single ''CE'', ''CTP'' = TP (for CEs performing both fixed and floating point operations, TP = max (TP_{fp}, TP_{xp})).

''CTP'' for aggregations of multiple ''CEs'' operating simultaneously is calculated as follows:

NOTE 1: For aggregations that do not allow all of the ''CEs'' to run simultaneously, the possible combination of ''CEs'' that provides the largest ''CTP'' should be used. The TP of each contributing ''CE'' is to be calculated at its maximum value theoretically possible before the ''CTP'' of the combination is derived.

N.B.: To determine the possible combinations of simultaneously operating ''CEs'', generate an instruction sequence that initiates operations in multiple ''CEs'', beginning with the slowest ''CE'' (the one needing the largest number of cycles to complete its operation) and ending with the fastest ''CE''. At each cycle of the sequence, the combination of ''CEs'' that are in operation during that cycle is a possible combination. The instruction sequence must take into account all hardware and/or architectural constraints on overlapping operations.

NOTE 2: A single integrated circuit chip or board assembly may contain multiple ''CEs''.

NOTE 3: Simultaneous operations are assumed to exist when the computer manufacturer claims concurrent, parallel or simultaneous operation or execution in a manual or brochure for the computer.

NOTE 4: ''CTP'' values are not to be aggregated for ''CE''-combinations (inter)connected by ''Local Area Networks'', Wide Area Networks, Input/Output shared connections/devices, I/O controllers and any communication interconnection implemented by ''software''.

NOTE 5: ''CTP'' values must be aggregated for multiple ''CEs'' specially designed to enhance performance by aggregation, operating simultaneously and sharing memory,— or multiple memory/''CE''—combinations operating simultaneously utilizing specially designed hardware. This aggregation does not apply to ''electronic assemblies'' controlled by 4A003.c.

''CTP'' = $TP_1 + C_2 * TP_2 + \ldots + C_n * TP_n$, where the TPs are ordered by value, with TP_1, being the highest, TP_2 being the second highest, . . . and TP_n being the lowest. C_i is a coefficient determined by the strength of the interconnection between ''CEs'', as follows:

For multiple ''CEs'' operating simultaneously and sharing memory:

$$C_2 = C_3 = C_4 = K = C_n = 0.75.$$

NOTE 1: When the ''CTP'' calculated by the above method does not exceed 194 Mtops, the following formula may be used to calculate $C_i \leq$

$$C_i = \frac{0.75}{m^{0.5}} \left(i = 2, K\ n\right)$$

where m = the number of ''CEs'' or groups of ''CEs'' sharing access.

Provided:

1. The TP_i of each ''CE'' or group of ''CEs'' does not exceed 30 Mtops;

2. The ''CEs'' or groups of ''CEs'' share access to main memory (excluding cache memory) over a single channel; and

3. Only one ''CE'' or group of ''CEs'' can have use of the channel at any given time.

N.B.: This does not apply to items controlled under Category 3.

NOTE 2: ''CEs'' share memory if they access a common segment of solid state memory. This memory may include cache memory, main memory, or other internal memory. Peripheral memory devices such as disk drives, tape drives, or RAM disks are not included.

For multiple ''CEs'' or groups of ''CEs'' not sharing memory, interconnected by one or more data channels:

$C_i = 0.75 * k_i$ (i=2, . . ., 32) (see NOTE on k_i factor)

$= 0.60 * k_i$ (i=33, . . ., 64)

$= 0.45 * k_i$ (i=65, . . ., 256)

$= 0.30 * k_i$ (i>256)

The value of C_i is based on the number of ''CEs'', not the number of nodes.

where k_i=min (S_i/K_r, 1), and

K_r=normalizing factor of 20 MByte/s.

S_i=sum of the maximum data rates (in units of MBytes/s) for all data channels connected to the i_{th} ''CE'' or group of ''CEs'' sharing memory.

When calculating a C_i for a group of ''CEs'', the number of the first ''CE'' in a group determines the proper limit for C_i. For example, in an aggregation of groups consisting of 3 ''CEs'' each, the 22nd group will contain ''CE''$_{64}$, ''CE''$_{65}$ and ''CE''$_{66}$. The proper limit for C_i for this group is 0.60.

Aggregation (of ''CEs'' or groups of ''CEs'') should be from the fastest-to-slowest; i.e.:

$TP_1 \geq TP_2 \geq TP_3$; and in the case of $TP_i = TP_{i+1}$, from the largest to smallest, i.e.:

$C_i \geq C_{i+1}$

NOTE: The k_i factor is not to be applied to ''CEs'' to 2 to 12 if the TP i / of the ''CE'' or group of ''CEs'' is more than 50 Mtops; i.e., C_i for ''CEs'' 2 to 12 is 0.75.

Category 5—Telecommunications and Information Security

NOTICE: Category 5 entries are divided into two sections. (I) Telecommunications and (II) Information Security.

I. TELECOMMUNICATIONS

NOTES: 1. The control status of components, ''lasers'', test and ''production'' equipment, materials and ''software'' therefor that are specially designed for telecommunications equipment or systems is defined in the telecommunications entries in this Category.

2. ''Digital computers'', related equipment or ''software'', when essential for the operation and support of telecommunications equipment described by the telecommunications equipment in this Category, are regarded as specially designed components, provided they are the standard models customarily supplied by the manufacturer. This includes operation, administration, maintenance, engineering or billing computer systems.

A. EQUIPMENT, ASSEMBLIES AND COMPONENTS

5A001 Any type of telecommunications equipment having any of the following characteristics, functions or features:

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to 5A001.a.	NS Column 1
NS applies to 5A001.b., c., d., .e, or .f	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A for 5A001.a;
$5000 for 5A001.b, .c, .d, and .f;
$3000 for 5A001.e
GBS: Yes, except 5A001.a, b.8, and b.9
CIV: Yes, except 5A001.a, b.8, and b.9

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Any type of telecommunications equipment having any of the following characteristics, functions or features:

a.1. Specially designed to withstand transitory electronic effects or electromagnetic pulse arising from a nuclear explosion;

a.2. Specially hardened to withstand gamma, neutron or ion radiation;

a.3. Specially designed to operate outside the temperature range from 218 K (−55 °C) to 397 K (124 °C).

NOTE: 5A001.a.3 applies only to electronic equipment.

NOTE: 5A001.a.2 and a.3 do not apply to equipment on board satellites.

b. Telecommunication transmission equipment or systems and specially designed components and accessories therefor, having any of the characteristics, functions or features:

NOTE: Telecommunication transmission equipment:

a. Categorized as follows, or combinations thereof:
1. Radio equipment (e.g., transmitters, receivers and transceivers);
2. Line terminating equipment;
3. Intermediate amplifier equipment;
4. Repeater equipment;
5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical multiplex included);
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G.7Ol);
10. ''Stored program controlled'' digital crossconnection equipment;
11. ''Gateways'' and bridges;
12. ''Media access units''; and

b. Designed for use in single or multi-channel communication via:
1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation; or
5. Underwater acoustic wave propagation.

b.1. Employing digital techniques, including digital processing of analog signals, and designed to operate at a ''digital transfer rate'' at the highest multiplex level exceeding 45 Mbit/s or a ''total digital transfer rate'' exceeding 90 Mbit/s.

NOTE: 5A001.b.1. does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b.2. Being ''stored program controlled'' digital cross connect equipment with a ''digital transfer rate'' exceeding 8.5 Mbit/s per port.

b.3. Being equipment containing:

b.3.a. Modems using the ''bandwidth of one voice channel'' with a ''data signalling rate'' exceeding 28,800 bits/s;

b.3.b. ''Communication channel controllers'' with a digital output having a ''data signalling rate'' exceeding 2.1 Mbit/s per channel; or

b.3.c. ''Network access controllers'' and their related common medium having a ''digital transfer rate'' exceeding 156 Mbit/s;

NOTE: If any non-controlled equipment contains a ''network access controller'', it cannot have any type of telecommunications interface except those described in, but not controlled by, 5A001.b.3.

b.4 Employing a ''laser'' and having any of the following characteristics:

b.4.a. Having a transmission wavelength exceeding 1,000 nm;

b.4.b. Employing analog techniques and having a bandwidth exceeding 45 MHz;

b.4.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

b.4.d. Employing wavelength division multiplexing techniques; or

b.4.e. Performing ''optical amplification''.

b.5. Radio equipment operating at input or output frequencies exceeding:

b.5.a. 31 GHz for satellite-earth station applications; or

b.5.b. 26.5 GHz for other applications;

NOTE: 5A001.b.5.b. does not control equipment for civil use when conforming with an International Telecommunicatios Union (ITU) allocated band between 26.5 GHz and 31 GHz.

b.6. Being radio equipment:

b.6.a. Employing quadrature-amplitude-modulation (QAM) techniques above level 4 if the ''total digital transfer rate'' exceeds 8.5 Mbit/s;

b.6.b. Employing quadrature-amplitude-modulation (QAM) techniques above level 16 if the ''total digital transfer rate'' is equal to or less than 8.5 Mbit/s; or

b.6.c. Employing other digital modulation techniques and having a ''spectral efficiency'' greater than 3 bit/sec/Hz;

NOTE 1: 5A001.b.6 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

NOTE 2: 5A001.b.6. does not control radio relay equipment for operation in an ITU allocated band:

a.1. Not exceeding 960 MHz; or

a.2. With a ''total digital transfer rate'' not exceeding 8.5 Mbit/s; and

b. Having a ''spectral efficiency'' not exceeding 4 bit/sec/Hz.

b.7 Being radio equipment operating in the 1.5 to 87.5 MHz band and having either of the following characteristics:

b.7.a.1. Automatically predicting and selecting frequencies and ''total digital transfer rates'' per channel to optimize the transmission; and

b.7.a.2. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 to 30 Mhz frequency range or 250 W or more in the 30 to 87.5 MHz frequency range, over an ''instantaneous bandwidth'' of one octave or more and with an output harmonic and distortion content of better than −80 dB; or

b.7.b. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal.

b.8. Being radio equipment employing ''spread spectrum'' or ''frequency agility'' (frequency hopping) techniques having any of the following characteristics:

b.8.a. User programmable spreading codes; or

b.8.b. A total transmitted bandwidth that is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz.

b.9. Being digitally controlled radio receivers having more than 1,000 channels, that:

b.9.a. Search or scan automatically a part of the electromagnetic spectrum;

b.9.b. Identify the received signals or the type of transmitter; and

b.9.c. Have a ''frequency switching time'' of less than 1 ms;

b.10. Providing functions of digital ''signal processing'' as follows:

b.10.a. Voice coding at rates less than 2,400 bit/s;

b.10.b. Employing circuitry that incorporates ''user-accessible programmability'' of digital ''signal processing'' circuits exceeding the limits of 4A003.b;

b.11. Being underwater communications systems having any of the following characteristics:

b.11.a. An acoustic carrier frequency outside the range of 20 to 60 kHz;

b.11.b. Using an electromagnetic carrier frequency below 30 kHz; or

b.11.c. Using electronic beam steering techniques.

c. ''Stored program controlled'' switching equipment and related signalling systems having any of the following characteristics, functions or features; and specially designed components and accessories therefor:

NOTE: Statistical multiplexers with digital input and digital output that provide switching are treated as ''stored program controlled'' switches.

c.1. ''Common channel signalling'',

NOTE: Signalling systems in which the signalling channel is carried in and refers to no more than 32 multiplexed channels forming a trunk line of no more than 2.1 Mbit/s, and in which the signalling information is carried in a fixed, time division multiplexed channel without the use of labelled messages, are not considered to be ''common channel signalling'' systems.

c.2. Containing ''Integrated Services Digital Network'' (ISDN) functions and having either of the following:

c.2.a. Switch-terminal (e.g., subscriber line) interfaces with a ''digital transfer rate'' at the highest multiplex level exceeding 192,000 bit/s, including the associated signalling channel (e.g., 2B+D); or

c.2.b. The capability that a signalling message received by a switch on a given channel

that is related to a communication on another channel may be passed through to another switch.

NOTE: 5A001.c.2. does not preclude:
a. The evaluation and appropriate actions taken by the receiving switch.
b. Unrelated user message traffic on a D channel of ISDN.

c.3. Multi-level priority and pre-emption for circuit switching;

NOTE: 5A001.c.3. does not control single-level call preemption.

c.4. ''Dynamic adaptive routing'';

c.5. Routing or switching of ''datagram'' packets;

c.6. Routing or switching of ''fast select'' packets;

NOTE: The restrictions in 5A001.c.5. and c.6. do not apply to networks restricted to using only ''network access controllers'' or to ''network access controllers'' themselves.

c.7. Designed for automatic hand-off of cellular radio calls to other cellular switches or automatic connection to a centralized subscriber data base common to more than one switch;

c.8. Being packet switches, circuit switches and routers with ports or lines exceeding either:

c.8.a. A ''data signalling rate'' of 64,000 bit/s per channel for a ''communications channel controller''; or

NOTE: 5A001.c.8.a. does not preclude the multiplexing over a composite link of communications channels not controlled by 5A001.b.1.

c.8.b. A ''digital transfer rate'' of 33 Mbit/s for a ''network access controller'' and related common media.

c.9. ''Optical switching'';

c.10. Employing ''Asynchronous Transfer Mode'' (ATM) techniques;

c.11. Containing ''stored program controlled'' digital crossconnect equipment with ''digital transfer rate'' exceeding 8.5 Mbit/s per port;

d. Centralized network control having both of the following characteristics:

d.1. Receives data from the nodes; and

d.2. Processes these data in order to provide control of traffic not requiring operator decisions, and thereby performing ''dynamic adaptive routing'';

NOTE: 5A001.d. does not preclude control of traffic as a function of predictable statistical traffic conditions.

e. Optical fiber communication cables, optical fibers and accessories therefor, as follows:

e.1. Optical fiber or cable of more than 50 m in length having either of the following characteristics:

e.1.a. Designed for single mode operation; or

e.1.b. For optical fibers, specified by the manufacturer as being capable of withstanding a Proof Test tensile stress of 2×10^9 N/m^2 or more;

TECHNICAL NOTE: Proof Test: On-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20 °C) and relative humidity of 40%.

N.B.: Equivalent national standards may be used for executing the Proof Test.

e.2. Optical fiber cables and accessories designed for underwater use (for fiber-optic hull penetrators or connectors, see 8A002.c);

f. Phased array antennae, operating above 10.5 GHz, containing active elements and distributed components, and designed to permit electronic control of beam shaping and pointing, except for landing systems with instruments meeting International Civil Aviation Organization (ICAO) standards (microwave landing systems (MLS)).

5A101 Telemetering and telecontrol equipment usable for "missiles".

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5A980 Communications intercepting devices; and parts and accessories therefor.

LICENSE REQUIREMENTS

Reason for Control:

Controls on equipment described in this entry are maintained in accordance with the Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90–351). A license is required for ALL destinations, regardless of end-use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See §742.13 of the EAR for additional information on the scope of this control.)

NOTE: These items are subject to the United Nations Security Council arms embargo against Rwanda described in §746.8 of the EAR.

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

5A990 Any type of telecommunications equipment, not controlled by 5A001.a, specially designed to operate outside the temperature range from 219 K (−54 °C) to 397 K (124 °C).

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5A991 Transmission equipment, not controlled by 5A001.b.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Modems using the ''bandwidth of one voice channel'' with a ''data signalling rate'' exceeding 9,600 bits per second;

b. ''Communication channel controllers'' with a digital output having a ''data signalling rate'' exceeding 64,000 bit/s per channel; or

c. ''Network access controller'' and their related common medium having a ''digital transfer rate'' exceeding 33 Mbit/s.

5A992 Mobile communications equipment, n.e.s., and assemblies and components therefor.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5A993 Radio relay communications equipment designed for use at frequencies equal to or exceeding 19.7 GHz and assemblies and components therefor, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5A994 "Data (message) switching" equipment or systems designed for "packet-mode operation" and assemblies and components therefor, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: Data (message) switching is defined as the technique for: (a) Accepting data groups (including messages, packets, or other digital or telegraphic information groups transmitted as a composite whole); (b) Storing (buffering) data groups as necessary; (c) Processing part of all the data groups, as necessary, for the purpose of: (1) Control (routing, priority, formatting, code conversion, error control, retransmission or journaling); (2) Transmission; or (3) Multiplexing; and (d) Retransmitting (processed) data groups when transmission or receiving facilities are available.
Items: The list of items controlled is contained in the ECCN heading.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

5B001 Equipment, and specially designed components and accessories therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: Yes
CIV: Yes

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definition: This entry does not control optical fibers and ''optical fiber preform'' characterization equipment not using semiconductor ''lasers''.
Items: a. Equipment and specially designed components and accessories therefor, specially designed for:

a.1. ''Development'' of equipment, materials, functions, or features controlled by 5A001, 5B001, 5C001, 5D001 or 5E001, including measuring or test equipment;

a.2. ''Production'' of equipment, materials, functions, or features controlled by 5A001, 5B001, 5C001, 5D001 or 5E001, including measuring, test or repair equipment;

a.3. ''Use'' of equipment, materials, functions, or features exceeding any of the least stringent control criteria applicable in 5A001, 5B001, 5C001, 5D001 or 5E001, including measuring, repair or test equipment.

b. Other equipment as follows:

b.1. Bit error rate (BER) test equipment designed or modified to test the equipment controlled by 5A001.b.1.;

b.2. Data communication protocol analyzers, testers and simulators for functions controlled by 5A001;

b.3. Stand alone ''stored program controlled'' radio transmission media simulators/channel estimators specially designed for testing equipment controlled by 5A001.b.5.

5B994 Telecommunications test equipment, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1,000 for Syria; N/A to Iran
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

C. MATERIALS

5C001 Preforms of glass or of any other material optimized for the manufacture of optical fibers controlled by 5A001.e.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: Yes
CIV: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

D. SOFTWARE

5D001: Telecommunications "Software".

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: Yes
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items:

a. ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment or materials controlled by 5A001, 5B001, or 5C001.

b. ''Software'' specially designed or modified to support ''technology'' controlled by 5E001.

c. Specific ''software'' as follows:

c.1. ''Generic software'', other than in machine-executable form, specially designed or modified for the ''use'' of ''stored program controlled'' digital switching equipment or systems;

c.2. ''Software'', other than in machine-executable form, specially designed or modified for the ''use'' of digital cellular radio equipment or systems;

c.3. ''Software'' specially designed or modified to provide characteristics, functions or

features of equipment controlled by 5A001 or 5B001;

c.4. ''Software'' that provides capability of recovering ''source code'' of telecommunications ''software'' controlled by this Category.

c.5. ''Software'' specially designed for the ''development'' or ''production'' of ''software'' controlled by 5D001;

5D101 "Software" designed or modified for the "development", "production" or "use" of items controlled by 5A101.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5D990 "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 5A990 and 5A991.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5D991 "Software" specially designed or modified for the "development", "production", or "use" of telecommunications test equipment controlled by 5B994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5D992 "Software" specially designed or modified for the "development", "production" or "use" of mobile communications equipment controlled by 5A992.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5D993 "Software" specially designed or modified for the "development", "production" or "use" of radio relay communication equipment controlled by 5A993.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5D994 "Software" specially designed or modified for the "development", "production" or "use" of data (message) switching equipment controlled by 5A994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

5E001 Telecommunications "technology".

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Technology'' according to the General Technology Note for the ''development'', ''production'' or ''use'' (excluding operation) of equipment, systems, materials or ''software'' controlled by 5A001, 5B001, 5C001, or 5D001.

b. Specific technologies, as follows:

b.1. ''Required'' technology for the ''development'' or ''production'' of telecommunications equipment specially designed to be used on board satellites.

b.2. ''Technology'' for the ''development'' or ''use'' of laser communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. ''Technology'' for the processing and application of coatings to optical fiber specially designed to make it suitable for underwater use;

b.4. ''Technology'' for the ''development'' or ''production'' of equipment employing ''Synchronous Digital Hierarchy'' (SDH) or ''Synchronous Optical Network'' (SONET) techniques;

b.5. ''Technology'' for the ''development'' or ''production'' of ''switch fabric'' exceeding 64,000 bits per second per information channel other than for digital cross connect integrated in the switch;

b.6. ''Technology'' for the ''development'' or ''production'' of centralized network control;

b.7. ''Technology'' for the ''development'' or ''production'' of digital cellular radio systems;

b.8. ''Technology'' for the ''development'' or ''production'' of ''Integrated Services Digital Network'' (ISDN).

b.9. ''Technology'' for the ''development'' of QAM techniques, for radio equipment, above level 4.

5E101 "Technology" according to the General Technology Note for the "development", "production" or "use" of equipment controlled by 5A101 or "software" controlled by 5D101.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5E990 Technology for the "development", "production" or "use" of equipment controlled by 5A990 or 5A991 or "software" controlled by 5D990.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5E991 "Technology" for the "development", "production", or "use" of telecommunications test equipment controlled by 5B994, or "software" controlled by 5D991.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5E992 "Technology" for the "development", "production", or "use" of mobile communications equipment controlled by 5A992 or "software" controlled by 5D992.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5E993 "Technology" for the "development", "production", or "use" of radio relay communication equipment controlled by 5A993, or "software" controlled by 5D993.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5E994 "Technology" for the "development", "production" or "use" of data (message) switching equipment controlled by 5A994, or "software" controlled by 5D994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

ADVISORY NOTES FOR TELECOMMUNICATIONS

ADVISORY NOTE 1: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Estonia, Latvia and Lithuania of equipment or systems controlled by 5A001.b, .c, .d, .e, and .f, and test equipment, ''software'' and ''use'' technology therefor, provided that:

a. The equipment or systems:

1. Are designed for and will be used for specific civil applications; and

2. Will be operated in the importing country by a civil end-user who has furnished to the supplier a Statement by Ultimate Consignee and Purchaser (Form BXA–711), or a statement on company letterhead described in §748.11(e) of the EAR certifying that the equipment or systems will used only for the specific end-use;

b. The information to accompany each application will include:

1. End-use assurances provided by the importer and backed by the importing country;

2. Acceptance of on-site inspection of the equipment or system by the licensee or the designated representative of the licensee from a country other than that listed in Country Group D:1;

3. A full description of the equipment or systems to be provided; and

4. The end-use information clearly stated including the installation site and intended application.

ADVISORY NOTE 2: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in the People's Republic of China of the following communications, measuring or test equipment:

a. ''Telecommunications transmission equipment'' controlled by 5A001.b.1, b.2, b.4 provided that:

1. It is intended for general commercial traffic in a civil communication system;

2. It is designed for operation at a ''digital transfer rate'' at the highest multiplex level of 140 Mbit/s or less and at a ''total digital transfer rate'' of 168 Mbit/s or less;

N.B.: An additional 2 Mbit/s for operation, maintenance and service communications may be added to the ''total digital transfer rate'' of 168 Mbit/s.

3. For equipment controlled by 5A001.b.4, the transmission wavelength must not exceed 1,370 nm and optical fiber must be used as the communication medium;

4. It is to be installed under the supervision of the seller in a permanent circuit; and

5. It is to be operated by the civilian authorities of the importing country;

b. Measuring or test equipment controlled by 5B001.a.3, 5B001.b.1, 5B001.b.2, that is necessary for the ''use'' (i.e., installation, operation and maintenance) of equipment exported under the conditions of this Advisory Note, provided that:

1. It is designed for ''use'' with communication transmission equipment operating at a ''digital transfer rate'' of 140 Mbit/s or less, and at a ''total digital transfer rate'' of 168 Mbit/s or less; and

2. It will be supplied in the minimum quantity required for the transmission equipment eligible for administrative exception treatment.

N.B. 1: Where possible, built-in test equipment (BITE) will be provided for installation or maintenance of transmission equipment eligible for administrative exception treatment under this Advisory Note rather than individual test equipment.

N.B. 2: The license application must include the locations of the connection points, types of equipment being connected and transmission rates.

ADVISORY NOTE 3: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in the People's Republic of China of ''network access controllers'' controlled by 5A001.b.3.c, when exported under the conditions of Advisory Note 2 to Category 4, with a ''digital transfer rate'' not exceeding 100 Mbits/s.

ADVISORY NOTE 4: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in the People's Republic of China of the following, provided that the associated multiplex equipment is designed for operation at a ''digital transfer rate'' at the highest multiplex level of 140 Mbit/s or less:

a. Digital microwave radio relay equipment controlled by 5A001.b.1 or 5B001.b.6, for fixed civil installations, operating at fixed frequencies not exceeding 23.6 GHz, with a ''total digital transfer rate'' not exceeding 168 Mbit/s;

b. Ground communication radio equipment for use with temporarily fixed services operated by civil authorities and designed to be used at fixed frequencies not exceeding 23.6 GHz;

c. Radio transmission media simulators/channel estimators controlled by 5B001.b.3, designed for testing equipment described in this Advisory Note 4.a or .b.

ADVISORY NOTE 5: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in the People's Republic of China of equipment controlled by 5A001.c.1 or ''software'' for ''common channel signalling'' controlled by 5D001.a or 5D001.c.3, provided that:

a. The ''common channel signalling'' is restricted to quasi-associated or associated mode of operation according to CCITT Red Book, Volume X, fascicle X.1;

b. No functions, other than those described in the following recommendations in the Red Book of CCITT: Q.701 to Q.709, Q.721 to Q.725, Q.791 and Q.795, are included;

N.B.: Only functions described in paragraph 2 of Q.795 are to be included. These Q.795 functions may not provide centralized network control having all of the following characteristics:

a. Is based on a network management protocol; and

b. Does both of the following:

1. Receives data from the nodes; and

2. Processes these data in order to:

a. Control traffic; and

b. Directionalize paths;

c. No form of ''Integrated Services Digital Network'' (ISDN) is provided;

d. Equipment or ''software'' is restricted to that necessary for the operation within a city or, for ''Private Automatic Branch Exchanges'', within a radius of 100 km;

N.B. 1: Where a recognized city contains more than one subordinate entity or city, the larger unified boundary prevails. In no case is the boundary larger than that of Beijing.

N.B. 2: A suburban entity that does not belong to a city, but is located within a circle with a diameter of 50 km and with a city in the middle, can be considered as part of a city.

e. No means are provided that will allow ''common channel signalling'' via analog transmission links;

f. All the applicable conditions enumerated in this Advisory Note 5.a to .e are accomplished by:

1. Omission or physical removal of equipment or coding;

2. Over-writing with non-functioning statements; or

3. Reasonably non-reversible modifications.

ADVISORY NOTE 6: Licenses are likely to be approved, as administrative exceptions, for export to satisfactory end-users in the People's Republic of China of equipment controlled by 5B001.a.2, as follows:

a. Optical fiber or ''optical fiber preform'' characterization equipment using semiconductor ''laser'' with a wavelength not exceeding 1,370 nm;

b. Equipment for the manufacture of silica-based ''optical fiber preforms'', optical fibers or cables.

ADVISORY NOTE 7: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in the People's Republic of China of test and inspection equipment and specially designed components and accessories therefor controlled by 5B001.a or 5B001.b and ''software'' and technology for such equipment, components and accessories, for the repair of telecommunications equipment, provided that:

a. Such equipment, components, accessories, ''software'' and technology:

1. Are specially designed for repair;

2. Are to be used to repair controlled equipment authorized for export or equipment that is not controlled for national security reasons;

3. Are shipped in reasonable quantities necessary for the types and quantities of exported equipment being serviced;

4. Do not provide local production facilities;

5. Do not provide for testing of individual electronic components; and

6. Do not include ''software'' in ''source code'' controlled by 5D001.c.1;

b. The repair does not upgrade the equipment or ''software'';

c. All the records of repair activity are kept by a representative of the supplier located in a country other than that listed in Country Group D:1; and

d. The information to accompany each license application shall include:

1. A complete list of equipment to be provided; and

2. A clear identification of the users and their activities.

N.B.: Nothing in this Advisory Note 7 shall be construed as overriding controls in other ECCNs contained in the Commerce Control List.

ADVISORY NOTE 8: Licenses are likely to be approved, as administrative exceptions, for export to satisfactory end-users in the People's Republic of China of ''optical fiber preforms'' controlled by 5C001, specially designed for the manufacture of silica-based optical fibers, provided they are specially designed to produce non-militarized silica-based optical fibers that are optimized to operate at a wavelength not exceeding 1,370 nm.

ADVISORY NOTE 9: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to the People's Republic of China of minimum quantities of semiconductor ''lasers'' designed and intended for use with a civil fiber optic communication system that would be either not controlled for national security reasons or eligible for administrative exceptions treatment under Advisory Note 2 (Notes for Telecommunications), having an output wavelength not exceeding 1,370 nm and a CW power output not exceeding 100 mW.

ADVISORY NOTE 10: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Albania, Bulgaria, the People's Republic of China, Mongolia, Romania or Vietnam of telecommunication equipment for optical fibers controlled by 5A001.b.4.a, provided that the transmission wavelength does not exceed 1,370 nm.

ADVISORY NOTE 11: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Albania, Bulgaria, the People's Republic of China, Mongolia, Romania or Vietnam of cables or fibers controlled by 5A001.e, provided that:

a. Quantities are normal for the envisaged end-use; and

b. They are for a specified civil end-use.

ADVISORY NOTE 12: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Albania, Bulgaria, the People's Republic of China, Mongolia, Romania or Vietnam of optical fiber test equipment controlled by 5B001.a.3 using a transmission wavelength not exceeding 1,370 nm.

ADVISORY NOTE 13: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Country Group D:1 of digital radio equipment or systems controlled by 5A001.b.1 or 5A001.b.6, provided that:

a. The equipment or system is intended for general commercial international traffic in an international civil telecommunication system, one end of which is in a country listed in Country Group A:1;

b. It is to be installed in a permanent circuit under the supervision of the licensee;

c. No means are to be provided for the transmission of traffic between points in a single country listed in Country Group D:1 other than Romania;

d. The ''digital transfer rate'' at the highest multiplex level does not exceed 156 Mbit/s;

e. The equipment does not employ either of the following:

1. Quadrature Amplitude Modulation (QAM) techniques above level 64; or

2. Other digital modulation techniques with a ''spectral efficiency'' exceeding 6 bit/s/Hz;

f. The equipment is not controlled by 5A001.b.4 or b.7 or by the ''Information Security'' entries in Category 5;

g. Spare parts shall remain under the control of the licensee or the licensee's designated representative;

NOTE: The supervision of the spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

h. The licensee or the licensee's designated representative who shall be from a country other than that listed in Country Group D:1, shall have the right of access to all the equipment;

i. There will be no transfer of technology controlled for national security reasons;

j. Supervision of systems installation, operation and maintenance shall be performed by the licensee or the licensee's designated representative, who shall be from a country other than that listed in Country Group D:1, using only personnel from countries other than those listed in Country Group D:1;

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major functions.

N.B. 2: This does not mean that only nationals from the exporting country should install the system.

k. Upon request, the licensee shall carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; and

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the BXA within one month after completing the inspection.

ADVISORY NOTE 14: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Country Groups D:1 of fiber optic telecommunication transmission system or equipment controlled by 5A001.b.1 and 5A001.b.4.a, fiber optic cables controlled by 5A001.e, or coaxial cable telecommunications transmission systems controlled by 5A001.b.1, and the test equipment, specially

designed components, accessories, ''software'' and technology, necessary for the ''use'' thereof, provided that:

a. They are intended for international telecommunications links dedicated to international civil traffic between the following locations:

1.a. *From the following countries:* Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, or the United Kingdom;

b. *To the following cities as listed by country:* Albania (Tirana), Armenia (Yerevan), Azerbaijan (Baku), Bulgaria (Sophia, Varna), Belarus (Minsk), Georgia (Tbilissi), Kazakhstan (Alma-Ata), Kyrgyzstan (Bishkek), Moldova (Chisinau), Romania (Bucharest, Constanza), Russia (Moscow, Novorossiisk, Rostov-on-Don, St. Petersburg, Volgograd), Tajikistan (Dushanbe), Turkmenistan (Ashgabat), Ukraine (Kiev, Odessa, Sebastopol), Uzbekistan (Tashkent) or:

2.a. *From the following countries:* Australia, Canada, Hong Kong, Japan, New Zealand, South Korea, or the United States;

b. *To the following cities as listed by country:* People's Republic of China (Shanghai, Guangzhou), Russia (Khabarovsk, Nakhodka, Vladivostok, Yuzhno-Sadhalinsk), Vietnam (Hanoi, Ho Chi Minh City);

N.B.: No traffic shall be carried between points in countries listed in Country Group D:1, except in Estonia, Latvia, and Lithuania.

b. [Reserved]

c. They are designed to operate at a ''digital transfer rate'' at the highest multiplex level of 623 Mbit/s or less;

d. The ''laser'' transmission wavelength does not exceed 1,590 nm;

e. The equipment, if employing synchronous transmission techniques, must conform to one of the approved SONET or SDH standards or recommendations (i.e. ANSI or CCITT);

f. Supervision of systems installation and maintenance of controlled transmission equipment must be performed by the licensee or the licensee's designated representative, who must be from a country other than that listed in Country Group D:1. Any portion of the installation of controlled transmission equipment which would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from countries other than those listed in Country Group D:1;

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

g. Controlled test equipment and controlled spare parts must remain under the supervision of the licensee or the licensee's designated representative, who shall be from a country other than that listed in Country Group D:1;

N.B.: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

h. The licensee or the licensee's designated representative who shall be from a country other than that listed in Country Group D:1, must have the right of access to all the equipment;

i. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; and

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the BXA (at P.O. Box 273, Washington D.C. 20044) within one month after completing the inspection.

j. The license application must include a system plan containing equipment quantities and approximate locations for the proposed system. After final installation, unless already provided, the applicant must provide to its licensing authorities the final location of the installed equipment to the greatest degree of precision available and a map of the final cable route.

ADVISORY NOTE 15: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Country Group D:1 of fiber optic telecommunication transmission systems or equipment controlled by 5A001.b.1 and 5A001.b.4.a, digital radio equipment or systems controlled by 5A001.b.1 and 5A001.b.6.a, coaxial cable telecommunications transmission equipment or systems controlled by 5A001.b.1, or fiber optic cables controlled by 5A001.e and the test equipment, specially designed components, accessories, ''software'' and technology, necessary for the ''use thereof, provided that:

a. They are intended for:

1. Intra-city or inter-city links within Albania, Armenia, Azerbaijan, Bulgaria, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, or Vietnam.

N.B.: Intra-city links provide service within a local service area which must not extend beyond a circle with a diameter of 50 km and with the city in the middle.

2. Inter-city links between cities in Albania, Armenia, Azerbaijan, Bulgaria, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova,

Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan;

b. They are designed to operate at a ''digital transfer rate'' at the highest multiplex level of 156 Mbit/s or less;

c. The ''laser'' transmission wavelength does not exceed 1,590 nm;

d. The radio transmission system does not employ Quadrature Amplitude Modulation (QAM) techniques above level 16;

e. The equipment or systems are designed and intended to be used for fixed civil applications directly connected to the civilian network;

f. The equipment, if employing synchronous transmission techniques, must conform to one of the approved SONET or SDH standards or recommendations (i.e., ANSI or CCITT);

g. Supervision of systems installation and of maintenance of controlled transmission equipment must be performed by the licensee or the licensee's designated representative, who must be from a country other than that listed in Country Group D:1. Any portion of the installation of controlled transmission equipment which would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from countries other than those listed in Country Group D:1;

N.B. 1: Supervision of maintenance includes preventive maintenance at period intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

h. Controlled test equipment and controlled spare parts must remain under the supervision of the Country Group A:1 member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

i. The Country Group A:1 country licensee or his designated representative, who must be from a country other than that listed in Country Group D:1, must have the right of access to all the equipment;

j. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; and

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Bureau of Export Administration within one month after completing the inspection.

k. The license application must include a system plan containing equipment quantities and approximate locations for the proposed system. After final installation, unless already provided, the applicant must provide to its licensing authorities the final location of the installed equipment to the greatest degree of precision available and a map of the final cable route.

ADVISORY NOTE 16: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Country Group D:1 of systems or equipment controlled by 5A001.c.1 or 5A001.c.2, or ''software'' for ''common channel signalling'' controlled by 5D001.a or 5D001.c.3, and test equipment, specially designed components, accessories and technology necessary for the ''use'' thereof, provided that:

a. They are intended for fiber optic, radio, or coaxial cable international telecommunication links fulfilling the provisions of Advisory Note l4.a and b.;

b. The ''common channel signalling'' (CCS) is restricted to associated mode of operation. Signalling channels and all related traffic channels must be carried on the same transmission system. Only international traffic between the locations listed in Advisory Note l4.a is permitted (i.e. calls originating in a country listed in Country Group D:1 will not be rerouted to any country listed in Country Group D:1;

c. No general service of ''Integrated Service Digital Network'' (ISDN) is provided by the country listed in Country Group D:1 gateway switch, except:

1. The ISDN user part (ISP) may be used on the international signalling link;

2. ISDN service may be provided for specified subscribers on the Country Group D:1 countries gateway switch;

d. Supervision of systems installation and of maintenance of controlled equipment and ''software'' must be performed by the licensee or the licensee's designated representative, who must be from a country other than that listed in Country Group D:1. Any portion of the installation of controlled equipment and ''software'' that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from countries other than those listed in Country Group D:1;

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

e. Controlled test equipment and controlled spare parts must remain under the supervision of the Country Group A:1 country licensee;

N.B: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

f. All ''common channel signalling'' equipment including spares, is operational in such a form that any removal from or manipulation on the end in a country listed in Country Group D:1 is immediately recognized (e.g. through remote maintenance and monitoring procedures) by the operator (i.e., an operator from one of the countries listed in Advisory Note l4.a.1.a or a.2.a);

g. The licensee or operator (i.e., an operator from one of the countries listed in Advisory Note l4.a.1.a or a.2.a) takes immediate action to ensure that non-operational equipment is repaired or replaced within a week of the failure;

h. The Country Group A:1 country licensee or the designated representative of the licensee, who must be from a country other than that listed in Country Group D:1, must have the right of access to all the equipment;

i. Nationals from countries listed in Country Group D:1 are not given tools or training allowing them to modify the approved configuration or divert equipment or ''software'' to non-approved uses;

j. Upon request of the government of the exporting country, the licensee or operator (i.e., an operator from one of the countries listed in Advisory Note l4.a.1.a or a.2.a) must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; and

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the BXA (at P.O. Box 273, Washington, D.C. 20044) within one month after completing the inspection.

k. The operator (i.e., an operator from one of the countries listed in Advisory Note l4.a.1.a or a.2.a) informs the exporting government immediately of any sign of misuse or diversion of ''common channel signalling'' hardware or ''software'' on the other end of the international link, or of any failure of the operator at the other end (i.e, the operator from one of the countries) listed in Advisory Note l4.a.l.b or a.2.b) to allow the operator to comply with the terms of the license;

l. Contractual agreements between the licensee and the operators on both ends of the link require that the operator at the other end of the international link (i.e., the operator from one of the countries listed in Advisory Note l4.a.1.b or a.2.b) complies fully with all the conditions stipulated in the license and that, in the event of failure by the latter to comply, the operator who is from one of the countries listed in Advisory Note l4.a.l.a or a.2.a will inform the authorities of such country and the government of the exporting country.

ADVISORY NOTE 17: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Country Group D:1 of equipment controlled by 5A001.c.4, 5A001.c.5 or 5A001.c.6, ''software'' controlled by 5D001.c.3 that provides features described in 5A001.c.4, 5A001.c.5, or 5A001.c.6, specially designed components and accessories therefor, and test equipment, ''software'' and technology necessary for the ''use'' thereof, provided that:

a. The equipment or ''software'' will be used for a specified civil end-use by a civil end-user only;

b. The equipment or ''software'' does not perform circuit switching or circuit switching functions;

c. Supervision of systems installation and of maintenance of controlled equipment or ''software'' must be performed by the licensee or the licensee's designated representative, who must be from a country other than that listed in Country Group D:1. Any portion of the installation of controlled equipment or ''software'' that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from countries other than those listed in Country Group D:1.

N.B. 1: Supervision of maintenance includes preventative maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only exporting country should install the system.

N.B. 3: This does not apply if the equipment or ''software'' is designed for installation by the user without further substantial support by the supplier.

d. The Country Group A:1 country licensee or the designated representative of the licensee, who must be from a country other than that listed in Country Group D:1, must have the right of access to all the equipment and may carry out inspections;

e. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; and

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation site. The licensee shall report the findings from the inspection to the BXA (at P.O. Box 273, Washington, D.C. 20044) within one month after completing the inspection.

ADVISORY NOTE 18: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Country Group D:1 of ''software'' controlled by 5D001.c.1, and related technology, ''software'' tools and test equipment necessary for the ''development'', ''production'' or ''use'' thereof, provided that:

a. The ''software'', technology, ''software'' tools and test equipment will be limited to

those necessary for problem analysis and reporting or for local adaptation of the switching equipment such as for subscriber terminal interface, network interface, billing, administration or similar adaptations for local civilian telecommunications requirements, by a civil end-user;

b. No ''software'' or technology ''required'' for the ''development'', ''production'' or ''use'' of functions, features or equipment controlled by the telecommunications entries in 5A, 5B or 5E of Subcategory I to Category 5 shall be included;

NOTE: This Advisory Note does not release from control the ''software'' in ''source code'' comprising that ''software'' that controls the management and execution of programs, commonly referred to as the operating system.

c. Such ''software'', technology, ''software'' tools or test equipment do not provide the capability to decompile, disassemble or perform similar activities to ''software'' in ''object code'' or similar format and thereby reverse-engineer controlled characteristics, functions or features;

d. The licensee or the licensee's designated representative, who shall be from a country other than that listed in Country Group D:1, shall have the right of access to the site of, and computing equipment being used to perform, such adaptations so as to have access to:

1. The ''software'', technology, ''software'' tools and test equipment referred to in this Advisory Note; and

2. All ''software'' developed or derived from the ''software'' technology, ''software'' tools and test equipment licensed under this Advisory Note;

e. Upon request of the BXA, the licensee must carry out an inspection to establish that:

1. The ''software'', technology, ''software'' tools and test equipment referred to in this Advisory Note are being used for the intended civil purpose; and

2. All the ''software'', technology, ''software'' tools and test equipment exported under the provisions of this Advisory Note are being used for the stated end purpose and are still located at the installation sites. The licensee shall report the findings from the inspection to the Bureau of Export Administration within one month after completing the inspection.

ADVISORY NOTE 19: Licenses are likely to be approved, as Administrative exceptions, for exports and reexports to satisfactory end-users in Country Group D:1 of components, parts and materials, controlled for national security reasons by entries on the Commerce Control List, necessary for the ''production'' of telecommunication equipment or systems, provided that:

a. The ''production'' equipment and technology for the equipment concerned has been previously legally exported;

b. The quantity of components, parts and materials exported is normal for the stated end-use;

c. Authorization under this Advisory Note will cover a program of supplies up to two calendar years for the ''production'' by the same licensee of equipment authorized under this Advisory Note 19.a;

d. No technology or ''software'' ''required'' for ''development'', ''production'' or ''use'' shall be included;

e. The components, parts and materials exported will not be permitted to exceed the performance threshold or features of the equipment previously authorized;

f. The contract includes explicit conditions to ensure that:

1. The equipment manufactured with the exported components, parts and materials is not exported or reexported, either directly or indirectly, to another country listed in Country Group D:1;

2. The supplier or licensor may appoint a representative who is entitled to verify that the ''production'' technology and ''production'' equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the equipment produced must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the production of the equipment or systems;

5. The equipment or systems produced will be for civil end-use only.

ADVISORY NOTE 20: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to Albania, Armenia, Azerbaijan, Bulgaria, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, the People's Republic of China, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam of telecommunications equipment or systems controlled by 5A001.b.1, 5A001.b.7, 5A001.c, 5A001.d or 5A001.e, measuring, test or repair equipment controlled by 5B001.a.3 or 5B001.b, and specially designed components and accessories, ''software'' and technology necessary for the ''use'' thereof, provided that:

a. Optical fiber telecommunication transmission equipment or systems:

1. Are designed to operate at a ''digital transfer rate'' of 623 Mbit/s or less at the highest multiplex level; and

2. Are designed to operate on a ''laser'' transmission wavelength not exceeding 1,590 nm.

b. Digital radio equipment or systems:

1. Are designed to operate at a ''digital transfer rate'' of 623 Mbit/s or less at the highest multiplex level;

2. Do not employ QAM techniques exceeding level 512 or other digital modulation

techniques having a ''spectral efficiency'' exceeding 9 bit/s/Hz;

c. ''CCS'':

1. Is limited to the associated mode of operation;

2. Signalling and related speech/data channels are limited to two signalling points and must not be routed via different transmission media or different routes;

N.B.: A single route consists of one or more consecutive serial connection links that may use different transmission media.

3. Message Transfer Part (MTP) level 3 signalling routes are limited to two signalling points;

N.B.: MTP Level 3 is found in Q.704 and related recommendations of the IT–T Q series for ''CCS''.

4. For point-to-point inter-city ''CCS'' connectivity between two signalling points, where permitted by this Advisory Note 20.c.1, c.2, or c.3, the Originating Point Codes (OPC) and Destination Point Codes (DPC) for all signalling messages over such signalling links cannot be reinstalled or changed following the vendor's initial software installation without prior authorization, being available in object code only; all compilation mechanisms and administrative tools that allow for modification of the Point Codes are removed following installation;

d. The equipment or systems are designed and intended to be used for fixed civil applications directly connected to a civilian network;

e. The equipment or systems, if employing synchronous transmission techniques, conform to one of the ANSI or IT–T approved standards or recommendations for ''SONET'' or ''SDH'';

f. Measuring, test or repair equipment controlled by 5B001.a.3 or 5B001.b and controlled spare parts remain under the supervision of the licensee or the licensee's designated representative;

g. The licensee or the licensee's designated representative have the right of access to all the equipment or systems and may carry out inspections;

h. Upon the request of the BXA, the licensee must carry out inspections to establish that:

1. All the equipment or systems exported under the provisions of this Advisory Note are being used for the intended civil purpose; and

2. Are still located at the installation sites. The licensee shall report the findings from the inspection to the BXA (at P.O. Box 273, Washington DC 20044) within one month after completing the inspection;

i. Supervision of systems installation and maintenance of controlled transmission equipment is performed by the licensee or the licensee's designated representative. Any portion of the installation of controlled transmission equipment that would require the transfer of controlled technology is performed by the licensee or the licensee's designated representative;

N.B. 1: Supervision of maintenance includes prevention maintenance at periodic intervals and intervention for major malfunctions.

j. License applications to export systems or equipment for ''common channel signalling'' identify the intended system routes and locations of signalling points.

II. Information Security

NOTE: The control status of ''information security'' equipment, ''software'', systems, application specific ''electronic assemblies'', modules, integrated circuits, components, or functions is defined in the ''information security'' entries in this Category even if they are components or ''electronic assemblies'' of other equipment.

NOTE: ''Information security'' equipment, ''software'', systems, application specific ''assemblies'', modules, integrated circuits, components, technology or functions that are excepted from control, not controlled, or eligible for licensing under an Advisory Note are under the licensing jurisdiction of the Department of Commerce. In addition, antivirus software controlled under 5D002.c is also under the licensing jurisdiction of the Department of Commerce. For all other items, exporters requesting a license from the Bureau of Export Administration must provide a statement from the Department of State, Office of Defense Trade Controls, verifying that the equipment intended for export is under the licensing jurisdiction of the Department of Commerce.

A. Equipment, Assemblies and Components

5A002 Systems, Equipment, Application Specific "Electronic Assemblies", Modules or Integrated Circuits for "Information Security", and Specially Designed Components Therefor

License Requirements

Reason for Control: NS, AT, EI

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

EI applies only to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. Refer to §742.15.

License Exceptions

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

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Designed or modified to use ''cryptography'' employing digital techniques to ensure ''information security'';

b. Designed or modified to perform cryptanalytic functions;

c. Designed or modified to use ''cryptography'' employing analog techniques to ensure ''information security'';

NOTE: 5A002.c does not control the following:

1. Equipment using ''fixed'' band scrambling not exceeding 8 bands and in which the transpositions change not more frequently than once every second;
2. Equipment using ''fixed'' band scrambling exceeding 8 bands and in which the transpositions change not more frequently than once every ten seconds;
3. Equipment using ''fixed'' frequency inversion and in which the transpositions change not more frequently than once every second;
4. Facsimile equipment;
5. Restricted audience broadcast equipment; and
6. Civil television equipment;

d. Designed or modified to suppress the compromising emanations of information-bearing signals;

NOTE: 5A002.d does not control equipment specially designed to suppress emanations for reasons of health and safety.

e. Designed or modified to use cryptographic techniques to generate the spreading code for ''spread spectrum'' or hopping code for ''frequency agility'' systems;

f. Designed or modified to provide certified or certifiable ''multilevel security'' or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;

g. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

NOTE: 5A002 does not control:

a. ''Personalized smart cards'' or specially designed components therefor, with any of the following characteristics:

1. Not capable of message traffic encryption or encryption of user-supplied data or related key management functions therefor; or
2. When restricted for use in equipment or systems excluded from control under the note to 5A002.c, or under paragraphs b through h of this note.

b. Equipment containing ''fixed'' data compression or coding techniques;

c. Receiving equipment for radio broadcast, pay television or similar restricted audience television of the consumer type, without digital encryption and where digital decryption is limited to the video, audio or management functions;

d. Portable or mobile radiotelephones for civil use (e.g., for use with commercial civil cellular radiocommunications systems) that are not capable of end-to-end encryption;

e. Decryption functions specially designed to allow the execution of copy-protected ''software'', provided the decryption functions are not user-accessible;

f. Access control equipment, such as automatic teller machines, self-service statement printers or point of sale terminals, that protects password or personal identification numbers (PIN) or similar data to prevent unauthorized access to facilities but does not allow for encryption of files or text, except as directly related to the password or PIN protection;

g. Data authentication equipment that calculates a Message Authentication Code (MAC) or similar result to ensure no alteration of text has taken place, or to authenticate users, but does not allow for encryption of data, text or other media other than that needed for the authentication;

h. Cryptographic equipment specially designed and limited for use in machines for banking or money transactions, such as automatic teller machines, self-service statement printers or point of sale terminals.

5A995: "Information security" equipment, n.e.s.; (e.g., cryptographic, cryptoanalytic, and cryptologic equipment, n.e.s.), and components therefor.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value

The list of items controlled is contained in the ECCN heading.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

5B002 Information Security—test, inspection and "production" equipment.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value

a. Equipment specially designed for:

a.1. The ''development'' of equipment or functions controlled by 5A002, 5B002, 5D002 or 5E002, including measuring or test equipment;

a.2. The ''production'' of equipment or functions controlled by 5A002, 5B002, 5D002, or 5E002, including measuring, test, repair or production equipment;

b. Measuring equipment specially designed to evaluate and validate the ''information security'' functions controlled by 5A002 or 5D002.

C. MATERIALS [RESERVED]

D. SOFTWARE

5D002 Information Security "Software"

LICENSE REQUIREMENTS

Reason for Control: NS, AT, EI

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

EI controls apply to encryption software transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. Refer to §742.15 of the EAR.

NOTE: Encryption software is controlled because of its functional capacity, and not because of any informational value of such software; such software is not accorded the same treatment under the EAR as other ''software''; and for export licensing purposes encryption software is treated under the EAR in the same manner as a commodity included in ECCN 5A002. License Exceptions for commodities are not applicable.

NOTE: Encryption software controlled for EI reasons under this entry remains subject to the EAR even when made publicly available in accordance with part 734 of the EAR, and it is not eligible for the General Software Note (''mass market'' treatment under License Exception TSU for mass market software). After a one-time BXA review, certain encryption software may be released from EI controls and made eligible for the General Software Note treatment as well as other provisions of the EAR applicable to software. Refer to §742.15(b)(1) of the EAR, and Supplement No. 6 to part 742.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: 5D002.a controls ''software'' designed or modified to use ''cryptography'' employing digital or analog techniques to ensure ''information security''.
Items: a. ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment or ''software'' controlled by 5A002, 5B002 or 5D002.

b. ''Software'' specially designed or modified to support ''technology'' controlled by 5E002.

c. Specific ''software'' as follows:

c.1. ''Software'' having the characteristics, or performing or simulating the functions of the equipment controlled by 5A002 or 5B002;

c.2. ''Software'' to certify ''software'' controlled by 5D002.c.1;

c.3. ''Software'' designed or modified to protect against malicious computer damage, e.g., viruses;

NOTE: 5D002 does not control:

a. ''Software required'' for the ''use'' of equipment excluded from control under the Note to 5A002;

b. ''Software'' providing any of the functions of equipment excluded from control under the Note to 5A002.

5D995 "Software", n.e.s., specially designed or modified for the "development", "production", or use of information security or cryptologic equipment (e.g., equipment controlled by 5A995).

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

5E002 "Technology" according to the General Technology Note for the "development", "production" or use of equipment controlled by 5A002 or 5B002 or "software" controlled by 5D002

LICENSE REQUIREMENTS

Reason for Control: NS, AT, EI

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

EI controls applies only to encryption technology transferred from the U.S. Munitions List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. Refer to §742.15 of the EAR.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5E995 "Technology", n.e.s., for the "development", "production", or "use" of "information security" or cryptologic equipment (e.g., equipment controlled by 5A995), or software controlled by 5D995.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

ADVISORY NOTES FOR ''INFORMATION SECURITY''

ADVISORY NOTE 1: Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Country Group D:1 of the following cryptographic equipment, provided that the equipment is intended for civil use:

a. Access control equipment, such as automatic teller machines, self-service statement printers or point of sale terminals, that protects password or personal identification numbers (PIN) or similar data to prevent unauthorized access to facilities, but does not allow for encryption of files or text, except as directly related to the password of PIN protection;

b. Data authentication equipment that calculates a Message Authentication Code (MAC) or similar result to ensure no alteration of text has taken place, or to authenticate users, but does not allow for encryption of data, text or other media other than that needed for the authentication;

c. Cryptographic equipment specially designed, developed or modified for use in machines for banking or money transactions, such as automatic teller machines, self-service statement printers, point of sale terminals or equipment for the encryption of interbanking transactions, and intended for use only in such applications.

ADVISORY NOTE 2: (Eligible for TSR). Licenses are likely to be approved, as administrative exceptions, for exports and reexports to satisfactory end-users in Country Group D:1 of the following cryptographic ''software'':

a. ''Software'' required for the ''use'' of equipment eligible for administrative exceptions treatment under Advisory Note 1 (Notes for ''Information Security'').

b. ''Software'' providing any of the functions of equipment eligible for administrative exceptions treatment under Advisory Note 1 (Notes for ''Information Security'').

Category 6—Sensors

A. EQUIPMENT, ASSEMBLIES AND COMPONENTS

6A001 Acoustics.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: Yes for 6A001.a.1.b.4 and 6A001.b

CIV: Yes for 6A001.a.1.b.4 and 6A001.b

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. Marine acoustic systems, equipment and specially designed components therefor, as follows:

a.1. Active (transmitting or transmitting-and-receiving) systems, equipment or specially designed components therefor, as follows:

NOTE: 6A001.a.1 does not control:

a.1.a Depth sounders operating vertically below the apparatus, not including a scanning function exceeding ±10°, and limited to measuring the depth of water, the distance of submerged or buried objects or fish finding.

a.1.b. Acoustic beacons, as follows:

a.1.b.1. Acoustic emergency beacons; or

a.1.b.2. Pingers specially designed for relocating or returning to an underwater position.

a.1.a. Wide-swath bathymetric survey systems for sea bed topographic mapping:

a.1.a.1. Designed:

a.1.a.1.a. To take measurements at an angle exceeding 10° from the vertical; and

a.1.a.1.b. To measure depths exceeding 600 m below the water surface; and

a.1.a.2. Designed:

a.1.a.2.a. To incorporate multiple beams any of which is less than 2°; or

a.1.a.2.b. To provide data accuracies of better than 0.5% of water depth across the swath averaged over the individual measurements within the swath;

a.1.b. Object detection or location systems having any of the following:

a.1.b.1. A transmitting frequency below 10 kHz;

a.1.b.2. Sound pressure level exceeding 224 dB (reference 1 micropascal at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

a.1.b.3. Sound pressure level exceeding 235 dB (reference 1 micropascal at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

a.1.b.4. Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

a.1.b.5. Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers:

a.1.b.5.a. Dynamically compensated for pressure; or

a.1.b.5.b. Incorporating other than lead zirconate titanate as the transduction element; or

a.1.b.6. Designed to operate with an unambiguous display range exceeding 5,120 m;

a.1.c. Acoustic projectors, including transducers, incorporating piezoelectric,

magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination, having any of the following characteristics:

NOTE 1: The control status of acoustic projectors, including transducers, specially designed for other equipment is determined by the control status of the other equipment.

NOTE 2: 6A001.a.1.c does not control electronic sources that direct the sound vertically only, or mechanical (e.g., air gun or vapor-shock gun) or chemical (e.g., explosive) sources.

a.1.c.1. An instantaneous radiated acoustic power density exceeding 0.01 mW/mm ^{2}/Hz for devices operating at frequencies below 10 kHz;

a.1.c.2. A continuously radiated acoustic power density exceeding 0.001 mW/mm ^{2}/Hz for devices operating at frequencies below 10 kHz;

a.1.c.3. Designed to withstand pressure during normal operation at depths exceeding 1,000 m; or

a.1.c.4. Side-lobe suppression exceeding 22 dB.

TECHNICAL NOTE: Acoustic power density is obtained by dividing the output acoustic power by the product of the area of the radiating surface and the frequency of operation.

a.1.d. Acoustic systems, equipment and specially designed components for determining the position of surface vessels or underwater vehicles designed:

a.1.d.1. To operate at a range exceeding 1,000 m with a positioning accuracy of less than 10 m rms (root mean square) when measured at a range of 1,000 m; or

a.1.d.2. To withstand pressure at depths exceeding 1,000 m;

NOTE: 6A001.a.1.d.1 includes equipment using coherent ''signal processing'' between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle, or capable of automatically correcting speed-of-sound propagation errors for calculation of a point.

a.2. Passive (receiving, whether or not related in normal application to separate active equipment) systems, equipment or specially designed components therefor, as follows:

a.2.a. Hydrophones (transducers) with any of the following characteristics:

a.2.a.1. Incorporating continuous flexible sensors or assemblies of discrete sensor elements with either a diameter or length less than 20 mm and with a separation between elements of less than 20 mm;

a.2.a.2. Having any of the following sensing elements:

a.2.a.2.a. Optical fibers;

a.2.a.2.b. Piezoelectric polymers; or

a.2.a.2.c. Flexible piezoelectric ceramic materials;

a.2.a.3. Hydrophone sensitivity better than—180 dB at any depth with no acceleration compensation;

a.2.a.4. When designed to operate at depths not exceeding 35 m, hydrophone sensitivity better than—186 dB with acceleration compensation;

a.2.a.5. When designed for normal operation at depths exceeding 35 m hydrophone sensitivity better than—192 dB with acceleration compensation;

a.2.a.6. When designed for normal operation at depths exceeding 100 m hydrophone sensitivity better than—204 dB; or

a.2.a.7. Designed for operation at depths exceeding 1,000 m;

TECHNICAL NOTE: Hydrophone sensitivity is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms reference, when the hydrophone sensor, without a preamplifier, is placed in a plane wave acoustic field with an rms pressure of 1 micropascal. For example, a hydrophone of −160 dB (reference 1 V per micropascal) would yield an output voltage of 10^{-8} V in such a field, while one of −180 dB sensitivity would yield only 10^{-9} V output. Thus, −160 dB is better than −180 dB.

a.2.b. Towed acoustic hydrophone arrays with any of the following:

a.2.b.1. Hydrophone group spacing of less than 12.5 m;

a.2.b.2. Hydrophone group spacing of 12.5 m to less than 25 m and designed or able to be modified to operate at depths exceeding 35 m; or

TECHNICAL NOTE: ''Able to be modified'' in 6A001.a.2.b.2 means having provisions to allow a change of the wiring or interconnections to alter hydrophone group spacing or operating depth limits. These provisions are: spare wiring exceeding 10% of the number of wires, hydrophone group spacing adjustment blocks or internal depth limiting devices that are adjustable or that control more than one hydrophone group.

a.2.b.3. Hydrophone group spacing of 25 m or more and designed to operate at depths exceeding 100 m;

a.2.b.4. Heading sensors controlled by 6A001a.2.d;

a.2.b.5. Non-metallic strength members or longitudinally reinforced array hoses;

a.2.b.6. An assembled array of less than 40 mm in diameter;

a.2.b.7. Multiplexed hydrophone group signals; or

a.2.b.8. Hydrophone characteristics specified in 6A001.a.2.a;

a.2.c. Processing equipment specially designed for towed acoustic hydrophone arrays with either of the following:

a.2.c.1. A Fast Fourier or other transform of 1,024 or more complex points in less than 20 ms with no ''user-accessible programmability''; or

a.2.c.2. Time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes with ''user accessible programmability'';

a.2.d. Heading sensors having an accuracy of better than ±0.5°; and

a.2.d.1. Designed to be incorporated within the array hosing and to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m; or

a.2.d.2. Designed to be mounted external to the array hosing and having a sensor unit capable of operating with 360o roll at depths exceeding 35 m;

b. Terrestrial geophones capable of conversion for use in marine systems, equipment or specially designed components controlled by 6A001.a.2.a;

c. Correlation-velocity sonar log equipment designed to measure the horizontal speed of the equipment carrier relative to the sea bed at distances between the carrier and the sea bed exceeding 500 m.

6A002 Optical sensors.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, CC, RS, AT, UN

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to optical detectors in 6A002.a.1, a.3, and a.4 that are specially designed or rated as electromagnetic (including ''lasers'') and ionizedparticle radiation resistant.	MT Column 1
RS applies to 6A002.a.1, a.2, a.3 and .c	RS Column 1
CC applies to police-model infrared viewers in 6A002.c	CC Column 1
AT applies to entire entry	AT Column 1
UN applies to 6A002.a.1, a.2 a.3 and c	Rwanda

LICENSE EXCEPTIONS

LVS: $3000, *except* N/A for 6A002.a.1, a.2, a.3, and c

GBS: Yes, for 6A002.a.4

CIV: Yes, for 6A002.a.4

LIST OF ITEMS CONTROLLED

Unit: parts and accessories in $ value

Related Controls: N/A

Related Definitions: Image intensifiers defined in 6A002.a.2 and focal plane arrays defined in 6A002.a.3 specially designed, modified, or configured for military use and not part of civil equipment are subject to the export licensing authority of U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121)

Items: a. Optical detectors, as follows:

NOTE: 6A002.a does not control germanium or silicon photodevices.

a.1. ''Space-qualified'' solid-state detectors having any of the following:

a.1.a.1. A peak response in the wavelength range exceeding 10 nm but not exceeding 300nm; and

a.1.a.2. A response of less than 0.1% relative to the peak response at a wavelength exceeding 400 nm;

a.1.b.1. A peak response in the wavelength range exceeding 900 nm but not exceeding 1,200 nm; and

a.1.b.2. A response ''time constant'' of 95 ns or less; or

a.1.c. A peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

a.2. Image intensifier tubes and specially designed components therefor, as follows:

a.2.a. Image intensifier tubes having all the following:

a.2.a.1. A peak response in wavelength range exceeding 400 nm, but not exceeding 1,050 nm;

a.2.a.2. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of less than 25 micrometers; and

a.2.a.3.a. An S–20, S–25 or multialkali photocathode; or

a.2.a.3.b. A GaAs or GaInAs photocathode;

a.2.b. Specially designed components as follows:

a.2.b.1. Fiber optic image inverters;

a.2.b.2. Microchannel plates having both of the following characteristics:

a.2.b.2.a. 15,000 or more hollow tubes per plate; and

a.2.b.2.b. Hole pitch (center-to-center spacing) of less than 25 micrometers; or

a.2.b.3. GaAs or GaInAs photocathodes;

a.3. Non-''space-qualified'' ''focal plane arrays'', having any of the following:

TECHNICAL NOTE: Linear or two-dimensional multi-element detector arrays are referred to as ''focal plane arrays''.

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 900 nm, but not exceeding 1,050 nm; and

a.3.a.2. A response ''time constant'' of less than 0.5 ns;

a.3.b.1. Individual elements with a peak response in the wavelength range exceeding 1,050 nm, but not exceeding 1,200 nm; and

a.3.b.2. A response ''time constant'' of 95 ns or less; or

a.3.c. Individual elements with a peak response in the wavelength range exceeding 1,200 nm, but not exceeding 30,000 nm;

NOTE 1: 6A002.a.3 includes photoconductive arrays and photovoltaic arrays.

NOTE 2: 6A002.a.3 does not control silicon ''focal plane arrays'', multi-element (not to exceed 16 elements) encapsulated photoconductive cells or pyroelectric detectors using any of the following:

a. Lead sulphide;
b. Triglycine sulphate and variants;
c. Lead-lanthanum-zirconium titanate and variants;
d. Lithium tantalate;
e. Polyvinylidene fluoride and variants;
f. Strontium barium niobate and variants; or
g. Lead selenide.

a.4. Non-''space-qualified'' single-element or non-focal-plane multi-element semiconductor photodiodes or phototransistors having both of the following:

a.4.a. A peak response at a wavelength exceeding 1,200 nm, but not exceeding 30,000 nm; and

a.4.b. A response ''time constant'' of 0.5 ns or less;

b. ''Multispectral Imaging Sensors'' designed for remote sensing applications, having either of the following characteristics:

b.1. An Instantaneous-Field-Of-View (IFOV) of less than 200 microradians; or

b.2. Specified for operation in the wavelength range exceeding 400 nm, but not exceeding 30,000 nm; and

b.2.a. Providing output imaging data in digital format; and

b.2.b.1. ''Space-qualified''; or

b.2.b.2. Designed for airborne operation and using other than silicon detectors;

c. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating either of the following:

c.1. Image intensifier tubes controlled by 6A002.a.2 or

c.2. ''Focal plane arrays'' controlled by 6A002.a.3;

TECHNICAL NOTE: Direct view refers to imaging equipment operating in the visible or infrared spectrum, that presents a visual image to a human observer without converting the image into an electronic signal for television display, and that cannot record or store the image photographically, electronically, or by any other means.

NOTE: 6A002.c does not control the following equipment incorporating other than GaAs or GaInAs photocathodes:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Medical equipment;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Flame detectors for industrial furnaces;

e. Equipment specially designed for laboratory use.

d. Special support components for optical sensors, as follows:

d.1. ''Space-qualified'' cryocoolers;

d.2. Non-''space-qualified'' cryocoolers, with a cooling source temperature below 218 K (−55 °C), as follows:

d.2.a. Closed cycle with a specified Mean-Time-To-Failure (MTTF), or Mean-Time-Between-Failures (MTBF), exceeding 2,500 hours;

d.2.b. Joule-Thomson (JT) self-regulating minicoolers with bore (outside) diameters of less than 8 mm;

d.3. Optical sensing fibers:

d.3.a. Specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive; or

d.3.b. Modified structurally to have a ''beat length'' of less than 50 mm (high birefringence).

6A003 Cameras.

LICENSE REQUIREMENTS

Reason for Control: NS, NP, RS, AT, UN

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
NP applies to items controlled in paragraphs 6A003.a.2, a.3 and a.4	NP Column 1
RS applies to items controlled in 6A003.b.3 and b.4	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to items controlled in 6A003.b.3 and b.4	Rwanda

LICENSE EXCEPTIONS

LVS: $1500, except N/A for 6A003.a.2 through a.5, b.1, b.3 and b.4

GBS: Yes for 6A003.a.1 and a.2 (see Advisory Note 3 to Category 6)

CIV: Yes for 6A003.a.1 and a.2 (see Advisory Note 3 to Category 6)

LIST OF ITEMS CONTROLLED

Unit: Number

Related Controls: Reference ECCNs 8A002.d and .e for cameras specially designed for underwater use.

Related Definitions: N/A

Items: a. Instrumentation cameras, as follows:

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames per second;

NOTE: 6A003.a.1 does not control cinema recording cameras for normal civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames per second for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras with writing speeds exceeding 10 mm/microsecond;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames per second;

a.5. Electronic cameras having:

a.5.a. An electronic shutter speed (gating capability) of less than 1 microsecond per full frame; and

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second;

b. Imaging cameras, as follows:

NOTE: 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having any of the following:

b.1.a. More than 4×10^6 ''active pixels'' per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4×10^6 ''active pixels'' per solid state array for color cameras incorporating three solid state arrays; or

b.1.c. More than 12×10^6 ''active pixels'' for solid state array color cameras incorporating one solid state array;

b.2. Scanning cameras and scanning camera systems:

b.2.a. Incorporating linear detector arrays with more than 8,192 elements per array; and

b.2.b. Having mechanical scanning in one direction;

b.3. Incorporating image intensifiers controlled by 6A002.a.2.a;

b.4. Incorporating focal plane arrays controlled by 6A002.a.3.

6A004 Optics.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: Yes for 6A004.a.1, a.2, a.4, b, d.1.a, e.2, e.4 and .f (See Advisory Note 4.1 to Category 6)

CIV: Yes for 6A004.f and items in Advisory Note 4.1 to Category 6

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; cable in meters/feet; components in $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. Optical mirrors (reflectors), as follows:

a.1. ''Deformable mirrors'' with either continuous or multi-element surfaces, and specially designed components therefor, capable of dynamically repositioning portions of the surface of the mirror at rates exceeding 100 Hz;

a.2. Lightweight monolithic mirrors with an average ''equivalent density'' of less than 30 kg/m^2, and a total weight exceeding 10 kg;

a.3. Lightweight ''composite'' or foam mirror structures with an average ''equivalent density'' of less than 30 kg/m^2, and a total weight exceeding 2 kg;

a.4. Beam steering mirrors more than 100 mm in diameter or length of major axis that maintain a flatness of lambda/2 or better (lambda is equal to 663nm) with a control bandwidth exceeding 100 Hz;

b. Optical components made from zinc selenide (ZnSe) or zinc sulphide (ZnS) with transmission in the wavelength range exceeding 3,000 nm but not exceeding 25,000 nm and either of the following:

b.1. Exceeding 100 cm^3 in volume; or

b.2. Exceeding 80 mm in diameter or length of major axis and 20 mm in thickness (depth);

c. ''Space-qualified'' components for optical systems, as follows:

c.1. Lightweighted to less than 20% ''equivalent density'' compared with a solid blank of the same aperture and thickness;

c.2. Substrates, substrates with surface coatings (single-layer or multi-layer, metallic or dielectric, conducting, semiconducting or insulating) or with protective films;

c.3. Elements or assemblies of mirrors designed to be assembled in space into an optical system with a collecting aperture equivalent to or larger than a single optic 1 meter in diameter;

c.4. Manufactured from ''composite'' materials having a coefficient of linear thermal expansion equal to or less than 5×10^{-6} in any coordinate direction;

d. Optical filters, as follows:

d.1. For wavelengths longer than 250 nm, comprised of multi-layer optical coatings and having either of the following:

d.1.a. Bandwidths equal to or less than 1 nm Full Width Half Intensity (FWHI) and peak transmission of 90% or more; or

d.1.b. Bandwidths equal to or less than 0.1 nm FWHI and peak transmission of 50% or more;

NOTE: 6A004.d.1 does not control optical filters with fixed air gaps or Lyot-type filters.

d.2. For wavelengths longer than 250 nm, and having all of the following:

d.2.a. Tunable over a spectral range of 500 nm or more;

d.2.b. Instantaneous optical bandpass of 1.25 nm or less;

d.2.c. Wavelength resettable within 0.1 ms to an accuracy of 1 nm or better within the tunable spectral range; and

d.2.d. A single peak transmission of 91% or more;

d.3. Optical opacity switches (filters) with a field of view of 30° or wider and a response time equal to or less than 1 ns;

e. Optical control equipment, as follows:

e.1. Specially designed to maintain the surface figure or orientation of the ''space-qualified'' components controlled by 6A004.c.1 or c.3;

e.2. Having steering, tracking, stabilization or resonator alignment bandwidths equal to or more than 100 Hz and an accuracy of 10 microradians or less;

e.3. Gimbals having a maximum slew exceeding 5°, a bandwidth equal to or more than 100 Hz and either of the following:

e.3.a.1. Exceeding 0.15 m but not exceeding 1 m in diameter or major axis length;

e.3.a.2. Capable of angular accelerations exceeding 2 radians/s^2; and

e.3.a.3. Having angular pointing errors equal to or less than 200 microradians; or

e.3.b.1. Exceeding 1 m in diameter or major axis length;

e.3.b.2. Capable of angular accelerations exceeding 0.5 radians/s^2; and

e.3.b.3. Having angular pointing errors equal to or less than 200 microradians;

e.4. Specially designed to maintain the alignment of phased array or phased segment mirror systems consisting of mirrors with a

segment diameter or major axis length of 1 m or more;

f. ''Fluoride fiber'' cable, or optical fibers therefor, having an attenuation of less than 4 dB/km in the wavelength range exceeding 1,000 nm but not exceeding 3,000 nm.

6A005 Lasers, components and optical equipment.

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
NP applies to 6A005.a.1.c, a.2.a (with an output power > 40W), a.4.c, a.6, (argon ion lasers only), c.1.b (with an output power > 30W), c.2.c.2.a (with an output power > 40W), c.2.c.2.b (with an output power > 40W), c.2.d.2.b (with an output power > 40W), and d.2.c	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000 for all other items; N/A for NP items

GBS: Yes, for items in Advisory Notes 5.1, 5.2 and 5.3 to Category 6

CIV: Yes, except for 6A005.c.2.a, .d (except d.2.c), .e and for items in Advisory Notes 5.1, 5.2 and 5.3 to Category 6

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in § value

Related Controls: Shared aperture optical elements, capable of operating in super-high power laser applications are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category XII.)

Related Definitions: 1. Pulsed ''lasers'' include those that run in a continuous wave (CW) mode with pulses superimposed. 2. Pulse-excited ''lasers'' include those that run in a continuously excited mode with pulse excitation superimposed. 3. The control status of Raman ''lasers'' is determined by the parameters of the pumping source ''lasers''. The pumping source ''lasers'' can be any of the ''lasers'' described below.

Items: a. Gas ''lasers'', as follows:

a.1. Excimer ''lasers'' having any of the following:

a.1.a. An output wavelength not exceeding 150 nm and:

a.1.a.1. An output energy exceeding 50 mJ per pulse; *or*

a.1.a.2. An average or CW output power exceeding 1 W;

a.1.b. An output wavelength exceeding 150 nm but not exceeding 190 nm and:

a.1.b.1. An output energy exceeding 1.5 J per pulse; or

a.1.b.2. An average or CW output power exceeding 120 W;

a.1.c. An output wavelength exceeding 190 nm but not exceeding 360 nm and:

a.1.c.1. An output energy exceeding 10 J per pulse; or

a.1.c.2. An average or CW output power exceeding 500 W; or

a.1.d. An output wavelength exceeding 360 nm and:

a.1.d.1. An output energy exceeding 1.5 J per pulse; or

a.1.d.2. An average or CW output power exceeding 30 W;

a.2. Metal vapour ''lasers'', as follows:

a.2.a. Copper (Cu) ''lasers'' with an average or CW output power exceeding 20 W;

a.2.b. Gold (Au) ''lasers'' with an average or CW output power exceeding 5 W;

a.2.c. Sodium (Na) ''lasers'' with an output power exceeding 5 W;

a.2.d. Barium (Ba) ''lasers'' with an average or CW output power exceeding 2 W;

a.3. Carbon monoxide (CO) ''lasers'' having either:

a.3.a. An output energy exceeding 2 J per pulse and a pulsed ''peak power'' exceeding 5 kW; or

a.3.b. An average or CW output power exceeding 5 kW;

a.4. Carbon dioxide (CO_2) ''lasers'' having any of the following:

a.4.a. A CW output power exceeding 10 kW;

a.4.b. A pulsed output with a ''pulse duration'' exceeding 10 microseconds and:

a.4.b.1. An average output power exceeding 10 kW; or

a.4.b.2. A pulsed ''peak power'' exceeding 100 kW; or

a.4.c. A pulsed output with a ''pulse duration'' equal to or less than 10 microseconds and:

a.4.c.1. A pulse energy exceeding 5 J per pulse and ''peak power'' exceeding 2.5 kW; or

a.4.c.2. An average output power exceeding 2.5 kW;

a.5. ''Chemical lasers'', as follows:

a.5.a. Hydrogen Fluoride (HF) ''lasers'';

a.5.b. Deuterium Fluoride (DF) ''lasers'';

a.5.c. ''Transfer lasers'':

a.5.c.1. Oxygen Iodine (O_2–I) ''lasers'';

a.5.c.2. Deuterium Fluoride-Carbon dioxide (DF-CO_2) ''lasers'';

a.6. Gas discharge and ion ''lasers'', i.e., krypton ion or argon ion ''lasers'', as follows:

a.6.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 50 W; or

a.6.b. An average or CW output power exceeding 50 W; or

a.7. Other gas ''lasers'', except nitrogen ''lasers'', having any of the following:

a.7.a. An output wavelength not exceeding 150 nm and:

a.7.a.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

a.7.a.2. An average or CW output power exceeding 1 W;

a.7.b. An output wavelength exceeding 150 nm but not exceeding 800 nm and:

a.7.b.1. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 30 W; or

a.7.b.2. An average or CW output power exceeding 30 W;

a.7.c. An output wavelength exceeding 800 nm but not exceeding 1,400 nm and:

a.7.c.1. An output energy exceeding 0.25 J per pulse and a pulsed ''peak power'' exceeding 10 W; or

a.7.c.2. An average or CW output power exceeding 10 W; or

a.7.d. An output wavelength exceeding 1,400 nm and an average or CW output power exceeding 1 W;

b. Semiconductor ''lasers'', as follows:

TECHNICAL NOTE: Semiconductor ''lasers'' are commonly called ''laser'' diodes.

NOTE: The control status of semiconductor ''lasers'' specially designed for other equipment is determined by the control status of the other equipment.

b.1. Individual, single-transverse mode semiconductor ''lasers'' having:

b.1.a. An average output power exceeding 100 mW; or

b.1.b. A wavelength exceeding 1,050 nm;

b.2. Individual, multiple-transverse mode semiconductor ''lasers'', or arrays of individual semiconductor ''lasers'', having:

b.2.a. An output energy exceeding 500 microjoules per pulse and a pulsed ''peak power'' exceeding 10 W;

b.2.b. An average or CW output power exceeding 10 W; or

b.2.c. A wavelength exceeding 1,050 nm;

c. Solid state ''lasers'', as follows:

c.1. ''Tunable'' ''lasers'' having any of the following:

NOTE: 6A005.c.1. includes titanium-sapphire (Ti: Al_2 O_3), thulium-YAG (Tm: YAG), thulium-YSGG (Tm: YSGG), alexandrite (Cr: $BeAl_2$ O_4) and color center ''lasers''.

c.1.a. An output wavelength less than 600 nm and:

c.1.a.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

c.1.a.2. An average or CW output power exceeding 1 W;

c.1.b. An output wavelength of 600 nm or more but not exceeding 1,400 nm and:

c.1.b.1. An output energy exceeding 1 J per pulse and a pulsed ''peak power'' exceeding 20 W; or

c.1.b.2. An average or CW output power exceeding 20 W; or

c.1.c. An output wavelength exceeding 1,400 nm and:

c.1.c.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

c.1.c.2.An average or CW output power exceeding 1 W;

c.2. Non-''tunable'' ''lasers'', as follows:

NOTE: 6A005.c.2. includes atomic transition solid state ''lasers''.

c.2.a. Ruby ''lasers'' having an output energy exceeding 20 J per pulse;

c.2.b. Neodymium glass ''lasers'', as follows:

c.2.b.1. ''Q-switched lasers'' having:

c.2.b.1.a. An output energy exceeding 20 J but not exceeding 50 J per pulse and an average output power exceeding 10 W; or

c.2.b.1.b. An output energy exceeding 50 J per pulse;

c.2.b.2. Non-''Q-switched lasers'' having:

c.2.b.2.a. An output energy exceeding 50 J but not exceeding 100 J per pulse and an average output power exceeding 20 W; or

c.2.b.2.b. An output energy exceeding 100 J per pulse;

c.2.c. Neodymium-doped (other than glass) ''lasers'', as follows, with an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm:

NOTE: For Neodymium-doped (other than glass) ''lasers'' having an output wavelength not exceeding 1,000 nm or exceeding 1,100 nm, see 6A005.c.2.d.

c.2.c.1. Pulse excited, mode-locked, ''Q-switched lasers'' with a ''pulse duration'' of less than 1 ns and:

c.2.c.1.a. A ''peak power'' exceeding 5 GW;

c.2.c.1.b. An average output power exceeding 10 W; or

c.2.c.1.c. A pulsed energy exceeding 0.1 J;

c.2.c.2. Pulse-excited, ''Q-switched lasers'', with a pulse duration equal to or more than 1 ns, and:

c.2.c.2.a. A single-transverse mode output with:

c.2.c.2.a.1. A ''peak power'' exceeding 100 MW;

c.2.c.2.a.2. An average output power exceeding 20 W; or

c.2.c.2.a.3. A pulsed energy exceeding 2 J; or

c.2.c.2.b. A multiple-transverse mode output with:

c.2.c.2.b.1. A ''peak power'' exceeding 200 MW;

c.2.c.2.b.2. An average output power exceeding 50 W; or

c.2.c.2.b.3. A pulsed energy exceeding 2 J;

c.2.c.3. Pulse-excited, non-''Q-switched lasers'', having:

c.2.c.3.a. A single-transverse mode output with:

c.2.c.3.a.1. A ''peak power'' exceeding 500 kW; or

c.2.c.3.a.2. An average output power exceeding 150 W; or

c.2.c.3.b. A multiple-transverse mode output with:

c.2.c.3.b.1. A ''peak power'' exceeding 1 MW; or

c.2.c.3.b.2. An average power exceeding 500 W;

c.2.c.4. Continuously excited ''lasers'' having:

c.2.c.4.a. A single-transverse mode output with:

c.2.c.4.a.1. A ''peak power'' exceeding 500 kW; or

c.2.c.4.a.2. An average or CW output power exceeding 150 W; or

c.2.c.4.b. A multiple-transverse mode output with:

c.2.c.4.b.1. A ''peak power'' exceeding 1 MW; or

c.2.c.4.b.2. An average or CW output power exceeding 500 W;

c.2.d. Other non-''tunable'' ''lasers'', having any of the following:

c.2.d.1. A wavelength less than 150 nm and:

c.2.d.1.a. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

c.2.d.1.b. An average or CW output power exceeding 1 W;

c.2.d.2. A wavelength of 150 nm or more but not exceeding 800 nm and:

c.2.d.2.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 30 W; or

c.2.d.2.b. An average or CW output power exceeding 30 W;

c.2.d.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm, as follows:

c.2.d.3.a. ''Q-switched lasers'' with:

c.2.d.3.a.1. An output energy exceeding 0.5 J per pulse and a pulsed ''peak power'' exceeding 50 W; or

c.2.d.3.a.2. An average output power exceeding:

c.2.d.3.a.2.a. 10 W for single-mode ''lasers'';

c.2.d.3.a.2.b. 30 W for multimode ''lasers'';

c.2.d.3.b. Non-''Q-switched lasers'' with:

c.2.d.3.b.1. An output energy exceeding 2 J per pulse and a pulsed ''peak power'' exceeding 50 W; or

c.2.d.3.b.2. An average or CW output power exceeding 50 W; or

c.2.d.4. A wavelength exceeding 1,400 nm and:

c.2.d.4.a. An output energy exceeding 100 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

c.2.d.4.b. An average or CW output power exceeding 1 W;

d. Dye and other liquid ''lasers'', having any of the following:

d.1. A wavelength less than 150 nm and:

d.1.a. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

d.1.b. An average or CW output power exceeding 1 W;

d.2. A wavelength of 150 nm or more but not exceeding 800 nm and:

d.2.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 20 W;

d.2.b. An average or CW output power exceeding 20 W; or

d.2.c. A pulsed single longitudinal mode oscillator with an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the ''pulse duration'' is less than 100 ns;

d.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm and:

d.3.a. An output energy exceeding 0.5 J per pulse and a pulsed ''peak power'' exceeding 10 W; or

d.3.b. An average or CW output power exceeding 10 W; or

d.4. A wavelength exceeding 1,400 nm and:

d.4.a. An output energy exceeding 100 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

d.4.b. An average or CW output power exceeding 1 W;

e. Free electron ''lasers'';

f. Components, as follows:

f.1. Mirrors cooled either by active cooling or by heat pipe cooling;

TECHNICAL NOTE: Active cooling is a cooling technique for optical components using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.

f.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical components specially designed for use with controlled ''lasers'';

g. Optical equipment, as follows:

g.1. Dynamic wavefront (phase) measuring equipment capable of mapping at least 50 positions on a beam wavefront with:

g.1.a. Frame rates equal to or more than 100 Hz and phase discrimination of at least 5% of the beam's wavelength; or

g.1.b. Frame rates equal to or more than 1,000 Hz and phase discrimination of at least 20% of the beam's wavelength;

g.2. ''Laser'' diagnostic equipment capable of measuring ''Super-High Power Laser'' (SHPL) system angular beam steering errors of equal to or less than 10 microradians;

g.3. Optical equipment, assemblies or components specially designed for a phased-array SHPL system for coherent beam combination to an accuracy of Lambda/10 at the designed wavelength, or 0.1 micrometer, whichever is the smaller;

g.4. Projection telescopes specially designed for use with SHPL systems.

6A006 "Magnetometers", "magnetic gradiometers", "intrinsic magnetic gradiometers" and compensation systems and specially designed components.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: § value

Related Controls: N/A

Related Definition: This entry does not control instruments specially designed for biomagnetic measurements for medical diagnostics, unless they incorporate unembedded sensors controlled by 6A006.h.

Items: a. ''Magnetometers'' using ''superconductive'', optically pumped or nuclear precession (proton/Overhauser) technology having a ''noise level'' (sensitivity) lower (better) than 0.05 nT rms per square root Hz;

b. Induction coil ''magnetometers'' having a ''noise level'' (sensitivity) lower (better) than:

b.1. 0.05 nT rms per square root Hz at frequencies of less than 1 Hz;

b.2. 1×10^{-3} nT rms per square root Hz at frequencies of 1 Hz or more but not exceeding 10 Hz; or

b.3. 1×10^{-4} nT rms per square root Hz at frequencies exceeding 10 Hz;

c. Fiber optic ''magnetometers'' having a ''noise level'' (sensitivity) lower (better) than 1 nT rms per square root Hz;

d. ''Magnetic gradiometers'' using multiple ''magnetometers'' controlled by 6A006.a, .b or .c;

e. Fiber optic ''intrinsic magnetic gradiometers'' having a magnetic gradient field ''noise level'' (sensitivity) lower (better) than 0.3 nT/m rms per square root Hz;

f. ''Intrinsic magnetic gradiometers'', using technology other than fiber-optic technology, having a magnetic gradient field ''noise level'' (sensitivity) lower (better) than 0.015 nT/m rms per square root Hz;

g. Magnetic compensation systems for magnetic sensors designed for operation on mobile platforms;

h. ''Superconductive'' electromagnetic sensors, containing components manufactured from ''superconductive'' materials, as follows:

h.1. Designed for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents (including Josephson effect devices or ''superconductive'' quantum interference devices (SQUIDS));

h.2. Designed for sensing electromagnetic field variations at frequencies of 1 KHz or less, and:

h.3. Having any of the following characteristics:

h.3.a. Incorporating thin-film SQUIDS with a minimum feature size of less than 2 micrometers and with associated input and output coupling circuits;

h.3.b. Designed to operate with a magnetic field slew rate exceeding 1×10^{6} magnetic flux quanta per second;

h.3.c. Designed to function without magnetic shielding in the earth's ambient magnetic field; or

h.3.d. Having a temperature coefficient less (smaller) than 0.1 magnetic flux quantum/K;

6A007 Gravity meters (gravimeters) and gravity gradiometers.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to 6A07.b and c when the accuracies in 6A07.b.1 and b.2 are met or exceeded	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definition: N/A

Items: a. Gravity meters for ground use having a static accuracy of less (better) than 10 microgal;

NOTE: 6A007.a does not control ground gravity meters of the quartz element (Worden) type.

b. Gravity meters for mobile platforms for ground, marine, submersible, space or airborne use having:

b.1. A static accuracy of less (better) than 0.7 milligal; and

b.2. An in-service (operational) accuracy of less (better) than 0.7 milligal with a time-to-steady-state registration of less than 2 minutes under any combination of attendant corrective compensations and motional influences;

c. Gravity gradiometers.

6A008 Radar systems, equipment and assemblies and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to items that are designed for airborne applications and that are usable in systems controlled for MT reasons.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000

GBS: Yes, for 6A008.b, .c, and l.1 only

CIV: Yes, for 6A008.b, .c, and l.1 only

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definition: This entry does not control: 1.) Secondary surveillance radar (SSR); 2.) Car radar designed for collision prevention; 3.) Displays or monitors used

for Air Traffic Control (ATC) having no more than 12 resolvable elements per mm;

4.) Meteorological (weather) radar.

Items: a. Operating at frequencies from 40 GHz to 230 GHz and having an average output power exceeding 100mW;

b. Having a tunable bandwidth exceeding ±6.25% of the center operating frequency;

TECHNICAL NOTE: The center operating frequency equals one half of the sum of the highest plus the lowest specified operating frequencies.

c. Capable of operating simultaneously on more than two carrier frequencies;

d. Capable of operating in synthetic aperture (SAR), inverse synthetic aperture (ISAR) or sidelooking airborne (SLAR) radar mode;

e. Incorporating ''electronically steerable phased array antennae'';

f. Capable of heightfinding non-cooperative targets;

NOTE: 6A008.f does not control precision approach radar equipment (PAR) conforming to ICAO standards;

g. Designed specially for airborne (balloon or airframe mounted) operation and having Doppler signal processing for the detection of moving targets;

h. Employing processing of radar signals using:

h.1. ''Radar spread spectrum'' techniques; or

h.2. ''Radar frequency agility'' techniques;

i. Providing ground-based operation with a maximum ''instrumented range'' exceeding 185 km;

NOTE: 6A008.i does not control:

a. Fishing ground surveillance radar;

b. Ground radar equipment specially designed for enroute air traffic control and ''software'' specially designed for ''use'' thereof, provided:

1. It has a maximum ''instrumented range'' of 500 km or less

2. It is configured so that radar target data can be transmitted only one way from the radar site to one or more civil ATC centers;

3. It contains no provisions for remote control of the radar scan rate from the enroute ATC center; and

4. It is to be permanently installed;

N.B.: The ''use'' ''software'' must be limited to ''object code'' and the minimum amount of ''source code'' necessary for installation, operation or maintenance.

j. ''Laser'' radar or Light Detection and Ranging (LIDAR) equipment, having either of the following:

j.1. ''Space-qualified''; or

j.2. Employing coherent heterodyne or homodyne detection techniques and having an angular resolution of less (better) than 20 microradians;

NOTE: 6A008.j does not control LIDAR equipment specially designed for surveying or for meteorological observation.

k. Having signal processing sub-systems using ''pulse compression'' with:

k.1. A ''pulse compression'' ratio exceeding 150; or

k.2. A pulse width of less than 200 ns;

l. Having data processing sub-systems with:

l.1. ''Automatic target tracking'' providing, at any antenna rotation, the predicted target position beyond the time of the next antenna beam passage;

NOTE: 6A008.l.1 does not control conflict alert capability in air traffic control systems, or marine or harbor radar.

l.2. Calculation of target velocity from primary radar having non-periodic (variable) scanning rates;

l.3. Processing for automatic pattern recognition (feature extraction) and comparison with target characteristic data bases (waveforms or imagery) to identify or classify targets; or

l.4. Superposition and correlation, or fusion, of target data from two or more ''geographically dispersed'' and ''interconnected radar'' sensors to enhance and discriminate targets.

NOTE: 6A008.l.4 does not control systems, equipment and assemblies used for marine traffic control.

6A018 Magnetic, pressure, and acoustic underwater detection devices specially designed for military purposes and controls and components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components in $ value

Related Controls: N/A

Related Definition: N/A

Items: The list of items controlled is contained in the ECCN heading.

6A102 Radiation hardened detectors, other than those specified in 6A002, for use in protecting against nuclear effects (e.g., electromagnetic pulse (EMP), X-rays, combined blast and thermal effects) and usable for "missiles", designed or rated to withstand radiation levels which meet or exceed a total irradiation dose of 5 X 10^5 rads (Si).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Components in number
Related Controls: N/A
Related Definition: In 6A102, a detector is defined as a mechanical, electrical, optical or chemical device that automatically identifies and records, or registers a stimulus such as an environmental change in pressure or temperature, an electrical or electromagnetic signal or radiation from a radioactive material.
Items: The list of items controlled is contained in the ECCN heading.

6A107 Specially designed components for gravity meters and gravity gradiometers specified in 6A007.b. and c.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6A108 Radar systems and tracking systems, other than those controlled by 6A008.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: This entry does not control airborne civil weather radar conforming to international standards for civil weather radars provided that they do not incorporate any of the following: (a) Phased array antennas; (b) Frequency agility; (c) Spread spectrum; or (d) Signal processing specially designed for the tracking of vehicles.

Laser radar systems are defined as those that embody specialized transmission, scanning, receiving and signal processing techniques for utilization of lasers for echo ranging, direction finding and discrimination of targets by location, radial speed and body reflection characteristics.

a. Radar and laser radar systems designed or modified for use in systems controlled by 9A004 (as provided in the Commerce Control List) and 9A104.

b. Precision tracking systems usable for ''missiles'', as follows:

b.1. Tracking systems that use a code translator in conjunction with either surface or airborne references or navigation satellite systems to provide real-time measurements of in-flight position and velocity;

b.2. Range instrumentation radars including associated optical/infrared trackers with all of the following capabilities:

b.2.a. Angular resolution better than 3 milliradians (0.5 mils);

b.2.b. Range of 30 km or greater, with a range resolution better than 10 meters rms; and

b.2.c. Velocity resolution better than 3 meters per second.

6A202 Photomultiplier tubes with a photocathode area of greater than 20cm^2 having an anode pulse rise time of less than 1 ns.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6A203 Cameras and components not controlled by ECCN 6A003.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment and components in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A

Items: a. Mechanical rotating mirror cameras, as follows; and specially designed components therefor:

a.1 Framing cameras with recording rates greater than 225,000 frames per second;

a.2. Streak cameras with writing speeds greater than 0.5 mm per microsecond;

TECHNICAL NOTE: Components of such cameras include their synchronizing electronics units and rotor assemblies consisting of turbines, mirrors and bearings.

b. Electronic streak and framing cameras and tubes, as follows:

b.1. Electronic streak cameras capable of 50 ns or less time resolution and streak tubes therefor;

b.2. Electronic (or electrically shuttered) framing cameras capable of 50 ns or less frame exposure time;

b.3. Framing tubes and solid state imaging devices for use with cameras described in 6A203.b.2, as follows:

b.3.a. Proximity focused image intensifier tubes having a photocathode deposited on a transparent conductive coating to decrease photocathode sheet resistance;

b.3.b. Gated silicon intensifier target (SIT) vidicon tubes, where a fast system allows gating the photoelectrons from the photocathode before they impinge on the SIT plate;

b.3.c. Kerr or pockel cell electro-optical shuttering; or

b.3.d. Other framing tubes and solid-state imaging devices having a fast-image gating time of less than 50 ns specially designed for cameras controlled by 6A203.b.2;

c. Radiation-hardended television cameras, or lenses therefor, specially designed or rated as radiation-hardened to withstand greater than 5×10^4 grays (Silicon) (5×10^6 rad (Silicon)) without operational degradation.

6A205 Lasers, other than those specified in 6A005.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Argon ion lasers with greater than 40 W average output power operating at wavelengths between 400 nm and 515 nm;

b. Tunable pulsed single-mode dye oscillators capable of an average power output of greater than 1 W, a repetition rate greater than 1 kHz, a pulse less than 100 ns, and a wavelength between 300 nm and 800 nm;

c. Tunable pulsed dye laser amplifiers and oscillators with an average power output of greater than 30 W, a repetition rate greater than 1 kHz, a pulse width less than 100 ns, and a wavelength between 300 nm and 800 nm; *except:* Single mode oscillators;

d. Pulsed carbon dioxide lasers with a repetition rate greater than 250 Hz, an average power output of greater than 500 W, and a pulse of less than 200 ns operating at wavelengths between 9,000 nm and 11,000 nm;

NOTE: This specification is not intended to control the higher power (typically 1 to 5kW) industrial CO_2 lasers used in applications such as cutting and welding, as those latter lasers are either continuous wave or are pulsed with a pulse width more than 200 ns.

e. Para-hydrogen Raman shifters designed to operate at 16 micrometer output wavelength and at a repetition rate greater than 250 Hz.

6A225 Velocity interferometers for measuring velocities in excess of 1 km per second during time intervals less than 10 microseconds (e.g. VISAR's, Doppler laser interferometers, DLI's, etc.).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6A226 Pressure sensors.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Manganin gauges for pressures greater than 100 kilobars; or

b. Quartz pressure transducers for pressures greater than 100 kilobars.

6A990 Airborne radar equipment, n.e.s., and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6A992 Gravity meters (gravimeters) for ground use, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Having a static accuracy of less (better) than 100 microgal; or

b. Being of the quartz element (Worden) type.

6A993 "Magnetometers", n.e.s., having a "noise level" (sensitivity) lower (better) than 1.0 nT rms per square root Hz.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6A994 Marine or terrestrial acoustic equipment, n.e.s., capable of detecting or locating underwater objects or features or positioning surface vessels or underwater vehicles; and specially designed components, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

6B004 Optics.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: Yes for Advisory Note 4.2 to Category 6
CIV: Yes for Advisory Note 4.2 to Category 6

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definition: This entry does not control microscopes.

a. Equipment for measuring absolute reflectance to an accuracy of ±0.1% of the reflectance value;

b. Equipment other than optical surface scattering measurement equipment, having an unobscured aperture of more than 10 cm, specially designed for the non-contact optical measurement of a non-planar optical surface figure (profile) to an ''accuracy'' of 2 nm or less (better) against the required profile.

6B005 Specially designed or modified equipment, including tools, dies, fixtures or gauges, and other specially designed components and accessories therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: Yes
CIV: Yes

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. For the manufacture or inspection of:

a.1. Free electron ''laser'' magnet wigglers;

a.2. Free electron ''laser'' photo injectors;

b. For the adjustment, to required tolerances, of the longitudinal magnetic field of free electron ''lasers''.

6B007 Equipment to produce, align and calibrate land-based gravity meters with a static accuracy of better than 0.1 milligal.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6B008 Pulse radar cross-section measurement systems having transmit pulse widths of 100 ns or less and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6B108 Systems specially designed for radar cross section measurement usable for "missiles" and their subsystems.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

C. MATERIALS

6C002 Optical sensors.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: Yes for 6C002.c
CIV: Yes for 6C002.c

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: a. Elemental tellurium (Te) of purity levels equal to or more than 99.9995%;

b. Single crystals of cadmium telluride (CdTe) cadmium zinc telluride (CdZnTe) or mercury cadmium tellurium (HgCdTe) of any purity level, including epitaxial wafers thereof;

TECHNICAL NOTE: Purity verified in accordance with ASTM F574–83 standard or equivalents.

c. ''Optical fiber preforms'' specially designed for the manufacture of high birefringence fibers controlled by 6A002.d.3.

6C004 Optics.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500
GBS: Yes for 6C004.h and 6C004.a, e.2, and .f as described in Advisory Note 4.1 to Category 6
CIV: Yes for 6C004.h and 6C004.a, e.2, and .f as described in Advisory Note 4.1 to Category 6

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A
Related Definitions: N/A
Items: a. Zinc selenide (ZnSe) and zinc sulphide (ZnS) ''substrate blanks'' produced by the chemical vapor deposition process:

a.1. Larger than 100 cm^3 in volume; or

a.2. Larger than 80 mm in diameter with a thickness equal to or more than 20 mm;

b. Boules of the following electro-optic materials:

b.1. Potassium titanyl arsenate (KTA);

b.2. Silver gallium selenide ($AgGaSe_2$);

b.3. Thallium arsenic selenide (Tl_3 $AsSe_3$, also known as TAS);

c. Non-linear optical materials having:

c.1. Third order susceptibility (chi 3) equal to or less than 1 W/m^2; and

c.2. A response time of less than 1 ms;

d. ''Substrate blanks'' of silicon carbide or beryllium beryllium (Be/Be) deposited materials exceeding 300 mm in diameter or major axis length;

e. Low optical absorption materials, as follows:

e.1. Bulk fluoride compounds containing ingredients with a purity of 99.999% or better; or

NOTE: 6C004.e.1 controls fluorides of zirconium or aluminium and variants.

e.2. Bulk fluoride glass made from compounds controlled by 6C004.e.1;

f. Glass, including fused silica, phosphate glass, fluorophosphate glass, zirconium fluoride (ZrF_4) and hafnium fluoride (HfF_4) with:

f.1. A hydroxil ion (OH-) concentration of less than 5 ppm;

f.2. Integrated metallic purity levels of less than 1 ppm; and

f.3. High homogeneity (index of refraction variance) less than 5×10^{-6};

g. Synthetically produced diamond material with an absorption of less than 10^{-5} cm^{-1} for wavelengths exceeding 200 nm, but not exceeding 14,000 nm;

h. ''Optical fiber preforms'' made from bulk fluoride compounds containing ingredients with a purity of 99.999% or better, specially designed for the manufacture of ''fluoride fibers'' controlled by 6A004.f.

6C005 Synthetic crystalline "laser" host material in unfinished form.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Titanium doped sapphire;
b. Alexandrite.

D. SOFTWARE

6D001 "Software" specially designed for the "development" or "production" of equipment controlled by 6A002, 6A003, 6A004, 6A005, 6A007, 6A008, 6A102, 6A108, 6B008 or 6B108.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, RS, AT, UN

Control(s)	*Country Chart*
NS applies to ''software'' for equipment controlled by 6A004, 6A005, 6A008 or 6B008	NS Column 1
MT applies to ''software'' for equipment controlled by 6A002, 6A003, 6A007, 6A008 (that is designed for airborne applications and that are usable in systems controlled for MT reasons), 6A102, 6A108 or 6B108 for MT reasons	MT Column 1
NP applies to ''software'' for equipment controlled by 6A005 for NP reasons	NP Column 1
RS applies to ''software'' for equipment controlled by 6A002 or 6A003 for RS reasons	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to ''software'' for equipment controlled by 6A002 or 6A003 for UN reasons	Rwanda

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6D002 "Software" specially designed for the "use" of equipment controlled by 6A002.b, 6A008, or 6B008.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to ''software'' for equipment controlled by 6A008 that is designed for airborne applications and that are usable in systems controlled for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

6D003 Other "software."

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
CIV: Yes for 6D003.d.1
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Acoustics:

a.1. ''Software'' specially designed for acoustic beam forming for the ''real-time processing'' of acoustic data for passive reception using towed hydrophone arrays;

a.2. ''Source code'' for the ''real-time processing'' of acoustic data for passive reception using towed hydrophone arrays;

b. Magnetometers:

b.1. ''Software'' specially designed for magnetic compensation systems for magnetic sensors designed to operate on mobile platforms;

b.2. ''Software'' specially designed for magnetic anomaly detection on mobile platforms;

c. Gravimeters: ''Software'' specially designed to correct motional influences of gravity meters or gravity gradiometers;

d. Radar:

d.1. Air Traffic Control ''software'' application ''programs'' hosted on general purpose computers located at Air Traffic Control centers and capable of any of the following:

d.1.a. Processing and displaying more than 150 simultaneous ''system tracks'';

d.1.b. Accepting radar target data from more than four primary radars; or

d.1.c. Automatically handing over primary radar target data (if not correlated with secondary surveillance radar (SSR) data) from the host ATC center to another ATC center;

d.2. ''Software'' for the design or ''production'' of radomes that:

d.2.a. Are specially designed to protect the ''electronically steerable phased array antennae'' controlled by 6A008.e; and

d.2.b. Limit the average side-lobe level increase by less than 13 dB for frequencies equal to or higher than 2 GHz.

6D102 "Software" specially designed for the "use" of equipment controlled by 6A002, 6A003, 6A007, 6A102, 6A108 or 6B108.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6D103 "Software" that processes post-flight recorded data obtained from systems controlled by 6A108.b, enabling determination of vehicle position throughout its flight path.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

The list of items controlled is contained in the ECCN heading.

6D990 "Software" specially designed for the "development", "production", or "use" of equipment controlled by 6A990, 6A992 or 6A993.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6D994 "Software" specially designed for the "development", "production", or "use" of equipment controlled by 6A994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

LVS: N/A
CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

6E001 "Technology" according to the General Technology Note for the "development" of equipment, materials or "software" controlled by 6A (except 6A018 6A990, 6A992 to 6A994), 6B, 6C, or 6D (except 6D990 or 6D994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, RS, CC, AT, UN

Control(s)	*Country Chart*
NS applies to "technology" for items controlled by 6A001 to 6A008, 6B004 to 6B008, 6C002 to 6C005, or 6D001 to 6D003	NS Column 1
MT applies to "technology" for items controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B108, 6D001, 6D002, 6D102 or 6D103 for MT reasons	MT Column 1
NP applies to "technology" for equipment controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225 or 6A226 for NP reasons	NP Column 2
RS applies to "technology" for equipment controlled by 6A002 or 6A003 for RS reasons	RS Column 1
CC applies to "technology" for equipment controlled by 6A002 for CC reasons	CC Column 1
AT applies to entire entry	AT Column 1
UN applies to "technology" for equipment controlled by 6A002 or 6A003 for UN reasons	Rwanda

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6E002 "Technology" according to the General Technology Note for the "production" of equipment or materials controlled by 6A (except 6A018, 6A990, 6A992 to 6A994), 6B, or 6C.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, RS, AT, CC, UN

Control(s)	*Country Chart*
NS applies to "technology" for equipment controlled by 6A001 to 6A008, 6B004 to 6B008, or 6C002 to 6C005	NS Column 1
MT applies to "technology" for equipment controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, or 6B108 for MT reasons	MT Column 1
NP applies to "technology" for equipment controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225 or 6A226 for NP reasons	NP Column 1
RS applies to "technology" for equipment controlled by 6A002 or 6A003 for RS reasons	RS Column 1
CC applies to "technology" for equipment controlled by 6A002 for CC reasons	CC Column 1
AT applies to entire entry	AT Column 1
UN applies to "technology" for equipment controlled by 6A002 or 6A003 for UN reasons	Rwanda

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6E003 Other "technology".

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. Optics.

a.1. Optical surface coating and treatment "technology" required to achieve uniformity of 99.5% or better for optical coatings 500 mm or more in diameter or major axis length and with a total loss (absorption and scatter) of less than 5×10^{-3};

a.2. Optical fabrication technologies, as follows:

a.2.a. For serially producing optical components at a rate exceeding 10 m^2 of surface area per year on any single spindle and with:

a.2.a.1. An area exceeding 1 m^2; and

a.2.a.2. A surface figure exceeding lambda/10 rms at the designed wavelength;

a.2.b. Single point diamond turning techniques producing surface finish accuracies of better than 10 nm rms on non-planar surfaces exceeding 0.5 m^2;

NOTE: See also ECCN 2E003.d in Category 2, Materials Processing.

b. Lasers.

b.1. ''Technology'' for optical filters with a bandwidth equal to or less than 10 nm, a field of view (FOV) exceeding 40° and a resolution exceeding 0.75 line pairs per milliradian;

b.2. ''Technology'' ''required'' for the ''development'', ''production'' or ''use'' of specially designed diagnostic instruments or targets in test facilities for Super High Power Lasers (SHPL) testing or testing or evaluation of materials irradiated by SHPL beams;

c. Magnetometers. ''Technology'' ''required'' for the ''development'' or ''production'' of fluxgate ''magnetometers'' or fluxgate ''magnetometer'' systems having a noise level:

c.1. Less than 0.05 nT rms per root Hz at frequencies of less than 1 Hz; or

c.2. 1×10^{-3} nT rms per square root Hz at frequencies of 1 Hz or more.

6E101 "Technology" according to the General Technology Note for the "use" of equipment or "software" controlled in 6A002.a.1, a.3 and a.4, 6A007.b. and .c, 6A008, 6A102, 6A107, 6A108, 6B108, 6D001, 6D002, 6D102 or 6D103 for MT reasons.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

6E201 "Technology" for the "use" of equipment controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225 or 6A226 for NP reasons.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

6E990 "Technology" for the "development", "production" or "use" equipment controlled by 6A990, 6A992, or 6A993.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

6E994 "Technology" for the "development", "production", or "use" of equipment controlled by 6A994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

ADVISORY NOTES FOR CATEGORY 6

Acoustics

ADVISORY NOTE 1: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in Country Group D:1 of equipment controlled by 6A001.a.1.b.4 for use in civil research or civil exploration work.

OPTICAL SENSORS

ADVISORY NOTE 2.1: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in the People's Republic of China of image intensifier tubes incorporating microchannel-plates, not specially designed for cameras controlled by 6A003.

N.B.: Advisory Note 2.1 does not apply to tubes incorporating a gallium arsenide (or similar semiconductor) photocathode.

ADVISORY NOTE 2.2: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in Country Group D:1 of reasonable quantities of non-ruggedized image intensifier tubes controlled by 6A002.a.2.a.3.a for bona fide medical use.

CAMERAS

ADVISORY NOTE 3: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in Country Group D:1 of mechanical framing cameras controlled by 6A003.a.2 designed for civil purposes (i.e., non-nuclear use) with a framing speed of not more than 2 million frames per second.

OPTICS

ADVISORY NOTE 4.1: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in Country Group D:1 of the following items for installation and use at ground-based bona fide academic or civilian astronomical research sites or in international air- or space-based bona fide academic or civilian astronomical research projects. For the end-use stated in this Advisory Note, the following limits apply:

a. One optical mirror controlled by 6A004.a.1;

b. Three optical mirrors controlled by 6A004.a.2;

c. Three optical mirrors controlled by 6A004.a.4;

d. Three optical mirrors controlled by 6A004.b;

e. Ten optical filters controlled by 6A004.d.1.a;

f. One piece of optical control equipment controlled by 6A004.e.2 for each operational mirror;

g. Four pieces of optical control equipment controlled by 6A004.e.4;

h. Three ''substrate blanks'' controlled by 6C004.a;

i. A reasonable quantity of the bulk fluoride glass controlled by 6C004.e.2;

j. A reasonable quantity of the materials controlled by 6C004.f.

N.B.: The quantity limitations listed in Advisory Note 4.1 refer to specific projects.

ADVISORY NOTE 4.2: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in Country Group D:1 of equipment controlled by 6B004.b for stated bona fide civil end-uses.

LASERS

ADVISORY NOTE 5.1: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in the People's Republic of China of:

a. ''Tunable'' pulsed flowing-dye ''lasers'' having all of the following, and specially designed components therefor:

1. An output wavelength less than 800 nm;

2. A ''pulse duration'' not exceeding 100 ns; and

3. A peak output power not exceeding 15 MW;

b. CO_2 or CO/CO_2 ''lasers'' having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; or

c. CO ''lasers'' having a CW maximum rated single or multimode output power not exceeding 10 kW.

ADVISORY NOTE 5.2: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in Country Group D:1 of ''lasers'', for civil applications, as follows:

a. Neodymium-doped (other than glass), pulse-excited, ''Q-switched lasers'' controlled by 6A005.c.2.c.2.b having:

1. A pulse duration equal to or more than 1 ns; and

2. A multiple-transverse mode output with a ''peak power'' not exceeding 400 MW;

b. Neodymium-doped (other than glass) ''lasers'' controlled by 6A005.c.2.c.3.b or 6A005.c.2.c.4.b:

1. Having:

a. An output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; and

b. An average or CW output power not exceeding 2 kW; and

2. Being:

a. Pulse-excited, non-''Q-switched'' multiple-transverse mode; or

b. Continuously excited, multiple-transverse mode;

c. CO_2 ''lasers'' controlled by 6A005.a.4:

1. Being in CW multiple-transverse mode; and

2. Having a CW output power not exceeding 15 kW.

d. CO ''lasers'' having a CW maximum rated single or multimode output power not exceeding 10 kW.

ADVISORY NOTE 5.3: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in Country Group D:1 of optical equipment controlled by 6A005.g when intended for use with ''lasers'' that are not controlled or controlled ''lasers'' that have been approved for export and reexport.

RADAR

ADVISORY NOTE 6: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in Country Group D:1 of Air Traffic Control (ATC) ''software'' application ''programs'' controlled by 6D03.d.1, provided that:

a. The number of ''system tracks'' does not exceed 700;

b. The number of primary radar inputs does not exceed 32; and

c. The ''software'' is further limited to ''object code'' and the minimum amount of ''source code'' necessary for installation, operation or maintenance.

Category 7—Navigation and Avionics

A. EQUIPMENT, ASSEMBLIES, AND COMPONENTS

7A001 Accelerometers designed for use in inertial navigation or guidance systems and having any of the following characteristics, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry except accelerometers that are specially designed and developed as Measurement While Drilling (MWD) sensors for use in downhole well service applications	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. A ''bias'' ''stability'' of less (better) than 130 micro g with respect to a fixed calibration value over a period of one year;

b. A ''scale factor'' ''stability'' of less (better) than 130 ppm with respect to a fixed calibration value over a period of one year; or

c. Specified to function at linear acceleration levels exceeding 100 g.

7A002 Gyros having any of the following characteristics, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. A ''drift rate'' ''stability'', when measured in a 1 g environment over a period of three months and with respect to a fixed calibration value, of:

a.1. Less (better) than 0.1° per hour when specified to function at linear acceleration levels below 10 g; or

a.2. Less (better) than 0.5° per hour when specified to function at linear acceleration levels from 10 g to 100 g inclusive; or

b. Specified to function at linear acceleration levels above 100 g.

7A003 Inertial navigation systems (gimballed and strapdown) and inertial equipment for attitude, guidance or control, having any of the following characteristics, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: Inertial navigation systems and inertial equipment, and specially designed components therefor specifically designed, modified or configured for military use are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category VIII.)
Related Definitions: N/A
Items: a. For ''aircraft'':

a.1. Navigation error (free inertial) of 0.8 nautical mile per hour (50% Circular Error Probable (CEP)) or less (better) subsequent to normal alignment;

a.2. Not certified for use on ''civil aircraft'' by ''civil aviation authorities''; or

a.3. Specified to function at linear acceleration levels exceeding 10 g.

b. [Reserved]

7A004 Gyro-astro compasses, and other devices that derive position or orientation by means of automatically tracking celestial bodies or satellites, with an azimuth accuracy of equal to or less (better) than 5 seconds of arc; and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	Country Chart
NS applies to entire entry except specially designed components	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit:$ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

7A006 Airborne altimeters operating at frequencies other than 4.2 to 4.4 GHz inclusive, having either of the following characteristics, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	Country Chart
NS applies to entire entry except specially designed components	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See Category 8 of the Commerce Control List for controls on automatic pilots for underwater vehicles, and Category 6 for controls on radar. Inertial navigation equipment for ships and submersibles is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category VIII, paragraph (e).)

Related Definitions: N/A

Items: a. ''Power management''; or

b. Using phase shift key modulation.

7A101 Accelerometers, other than those specified in entry 7A001, with a threshold of 0.05 g or less, or a linearity error within 0.25% of full scale output, or both, that are designed for use in inertial navigation systems or in guidance systems of all types and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country Chart
MT applies to entire entry except accelerometers that are specially designed and developed as Measurement While Drilling (MWD) sensors for use in downhole well service applications.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definition: 7A101 does not specify accelerometers which are specially designed and developed as MWD (Measurement While Drilling) sensors for use in downhole well service operations.

Items: The list of items is included in the entry heading.

7A102 All types of gyros, other than those specified in 7A002, usable in "missiles", with a rated "drift rate" "stability" of less than 0.5° (1 sigma or rms) per hour in a 1 g environment and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country Chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: § value

Related Controls: N/A

Related Definitions: (1) Drift rate is defined as the time rate of output deviation from the desired output. It consists of random and systematic components and is expressed as an equivalent angular displacement per unit time with respect to inertial space. (2) Stability is defined as standard deviation (1 sigma) of the variation of a particular parameter from its calibrated value measured under stable temperature conditions. This can be expressed as a function of time.

Items: The list of items controlled is contained in the ECCN heading.

7A103 Instrumentation, navigation equipment and systems, other than those specified in 7A003, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) Items controlled in 7A103.b in the corresponding EU list number are not controlled in this CCL entry. Those items are subject to the export licensing jurisdiction of the U.S. Department of State, Office of Defense Trade Controls (See 22 CFR part 121, Category VIII.e) (2) Inertial navigation systems and inertial equipment, and specially designed components therefor specifically designed, modified or configured for military use are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category VIII.)
Related Definitions: N/A
Items: a. Inertial or other equipment using accelerometers or gyros specified in 7A001, 7A002, 7A101 or 7A102 and systems incorporating such equipment.
b. [Reserved]

7A104 Gyro-astro compasses and other devices, other than those specified in 7A004, that derive position or orientation by means of automatically tracking celestial bodies or satellites and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

7A106 Avionics equipment and components usable in missile systems.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: Altimeters for missile systems controlled in the corresponding EU list number are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category VIII, paragraph (e).)
Related Definitions: N/A
Items: a. Terrain contour mapping equipment;
b. Scene mapping and correlation (both digital and analog) equipment;
c. Doppler navigation radar equipment;
d. Imaging sensor equipment (active).

7A115 Airborne passive sensors for determining bearing to specific electromagnetic sources (direction finding equipment) or terrain characteristics.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: Airborne passive sensors designed or modified for use in missile systems controlled in the corresponding EU list number is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)
Related Definitions: N/A
Items: a. Scene mapping and correlation (both digital and analog) equipment;
b. Passive interferometer equipment; and,
c. Imaging sensor equipment (passive).

7A994 Other navigation direction finding equipment, airborne communication equipment, all aircraft, inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including parts and components, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: Global Positioning Satellite receivers having the following characteristics are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (22 CFR part 121, Category XV): (a) Designed for encryption or decryption (e.g., Y-code) or GPS precise positioning service (PPS) signal; (b) Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater; (c) Specifically designed or modified for use with a null-steering antenna or including a null-steering antenna designed to reduce or avoid jamming signals; or (d) Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km. (GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specially designed, modified or configured for military use are controlled by 22 CFR part 121, Category XV, paragraph (c).

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

7B001 Test, calibration or alignment equipment specially designed for equipment controlled by 7A, except equipment for Maintenance Level I or Maintenance Level II.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definition: (1) Maintenance Level I: The failure of an inertial navigation unit is detected on the aircraft by indications from the Control and Display Unit (CDU) or by the status message from the corresponding sub-system. By following the manufacturer's manual, the cause of the failure may be localized at the level of the malfunctioning line replaceable unit (LRU). The operator then removes the LRU and replaces it with a spare.

(2) Maintenance Level II: The defective LRU is sent to the maintenance workshop (the manufacturer's or that of the operator responsible for level II maintenance). At the maintenance workshop, the malfunctioning LRU is tested by various appropriate means to verify and localize the defective shop replaceable assembly (SRA) module responsible for the failure. This SRA is removed and replaced by an operative spare. The defective SRA (or possibly the complete LRU) is then shipped to the manufacturer. Maintenance Level II does not include the removal of controlled accelerometers or gyro sensors from the SRA.

Items: The list of items controlled is contained in the ECCN heading.

7B002 Equipment specially designed to characterize mirrors for ring "laser" gyros.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. Scatterometers having a measurement accuracy of 10 ppm or less (better); or

b. Profilometers having a measurement accuracy of 0.5 nm (5 angstrom) or less (better).

7B003 Equipment specially designed for the "production" of equipment controlled by 7A, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. Gyro tuning test stations;

b. Gyro dynamic balance stations;

c. Gyro run-in/motor test stations;

d. Gyro evacuation and fill stations;

e. Centrifuge fixtures for gyro bearings;

f. Accelerometer axis align stations.

7B101 Equipment specially designed for the "production" of equipment controlled by 7A, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Inertial Measurement Unit (IMU Module) tester;
b. IMU platform tester;
c. IMU stable element handling fixture;
d. IMU platform balance fixture;
e. Acceleromerter test station.

7B102 Reflectometers specially designed to characterize mirrors, for "laser" gyros, having a measurement accuracy of 50 ppm or less (better).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

7B994 Other equipment for the test, inspection, or "production" of navigation and avionics equipment.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

C. MATERIALS [RESERVED]

D. SOFTWARE

7D001 "Software" specially designed or modified for the "development" or "production" of equipment controlled by 7A (except 7A994) or 7B (except 7B994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, RS, AT

Control(s)	*Country Chart*
NS applies to ''software'' for equipment controlled by 7A001 to 7A004, 7A006, 7B001, 7B002 or 7B003	NS Column 1
MT applies to entire entry	MT Column 1
RS applies to ''software'' for inertial navigation systems inertial equipment, and specially designed components therefor, for ''civil aircraft''	RS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) The corresponding EU List number controls ''software'' relating to entries that do not appear on the CCL (e.g., 7A003.b, 7A005, 7A103.b, 7A105, 7A116, 7A117, 7B103). The ''software'' related to these entries is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.) (2) ''Software'' for inertial navigation systems and inertial equipment, and specially designed components therefor, not for use on civil aircraft are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category VIII, paragraph (e).)
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

7D002 "Source code" for the "use" of any inertial navigation equipment or Attitude Heading Reference Systems (AHRS) (except gimballed AHRS) including inertial equipment not controlled by 7A003 or 7A004.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: AHRS generally differ from inertial navigation systems (INS) in that an AHRS provides altitude heading information and normally does not provide the acceleration, velocity and position information associated with INS.
Items: The list of items controlled is contained in the ECCN heading.

7D003 Other "software".

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Software'' specially designed or modified to improve the operational performance or reduce the navigational error of systems to the levels specified in 7A003 or 7A004;

b. ''Source code'' for hybrid integrated systems that improves the operational performance or reduces the navigational error of systems to the level specified in 7A003 by continuously combining inertial data with any of the following navigation data:

b.1. Doppler radar velocity;

b.2. Global Positioning Satellite (GPS) references or;

b.3. Terrain data base;

c. ''Source code'' for integrated avionics or mission systems that combine sensor data and employ knowledge-based expert systems;

d. ''Source code'' for the ''development'' of:

d.1. Digital flight management systems for flight path optimization;

d.2. Integrated propulsion and flight control systems;

d.3. Fly-by-wire or fly-by-light control systems;

d.4. Fault-tolerant or self-reconfiguring ''active flight control systems'';

d.5. Airborne automatic direction finding equipment;

d.6. Air data systems based on surface static data;

d.7. Raster-type head-up displays or three dimensional displays.

7D101 "Software" specially designed for the "use" of equipment controlled by 7A001 to 7A004, 7A006, 7A101 to 7A104, 7A106, 7A115, 7B001, 7B002, 7B003, 7B101, or 7B102.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) The corresponding EU List number controls ''software'' relating to entries that do not appear on the CCL (e.g., 7A003.b, 7A005, 7A103.b, 7A105, 7A116, 7A117, or 7B103). The ''software'' related to these entries is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.) (2) ''Software'' for inertial navigation systems and inertial equipment, and specially designed components therefor, not designed for use on civil aircraft by civil aviation authorities of a country listed in Country Group A:1 is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category VIII.)
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

7D102 Integration "software" for the equipment controlled by 7A003 or 7A103.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS:
CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) The corresponding EU List number controls ''software'' relating to entries that do not appear on the CCL (e.g., 7A003.b or 7A103.b). The ''software'' related to these entries is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

7D994 "Software", n.e.s., for the "development", "production", or "use" of navigation, airborne communication and other avionics.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

7E001 "Technology" according to the General Technology Note for the "development" of equipment or "software" controlled by 7A (except 7A994), 7B (except 7B994), or 7D (except 7D994).

LICENSE REQUIREMENTS

Reason for Control: MT, NS, RS, AT

Control(s)	*Country Chart*
NS applies to ''technology for items controlled by 7A001 to 7A004, 7A006, 7B001 to 7B003, 7D001 to 7D003	NS Column 1
MT applies to entire entry	MT Column 1
RS applies to ''technology'' for inertial navigation systems, inertial equipment and specially designed components therefor, for civil aircraft	RS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: The corresponding EU List number controls ''technology'' relating to entries that do not appear on the CCL (e.g., 7A003.b, 7A005, 7A103.b, 7A105, 7A116, 7A117, 7B103). The software related to these entries is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Control (see 22 CFR part 121).
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

7E002 "Technology" according to the General Technology Note for the "production" of equipment controlled by 7A (except 7A994) or 7B (except 7B994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, RS, AT

Control(s)	*Country Chart*
NS applies to ''technology'' for equipment controlled by 7A001 to 7A004, 7A006 or 7B001 to 7B003	NS Column 1
MT applies to entire entry	MT Column 1
RS applies to ''technology'' for inertial navigation systems, inertial equipment and specially designed components therefor, for civil aircraft	RS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: The corresponding EU List number controls ''technology'' relating to entries that do not appear on the CCL (e.g., 7A003.b, 7A005, 7A103.b, 7A105, 7A116, 7A117, 7B103). The software related to these entries is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121).
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

7E003 "Technology" according to the General Technology Note for the repair, refurbishing or overhaul of equipment controlled by 7A001 to 7A004, except for maintenance "technology" directly associated with calibration, removal or replacement of damaged or unserviceable line replaceable units (LRU) and shop replaceable units (SRA) of a "civil aircraft" as described in Maintenance Level I or Maintenance Level II.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definition: Refer to the Related Definitions for 7B001
Items: The list of items controlled is contained in the ECCN heading.

7E004 Other "technology."

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: a. ''Technology'' for the ''development'' or ''production'' of:

a.1. Airborne automatic direction finding equipment operating at frequencies exceeding 5 MHz;

a.2. Air data systems based on surface static data only, i.e., that dispense with conventional air data probes;

a.3. Raster-type head-up displays or three dimensional displays for ''aircraft'';

a.4. Inertial navigation systems or gyro-astro compasses containing accelerometers or gyros controlled by 7A001 or 7A002;

b. ''Development'' ''technology'', as follows, for ''active flight control systems'' (including fly-by-wire or fly-by-light);

b.1. Configuration design for interconnecting multiple microelectronic processing elements (on-board computers) to achieve ''real time processing'' for control law implementation;

b.2. Control law compensation for sensor location or dynamic airframe loads, i.e., compensation for sensor vibration environment or for variation of sensor location from the center of gravity;

b.3. Electronic management of data redundancy or systems redundancy for fault detection, fault tolerance, fault isolation or reconfiguration;

NOTE: 7E004.b.3 does not control ''technology'' for the design of physical redundancy.

b.4. Flight controls that permit inflight reconfiguration of force and moment controls for real time autonomous air vehicle control;

b.5. Integration of digital flight control, navigation and propulsion control data into a digital flight management system for flight path optimization, except ''development'' ''technology'' for aircraft flight instrument systems integrated solely for VOR, DME, ILS or MLS navigation or approaches;

b.6. Full authority digital flight control or multi sensor mission management systems incorporating knowledge-based expert systems;

NOTE: (For ''technology'' for Full Authority Digital Engine Control (FADEC), see 9E003.a.10)

c. ''Technology'' for the ''development'' of helicopter systems, as follows:

c.1. Multi-axis fly-by-wire or fly-by-light controllers that combine the functions of at least two of the following into one controlling element:

c.1.a. Collective controls;

c.1.b. Cyclic controls;

c.1.c. Yaw controls;

c.2. ''Circulation-controlled anti-torque or circulation-controlled directional control systems'';

c.3. Rotor blades incorporating ''variable geometry airfoils'' for use in systems using individual blade control.

7E101 "Technology" according to the General Technology Note for the "use" of equipment or "software" specified in 7A001 to 7A004, 7A006, 7A101 to 7A104, 7A106, 7A115, 7B002, 7B003, 7B101, 7B102, 7D101 or 7D102 for MT reasons.

LICENSE REQUIREMENTS

Reason for Control: MT, RS, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
RS applies to ''development'' or ''production'' of inertial navigation systems, inertial equipment and specially designed components therefor, for civil aircraft.	RS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: (1) The corresponding EU List number controls ''technology'' relating to entries that do not appear on the CCL (e.g., 7A003.b, 7A005, 7A103.b, 7A105, 7A116, 7A117, 7B103). The software related to these entries is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.) *2.*)

''Technology'' for inertial navigation systems and inertial equipment, and specially designed components therefor, not for use on civil aircraft are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category VIII.)

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

97E102 "Technology" for protection of avionics and electrical subsystems against electromagnetic pulse (EMP) and electromagnetic interference (EMI) hazards from external sources.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. Design ''technology'' for shielding systems;

b. Design ''technology'' for the configuration of hardened electrical circuits and subsystems;

c. Design ''technology'' for the determination of hardening criteria of paragraph a and b above.

7E994 "Technology", n.e.s., for the "development", "production", or "use" of navigation, airborne communication, and other avionics equipment.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

Category 8—Marine

A. EQUIPMENT, ASSEMBLIES AND COMPONENTS

8A001 Submersible vehicles or surface vessels.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in § value
Related Controls: See other Categories, as appropriate, within the Commerce Control List for controls of equipment for submersible vehicles (e.g., for the control status of marine gas turbine engines, see Category 9).
Related Definitions: N/A
Items: a. Manned, tethered submersible vehicles designed to operate at depths exceeding 1,000 m;

b. Manned, untethered submersible vehicles:

b.1. Designed to ''operate autonomously'' and having a lifting capacity of:

b.1.a. 10% or more of their weight in air; and

b.1.b. 15 kN or more;

b.2. Designed to operate at depths exceeding 1,000 m; or

b.2.a. Designed to carry a crew of 4 or more;

b.2.b. Designed to ''operate autonomously'' for 10 hours or more;

b.2.c. Having a ''range'' of 25 nautical miles or more; and

b.2.d. Having a length of 21 m or less;

c. Unmanned, tethered submersible vehicles designed to operate at depths exceeding 1,000 m:

c.1. Designed for self-propelled maneuver using propulsion motors or thrusters controlled by 8A002.a.2; or

c.2. Having a fiber optic data link;

d. Unmanned, untethered submersible vehicles:

d.1. Designed for deciding a course relative to any geographical reference without real-time human assistance;

d.2. Having an acoustic data or command link; or

d.3. Having a fiber optic data or command link exceeding 1,000 m;

e. Ocean salvage systems with a lifting capacity exceeding 5 MN for salvaging objects from depths exceeding 250 m and having either of the following:

e.1. Dynamic positioning systems capable of position keeping within 20 m of a given point provided by the navigation system; or

e.2. Seafloor navigation and navigation integration systems for depths exceeding 1,000 m with positioning accuracies to within 10 m of a predetermined point;

f. Surface-effect vehicles (fully skirted variety) with a maximum design speed, fully loaded, exceeding 30 knots in a significant wave height of 1.25 m (Sea State 3) or more, a cushion pressure exceeding 3,830 Pa, and a light-ship-to-full-load displacement ratio of less than 0.70;

g. Surface-effect vehicles (rigid sidewalls) with a maximum design speed, fully loaded, exceeding 40 knots in a significant wave height of 3.25 m (Sea State 5) or more;

h. Hydrofoil vessels with active systems for automatically controlling foil systems, with a maximum design speed, fully loaded, of 40 knots or more in a significant wave height of 3.25 m (Sea State 5) or more;

i. Small waterplane area vessels with:

i.1. A full load displacement exceeding 500 tons with a maximum design speed, fully loaded, exceeding 35 knots in a significant wave height of 3.25 m (Sea State 5) or more; or

i.2. A full load displacement exceeding 1,500 tons with a maximum design speed, fully loaded, exceeding 25 knots in a significant wave height of 4 m (Sea State 6) or more.

TECHNICAL NOTE: A small waterplane area vessel is defined by the following formula: waterplane area at an operational design draft less than 2×(displaced volume at the operational design draft)$^{2/3}$.

8A002 Systems or equipment.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000

GBS: Yes for 8A002.i.2 as described in Advisory Note to Category 8 and 8A002.e.2

CIV: Yes for 8A002.i.2 as described in Advisory Note to Category 8 and 8A002.e.2

LIST OF ITEMS CONTROLLED

Unit: Equipment in number

Related Controls: See other Categories, as appropriate, within the Commerce Control List for controls of equipment for submersible vehicles (e.g., for underwater communications systems, see Category 5).

Related Definitions: N/A

Items: a. Systems or equipment, specially designed or modified for submersible vehicles, designed to operate at depths exceeding 1,000 m, as follows:

a.1. Pressure housings or pressure hulls with a maximum inside chamber diameter exceeding 1.5 m;

a.2. Direct current propulsion motors or thrusters;

a.3. Umbilical cables, and connectors therefor, using optical fiber and having synthetic strength members;

b. Systems specially designed or modified for the automated control of the motion of equipment for submersible vehicles controlled by 8A001 using navigation data and having closed loop servo-controls to:

b.1. Enable a vehicle to move within 10 m of a predetermined point in the water column;

b.2. Maintain the position of the vehicle within 10 m of a predetermined point in the water column; or

b.3. Maintain the position of the vehicle within 10 m while following a cable on or under the seabed;

c. Fiber optic hull penetrators or connectors;

d. Underwater vision systems, as follows:

d.1.a. Television systems (comprising camera, lights, monitoring and signal transmission equipment) having a limiting resolution when measured in air of more than 500 lines and specially designed or modified for remote operation with a submersible vehicle; or

d.1.b. Underwater television cameras having a limiting resolution when measured in air of more than 700 lines;

TECHNICAL NOTE: Limiting resolution in television is a measure of horizontal resolution usually expressed in terms of the maximum number of lines per picture height discriminated on a test chart, using IEEE Standard 208/1960 or any equivalent standard.

d.2. Systems, specially designed or modified for remote operation with an underwater vehicle, employing techniques to minimize the effects of back scatter, including range-gated illuminators or ''laser'' systems;

d.3. Low light level television cameras specially designed or modified for underwater use containing:

d.3.a. Image intensifier tubes controlled by 6A002.a.2.a; and

d.3.b. More than 150,000 ''active pixels'' per solid state area array;

e. Photographic still cameras specially designed or modified for underwater use, having a film format of 35 mm or larger, and:

e.1. Annotating the film with data provided by a source external to the camera;

e.2. Having autofocussing or remote focussing specially designed for underwater use;

e.3. Having automatic back focal distance correction; or

e.4. Having automatic compensation control specially designed to permit an underwater camera housing to be usable at depths exceeding 1,000 m;

f. Electronic imaging systems, specially designed or modified for underwater use, capable of storing digitally more than 50 exposed images;

g. Light systems, as follows, specially designed or modified for underwater use:

g.1. Stroboscopic light systems capable of a light output energy of more than 300 J per flash;

g.2. Argon arc light systems specially designed for use below 1,000 m;

h. ''Robots'' specially designed for underwater use, controlled by using a dedicated stored program computer, and:

h.1. Having systems that control the ''robot'' using information from sensors that measure force or torque applied to an external object, distance to an external object, or tactile sense between the ''robot'' and an external object; or

h.2. Capable of exerting a force of 250 N or more or a torque of 250 Nm or more and using titanium based alloys or ''fibrous and filamentary'' ''composite'' materials in their structural members;

i. Remotely controlled articulated manipulators specially designed or modified for use with submersible vehicles and having either of the following characteristics:

i.1. Having systems that control the manipulator using the information from sensors that measure the torque or force applied to an external object, or tactile sense between the manipulator and an external object; or

i.2. Controlled by proportional master-slave techniques or by using a dedicated stored program computer, and having 5 degrees of freedom of movement or greater;

NOTE: Only functions having proportional control using positional feedback or by using a dedicated stored program computer are counted when determining the number of degrees of freedom of movement.

j. Air-independent power systems, as follows, specially designed for underwater use:

j.1. Brayton, Stirling or Rankine cycle engine air independent power systems having any of the following:

j.1.a. Chemical scrubber or absorber systems specially designed to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.1.b. Systems specially designed to use a monoatomic gas;

j.1.c. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; or

j.1.d. Systems specially designed:

j.1.d.1. To pressurize the products of reaction or for fuel reformation;

j.1.d.2. To store the products of the reaction; and

j.1.d.3. To discharge the products of the reaction against a pressure of 100 kPa or more;

j.2. Diesel cycle engine air independent systems, having all of the following:

j.2.a. Chemical scrubber or absorber systems specially designed to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.2.b. Systems specially designed to use a monoatomic gas;

j.2.c. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; and

j.2.d. Specially designed exhaust systems that do not exhaust continuously the products of combustion;

j.3. Fuel cell air independent power systems with an output exceeding 2 kW having either of the following:

j.3.a. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; or

j.3.b. Systems specially designed:

j.3.b.1. To pressurize the products of reaction or for fuel reformation;

j.3.b.2. To store the products of the reaction; and

j.3.b.3. To discharge the products of the reaction against a pressure of 100 kPa or more;

k. Skirts, seals and fingers, as follows:

k.1. Designed for cushion pressures of 3,830 Pa or more, operating in a significant wave height of 1.25 m (Sea State 3) or more and specially designed for surface effect vehicles (fully skirted variety) controlled by 8A001.f;

k.2. Designed for cushion pressures of 6,224 Pa or more, operating in a significant wave height of 3.25 m (Sea State 5) or more and specially designed for surface effect vehicles (rigid sidewalls) controlled by 8A001.g;

l. Lift fans rated at more than 400 kW specially designed for surface effect vehicles controlled by 8A001.f or 8A001.g;

m. Fully submerged subcavitating or supercavitating hydrofoils specially designed for vessels controlled by 8A001.h;

n. Active systems specially designed or modified to control automatically the sea-induced motion of vehicles or vessels controlled by 8A001.f, .g, .h or .i;

o.1. Water-screw propeller or power transmission systems, as follows, specially designed for surface effect vehicles (fully skirted or rigid sidewall variety), hydrofoils or small waterplane area vessels controlled by 8A001.f, .g, .h or .i:

o.1.a. Supercavitating, super-ventilated, partially-submerged or surface piercing propellers rated at more than 7.5 MW;

o.1.b. Contrarotating propeller systems rated at more than 15 MW;

o.1.c. Systems employing pre-swirl or post-swirl techniques for smoothing the flow into a propeller;

o.1.d. Light-weight, high capacity (K factor exceeding 300) reduction gearing;

o.1.e. Power transmission shaft systems, incorporating ''composite'' material components, capable of transmitting more than 1 MW;

o.2. Water-screw propeller, power generation or transmission systems for use on vessels.

o.2.a. Controllable-pitch propellers and hub assemblies rated at more than 30 MW;

o.2.b. Internally liquid-cooled electric propulsion engines with a power output exceeding 2.5 MW;

o.2.c. ''Superconductive'' propulsion engines, or permanent magnet electric propulsion engines, with a power output exceeding 0.1 MW;

o.2.d. Power transmission shaft systems, incorporating ''composite'' material components, capable of transmitting more than 2 MW;

o.2.e. Ventilated or base-ventilated propeller systems rated at more than 2.5 MW;

o.3. Noise reduction systems for use on vessels of 1,000 tons displacement or more, as follows:

o.3.a. Noise reduction systems that attenuate at frequencies below 500 Hz and consist of compound acoustic mounts for the acoustic isolation of diesel engines, diesel generator sets, gas turbines, gas turbine generator sets, propulsion motors or propulsion reduction gears, specially designed for sound or vibration isolation, having an intermediate mass

exceeding 30% of the equipment to be mounted;

o.3.b. Active noise reduction or cancellation systems, or magnetic bearings, specially designed for power transmission systems, and incorporating electronic control systems capable of actively reducing equipment vibration by the generation of anti-noise or anti-vibration signals directly to the source;

p. Pumpjet propulsion systems with a power output exceeding 2.5 MW using divergent nozzle and flow conditioning vane techniques to improve propulsive efficiency or reduce propulsion-generated underwater-radiated noise.

8A018 Items on the International Munitions List.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Closed and semi-closed circuit (rebreathing) apparatus for diving and underwater swimming, and specially designed components for use in the conversion of open-circuit apparatus to military use;

b. Naval equipment, as follows:

b.1. Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over specially designed for submarines;

b.2. Electric motors specially designed for submarines, i.e., over 1,000 hp, quick reversing type, liquid cooled, and totally enclosed;

b.3. Nonmagnetic diesel engines, 50 hp and over, specially designed for military purposes. (An engine shall be presumed to be specially designed for military purposes if it has nonmagnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines, or its nonmagnetic content exceeds 75 percent of total weight.);

b.4. Marine boilers designed to have any of the following characteristics:

b.4.a. Heat release rate (at maximum rating) equal to or in excess of 190,000 BTU per hour per cubic foot of furnace volume; or

b.4.b. Ratio of steam generated in pounds per hour (at maximum rating) to the dry weight of the boiler in pounds equal to or in excess of 0.83;

b.5. Submarine and torpedo nets; and

b.6. Components, parts, accessories, and attachments for the above.

8A992 Other underwater camera equipment, n.e.s., other submersible systems, n.e.s.; and specially designed parts therefor.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

8A993 Self-contained underwater breathing apparatus (scuba gear) and related equipment.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Self-contained underwater breathing apparatus (scuba gear);

b. Pressure regulators, air cylinders, hoses, valves and backpacks for the apparatus described in paragraph 8A993.a;

c. Life jackets, inflation cartridges, compasses, wetsuits, masks, fins, weight belts, and dive computers;

d. Underwater lights and propulsion equipment;

e. Air compressors and filtration systems specially designed for filling air cylinders; and

f. Other self-contained underwater breathing apparatus (scuba gear) and related equipment, n.e.s.

8A994 Boats, n.e.s., including inflatable boats, marine engines (both inboard and outboard) and submarine engines, n.e.s; and specially designed parts therefor, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

8B001 Water tunnels, having a background noise of less than 100 dB (reference 1 microPascal, 1 Hz) in the frequency range from 0 to 500 Hz, designed for measuring acoustic fields generated by a hydro-flow around propulsion system models.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

C. MATERIALS

8C001: Syntactic foam for underwater use.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: Syntactic foam consists of hollow spheres of plastic or glass embedded in a resin matrix.
Items: a. Designed for marine depths exceeding 1,000 m; and
b. With a density less than 561 kg/m^3.

D. SOFTWARE

8D001 "Software" specially designed or modified for the "development", "production" or "use" of equipment or materials controlled by 8A (except 8A018, 8A992 to 8A994), 8B, or 8C.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

8D002 Specific "software" specially designed or modified for the "development", "production", repair, overhaul or refurbishing (re-machining) of propellers specially designed for underwater noise reduction.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

8D992 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 8A992.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

8D993 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 8A993 and 8A994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

8E001 "Technology" according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 8A (except 8A018, 8A992 to 8A994), 8B, or 8C.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

8E002 Other technology.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Technology'' for the ''development'', ''production'', repair, overhaul or refurbishing (re-machining) of propellers specially designed for underwater noise reduction;

b. ''Technology'' for the overhaul or refurbishing of equipment controlled by 8A001, 8A002.b, .j, .o, or .p.

8E992 "Technology" for the "development", "production" or "use" of equipment controlled by 8A992.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

8E993 "Technology" for the "development", "production" or "use" of items controlled by 8A993 and 8A994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

ADVISORY NOTES FOR CATEGORY 8

ADVISORY NOTE: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in Country Group D:1 of manipulators, for civil end-uses (e.g., underwater oil, gas or mining operations), that are controlled by 8A002.i.2 and have 5 degrees of freedom of movement.

Category 9—Propulsion Systems Space Vehicles and Related Equipment

A. EQUIPMENT, ASSEMBLIES AND COMPONENTS

9A001 Aero gas turbine engines incorporating any of the technologies controlled by 9E003.a and described in this entry.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country chart*
NS applies to entire entry	NS Column 2
MT applies to only to those engines that meet the characteristics listed in 9A101	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Not certified for the specific ''civil aircraft'' for which they are intended;

NOTE: For the purpose of the ''civil aircraft'' certification process, a limited number of civil certified engines, assemblies or components may be authorized for export and reexport to Country Group D:1. This limited number is defined as the minimum required (up to 16, including spares) for civil certification.

b. Not certified for civil use by the civil aviation authorities in a country listed in Country Group A:1;

c. Designed to cruise at speeds exceeding Mach 1.2 for more than thirty minutes;

9A002 Marine gas turbine engines with an ISO standard continuous power rating of 24,245 kW or more and a specific fuel consumption of less than 0.219 kg/kWh at any point in the power range from 35 to 100%, and specially designed assemblies and components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: Yes, only as described in Advisory Note 1 to Category 9
CIV: Yes, only as described in Advisory Note 1 to Category 9

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definition: The term marine gas turbine engines includes those industrial, or aero-derivative, gas turbine engines adapted for marine propulsion or shipboard power generation.
Items: The list of items controlled is contained in the ECCN heading.

9A003 Specially designed assemblies and components, incorporating any of the technologies controlled by 9E003.a, for gas turbine engine propulsion systems.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls:
Related Definition: This entry does not control multiple domed combusters operating at average burner outlet temperatures equal to or less than 1,813 K (1,540 °C).
Items: a. Assemblies and components specially designed for those gas turbine engine propulsion systems controlled by 9A001; or

b. Whose design or production origins are either countries listed in Country Group D:1 or unknown to the manufacturer;

9A004 "Spacecraft", (not including their payloads) and specially designed components therefor that are not subject to the authority of the Department of State. (See notes.)

LICENSE REQUIREMENTS

Reason for Control: NS, AT, SI.

Control(s)	*Country chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

SI applies to commercial communications satellites controlled by 9A004.a. See §742.14 of the EAR for additional information.

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; systems, components, parts and accessories in $ value.

Related Controls: (1) The corresponding EU list number controls space launch vehicles (not including their payloads) and other ''spacecraft'' (not identified in this CCL entry). These items are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (See 22 CFR part 121, Category XV). For the control status of products contained in ''spacecraft'' payloads, see the appropriate

categories of the U.S. Munitions List (USML). (2) For the control status of items contained in ''spacecraft'' payloads subject to the EAR, see the appropriate entries on the CCL.

Related Definition: Transferring registration or operational control to any foreign person of any commercial communications satellite controlled by this entry must be authorized on a license issued by the Bureau of Export Administration. This requirement applies whether the commercial communications satellite is physically located in the United States or abroad.

Items

a. Commercial communications Satellites;

TECHNICAL NOTE: Commercial communications satellites are subject to Commerce licensing jurisdiction even if they include the individual munitions list systems, components, or parts identified in Category XV(f) of the United States Munitions List (USML). In all other cases, these Category XV(f) systems, components, or parts remain on the USML, except that satellite fuel, ground support equipment, test equipment, payload adapter/interface hardware, replacement parts for the preceding items, and non-embedded, solid propellant orbit transfer engines (''kick motors'') are subject to Commerce licensing jurisdiction (and not controlled on the USML) when they are to be utilized for the specific commercial communications satellite launch, provided the solid propellant ''kick motor'' being utilized is not specifically designed or modified for military use or capable of being restarted after achievement of mission orbit (such orbit transfer engines are always controlled under Category IV of the USML). Technical data (as defined in §120.10 of the International Traffic in Arms Regulations (ITAR)) and defense services (as defined in §120.9 of the ITAR) related to the systems, components, or parts referred to in Category XV(f) of the USML are always controlled under the USML, even when the satellite itself is licensed by the Department of Commerce.

NOTES: 1. Military communication satellites or multi-mission satellites, including commercial communications satellites having additional non-communication mission(s) or payload(s) are under the jurisdiction of the Department of State.

2. As indicated in the Technical Note, under some circumstances a license application under 9A004 includes other items, which are necessary for the commercial communications satellite launch, but are normally subject to State Department jurisdiction. Certain of these items (e.g., kickmotors, satellite fuel, etc.) are controlled by the Missile Technology Control Regime (MTCR) Equipment and Technology Annex.

b. [Reserved]

c. Other ''spacecraft'' not subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls under 22 CFR part 121, Category XV.

NOTES: 1. ECCN 9A004.c includes the international space station being developed, launched and operated under the supervision of the U.S. National Aeronautics and Space Administration. Exporters requesting a license from the Department of Commerce for spacecraft other than the international space station or a commercial communications satellite specified in 9A004 must provide a statement from the Department of State, Office of Defense Trade Controls, verifying that the item intended for export is under the licensing jurisdiction of the Department of Commerce.

2. All other spacecraft, including all other satellites not controlled under 9A004 and components, parts, accessories, attachments, associated equipment, and ground support equipment therefor are subject to the export licensing authority of the Department of State.

3. Items on Category XV(f) of the USML and certain other USML items designated in the technical note, above, that are included in a commercial communications satellite to be exported under a Commerce license must be specifically listed on the Commerce license application. Such USML items when not included in a specific commercial communications satellite are under the jurisdiction of the Department of State.

4. Technical data provided to the launch provider (form, fit, function, mass, electrical, mechanical, dynamic/environmental, telemetry, safety, facility, launch pad access, and launch parameters) for commercial communications satellites that describe the interfaces for mating of the satellite to the launch vehicle and parameters for launch (e.g., orbit, timing) of the satellite, are under Commerce jurisdiction. Other technical data and all defense services and technical assistance for satellite and/or launch vehicles, including compatibility, integration, or processing data are controlled and subject to licensing by the Department of State, in accordance with 22 CFR parts 120 through 130. Approval for such technical assistance will require a Technical Assistance Agreement (TAA) and may require U.S. Government oversight.

5. Once a satellite is launched, items remaining unlaunched are required to be returned immediately to the United States. If the satellite launch is canceled or unduly delayed, the satellite and all support equipment must be returned immediately to the United States.

6. Detailed design, development, production, or manufacturing data for all spacecraft, including satellites, regardless of

which agency has jurisdiction over the export, and all systems components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for articles under Category XV on the United States Munitions List (including software source code and operating algorithms) are subject to licensing by the Department of State. This does not include that level of technical data (including marketing data) necessary and reasonable for a purchaser to have assurance that a U.S.-built item intended to operate in space has been designed, manufactured and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations) as well as data necessary for normal in-orbit satellite operations, to evaluate in-orbit anomalies, and to operate and maintain associated ground station equipment (except encryption hardware).

9A018 Equipment on the International Munitions List.

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
RS applies to 9A018.a and b	RS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: (a) Parachute systems designed for use in dropping military equipment, braking military aircraft, slowing spacecraft descent, or retarding weapons delivery; AND (b)Instrument flight trainers for combat simulation are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category VIII.)

Related Definition: This entry controls parachute systems designed for use in dropping personnel only.

Items: a. Military trainer aircraft bearing ''T'' designations:

a.1. Using reciprocating engines; or

a.2. Turbo prop engines with less than 600 horse power (h.p.);

a.3. T–37 model jet trainer aircraft; and

a.4. Specially designed component parts.

b. Vehicles specially designed or modified for military purposes. (See part 770 of the EAR, Interpretation 8)

c. Pressure refuelers, pressure refueling equipment, and equipment specially designed to facilitate operations in confined areas; and ground equipment, n.e.s, developed specially for military aircraft and helicopters, and specially designed parts and accessories, n.e.s.;

d. Pressurized breathing equipment specially designed for use in military aircraft and helicopters;

e. Military parachutes and complete canopies, harnesses, and platforms and electronic release mechanisms therefor, except such types as are in normal sporting use;

f. Military instrument flight trainers, except for combat simulation; and components, parts, attachments and accessories specially designed for such equipment.

9A101 Lightweight turbojet and turbofan engines (including turbocompound engines) usable in "missiles", other than those specified in 9A001, having both the following characteristics.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in § value

Related Controls: (1) Items controlled in 9A101.b in the corresponding EU List number are not controlled in this CCL entry. Those items are subject to the export licensing jurisdiction of the U.S. Department of State, Office of Defense Trade Controls (See 22 CFR part 121, Category IV, paragraph (h) and Category VIII). (2) Engines designed or modified for missiles (except engines for non-military unmanned air vehicles [UAVs] or remotely piloted vehicles [RPVs]), regardless of thrust or specific fuel consumption, are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category VIII.)

Related Definitions: N/A

Items: a. Maximum thrust value greater than 1000 N (achieved un-installed) excluding civil certified engines with a maximum thrust value greater than 8,890 N (achieved un-installed); *and*

b. [Reserved]

c. Specific fuel consumption of 0.13kg/N/hr or less (at sea level static and standard conditions).

9A106 Systems or components, other than those controlled by 9A006, usable in "missiles," as follows, specially designed for liquid rocket propulsion systems.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment and components in number; parts and accessories in $ value

Related Controls: Items controlled in 9A106.a, .b, and .c in the corresponding EU List number are not controlled in this CCL entry. Those items are subject to the export licensing jurisdiction of the U.S. Department of State, Office of Defense Trade Controls (See 22 CFR part 121, Category IV, paragraphs (f) and (h).)

Related Definitions: Only the following servo valves and pumps are controlled by this entry: (1) Servo valves designed for flow rates of 24 liters per minute or greater, at an absolute pressure of 7 MPa (1,000 psi) or greater, have an actuator response time of less than 100 ms; (2) Pumps, for liquid propellants, with shaft speeds equal to or greater than 8,000 rpm or with discharge pressures equal to or greater than 7 MPa (1,000 psi).

Items: a–c. [Reserved]

d. Liquid or slurry propellant (including oxidizers) control systems designed or modified to operate in vibration environments of more than 10 g RMS between 20 Hz and 2,000 Hz, and specially designed components therefor.

9A110 Composite structures, laminates, and manufactures thereof, and resin impregnated fiber prepregs and metal coated fiber preforms, therefor, made either with organic matrix or metal matrix utilizing fibrous or filamentary reinforcements having a specific tensile strength greater than 7.62×10^4 m (3×10^6 inches) and a specific modulus greater than 3.18×10^6 m (1.25×10^8 inches).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: The corresponding EU List number includes references to items that are not contained on the CCL (e.g., 9A005, 9A007, 9A010, 9A104, 9A105, 9A106.a, .b, and .c, 9A107, 9A108, 9A116 to 9A119). These items are not cross-referenced in the CCL since they are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121) and do not appear on the CCL.

Related Definition: The only resin impregnated fiber prepregs specified in entry 9A110 are those using resins with a glass transition temperature (T_g), after cure, exceeding 418 K (145 °C) as determined by ASTM D4065 or national equivalents.

Items: The list of items controlled is contained in the ECCN heading.

9A115 Launch support equipment designed or modified for systems controlled by 9A004 or 9A104.

LICENSE REQUIREMENTS

Reason for Control: MT, UN, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
UN applies to entire entry	Rwanda
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: (1) Items controlled in 9A115.a in the corresponding EU List number are not controlled in this CCL entry. Those items are subject to the export licensing jurisdiction of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121, Category VIII, paragraph (e)). (2) This entry contains references to EU list numbers that are not contained on the CCL.

Related Definitions: N/A

Items: a. [Reserved]

b. Vehicles for transport, handling, control, activation or launching.

9A190 Non-military unmanned air vehicle systems (UAVs) and remotely piloted vehicles (RPVs) that are capable of a maximum range of at least 300 kilometers (km), regardless of payload.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9A980 Nonmilitary mobile crime science laboratories; and parts and accessories, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9A990 Diesel engines, n.e.s., for trucks, tractors, and automotive applications of continuous brake horsepower of 400 BHP (298 kW) or greater (performance based on SAE J1349 standard conditions of 100 kPa and 25°); pressurized aircraft breathing equipment, n.e.s.; and specially designed parts therefor, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9A991 "Aircraft" and certain gas turbine engines, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT, UN

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1
UN applies to 9A991.a	Rwanda

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: a. Military aircraft, demilitarized (not specifically equipped or modified for military operation), as follows:

a.1. Cargo, ''C–45 through C–118'' inclusive, and ''C–121,''

a.2. Trainers, bearing a ''T'' designation and using piston engines,

a.3. Utility, bearing a ''U'' designation and using piston engines,

a.4. Liaison, bearing an ''L'' designation, and

a.5. Observation, bearing an ''O'' designation and using piston engines;

b. Other nonmilitary aircraft; and

NOTE: Specify make and model of aircraft and type of avionic equipment on aircraft.

c. Aero gas turbine engines not controlled by 9A001 or 9A101, and specially designed parts therefor.

NOTE: 9A991.c does not control aero gas turbine engines that are destined for use in civil ''aircraft'' and that have been in use in bona fide civil ''aircraft'' for more than eight years. (See 9A994.)

9A992 Off highway wheel tractors of carriage capacity 9mt (20,000 lbs) or more; and parts and accessories, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in § value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9A993 On-Highway tractors, with single or tandem rear axles rated for 9mt per axel (20,000 lbs.) or greater and specially designed parts.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definition: This entry controls highway tractors only. It does not control solid chassis vehicles such as dump trucks, construction equipment, or panel/van type trucks.
Items: The list of items controlled is contained in the ECCN heading.

9A994 Aircraft parts and components, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

9B001 Specially designed equipment, tooling or fixtures, as follows, for manufacturing or measuring gas turbine blades, vanes or tip shroud castings.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: Yes, for 9B001.a, .b, .f and .h
CIV: Yes, for 9B001.a, .b, .f and .h

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Automated equipment using non-mechanical methods for measuring airfoil wall thickness;

b. Tooling, fixtures or measuring equipment for the ''laser'', water jet or ECM/EDM hole drilling processes controlled by 9E003.c;

c. Directional solidification or single crystal casting equipment;

d. Ceramic cores or shells;

e. Ceramic core manufacturing equipment or tools;

f. Ceramic core leaching equipment;

g. Ceramic shell wax pattern preparation equipment;

h. Ceramic shell burn out or firing equipment.

9B002 On-line (real time) control systems, instrumentation (including sensors) or automated data acquisition and processing equipment, specially designed for the development of gas turbine engines, assemblies or components incorporating technologies controlled by 9E003.a.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9B003 Equipment specially designed for the production or test of gas turbine brush seals designed to operate at tip speeds exceeding 335 m/s, and specially designed parts or accessories.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9B004 Tools, dies or fixtures for the solid state joining of gas turbine "superalloy" or titanium components.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9B005 On-line (real-time) control systems, instrumentation (including sensors) or automated data acquisition and processing equipment, specially designed for use with wind tunnels or devices.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Wind tunnels designed for speeds of Mach 1.2 or more, except those specially designed for educational purposes and having a test section size (measured laterally) of less than 250 mm;

TECHNICAL NOTE: Test section size in 9B005.a means: the diameter of the circle, or the side of the square, or the longest side of the rectangle at the largest test section location.

b. Devices for simulating flow-environments at speeds exceeding Mach 5, including hot-shot tunnels, plasma arc tunnels, shock tubes, shock tunnels, gas tunnels and light gas guns;

c. Wind tunnels or devices, other than two-dimensional sections, capable of simulating Reynolds number flows exceeding 25 x 106.

9B006 Specially designed acoustic vibration test equipment capable of producing sound pressure levels of 160 dB or more, (reference to 20 micropascals) with a rated output of 4 kW or more at a test cell temperature exceeding 1273 K (1000 °C), and specially designed transducers, strain gauges, accelerometers, thermocouples or quartz heaters therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS:
LVS: $3000
GBS: Yes
CIV: Yes

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9B007 Equipment specially designed for inspecting the integrity of rocket motors using non-destructive test (NDT) techniques other than planar X-ray or basic physical or chemical analysis.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

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

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9B008 Transducers specially designed for the direct measurement of the wall skin friction of the test flow with a stagnation temperature exceeding 833 K (560 °C).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9B009 Tooling specially designed for producing turbine engine powder metallurgy rotor components capable of operating at stress levels of 60% of ultimate tensile strength (UTS) or more and metal temperatures of 873 K (600 °C) or more.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9B105 Wind tunnels for speeds of Mach 0.9 or more usable for "missiles" and their subsystems.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9B106 Environmental chambers and anechoic chambers.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Environmental chambers capable of simulating the following flight conditions:

a.1. Vibration environments of 10 g rms or greater between 20 Hz and 2,000 Hz and imparting forces of 50 kN or greater; and

a.2. Altitudes of 15,000 m or greater; or

a.3. Temperature of at least 223 K (−50 °C) to 398 K (+ 125 °C)

b. Anechoic chambers capable of simulating the following flight conditions:

b.1. Acoustic environments at an overall sound pressure level of 140 dB or greater (referenced to 20 microPa) or with a rated power output of 4 kW or greater; and

b.2. Altitudes of 15,000 m or greater; or

b.3. Temperature of at least 223 K (−50 °C) to 398 K (+125 °C).

9B115 Specially designed "production equipment" for the systems, sub-systems, and components controlled by 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109, 9A111, 9A116 to 9A119.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: This entry contains references to EU list numbers that are not contained on the CCL. Though the items controlled by 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109, 9A111, 9A116 to 9A119 are not subject to the export licensing authority of BXA, the ''production equipment'' related to these items are controlled in this entry on the CCL.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9B116 Specially designed "production facilities" for the systems, sub-systems, and components controlled by 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109, 9A111, 9A116 to 9A119.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: This entry contains references to EU list numbers that are not contained on the CCL. Though the items controlled by 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109, 9A111, 9A116 to 9A119 are not subject to the export licensing authority of BXA, the ''production facilities'' related to these items are controlled in this entry on the CCL.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

9B117 Test benches and test stands for solid or liquid propellant rockets or rocket motors, having either of the following characteristics.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. The capacity to handle more than 90 kN (20,000 lbs.) of thrust; *or*

b. Capable of simultaneously measuring the three axial thrust components.

9B994 Vibration test equipment and specially designed parts and components, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

C. MATERIALS [RESERVED]

D. ''SOFTWARE''

9D001 "Software" "required" for the "development" of equipment or "technology" controlled by 9A (except 9A018, 9A990 to 9A994), 9B (except 9B994) or 9E003.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to ''software'' for items controlled by 9A001 to 9A003, 9B001 to 9B009, 9E003	NS Column 1
MT applies to ''software'' for equipment controlled by 9A001, 9A101, 9A106, 9A110, 9A115, 9A190, 9B001 to 9B005, 9B007, 9B105, 9B106, 9B115 to 9B117 for for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) The corresponding EU List number controls ''software'' relating to entries that do not appear on the CCL (e.g., 9A004 to 9A011, 9A104, 9A105, 9A107 to 9A109, 9A111, 9A116 to 9A119). The ''software'' related to these entries is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.) (2) ''Software'' ''required'' for the ''development'' of equipment controlled by 9A004 is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category XV.)

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

9D002 "Software" "required" for the "production" of equipment controlled by 9A (except 9A018, 9A990 to 9A994) or 9B (except 9B994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to ''software'' for equipment controlled by 9A001 to 9A003 or 9B001 to 9B009	NS Column 1
MT applies to ''software'' for equipment controlled by 9A001, 9A101, 9A106, 9A110, 9A115, 9A190, 9B001 to 9B005, 9B007, 9B105, 9B106, 9B115 to 9B117 for for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) The corresponding EU List number controls ''software'' relating to entries that do not appear on the CCL (e.g., 9A005 to 9A011, 9A104, 9A105, 9A107 to

9A109, 9A111, 9A116 to 9A119). The ''software'' related to these entries is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.) (2) ''Software'' ''required'' for the ''production'' of equipment controlled by 9A004 is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category XV.)

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

9D003 "Software" "required" for the "use" of full authority digital electronic engine controls (FADEC) for propulsion systems controlled by 9A (except 9A018, 9A990 to 9A994) or 9B (except 9B994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to ''software'' for ''use'' of FADEC for equipment controlled by 9A001 to 9A003	NS Column 1
MT applies to ''software'' required for the ''use'' of FADEC for gas turbine aero engines controlled by 9A101, 9A106, 9A110, or 9A115	MT Column 1
AT applies to entire entry	AT Column 1

Unit: $ value

Related Controls: (1) The corresponding EU List number controls ''software'' relating to entries that do not appear on the CCL (e.g., 9A005 to 9A011, 9A105, 9A107 to 9A109, 9A111, 9A116 to 9A119). The ''software'' related to these entries is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121). (2) ''Software'' ''required'' for ''use'' of FADEC for equipment controlled by 9A004 is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category XV.)

Related Definitions: N/A

Items: a. ''Software'' in digital electronic controls for propulsion systems, aerospace test facilities or air breathing aero-engine test facilities;

b. Fault-tolerant ''software'' used in FADEC systems for propulsion systems and associated test facilities.

9D004 Other "software".

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. ''Software'' specially designed for vibration test equipment using real time digital controls with individual exciters (thrusters) with a maximum thrust exceeding 50 kN;

b. 2D or 3D viscous ''software'' validated with wind tunnel or flight test data ''required'' for detailed engine flow modelling;

c. ''Software'' ''required'' for the ''development'' or ''production'' of real time full authority electronic test facilities for engines or components controlled by 9A;

d. ''Software'' for testing aero gas turbine engines, assemblies or components, specially designed to collect, reduce and analyze data in real time, and capable of feedback control, including the dynamic adjustment of test articles or test conditions, as the test is in progress;

e. ''Software'' specially designed to control directional solidification or single crystal casting;

f. ''Software'' in ''source code,'' ''object code'' or machine code ''required'' for the ''use'' of active compensating systems for rotor blade tip clearance control.

NOTE: 9D004.f does not control ''software'' embedded in uncontrolled equipment or ''required'' for maintenance activities associated with the calibration or repair or updates to the active compensating clearance control system.

9D101 "Software" specially designed for the "use" of items specified in 9A101, 9A106, 9A110, 9A115, 9A190, 9B105, 9B106, 9B116 or 9B117.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

9D018 "Software" for the "use" of equipment controlled by 9A018.

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
RS applies to 9A018.a and .b	RS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes for Australia, Japan, New Zealand, and NATO only

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

9D990 "Software", n.e.s., for the "development" or "production" of diesel engines and pressurized aircraft breathing equipment controlled by 9A990.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

9D991 "Software", n.e.s., for the "development" or "production" of aircraft and aero gas turbine engines controlled by 9A991 or aircraft parts and components controlled by 9A994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

9D993 "Software" for the "production" or "development" of off-highway wheel tractors controlled by 9A992 or on-highway tractors controlled by 9A993.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

9D994 "Software" for the "development", "production", or "use" of equipment controlled by 9B994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

9E001 "Technology" according to the General Technology Note for the "development" of equipment or "software" controlled by 9A001.c, 9B (except 9B994), or 9D (except 9D018, 9D990 to 9D994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to ''technology'' for items controlled by 9A001.c, 9B001 to 9B009, 9D001 to 9D004	NS Column 1
MT applies to ''technology'' for items controlled by 9B001 to 9B005, 9B007, 9B105, 9B106, 9B115 to 9B117, 9D001 to 9D004 for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: (1) The corresponding EU List number controls ''software'' relating to entries that do not appear on the CCL (e.g., 9D103). The ''software'' related to these entries is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121). (2) ''Technology'' required for the ''development'' of equipment controlled by 9A004 is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121, Category XV.)

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

9E002 "Technology" according to the General Technology Note for the "production" of equipment controlled by 9A001.c or 9B (except 9B994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to "technology" for equipment controlled by 9B001 to 9B005, 9B007, 9B105, 9B106, 9B115 to 9B117 for MT reasons	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: See 1E002.f for controls on "technology" for the repair of controlled structures, laminates or materials.

Related Definition: Development or production "technology" controlled by 9E for gas turbine engines remains controlled when used as "use" "technology" for repair, rebuild and overhaul. Excluded from control are: technology, drawings or documentation for maintenance activities directly associated with calibration, removal or replacement of damaged or unserviceable line replaceable units, including replacement of whole engines or engine modules.

Items: The list of items controlled is contained in the ECCN heading.

9E003 Other "technology".

LICENSE REQUIREMENTS

Reason for Control: NS, AT, SI.

Control(s)	*Country chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

SI applies to 9E003. a.1. through a.12 and f. See §742.14 of the EAR for additional information.

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A.

Related Controls: (1) The corresponding EU List number does not control technology controlled under 9E003.f. (2) Hot section technology specifically designed, modified, or equipped for military uses or purposes, or developed principally with U.S. Department of Defense funding, is subject to the jurisdiction of the Department of State. (3) Technology is subject to the EAR when actually applied to a commercial aircraft engine program. Exporters may seek to establish commercial application either on a case-by-case basis through submission of documentation demonstrating application to a commercial program in requesting an export license from Commerce in respect to a specific export or, in the case of use for broad categories of aircraft, engines, or components, a commodity jurisdiction determination from State.

Items: a. "Technology" "required" for the "development", "production" or overhaul of the following commercial aircraft engines, components or systems:

a.1. Gas turbine blades, vanes or tip shrouds made from directionally solidified (DS) or single crystal (CS) alloys having (in the 001 Miller Index Direction) a stress-rupture life exceeding 400 hours at 1,273 K (1,000 °C) at a stress of 200 MPa, based on the average property values;

a.2. Multiple domed combustors operating at average burner outlet temperatures exceeding 1,643 K (1370 °C), or combustors incorporating thermally decoupled combustion liners, non-metallic liners or non-metallic shells;

a.3. Components manufactured from organic "composite" materials designed to operate above 588 K (315 °C), or from metal "matrix" "composite", ceramic "matrix", intermetallic or intermetallic reinforced materials controlled by 1A002 or 1C007;

a.4. Uncooled turbine blades, vanes, tip-shrouds or other components designed to operate at gas path temperatures of 1,323 K (1,050 °C) or more;

a.5. Cooled turbine blades, vanes or tip-shrouds, other than those described in 9E003.a.1, exposed to gas path temperatures of 1,643 K (1,370 °C) or more;

a.6. Airfoil-to-disk blade combinations using solid state joining;

a.7. Gas turbine engine components using "diffusion bonding" "technology" controlled by 2E003.b;

a.8. Damage tolerant gas turbine engine rotating components using powder metallurgy materials controlled by 1C002.b;

a.9. Full authority digital electronic engine controls (FADEC) for gas turbine and combined cycle engines and their related diagnostic components, sensors and specially designed components;

a.10. Adjustable flow path geometry and associated control systems for:

a.10.a. Gas generator turbines;

a.10.b. Fan or power turbines;

a.10.c. Propelling nozzles;

NOTE 1: Adjustable flow path geometry and associated control systems do not include inlet guide vanes, variable pitch fans, variable stators or bleed valves for compressors.

NOTE 2: 9E003.a.10 does not control "development" or "production" "technology" for adjustable flow path geometry for reverse thrust.

a.11. Rotor blade tip clearance control systems employing active compensating casing

''technology'' limited to a design and development data base;

a.12. Gas bearings for gas turbine engine rotor assemblies;

a.13. Wide chord hollow fan blades without part-span support;

NOTE: Also see 9E003.f.

b. ''Technology'' ''required'' for the ''development'' or ''production'' of:

b.1. Wind tunnel aero-models equipped with non-intrusive sensors capable of transmitting data from the sensors to the data acquisition system;

b.2. ''Composite'' propeller blades or propfans capable of absorbing more than 2,000 kW at flight speeds exceeding Mach 0.55;

c. ''Technology'' ''required'' for the ''development'' or ''production'' of gas turbine engine components using ''laser'', water jet or ECM/EDM hole drilling processes to produce holes with:

c.1.a. Depths more than four times their diameter;

c.1.b. Diameters less than 0.76 mm; and

c.1.c. Incidence angles equal to or less than 25°; or

c.2.a. Depths more than five times their diameter;

c.2.b. Diameters less than 0.4 mm; and

c.2.c. Incidence angles of more than 25°;

TECHNICAL NOTE: For the purposes of 9E003.c, incidence angle is measured from a plane tangential to the airfoil surface at the point where the hole axis enters the airfoil surface.

d. ''Technology'' ''required'' for the ''development'' or ''production'' of helicopter power transfer systems or tilt rotor or tilt wing ''aircraft'' power transfer systems:

d.1. Capable of loss-of-lubrication operation for 30 minutes or more; or

d.2. Having an input power-to-weight ratio equal to or more than 8.87 kW/kg.

e.1 ''Technology'' for the ''development'' or ''production'' of reciprocating diesel engine ground vehicle propulsion systems having all of the following:

e.1.a. A box volume of 1.2 m^3 or less;

e.1.b. An overall power output of more than 750 kW based on 80/1269/EEC, ISO 2534 or national equivalents; and

e.1.c. A power density of more than 700 kW/m^3 of box volume;

TECHNICAL NOTE: Box volume: the product of three perpendicular dimensions measured in the following way:

Length: The length of the crankshaft from front flange to flywheel face;

Width: The widest of the following:

a. The outside dimension from valve cover to valve cover;

b. The dimensions of the outside edges of the cylinder heads; or

c. The diameter of the flywheel housing;

Height: The largest of the following:

a. The dimension of the crankshaft center-line to the top plane of the valve cover (or cylinder head) plus twice the stroke; or

b. The diameter of the flywheel housing.

e.2. ''Technology'' ''required'' for the ''production'' of specially designed components, as follows, for ''high output diesel engines'':

e.2.a. ''Technology'' ''required'' for the ''production'' of engine systems having all of the following components employing ceramics materials controlled by 1C007:

e.2.a.1. Cylinder liners;

e.2.a.2. Pistons;

e.2.a.3. Cylinder heads; and

e.2.a.4. One or more other components (including exhaust ports, turbocharger, valve guides, valve assemblies or insulated fuel injectors);

e.2.b. ''Technology'' ''required'' for the ''production'' of turbocharger systems, with single-stage compressors having all of the following:

e.2.b.1. Operating at pressure ratios of 4:1 or higher;

e.2.b.2. A mass flow in the range from 30 to 130 kg per minute; and

e.2.b.3. Variable flow area capability within the compressor or turbine sections;

e.2.c. ''Technology'' ''required'' for the ''production'' of fuel injection systems with a specially designed multifuel (e.g., diesel or jet fuel) capability covering a viscosity range from diesel fuel (2.5 cSt at 310.8 K (37.8° C)) down to gasoline fuel (0.5 cSt at 310.8 K (37.8° C)), having both of the following:

e.2.c.1. Injection amount in excess of 230 mm^3 per injection per cylinder;

e.2.c.2. Specially designed electronic control features for switching governor characteristics automatically depending on fuel property to provide the same torque characteristics by using the appropriate sensors;

e.3. ''Technology'' ''required'' for the ''development'' or ''production'' of ''high output diesel engines'' for solid, gas phase or liquid film (or combinations thereof) cylinder wall lubrication, permitting operation to temperatures exceeding 723 K (450° C), measured on the cylinder wall at the top limit of travel of the top ring of the piston.

f. Technology not otherwise controlled in 9E003.a.1. through a.12 and currently used in the ''development'', ''production'' or overhaul of hot section parts and components of civil derivatives of military engines controlled on the U.S. Munitions List.

9E018 "Technology" for the "development", "production", or "use" of equipment controlled by 9A018.

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
RS applies to 9A018.a and .b	RS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes for Australia, Japan, New Zealand, and NATO only

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9E101 "Technology" according to the General Technology Note for the "development" or "production" of equipment controlled by 9A101, 9A106, 9A110, or 9A115.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: The corresponding EU List number controls ''software'' relating to entries that do not appear on the CCL (e.g., 9A104, 9A105, 9A107 to 9A109, 9A111, 9A116 to 9A119). The ''software'' related to these entries is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121).
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9E102 "Technology" according to the General Technology Note for the "use" of goods specified in 9A101, 9A106, 9A110, 9B105, 9B106, 9B115, 9B116, 9B117, or 9D101.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: The corresponding EU List number controls ''software'' relating to entries that do not appear on the CCL (e.g., 9A004 to 9A011, 9A104, 9A105, 9A107 to 9A109, 9A111, 9A116 to 9A119, or 9D103). The ''software'' related to these entries is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121).
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9E990 "Technology", n.e.s., for the "development", "production", or "use" of diesel engines and pressurized aircraft breathing equipment controlled by 9A990.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9E991 "Technology", n.e.s., for the "development", "production", or "use" of aircraft and aero gas turbine engines controlled by 9A991 or aircraft parts and components controlled by 9A994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9E993 "Technology" for the "development", "production", or "use" of off-highway wheel tractors controlled by 9A992 or on-highway tractors controlled by 9A993.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

9E994 "Technology" for "development", "production", or "use" of vibration test equipment controlled by 9B994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

ADVISORY NOTES FOR CATEGORY 9

ADVISORY NOTE 1: Licenses are likely to be approved, as administrative exceptions, for export and reexport to satisfactory end-users in Country Group D:1 of marine gas turbine engines controlled by 9A002, for installation in civil marine vessels for civil end-use, provided that their specific fuel consumption exceeds 0.23 kg/kW–hr. and their continuous ISO rating is less than 20,000 kW.

[61 FR 12937, Mar. 25, 1996]

EDITORIAL NOTE: For additional FEDERAL REGISTER citations to Supplement No. 1 to part 774, see the List of CFR Sections Affected in the Finding Aids section of this volume.

SUPPLEMENT NO. 2 TO PART 774—GENERAL TECHNOLOGY AND SOFTWARE NOTES

1. *General Technology Note.* The export of ''technology'' that is ''required'' for the ''development'', ''production'', or ''use'' of items on the Commerce Control List is controlled according to the provisions in each Category.

''Technology'' ''required'' for the ''development'', ''production'', or ''use'' of a controlled product remains controlled even when applicable to a product controlled at a lower level.

License Exception OTS is available for ''technology'' that is the minimum necessary for the installation, operation, maintenance (checking), and repair of those products that are eligible for License Exceptions or that are exported under a license.

N.B.: This does not allow release under a License Exception of the repair ''technology'' controlled by 1E002.e, 1E002.f, 7E003, or 8E002.a.

N.B.: The 'minimum necessary' excludes ''development'' or ''production'' technology and permits ''use'' technology only to the extent ''required'' to ensure safe and efficient use of the product. Individual ECCNs may further restrict export of ''minimum necessary'' information.

II. *General Software Note.* License Exception TSU (''mass market'' software) is available to all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, for release of software that is generally available to the public by being:

a. Sold from stock at retail selling points, without restriction, by means of:

1. Over the counter transactions;
2. Mail order transactions; or
3. Telephone call transactions; and

b. Designed for installation by the user without further substantial support by the supplier.

NOTE: License Exception TSU for mass market software does not apply to encryption software controlled for EI reasons under ECCN 5D002. Encryption software may become eligible after a one-time BXA review according to the provision of §742.15(b)(1) of the EAR.

[61 FR 12937, Mar. 25, 1996, as amended at 61 FR 65467, Dec. 13, 1996; 61 FR 68587, Dec. 30, 1996]

SUPPLEMENT NO. 3 TO PART 774

CROSS-REFERENCE

Old ECCN	New ECCN
Sorted by ''OLD'' ECCN CAT 0	
0A18	0A018
0A80	0A980
0A82	0A982
0A82	0A983
0A84	0A984
0A84	0A985
0A86	0A986
0A88	0A988
0A95	§746.4(b)(2)(i)
0A96	EAR99
0A98	§734.3(b)(2)
0E18	0E018
0E84	0E984
0E96	EAR99
1B16	0B003
1C19.b	0C006
1D01	0D001
1E19	0E001
2A19.c	0B001
2A50.b	0B008
2D19	0D001
2D50	0D001
2E19	0E001
2E50	0E001
CAT 1	
***	1D103
***	1E202
***	1E203
1A01	1A001
1A02	1A002
1A03	1A003
1A22.b	1A102
1A27	1C116

Old ECCN	New ECCN
1A45	1A226
1A46	1C202
1A47	1C216
1A48	1A290
1A50	1C226
1A84	1A984
1A88	1A988
1A96	EAR99
1B01	1B001
1B02	1B002
1B03	1B003
1B17	1B225
1B18	1B018
1B21	1B101
1B28	1B115
1B30.a	1B116
1B41	1B201
1B42	1B226
1B52	1B229
1B53	1B228
1B54	1B227
1B55	1B232
1B58	1B231
1B59	1B230
1B96	EAR99
1C01	1C001
1C02	1C002
1C03	1C003
1C05	1C005
1C06	1C006
1C07	1C007
1C08	1C008
1C09	1C009
1C10	1C010
1C18	1C018
1C19.a	1C234
1C19.c	1C233
1C19.d	1C230
1C19.e	1A225
1C19.f	1C231
1C21	1C101
1C22	1C117
1C27	1C107
1C31	1C115
1C49	1A225
1C50	1C210
1C50.c	1A202
1C51	1C229
1C52	1C227
1C53	1C228
1C54	1C236
1C55	1C232
1C56	1C238
1C57	1C225
1C58	1C237
1C60	1C350
1C61.a (partial), .b.c (partial), .f	1C351
1C61.a (partial), .c (partial)	1C352
1C61.c.15,c.16, .d	1C354
1C61.e	1C353
1C80	1C980
1C81	1C981
1C82	1C982
1C83	1C983
1C84	1C984
1C88	1C988
1C91	1C991
1C92	1C992
1C93	1C993
1C94	1C994
1C95	1C995
1C96	EAR99
1CO4	1C004
1D01	1D018

Old ECCN	New ECCN
1D01	1D001
1D02	1D002
1D23	1D101
1D41	1D201
1D60	1D390
1D93	1D993
1D94	1D993
1D96	EAR99
1E02	1E002
1E23	1E001
1E23	1E101
1E24	1E103
1E25	1E104
1E40	1E201
1E41	1E201
1E60	1E001
1E60	1E350
1E60	1E391
1E61	1E001
1E61	1E351
1E61	1E391
1E94	1E994
1E96	EAR99
2A50.c	1A227

CAT 2

***	2A993
***	2B207
1A44	2A225
1B30.b	2B104
1B50.a	2B226
1B50.b	2B227
1B51	2B230
1B70.a through .d	2B350
1B70.e	2B351
1B71	2B352
1D50	2D201
1E41	2E201
1E70	2E301
2A01	2A001
2A02	2A002
2A03	2A003
2A04	2A004
2A05	2A005
2A06	2A006
2A48	2A226
2A49	2A290
2A50.b.d.f	2A291
2A50.e	2B225
2A51	2A292
2A52	2B231
2A53	2A293
2A94	2A994
2A96	EAR96
2B01	2B001
2B02	2B002
2B03	2B003
2B04	2B004
2B05	2B005
2B06	2B006
2B07	2B007
2B08	2B008
2B09	2B009
2B18	2B018
2B24	2B104
2B41	2B290
2B44	2B204
2B50	2B115
2B50	2B215
2B51	2B228
2B53	2B229
2B85	2B985

Old ECCN	New ECCN
2B91	2B991
2B92	2B992
2B93	2B993
2B94	2B994
2B96	EAR99
2D01	2D001
2D02	2D002
2D18	2D018
2D24	2D101
2D41	2D290
2D49	2D290
2D50	2D290
2D92	2D994
2D93	2D992
2D94	2D993
2D96	EAR99
2E01	2E001
2E02	2E002
2E03	2E003
2E18	2E018
2E20	2E201
2E24	2E001
2E24	2E002
2E24	2E101
2E40	2E201
2E40	2E290
2E41	2E001
2E41	2E002
2E41	2E201
2E41	2E290
2E44	2E001
2E44	2E002
2E44	2E201
2E44	2E290
2E48	2E001
2E48	2E002
2E48	2E201
2E49	2E001
2E49	2E002
2E49	2E290
2E50	2E001
2E50	2E002
2E50	2E201
2E50	2E290
2E51	2E001
2E51	2E002
2E51	2E201
2E51	2E290
2E52	2E001
2E52	2E002
2E52	2E201
2E53	2E001
2E53	2E002
2E53	2E201
2E53	2E290
2E93	2E994
2E94	2E993
2E96	EAR99
3A48	2B232
9B26.a	2B116

CAT 3

2A19.b	3A231
3A01	3A001
3A02	3A002
3A22	3A101
3A41	3A201.a
3A42	3A201.b
3A43	3A228
3A44	3A230
3A46	3A229
3A49	3A232
3A50	3A225

Old ECCN	New ECCN
3A51	3A233
3A52	3A202
3A53	3A227
3A54	3A226
3A55	3A201.c
3A80	3A980
3A81	3A981
3A92	3A992
3A93	3A993
3A94	3A994
3A96	EAR99
3B01.a	3B001
3B01.b	3B002
3B01.c	3B003
3B01.d	3B004
3B01.e	3B005
3B01.f	3B006
3B01.g	3B007
3B01.h	3B008
3B91	3B991
3B96	EAR99
3C01	3C001
3C02	3C002
3C03	3C003
3C04	3C004
3C96	EAR99
3D02	3D002
3D03	3D003
3D21	3D001
3D22	3D001
3D22	3D101
3D80	3D980
3D94	3D994
3D96	EAR99
3E02	3E002
3E22	3E001
3E22	3E101
3E40	3E001
3E40	3E201
3E41	3E201
3E80	3E980
3E94	3E994
3E96	EAR99

CAT 4

4A01	4A001
4A02	4A002
4A03	4A003
4A04	4A004
4A21	4A101
4A80	4A980
4A94	4A994
4A96	EAR99
4B94	4B994
4B96	EAR99
4C94	4C994
4C96	EAR99
4D01	4D001
4D02	4D002
4D03	4D003
4D21	4D190
4D80	4D980
4D92	4D994
4D93	4D993
4D94	4D994
4D96	EAR99
4E01	4E001
4E02	4E002
4E80	4E980
4E92	4E994
4E93	4E993
4E94	4E994
4E96	EAR99

Old ECCN	New ECCN
CAT 5	
2A19.a	Deleted
5A01	5A001.a
5A02	5A001.b
5A03	5A001.c
5A04	5A001.d
5A05	5A001.e
5A06	5A001.f
5A11	5A002
5A20	5A101
5A80	5A980
5A90	5A990
5A91	5A991
5A92	5A992
5A93	5A993
5A94	5A994
5A95	5A995
5A96	EAR99
5B01	5B001.a
5B02	5B001.b
5B11	5B002.a.1
5B12	5B002.a.2
5B13	5B002.b
5B94	5B994
5B96	EAR99
5C01	5C001
5C96	EAR99
5D01	5D001.a
5D02	5D001.b
5D03	5D001.c
5D11	5D002.a
5D12	5D002.b
5D13	5D002.c
5D20	5D101
5D20	5D190
5D90	5D990
5D91	5D991
5D92	5D992
5D93	5D993
5D94	5D994
5D95	5D995
5D96	EAR99
5E01	5E001.a
5E02	5E001.b
5E11	5E002
5E20	5E101
5E90	5E990
5E91	5E991
5E92	5E992
5E93	5E993
5E94	5E994
5E95	5E995
5E96	EAR99
CAT 6	
2A44.a	6A225
2A44.b.c	6A226
6A01	6A001
6A02	6A002
6A03	6A003
6A04	6A004
6A05	6A005
6A06	6A006
6A07	6A007
6A07	6A107
6A08	6A008
6A18	6A018
6A22	6A102
6A28	6A108
6A29	6A108
6A30	6B108
6A43	6A203
6A44	6A202
6A50	6A205
6A90	6A990
6A92	6A992
6A93	6A993
6A94	6A994
6A96	EAR99
6B04	6B004
6B05	6B005
6B07	6B007
6B08	6B008
6B96	EAR99
6C02	6C002
6C04	6C004
6C05	6C005
6C96	EAR99
6D01	6D001
6D02	6D002
6D03	6D003
6D21	6D001
6D22	6D102
6D29	6D103
6D90	6D990
6D92	6D990
6D93	6D990
6D94	6D994
6D96	EAR99
6E01	6E001
6E02	6E002
6E03	6E003
6E21	6E001
6E22	6E002
6E23	6E101
6E40	6E201
6E41	6E001
6E41	6E002
6E41	6E201
6E94	6E994
6E96	EAR99
CAT 7	
* * *	7D102
7A01	7A001
7A02	7A002
7A03	7A003
7A04	7A004
7A06	7A006
7A21	7A101
7A22	7A102
7A23	7A103
7A24	7A104
7A26	7A106
7A27	7A115
7A94	7A994
7B01	7B001
7B02	7B002
7B03	7B003
7B22.a	7B102
7B22.b through .f	7B101
7B94	7B994
7D01	7D001
7D02	7D002
7D03	7D003
7D24	7D001
7D24	7D101
7D94	7D994
7E01	7E001
7E02	7E002
7E03	7E003
7E04	7E004
7E21	7E001
7E21	7E002
7E21	7E101

Old ECCN	New ECCN
7E22	7E102
7E94	7E994

CAT 8

8A01	8A001
8A02	8A002
8A18	8A018
8A92	8A992
8A93	8A993
8A94	8A994
8A96	EAR99
8B01	8B001
8B96	EAR99
8C01	8C001
8C96	EAR99
8D01	8D001
8D02	8D002
8D92	8D992
8D93	8D993
8D96	EAR99
8E01	8E001
8E02	8E002
8E92	8E992
8E93	8E993
8E96	EAR99

CAT 9

1A22.a	9A110
9A01	9A001
9A02	9A002
9A03	9A003
9A04	9A004
9A18	9A018
9A21	9A101
9A22	9A115
9A23	9A106
9A24	9A190
9A80	9A980
9A90	9A990
9A91	9A991
9A92	9A992
9A93	9A993
9A94	9A994
9A96	EAR99
9B01	9B001
9B02	9B002
9B03	9B003
9B04	9B004
9B05	9B005
9B06	9B006
9B07	9B007
9B08	9B008
9B09	9B009
9B21	9B115
9B21	9B116
9B25	9B105
9B26.b	9B106
9B27	9B117
9B94	9B994
9B96	EAR99
9D01	9D001
9D02	9D002
9D03	9D003
9D04	9D004
9D18	9D018
9D24	9D001
9D24	9D002
9D24	9D101
9D90	9D990
9D91	9D991
9D93	9D993
9D94	9D994
9D96	EAR99
9E01	9E001
9E02	9E002
9E03	9E003
9E18	9E018
9E21	9E101
9E21	9E102
9E90	9E990
9E91	9E991
9E93	9E993
9E94	9E994
9E96	EAR99

Sorted by ''NEW'' ECCN
CAT 0

0A18	0A018
0A80	0A980
0A82	0A982
0A82	0A983
0A84	0A984
0A84	0A985
0A86	0A986
0A88	0A988
2A19.c	0B001
1B16	0B003
2A50.b	0B008
1C19.b	0C006
1D01	0D001
2D19	0D001
2D50	0D001
1E19	0E001
2E19	0E001
2E50	0E001
0E18	0E018
0E84	0E984
0A98	§ 734.3(b)(2)
0A95	§ 746.4(b)(2)(i)
0A96	EAR99
0E96	EAR99

CAT 1

1A01	1A001
1A02	1A002
1A03	1A003
1A22.b	1A102
1C50.c	1A202
1C19.e	1A225
1C49	1A225
1A45	1A226
2A50.c	1A227
1A48	1A290
1A84	1A984
1A88	1A988
1B01	1B001
1B02	1B002
1B03	1B003
1B18	1B018
1B21	1B101
1B28	1B115
1B30.a	1B116
1B41	1B201
1B17	1B225
1B42	1B226
1B54	1B227
1B53	1B228
1B52	1B229
1B59	1B230
1B58	1B231
1B55	1B232
1C01	1C001

Old ECCN	New ECCN
1C02	1C002
1C03	1C003
1CO4	1C004
1C05	1C005
1C06	1C006
1C07	1C007
1C08	1C008
1C09	1C009
1C10	1C010
1C18	1C018
1C21	1C101
1C27	1C107
1C31	1C115
1A27	1C116
1C22	1C117
1A46	1C202
1C50	1C210
1A47	1C216
1C57	1C225
1A50	1C226
1C52	1C227
1C53	1C228
1C51	1C229
1C19.d	1C230
1C19.f	1C231
1C55	1C232
1C19.c	1C233
1C19.a	1C234
1C54	1C236
1C58	1C237
1C56	1C238
1C60	1C350
1C61.a (partial), .b.c (partial), .f	1C351
1C61.a (partial), .c (partial)	1C352
1C61.e	1C353
1C61.c.15, c.16, .d	1C354
1C80	1C980
1C81	1C981
1C82	1C982
1C83	1C983
1C84	1C984
1C88	1C988
1C91	1C991
1C92	1C992
1C93	1C993
1C94	1C994
1C95	1C995
1D01	1D001
1D02	1D002
1D01	1D018
1D23	1D101
* * *	1D103
1D41	1D201
1D60	1D390
1D93	1D993
1D94	1D993
1E23	1E001
1E60	1E001
1E61	1E001
1E02	1E002
1E23	1E101
1E24	1E103
1E25	1E104
1E40	1E201
1E41	1E201
* * *	1E202
* * *	1E203
1E60	1E350
1E61	1E351
1E60	1E391
1E61	1E391
1E94	1E994
1A96	EAR99
1B96	EAR99
1C96	EAR99
1D96	EAR99
1E96	EAR99

CAT 2

Old ECCN	New ECCN
2A01	2A001
2A02	2A002
2A03	2A003
2A04	2A004
2A05	2A005
2A06	2A006
1A44	2A225
2A48	2A226
2A49	2A290
2A50.b.d.f	2A291
2A51	2A292
2A53	2A293
* * *	2A993
2A94	2A994
2B01	2B001
2B02	2B002
2B03	2B003
2B04	2B004
2B05	2B005
2B06	2B006
2B07	2B007
2B08	2B008
2B09	2B009
2B18	2B018
1B30.b	2B104
2B24	2B104
2B50	2B115
9B26.a	2B116
2B44	2B204
* * *	2B207
2B50	2B215
2A50.e	2B225
1B50.a	2B226
1B50.b	2B227
2B51	2B228
2B53	2B229
1B51	2B230
2A52	2B231
3A48	2B232
2B41	2B290
1B70.a through .d	2B350
1B70.e	2B351
1B71	2B352
2B85	2B985
2B91	2B991
2B92	2B992
2B93	2B993
2B94	2B994
2D01	2D001
2D02	2D002
2D18	2D018
2D24	2D101
1D50	2D201
2D41	2D290
2D49	2D290
2D50	2D290
2D93	2D992
2D94	2D993
2D92	2D994
2E01	2E001
2E24	2E001
2E41	2E001
2E44	2E001
2E48	2E001
2E49	2E001
2E50	2E001
2E51	2E001
2E52	2E001

Old ECCN	New ECCN
2E53	2E001
2E02	2E002
2E24	2E002
2E41	2E002
2E44	2E002
2E48	2E002
2E49	2E002
2E50	2E002
2E51	2E002
2E52	2E002
2E53	2E002
2E03	2E003
2E18	2E018
2E24	2E101
1E41	2E201
2E20	2E201
2E40	2E201
2E41	2E201
2E44	2E201
2E48	2E201
2E50	2E201
2E51	2E201
2E52	2E201
2E53	2E201
2E40	2E290
2E41	2E290
2E44	2E290
2E49	2E290
2E50	2E290
2E51	2E290
2E53	2E290
1E70	2E301
2E94	2E993
2E93	2E994
2A96	EAR96
2B96	EAR99
2D96	EAR99
2E96	EAR99

CAT 3

3A01	3A001
3A02	3A002
3A22	3A101
3A41	3A201.a
3A42	3A201.b
3A55	3A201.c
3A52	3A202
3A50	3A225
3A54	3A226
3A53	3A227
3A43	3A228
3A46	3A229
3A44	3A230
2A19.b	3A231
3A49	3A232
3A51	3A233
3A80	3A980
3A81	3A981
3A92	3A992
3A93	3A993
3A94	3A994
3B01.a	3B001
3B01.b	3B002
3B01.c	3B003
3B01.d	3B004
3B01.e	3B005
3B01.f	3B006
3B01.g	3B007
3B01.h	3B008
3B91	3B991
3C01	3C001
3C02	3C002
3C03	3C003
3C04	3C004
3D21	3D001
3D22	3D001
3D02	3D002
3D03	3D003
3D22	3D101
3D80	3D980
3D94	3D994
3E22	3E001
3E40	3E001
3E02	3E002
3E22	3E101
3E40	3E201
3E41	3E201
3E80	3E980
3E94	3E994
3A96	EAR99
3B96	EAR99
3C96	EAR99
3D96	EAR99
3E96	EAR99

CAT 4

4A01	4A001
4A02	4A002
4A03	4A003
4A04	4A004
4A21	4A101
4A80	4A980
4A94	4A994
4B94	4B994
4C94	4C994
4D01	4D001
4D02	4D002
4D03	4D003
4D21	4D190
4D80	4D980
4D93	4D993
4D92	4D994
4D94	4D994
4E01	4E001
4E02	4E002
4E80	4E980
4E93	4E993
4E92	4E994
4E94	4E994
4A96	EAR99
4B96	EAR99
4C96	EAR99
4D96	EAR99
4E96	EAR99

CAT 5

5A01	5A001.a
5A02	5A001.b
5A03	5A001.c
5A04	5A001.d
5A05	5A001.e
5A06	5A001.f
5A11	5A002
5A20	5A101
5A80	5A980
5A90	5A990
5A91	5A991
5A92	5A992
5A93	5A993
5A94	5A994
5A95	5A995
5B01	5B001.a
5B02	5B001.b
5B11	5B002.a.1

Old ECCN	New ECCN
5B12	5B002.a.2
5B13	5B002.b
5B94	5B994
5C01	5C001
5D01	5D001.a
5D02	5D001.b
5D03	5D001.c
5D11	5D002.a
5D12	5D002.b
5D13	5D002.c
5D20	5D101
5D20	5D190
5D90	5D990
5D91	5D991
5D92	5D992
5D93	5D993
5D94	5D994
5D95	5D995
5E01	5E001.a
5E02	5E001.b
5E11	5E002
5E20	5E101
5E90	5E990
5E91	5E991
5E92	5E992
5E93	5E993
5E94	5E994
5E95	5E995
2A19.a	Deleted
5A96	EAR99
5B96	EAR99
5C96	EAR99
5D96	EAR99
5E96	EAR99

CAT 6

6A01	6A001
6A02	6A002
6A03	6A003
6A04	6A004
6A05	6A005
6A06	6A006
6A07	6A007
6A08	6A008
6A18	6A018
6A22	6A102
6A07	6A107
6A28	6A108
6A29	6A108
6A44	6A202
6A43	6A203
6A50	6A205
2A44.a	6A225
2A44.b.c	6A226
6A90	6A990
6A92	6A992
6A93	6A993
6A94	6A994
6B04	6B004
6B05	6B005
6B07	6B007
6B08	6B008
6A30	6B108
6C02	6C002
6C04	6C004
6C05	6C005
6D01	6D001
6D21	6D001
6D02	6D002
6D03	6D003
6D22	6D102
6D29	6D103
6D90	6D990
6D92	6D990
6D93	6D990
6D94	6D994
6E01	6E001
6E21	6E001
6E41	6E001
6E02	6E002
6E22	6E002
6E41	6E002
6E03	6E003
6E23	6E101
6E40	6E201
6E41	6E201
6E94	6E994
6A96	EAR99
6B96	EAR99
6C96	EAR99
6D96	EAR99
6E96	EAR99

CAT 7

7A01	7A001
7A02	7A002
7A03	7A003
7A04	7A004
7A06	7A006
7A21	7A101
7A22	7A102
7A23	7A103
7A24	7A104
7A26	7A106
7A27	7A115
7A94	7A994
7B01	7B001
7B02	7B002
7B03	7B003
7B22.b through .f	7B101
7B22.a	7B102
7B94	7B994
7D01	7D001
7D24	7D001
7D02	7D002
7D03	7D003
7D24	7D101
***	7D102
7D94	7D994
7E01	7E001
7E21	7E001
7E02	7E002
7E21	7E002
7E03	7E003
7E04	7E004
7E21	7E101
7E22	7E102
7E94	7E994

CAT 8

8A01	8A001
8A02	8A002
8A18	8A018
8A92	8A992
8A93	8A993
8A94	8A994
8B01	8B001
8C01	8C001
8D01	8D001
8D02	8D002
8D92	8D992
8D93	8D993
8E01	8E001
8E02	8E002

Old ECCN	New ECCN
8E92	8E992
8E93	8E993
8A96	EAR99
8B96	EAR99
8C96	EAR99
8D96	EAR99
8E96	EAR99
CAT 9	
9A01	9A001
9A02	9A002
9A03	9A003
9A04	9A004
9A18	9A018
9A21	9A101
9A23	9A106
1A22.a	9A110
9A22	9A115
9A24	9A190
9A80	9A980
9A90	9A990
9A91	9A991
9A92	9A992
9A93	9A993
9A94	9A994
9B01	9B001
9B02	9B002
9B03	9B003
9B04	9B004
9B05	9B005
9B06	9B006
9B07	9B007
9B08	9B008
9B09	9B009
9B25	9B105

Old ECCN	New ECCN
9B26.b	9B106
9B21	9B115
9B21	9B116
9B27	9B117
9B94	9B994
9D01	9D001
9D24	9D001
9D02	9D002
9D24	9D002
9D03	9D003
9D04	9D004
9D18	9D018
9D24	9D101
9D90	9D990
9D91	9D991
9D93	9D993
9D94	9D994
9E01	9E001
9E02	9E002
9E03	9E003
9E18	9E018
9E21	9E101
9E21	9E102
9E90	9E990
9E91	9E991
9E93	9E993
9E94	9E994
9A96	EAR99
9B96	EAR99
9D96	EAR99
9E96	EAR99

Parts 775–799 [Reserved]