

Bur. of Industry and Security, Comm.

Pt. 734, Supp. No. 2

(vii) Destination and end-use scope of §734.9(h)(2), *i.e.*, the foreign-produced item is destined to a destination specified in Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6, or will be incorporated into any “part,” “component,” “computer,” or “equipment” not designated EAR99 that is destined to a destination specified in Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6, or worldwide to an entity headquartered in, or whose ultimate parent company is headquartered in, either a destination specified in Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6; or technology developed by an entity headquartered in, or whose ultimate parent company is headquartered in, either Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6, for the “production” of a mask or an integrated circuit wafer or die;

(viii) Country and end-use scope of §734.9(i)(2), *i.e.*, used in the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of, a “supercomputer” located in or destined to the People’s Republic of China (PRC) or Macau; or incorporated into, or used in the “development,” or “production,” of any “part,” “component,” or “equipment” that will be used in a “supercomputer” located in or destined to the PRC or Macau;

(ix) Destination scope of §734.9(j)(2), *i.e.*, is destined to Iran or will be incorporated into or used in the “production” or “development” of any “part,” “component,” or “equipment,” including any modified or designed “components,” “parts,” “accessories,” and “attachments” therefor, identified in supplement no. 7 to part 746 of the EAR or is specified in any ECCN on the CCL in Categories 3 through 5 or 7 of the CCL that is located in or destined to Iran; and

(3) My organization affirms its commitment to comply with all applicable requirements under the EAR.

[INSERT NAME(S) OF CONSIGNEE(S) OR EXPORTER(S), REEXPORTERS, OR TRANSFERORS AS APPLICABLE].

[INSERT DATE(S) SIGNED]

NOTE 1 TO PARAGRAPH (B): When multiple consignees engaged in a production process (or other type of collaborative activity, such as joint development) will be exporting, re-exporting, transferring, or receiving items subject to the EAR, a single model certification statement for multiple consignees may be used.

(c) *Additional information.* Because this is only a model certification, parties to the transaction may add additional elements to the certification and/or use it for multiple purposes as part of their compliance pro-

gram. For example, if a company has ten affiliated companies in a multi-step supply chain, instead of obtaining a model certification for each export, reexport, or transfer (in-country), the exporter, reexporter, or transferor may request all ten parties to sign the certification, if appropriate, which may further reduce the burden on parties participating in the supply chain.

[88 FR 73490, Oct. 25, 2023, as amended at 89 FR 23883, Apr. 4, 2024]

SUPPLEMENT NO. 2 TO PART 734— GUIDELINES FOR *De Minimis* RULES

(a) Calculation of the value of controlled U.S.-origin content in foreign-made items is to be performed for the purposes of §734.4 of this part, to determine whether the percentage of U.S.-origin content is *de minimis*. (Note that you do not need to make these calculations if the foreign made item does not require a license to the destination in question.) Use the following guidelines to perform such calculations:

(1) *U.S.-origin controlled content.* To identify U.S.-origin controlled content for purposes of the *de minimis* rules, you must determine the Export Control Classification Number (ECCN) of each U.S.-origin item incorporated into a foreign-made product. Then, you must identify which, if any, of those U.S.-origin items would require a license from BIS if they were to be exported or reexported (in the form in which you received them) to the foreign-made product’s country of destination. For purposes of identifying U.S.-origin controlled content, you should consult the Commerce Country Chart in supplement no. 1 to part 738 of the EAR and controls described in part 746 of the EAR (excluding U.S.-origin content that meets the criteria in §746.7(a)(1)(v) or §746.8(a)(12)(iii)(B)). Part 744 of the EAR should not be used to identify controlled U.S. content for purposes of determining the applicability of the *de minimis* rules. In identifying U.S.-origin controlled content, do not take account of commodities, software, or technology that could be exported or reexported to the country of destination without a license (designated as “NLR”) or under License Exception GBS (see part 740 of the EAR). Commodities subject only to short supply controls are not included in calculating U.S. content.

NOTE TO PARAGRAPH (a)(1): U.S.-origin controlled content is considered ‘incorporated’ for *de minimis* purposes if the U.S.-origin controlled item is: Essential to the functioning of the foreign equipment; customarily included in sales of the foreign equipment; and reexported with the foreign produced item. U.S.-origin software may be ‘bundled’ with foreign produced commodities; see §734.4 of this part. For purposes of determining *de minimis* levels, technology and source code

Pt. 734, Supp. No. 2

used to design or produce foreign-made commodities or software are not considered to be incorporated into such foreign-made commodities or software.

(2) *Value of U.S.-origin controlled content.* The value of the U.S.-origin controlled content shall reflect the fair market price of such content in the market where the foreign product is being produced. In most cases, this value will be the same as the actual cost to the foreign manufacturer of the U.S.-origin commodity, technology, or software. When the foreign manufacturer and the U.S. supplier are affiliated and have special arrangements that result in below-market pricing, the value of the U.S.-origin controlled content should reflect fair market prices that would normally be charged to unaffiliated customers in the same foreign market. If fair market value cannot be determined based upon actual arms-length transaction data for the U.S.-origin controlled content in question, then you must determine another reliable valuation method to calculate or derive the fair market value. Such methods may include the use of comparable market prices or costs of production and distribution. The EAR do not require calculations based upon any one accounting system or U.S. accounting standards. However, the method you use must be consistent with your business practice.

(3) *Foreign-made product value—(i) General.* The value of the foreign-made product shall reflect the fair market price of such product in the market where the foreign product is sold. In most cases, this value will be the same as the actual cost to a buyer of the foreign-made product. When the foreign manufacturer and the buyer of their product are affiliated and have special arrangements that result in below-market pricing, the value of the foreign-made product should reflect fair market prices that would normally be charged to unaffiliated customers in the same foreign market. If fair market value cannot be determined based upon actual arms-length transaction data for the foreign-made product in question, then you must determine another reliable valuation method to calculate or derive the fair market value. Such methods may include the use of comparable market prices or costs of production and distribution. The EAR do not require calculations based upon any one accounting system or U.S. accounting standards. However, the method you use must be consistent with your business practice.

(ii) *Foreign-Made Software.* In calculating the value of foreign-made software for purposes of the *de minimis* rules, you may make an estimate of future sales of that foreign software. The total value of foreign-made software will be the sum of: The value of actual sales of that software based on orders received at the time the foreign software in-

15 CFR Ch. VII (1-1-25 Edition)

corporates U.S.-origin content and, if applicable; and an estimate of all future sales of that software.

NOTE TO PARAGRAPH (a)(3): Regardless of the accounting systems, standard, or conventions you use in the operation of your business, you may not depreciate reported fair market values or otherwise reduce fair market values through related accounting conventions. Values may be historic or projected. However, you may rely on projected values only to the extent that they remain consistent with your documentation.

(4) *Calculating percentage value of U.S.-origin items.* To determine the percentage value of U.S.-origin controlled content incorporated in, commingled with, or “bundled” with the foreign produced item, divide the total value of the U.S.-origin controlled content by the foreign-made item value, then multiply the resulting number times 100. If the percentage value of incorporated U.S.-origin items is equal to or less than the *de minimis* level described in §734.4 of the EAR, then the foreign-made item is not subject to the EAR.

(b) *One-time report.* As stated in paragraphs (c) and (d) of §734.4, a one-time report is required before reliance on the *de minimis* rules for technology. The purpose of the report is solely to permit the U.S. Government to evaluate whether U.S. content calculations were performed correctly.

(1) *Contents of report.* You must include in your report a description of the scope and nature of the foreign technology that is the subject of the report and a description of its fair market value, along with the rationale and basis for the valuation of such foreign technology. Your report must indicate the country of destination for the foreign technology reexports when the U.S.-origin controlled content exceeds 10%, so that BIS can evaluate whether the U.S.-origin controlled content was correctly identified based on paragraph (a)(1) of this Supplement. The report does not require information regarding the end-use or end-users of the reexported foreign technology. You must include in your report the name, title, address, telephone number, E-mail address, and facsimile number of the person BIS may contact concerning your report.

(2) *Submission of report.* You must submit your report to BIS using one of the following methods:

- (i) E-mail: rpd2@bis.doc.gov;
- (ii) Fax: (202) 482-3355; or
- (iii) Mail or Hand Delivery/Courier: U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th and Pennsylvania Avenue NW, Room 2099B, Washington, DC 20230.

(3) *Report and wait.* If you have not been contacted by BIS concerning your report within thirty days after filing the report

Bur. of Industry and Security, Comm.**§ 736.2**

with BIS, you may rely upon the calculations described in the report unless and until BIS contacts you and instructs you otherwise. BIS may contact you with questions concerning your report or to indicate that BIS does not accept the assumptions or rationale for your calculations. If you receive such a contact or communication from BIS within thirty days after filing the report with BIS, you may not rely upon the calculations described in the report, and may not use the *de minimis* rules for technology that are described in §734.4 of this part, until BIS has indicated that such calculations were performed correctly.

[73 FR 56969, Oct. 1, 2008, as amended at 78 FR 13468, Feb. 28, 2013; 87 FR 12237, Mar. 3, 2022; 88 FR 12154, Feb. 27, 2023; 88 FR 33428, May 23, 2023; 89 FR 4810, Jan. 25, 2024; 89 FR 51650, June 18, 2024]

PART 736—GENERAL PROHIBITIONS**Sec.****736.1 Introduction.****736.2 General prohibitions and determination of applicability.****SUPPLEMENT NO. 1 TO PART 736—GENERAL ORDERS****SUPPLEMENT NO. 2 TO PART 736—ADMINISTRATIVE ORDERS**

AUTHORITY: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 8, 2024, 89 FR 40355 (May 9, 2024); Notice of November 7, 2024, 89 FR 88867 (November 8, 2024).

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 free-standing. 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 (also see other parts of the EAR where the license requirements and other EAR restrictions are specified in greater detail):

(1) *Classification of the item.* The classification of the item on the Commerce Control List (see part 774 of the EAR) or description of the item in supplements no. 2, 4, or 6 to part 746 of the EAR. For guidance on classifying items, see the Commerce Control List Order of Review in supplement no. 4 to part 774 and for determining licensing requirements using the Commerce Control List in supplement no. 1 to part 774

§ 736.2

and the Commerce Country Chart in supplement no. 1 to part 738, see § 738.4;

NOTE 1 TO PARAGRAPH (a)(1): The description of items in supplements no. 2, 4, or 6 of part 746 are used for determining license requirements for Russia and Belarus under §§ 746.5 and 746.10. Items described in supplements no. 2, 4, or 6 in most cases are designated as EAR99 (subject to the EAR but not specifically listed on the Commerce Control List).

(2) *Destination.* The country of ultimate destination for an export, reexport, or transfer (in-country) (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List for export and reexport license requirements and part 746 for additional license requirements based on embargoes and other special controls for exports, reexports, or certain transfers (in-country));

(3) *End user or end use.* The ultimate end user (see General Prohibition Four (paragraph (b)(4) of this section) and supplement no. 1 to part 764 of the EAR for references to persons with whom your transaction may not be permitted; see General Prohibition Five (Paragraph (b)(5) of this section) and part 744 for references to end users for whom you may need an export, reexport, or transfer (in-country) license). Certain EAR requirements (e.g., §§ 734.9(e), 744.11(a)), and 744.15(b)) extend to all parties to the transaction as described in § 748.5(c) through (f). Many of the end-use controls in part 744 specify destinations or Country Groups as part of the criteria for defining the scope of the end use controls.

(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 or a 'military-intelligence end use' or a 'military-intelligence end user,' as described in part 744 of the EAR.

(b) *General prohibitions.* The following ten general prohibitions describe certain exports, reexports, transfers (in-country), 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 Industry

15 CFR Ch. VII (1-1-25 Edition)

and Security (BIS) 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 and in § 744.11 and in supplement no. 4 to part 744—Entity List.

(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 (U.S. Content Reexports).* (i) You may not, without a license or license exception, reexport or export from abroad foreign-made commodities that incorporate controlled U.S.-origin commodities, foreign-made commodities that are "bundled" with controlled U.S.-origin software, foreign-made software that is commingled with controlled

¹See part 738 of the EAR for selected controls that are not specified on the Country Chart.

Bur. of Industry and Security, Comm.**§ 736.2**

U.S.-origin software, or foreign-made technology that is commingled with controlled U.S.-origin technology if such items require a license according to any of the provisions in the EAR and incorporate or are commingled with more than a *de minimis* amount of controlled U.S. content, as defined in § 734.4 of the EAR concerning the scope of the EAR.

(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 re-exporter.

(3) *General Prohibition Three—Foreign-direct product (FDP) rules.* (i) You may not, without a license or license exception, export from abroad, reexport, or transfer (in-country) foreign-“direct products” or other foreign-produced items subject to the EAR pursuant to § 734.9 if such items are subject to a license requirement in part 736, 742, 744, 746, or 764 of the EAR.

(ii) Each license exception described in part 740 of the EAR supersedes General Prohibition Three if all terms and conditions of a given license exception are met and none of the restrictions of § 740.2 or § 744.11(a) apply.

(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. Orders denying export privileges are published in the FEDERAL REGISTER when they are issued and are the legally controlling documents in accordance with their terms. BIS also maintains compilations of persons denied export privileges on its Web site at <http://www.bis.doc.gov>. BIS may, on an exceptional basis, authorize activity otherwise prohibited by a denial order. See § 764.3(a)(2) 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, reexport, or transfer (in-country) to prohibited end-uses or end-users (End-Use End-User).* You may not, without a license, knowingly export, reexport, or transfer (in-country) any item subject to the EAR to an end user or end use that is prohibited by part 744 of the EAR. Each section in part 744 specifies whether the license requirements extend to exports, reexports, and transfers (in-country).

(6) *General Prohibition Six—Export, reexport, and transfer (in-country) to embargoed destinations (Embargo).* (i) You may not, without a license or license exception or portion thereof that is specifically listed in the license exceptions paragraph pertaining to a particular sanctioned country or region in part 746 of the EAR, export, reexport, or transfer (in-country) any item subject to the EAR to a country or region (e.g., the Crimea region of Ukraine and covered regions of Ukraine) that is embargoed by the United States or otherwise made subject to controls under part 734 as both are described at part 746 of the EAR. Each section in part 746 specifies whether the license requirements extend to exports, reexports, and transfers (in-country).

(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.

§ 736.2

(7) *General Prohibition Seven—Support of proliferation activities and certain military-intelligence end uses and end users (“U.S. person” activities).* (i) Support of proliferation activities and certain military-intelligence end uses and end users (“U.S. person” activities).

(A) If you are a “U.S. person,” as that term is defined in §772.1 of the EAR, you may not engage in any activities prohibited by §744.6(b) or (c) of the EAR, which prohibit, without a license from BIS, the shipment, transmission, or transfer (in-country) of items not subject to the EAR; facilitating such shipment, transmission, or transfer (in-country); or the performance of any contract, service, or employment (including, but not limited to: ordering, buying, removing, concealing, storing, using, selling, loaning, disposing, servicing, financing, or transporting, freight forwarding, or conducting negotiations in furtherance of) that you know or are informed by BIS will support:

(1) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of nuclear explosive devices in or by any country not listed in supplement no. 3 to part 744 of the EAR;

(2) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of “missiles” in or by a country listed in Country Groups D:4 or E:2;

(3) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons in or by any country or designation worldwide;

(4) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, refurbishing, shipment, or transfer (in-country) of a whole plant to make chemical weapons precursors identified in ECCN 1C350, in or by countries other than those listed in Country Group A:3 (Australia Group); or

15 CFR Ch. VII (1-1-25 Edition)

(5) A ‘military-intelligence end use’ or a ‘military-intelligence end user,’ as defined in §744.22(f) of the EAR, in Belarus, Burma, the People’s Republic of China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2.

(B) If you are a “U.S. person” as that term is defined in §772.1 of the EAR, you may not export a Schedule 1 chemical listed in supplement no. 1 to part 745 without first complying with the provisions of §§742.18 and 745.1 of the EAR.

(C) If you are a “U.S. person” as that term is defined in §772.1 of the EAR, you may not export a Schedule 3 chemical listed in supplement no. 1 to part 745 to a destination *not* listed in supplement no. 2 to part 745 without complying with the End-Use Certificate requirements in §745.2 of the EAR that apply to Schedule 3 chemicals controlled for CW reasons in ECCN 1C350, ECCN 1C355, and ECCN 1C395.

(ii) [Reserved]

(8) *General Prohibition Eight—In transit shipments and items to be unladed 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 or transit through such a country of transit, or unless such an export or reexport is eligible to such a country of transit without a license.

(ii) *Country scope.* This General Prohibition Eight applies to Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, 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

Bur. of Industry and Security, Comm.

Pt. 736, Supp. No. 1

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, re-export, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported, reexported, or transferred (in-country) or to be exported, reexported, or transferred (in-country) with knowledge that a violation of the Export Administration Regulations, the Export Control Reform Act of 2018, 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]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §736.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

SUPPLEMENT NO. 1 TO PART 736— GENERAL ORDERS

(a) General Order No. 1:

General Order No. 1 of September 16, 1998; Establishing a 24-month validity period on reexport authorizations issued without a validity period and revoking those exceeding that period.

(1) Reexport authorizations issued within 24-months of the General Order. All reexport authorizations issued with no validity period within the 24-months preceding September 16, 1998 shall be deemed to have an expiration date which shall be the date 24-months from the date of issuance of the reexport authorization or November 16, 1998, whichever is longer.

(2) Reexport authorizations issued before the 24-month period preceding the General Order. For reexport authorizations issued with no validity period before the 24-month period preceding September 16, 1998:

(i) Effective September 16, 1998, all such outstanding reexport authorizations for terrorist-supporting countries (see parts 742 and 746 of the EAR) are revoked.

(ii) Effective November 16, 1998, all other such outstanding reexport authorizations are revoked.

(3) Extensions. If necessary, you may request extensions of such authorizations according to procedures set forth in §750.7(g) of the EAR.

(4) Specific Notice from BIS. If you have received, or should you receive, specific notice from BIS with regard to a reexport authorization covered by this General Order, informing you of a revocation, suspension, or revision (including validity period) of any such reexport authorization, then the terms of that specific notice will be controlling.

(5) Definition of “authorization”. The term “authorization” as used in this General Order encompasses the range of reexport authorizations granted by BIS, which includes licenses, individual letters, and other types of notifications.

(b) General Order No. 2:

General Order No. 2; section 5(b) of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (SAA) gives the President authority to waive the application of certain prohibitions set forth in the SAA if the President determines that it is in the national security interest of the United States to do so. The President made such a determination in Executive Order 13338, finding that it was “in the national security interest of the United States to waive application of subsection 5(a)(1) and 5(a)(2)(A) of the SAA so as to permit the exportation or re-exportation of certain items as specified in the Department of Commerce’s General Order No. 2.” The President’s reference to General Order No. 2 addresses applications to export and reexport the following items, which are considered on a case-by-case basis as opposed to the general policy of denial set forth in section 746.9 of the Regulations: Items in support of activities, diplomatic or otherwise, of the United States Government (to the extent that regulation of such exportation or reexportation would not fall within the President’s constitutional authority to conduct the nation’s foreign affairs); medicine (on the CCL) and medical devices (both as defined in part 772 of the EAR); parts and components intended to ensure the safety of civil aviation and the safe operation of commercial passenger aircraft; aircraft chartered by the Syrian Government for the transport of Syrian Government officials on official Syrian Government business; telecommunications equipment and associated computers, software and technology; items in support of United Nations operations in Syria; and items necessary for the support of the Syrian people, including, but not limited to, items related to water supply and sanitation, agricultural production and food processing, power generation, oil and gas production, construction and engineering, transportation, and educational infrastructure. The

Pt. 736, Supp. No. 1

total dollar value of each approved license for aircraft parts for flight safety normally will be limited to no more than \$2 million over the 24-month standard license term, except in the case of complete overhauls.

NOTE TO GENERAL ORDER No. 2: The controls for exports and reexports to Syria are set forth in §746.9 of the EAR.

(c) General Order No. 3:

General Order No. 3 of July 22, 2015. Certain licenses issued by BIS prior to July 22, 2015 contain conditions that restrict the export, reexport, or transfer (in-country) to or within Country Group E:1 as specified in supplement no. 1 to part 740 of the EAR. At the time those license were issued, Cuba was in Country Group E:1. Many of those restrictions were intended to apply to Cuba, not only as a State Sponsor of Terrorism but also as a country subject to unilateral embargo. However, BIS did not always list both Country Groups E:1 and E:2 in license conditions because, at the time, doing so would have been redundant. However, with the rescission of Cuba's designation as a State Sponsor of Terrorism and resultant removal from Country Group E:1, continuing those conditions with respect to Cuba is consistent with the embargo. Accordingly, all conditions that apply to Country Group E:1 on licenses issued prior to July 22, 2015 that are in effect on that date, are revised to apply to Country Groups E:1 and E:2 as specified in supplement no. 1 to part 740 of the EAR. Licensees who seek authorization for transactions that are affected by this General Order No. 3 may submit license applications that refer to General Order No. 3 and explain the reason for the request in Block 24 of the application. All license applications involving Cuba are reviewed pursuant to the licensing policy in §746.2(b) of the EAR. The request should provide any available information in support of the argument that the transaction would be consistent with the licensing policy in §746.2(b) of the EAR.

(d) General Order No. 4. Exports, reexports, or transfers (in-country) authorized under the Temporary General Licenses (TGL) specified under paragraphs (d)(1) and (2) of this supplement must also comply with the terms and conditions under paragraphs (d)(3) through (5) of this supplement.

(1) *TGL—Less restricted SME “parts,” “components,” or “equipment.”* This TGL only overcomes the license requirements described in §744.23(a)(4) of EAR when:

(i) *Product scope.* The items subject to the EAR that are specified on the Commerce Control List (CCL) in supplement no. 1 to part 774 of the EAR, as follows:

(A) ECCNs that are designated as controlled on the CCL only for AT reasons (3A991, 3B992, and associated “software” and “technology”); or

15 CFR Ch. VII (1-1-25 Edition)

(B) ECCN 3B001.c.4, 3B993.b.1, c.2, c.3, d.4, f.2, f.3, o.2, q.1, q.2, 3B994, 3D993.a (for commodities specified in this paragraph), 3D993.b through d, 3D994, 3E993.a (for commodities specified in this paragraph), 3E993.b, or 3E994; and

(ii) *End-use scope.* The recipient is “developing” or “producing” “parts,” “components,” or “equipment” (as specified in §§744.23(a)(4) and 742.6(a)(11) of the EAR) at the direction of a company that is headquartered in the United States or a destination specified in Country Group A:5 or A:6 and not majority-owned by an entity headquartered in either Macau or a destination specified in Country Group D:5.

(2) *TGL—Advanced computing items.* This TGL only overcomes the license requirements described in §742.6(a)(6)(iii) of the EAR when the criteria in paragraphs (d)(2)(i) and either (d)(2)(ii)(A) or (d)(2)(ii)(B) are met.

(i) *Product scope.* The items subject to the EAR are specified in, either:

(A) ECCNs 3A001.z; 3A090.a and 3A090.b; 3D001 (for “software” for commodities controlled by 3A001.z, 3A090.a and 3A090.b); 3E001 (for “technology” for commodities controlled by 3A001.z, 3A090.a and .b); 4A003.z; 4A004.z; 4A005.z; 4A090; 4D001 (for “software” for commodities controlled by 4A003.z, 4A004.z, and 4A005.z); 4D090; 4E001 (for “technology” for commodities controlled by 4A003.z, 4A004.z, 4A005.z, 4A090 or “software” specified by 4D001 (for 4A003.z, 4A004.z, and 4A005.z); 4D090; 5A002.z; 5A004.z; 5A992.z; 5D002.z; 5D992.z; 5E002 (for “technology” for commodities controlled by 5A002.z or 5A004.z or “software” specified by 5D002 (for 5A002.z or 5A004.z commodities); or 5E992 (for “technology” for commodities controlled by 5A992.z or “software” controlled by 5D992.z) of the Commerce Control List (CCL); or

(B) ECCN 3A090.c.

(ii) *End-use scope—(A) For all items under paragraph (d)(2)(i).* Any item identified under the paragraph (d)(2)(i) of this supplement, may be exported, reexported, or transferred (in-country) to or within a destination specified in Country Groups D:1, D:4, or D:5 (and not specified in Country Groups A:5 or A:6) or for 3A090.c to or within Macau or a destination specified in Country Group D:5 when either of the following apply:

(1) The end user is located in, but is not headquartered in, or whose ultimate parent company is not headquartered in, Macau or Country Group D:5 and the end use is to continue or engage in the following activities: integration, assembly (mounting), inspection, testing, quality assurance, and distribution of items covered by items specified in paragraph (d)(2)(i); and

(2) The ultimate end user of these items is located outside of destinations specified in Country Groups D:1, D:4, or D:5 (and not specified in Country Groups A:5 or A:6) by

Bur. of Industry and Security, Comm.

Pt. 736, Supp. No. 1

entities not headquartered in or whose ultimate parent company is not headquartered in Macau or a destination specified in Country Group D:5.

(B) *Additional permitted ultimate end use for 3A090.c.* ECCN 3A090.c commodities are authorized under this paragraph (d)(2)(ii) of this General Order No. 4 for use in any destination if the 3A090.c commodity is incorporated into another commodity, provided that the higher-level commodity is not identified in paragraph (d)(2)(i) of this General Order No. 4. If the higher-level commodity is identified under paragraph (d)(2)(i), of this General Order No. 4, then the ultimate end use of these items is authorized under this paragraph (d)(2)(ii) for destinations other than those specified in Country Groups D:1, D:4, or D:5 (and not specified in Country Groups A:5 or A:6) by entities not headquartered in, or whose ultimate parent company is not headquartered in, Macau or a destination specified in Country Group D:5. Any subsequent export, reexport, or transfer (in-country) of a 3A090.c commodity (regardless of whether it was incorporated into a higher-level commodity) would also need to comply with any other applicable EAR license requirements such as those based on the classification (including, if relevant, the higher-level commodity) and the end use and parties to the transaction.

(3) *Validity date follows:*

(i) Paragraph (d)(1)(i)(A) expires on December 31, 2026;

(ii) Paragraph (d)(1)(i)(B) expires on December 31, 2026;

(iii) Paragraph (d)(2)(i)(A) expires on December 31, 2025; and

(iv) Paragraph (d)(2)(i)(B) expires on December 31, 2026.

(4) *End-use and end-user restrictions*—(i) *Restrictions related to part 744 of the EAR.* The TGL under paragraphs (d)(1) and (2) of this supplement does not overcome the license requirements of §744.11 or §744.21 of the EAR when an entity listed in supplements no. 4 or 7 to part 744 is a party to the transaction as described in §748.5(c) through (f) of the EAR, or when there is knowledge of any other prohibited end use or end user (other than the §744.23 provisions specified above in the TGL).

(ii) *Indigenous production.* (A) The TGL under paragraph (d)(1) of this supplement cannot be used for the indigenous “development” or “production” of Category 3B tools in either Macau or a destination specified in Country Group D:5, *i.e.*, where the “part,” “component,” or “equipment” is “developed” or “produced” at the direction of an entity that is headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5.

(B) The TGL under paragraph (d)(2) of this supplement cannot be used for the indige-

nous “development” or “production” of any item identified under paragraph (d)(2)(i) of this supplement where the “part,” “component,” or “equipment” is “developed” or “produced” at the direction of an entity that is headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5.

(5) *Recordkeeping requirement.* All exports, reexports, transfer (in-country), and exports from abroad shipped under the authorization of this TGL are subject to the recordkeeping requirements of part 762 of the EAR. The records subject to this recordkeeping requirement include but are not limited to directives to the parties that are eligible to use this TGL and a list of the parties that have received directives. Each party that issues or acts upon a directive is responsible for keeping a record of that directive.

(e) General Order No. 5:

General Order No. 5 of April 16, 2013; Authorization for Items the President Determines No Longer Warrant Control under the United States Munitions List (USML).

(1) *Continued use of DDTC approvals from the Department of State’s Directorate of Defense Trade Controls (DDTC) for items that become subject to the EAR.* Items the President has determined no longer warrant control under the USML will become subject to the EAR as published final rules that transfer the items to the CCL become effective. DDTC licenses, agreements, or other approvals that contain items transitioning from the USML to the CCL and that are issued prior to the effective date of the final rule transferring such items to the CCL may continue to be used in accordance with the Department of State’s final rule, *Amendments to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform*, published on April 16, 2013 in the FEDERAL REGISTER.

(2) *BIS authorization.*

(i) Where continued use of DDTC authorization is not or is no longer an available option, or a holder of an existing DDTC authorization returns or terminates that authorization, any required authorization to export, reexport, or transfer (in-country) a transitioned item on or after the effective date of the applicable final rule must be obtained under the EAR. Following the publication date and prior to the effective date of a final rule moving an item from the USML to the CCL, applicants may submit license applications to BIS for authorization to export, reexport, or transfer (in-country) the transitioning item. BIS will process the license applications in accordance with §750.4 of the EAR, hold the license application without action (HWA) if necessary, and issue a license, if approved, to the applicant no sooner than the effective date of the final rule transitioning the items to the CCL.

Pt. 736, Supp. No. 1

(ii) Following the effective date of a final rule moving items from the USML to the CCL, exporters, reexporters, and transferors of such items may return DDT^C licenses in accordance with §123.22 of the ITAR or terminate Technical Assistance Agreements, Manufacturing License Agreements, or Warehouse and Distribution Agreements in accordance with §124.6 of the ITAR and thereafter export, reexport, or transfer (in-country) such items under applicable provisions of the EAR, including any applicable license requirements. No transfer (in-country) may be made of an item exported under a DDT^C authorization containing provisos or other limitations without a license issued by BIS unless (i) the transfer (in-country) is authorized by an EAR license exception and the terms and conditions of the License Exception have been satisfied, or (ii) no license would otherwise be required under the EAR to export or reexport the item to the new end user.

(3) *Prior commodity jurisdiction determinations.* If the U.S. State Department has previously determined that an item is not subject to the jurisdiction of the ITAR and the item was not listed in a then existing “018” series ECCN (for purposes of the “600 series” ECCNs, or the 0x5zz ECCNs) or in a then existing ECCN 9A004.b or related software or technology ECCN (for purposes of the 9x515 ECCNs), then the item is per se not within the scope of a “600 series” ECCN, a 0x5zz ECCN, or a 9x515 ECCN. If the item was not listed elsewhere on the CCL at the time of such determination (*i.e.*, the item was designated EAR99), the item shall remain designated as EAR99 unless specifically enumerated by BIS or DDT^C in an amendment to the CCL or to the USML, respectively.

(4) *Voluntary Self-Disclosure.* Parties to transactions involving transitioning items are cautioned to monitor closely their compliance with the EAR and the ITAR. Should a possible or actual violation of the EAR, or of any license or authorization issued thereunder, be discovered, the person or persons involved are strongly encouraged to submit a Voluntary Self-Disclosure to the Office of Export Enforcement, in accordance with §764.5 of the EAR. Permission from the Office of Exporter Services, in accordance with §764.5(f) of the EAR, to engage in further activities in connection with that item may also be necessary. Should a possible or actual violation of the ITAR, or of any license or authorization issued thereunder, be discovered, the person or persons involved are strongly encouraged to submit a Voluntary Disclosure to DDT^C, in accordance with §127.12 of the ITAR. For possible or actual violations of both the EAR and ITAR, the person or persons involved are strongly encouraged to submit disclosures to both BIS and DDT^C, indicating to each agency that

15 CFR Ch. VII (1-1-25 Edition)

they also have made a disclosure to the other agency.

(f) *General Order No. 6.* General Order No. 6 of September 6, 2024.

(1) *GAAFET exports, reexports, and transfers (in-country).* This General License (GL) authorizes the export, reexport, or transfer (in-country) of GAAFET “technology” specified in ECCN 3E905 for the “development” or “production” of integrated circuits to end users located in a destination specified in Country Group A:5 or A:6 of supplement no. 1 to part 740 of the EAR when that “development” or “production” began to be performed on or prior to September 6, 2024.

(2) *GAAFET grandfather clause for deemed exports and deemed reexports.* This GL authorizes deemed exports or deemed reexports of GAAFET “technology” specified in ECCN 3E905 (including for future advancements or versions of the same “technology”) to foreign person employees or contractors already employed by entities as of September 6, 2024 whose most recent country of citizenship or permanent residency is a destination specified in Country Group D:1 or D:5, and who are not prohibited persons under part 744 of the EAR, *e.g.*, not listed on the Entity List (supplement no. 4 to part 744), Unverified List (supplement no. 6 to part 744), Military End-User List (supplement no. 7 to part 744), or listed on the Denied Persons List (<https://www.bis.gov>). BIS notes that for purposes of §§742.4(a)(5) and 742.6(a)(10), the employee need not be a permanent and regular employee as that term is defined in §734.20(d), *e.g.*, they may be newly hired.

(3) *Quantum deemed exports and deemed reexports.* This GL authorizes deemed exports or deemed reexports of quantum “technology” and “software” in ECCNs 3D901 (for “software” for quantum items in ECCNs 3A901.b, 3B904), 3E901 (for “technology” for quantum items in 3A901, 3A904, 3B904, 3C907, 3C908, 3C909), and “technology” for quantum items in ECCNs 4D906 or 4E906, to foreign persons whose most recent country of citizenship or permanent residency is a destination specified in Country Group D:1 or D:5 and who are not prohibited persons under part 744 of the EAR, *e.g.*, not listed on the Entity List (supplement no. 4 to part 744), Unverified List (supplement no. 6 to part 744), Military End-User List (supplement no. 7 to part 744), or listed on the Denied Persons List (<https://www.bis.gov>). BIS notes that for purposes of §§742.4(a)(5) and 742.6(a)(10), the employee need not be a permanent and regular employee as that term is defined in §734.20(d), *e.g.*, they may be newly hired.

(4) *Reporting requirements.* Exports, reexports, and transfers (in-country), including deemed exports and deemed reexports, under this GL are subject to annual reporting requirements in accordance with §743.7 of the EAR for GAAFET items in paragraph (f)(1) and (f)(2) of this general order and §743.8 for