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§ 768.8 Eligibility of expedited licensing procedures for non-controlled countries.

(a) BIS 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) BIS 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, BIS 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 BIS evaluation and recommendation, taking into consideration the evidence the Secretaries of Defense, State, and other interested agencies provide to BIS and any other information that the Secretary considers relevant.

(f) Within 30 days of the receipt of the FAS or TAC certification, BIS 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, BIS will be notified of the Secretary's determination and, where appropriate, supplement no. 2 to part 768 will be amended.

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(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 Industry and Security, Room H-1093, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

[61 FR 12915, Mar. 25, 1996, as amended at 72 FR 25196, May 4, 2007]

§ 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 BIS 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 Industry and Security (BIS) 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. BIS combines the submitted evidence with the evidence that it collects from other sources. BIS 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. BIS 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 BIS. If information is based on oral statements a third party made, the submitter should provide a memorandum of the conversation to BIS if the submitter cannot obtain a written memorandum from the source. BIS 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 BIS will consider in evaluating foreign availability. BIS 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 Item interpretations.

770.3 Interpretations related to exports of technology and software to destinations in Country Group D:1.

AUTHORITY: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

§ 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 Item 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 Ex-

port Control Classification Number (ECCN) 2A001 (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) [Reserved]

(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 Electronic Export Information (EEI) on the Automated Export System (AES), 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 EEI filing to the AES 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 Directorate 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)–(j) [Reserved]

(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 or not your chemicals are controlled by this entry.

(1) (C.A.S. #1341–49–7) Ammonium hydrogen bifluoride
Acid ammonium fluoride
Ammonium bifluoride
Ammonium difluoride

Ammonium hydrofluoride	N,N-Diethyl-2-aminoethanol
Ammonium hydrogen bifluoride	Diethyl (2-hydroxyethyl) amine
Ammonium hydrogen difluoride	N,N-Diethyl-N-(.beta.-hydroxyethyl) amine
Ammonium monohydrogen difluoride (2) (C.A.S. #7784-34-1) Arsenic tri- chloride	N,N-Diethyl-2-hydroxyethylamine
Arsenic (III) chloride	Diethylaminoethanol
Arsenous chloride	2-(Diethylamino) ethanol
Fuming liquid arsenic	2-(Diethylamino)ethyl alcohol
Trichloroarsine	N,N-Diethylmonoethanolamine
(3) (C.A.S. #76-93-7) Benzilic acid	(2-Hydroxyethyl) diethylamine
.alpha.,.alpha.-Diphenyl-.alpha.- hydroxyacetic acid	2-Hydroxytriethylamine
Diphenylglycolic acid	(10) (C.A.S. #5842-07-9) N,N- Diisopropyl-.beta.-aminoethane thiol
.alpha.,.alpha.-Diphenylglycolic acid	2-(Diisopropylamino) ethanethiol
Diphenylhydroxyacetic acid	Diisopropylaminoethanethiol
.alpha.-Hydroxy-2,2-diphenylacetic acid	.beta.-Diisopropylaminoethanethiol
2-Hydroxy-2,2-diphenylacetic acid	2-(bis(1-Methylethyl)amino) ethanethiol
.alpha.-Hydroxy-.alpha.- phenylbenzeneacetic acid	(11) (C.A.S. #4261-68-1) N, N- Diisopropyl-2-aminoethyl chloride hy- drochloride
Hydroxydiphenylacetic acid	(12) (C.A.S. #96-80-0) N,N-Diisopropyl- .beta.-aminoethanol
(4) (C.A.S. #107-07-3) 2-Chloroethanol	N,N-Diisopropyl-2-aminoethanol
2-Chloro-1-ethanol	2-(Diisopropylamino) ethanol
Chloroethanol	(N,N-Diisopropylamino) ethanol
2-Chloroethyl alcohol	2-(Diisopropylamino) ethyl alcohol
Ethene chlorohydrin	N,N-Diisopropylethanolamine
Ethylchlorohydrin	(13) (C.A.S. #96-79-7) N,N-Diisopropyl- .beta.-aminoethyl chloride
Ethylene chlorohydrin	2-Chloro-N,N-diisopropylethylamine
Ethylene chlorohydrin	1-Chloro-N,N- diisopropylaminoethane
Glycol chlorohydrin	2-Chloro-N,N-diisopropylethylamine
Glycol monochlorohydrin	N-(2-chloroethyl)-N-(1-methylethyl)- 2-propanamine
2-Hydroxyethyl chloride	N-(2-Chloroethyl) diisopropylamine
(5) (C.A.S. #78-38-6) Diethyl ethylphosphonate Ethylphosphonic acid diethyl ester	N,N-Diisopropyl-2-chloroethylamine
(6) (C.A.S. #15715-41-0) Diethyl methylphosphonite	1-(Diisopropylamino)-2-chloroethane
Diethoxymethylphosphine	2-(Diisopropylamino)ethyl chloride
Diethyl methanephosphonite	Diisopropylaminoethyl chloride
0,0-Diethyl methylphosphonite	.beta.-Diisopropylaminoethyl chlo- ride
Methyldiethoxyphosphine	(14) (C.A.S. #108-18-9) Diisopropylamine
Methylphosphonous acid diethyl ester	N,N-Diisopropylamine
(7) (C.A.S. #2404-03-7) Diethyl-N, N- dimethylphosphoro-amidate	N-(1-Methylethyl)-2-propanamine
N,N-Dimethyl-O,O'-diethyl phosphoramidate	(15) (C.A.S. #6163-75-3) Dimethyl ethylphosphonate
Diethyl dimethylphosphoramidate	Dimethyl ethanephosphonate
Dimethylphosphoramidic acid diethyl ester	Ethylphosphonic acid dimethyl ester
(8) (C.A.S. #762-04-9) Diethyl phosphite	(16) (C.A.S. #756-79-6) Dimethyl methylphosphonate
Diethoxyphosphine oxide	Dimethoxymethyl phosphine oxide
Diethyl acid phosphite	Dimethyl methanephosphonate
Diethyl hydrogen phosphite	Methanephosphonic acid dimethyl ester
Diethyo phosphonate	Methylphosphonic acid dimethyl ester
Hydrogen diethyl phosphite	
(9) (C.A.S. #100-37-8) N, N- Diethylethanolamine	

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(17) (C.A.S. #868-85-9) Dimethyl phosphite	Phosphoroxetrychloride
Dimethoxyphosphine oxide	Phosphorus chloride oxide
Dimethyl acid phosphite	Phosphorus monoxide trichloride
Dimethyl hydrogen phosphite	Phosphorus oxide trichloride
Dimethyl phosphonate	Phosphorus oxytrichloride
Hydrogen dimethyl phosphite	Phosphorus trichloride oxide
Methyl phosphate	Phosphoryl trichloride
(18) (C.A.S. #124-40-3) Dimethylamine	Trichlorophosphine oxide
N-Methyl methanamine	Trichlorophosphorus oxide
(19) (C.A.S. #506-59-2) Dimethylamine hydrochloride	(33) (C.A.S. #10026-13-8) Phosphorus pentachloride
Dimethylammonium chloride	Pentachlorophosphorane
N-Methyl methanamine hydrochloride	Pentachlorophosphorus
(20) [Reserved]	Phosphoric chloride
(21) (C.A.S. #1498-40-4) Ethylphosphonous dichloride	Phosphorus(V) chloride
Dichloroethylphosphine	Phosphorus perchloride
Ethyl phosphonous dichloride	(34) (C.A.S. #1314-80-3) Phosphorus pentasulfide
Ethyl dichlorophosphine	Diphosphorus pentasulfide
(22) (C.A.S. #430-78-4) Ethylphosphonous difluoride	Phosphoric sulfide
Ethyl difluorophosphine	Phosphorus persulfide
(23) (C.A.S. #1066-50-8) Ethylphosphonyl dichloride	Phosphorus sulfide
Dichloroethylphosphine oxide	(35) (C.A.S. #7719-12-2) Phosphorus trichloride
Ethanephosphonyl chloride	Phosphorus chloride
Ethylphosphinic dichloride	Trichlorophosphine
Ethylphosphonic acid dichloride	(36) C.A.S. #75-97-8) Pinacolone
Ethylphosphonic dichloride	tert-Butyl methyl ketone
(24) [Reserved]	2,2-Dimethyl-3-butanone
(25) (C.A.S. #7664-39-3) Hydrogen fluoride	3,3-Dimethyl-2-butanone
Anhydrous hydrofluoric acid	2,2-Dimethylbutanone
Fluorhydric acid	3,3-Dimethylbutanone
Fluorine monohydride	1,1-Dimethylethyl methyl ketone
Hydrofluoric acid gas	Methyl tert-butyl ketone
(26) (C.A.S. #3554-74-3) 3-Hydroxy-1-methylpiperidine	Pinacolin
3-Hydroxy-N-methylpiperidine	Pinacoline
1-Methyl-3-hydroxypiperidine	1,1,1-Trimethylacetone
N-Methyl-3-hydroxypiperidine	(37) (C.A.S. #464-07-3) Pinacolyl alcohol
1-Methyl-3-piperidinol	tert-Butyl methyl carbinol
N-Methyl-3-piperidinol	2,2-Dimethyl-3-butanol
(27) (C.A.S. #76-89-1) Methyl benzilate	3,3-Dimethyl-2-butanol
Benzilic acid methyl ester	1-Methyl-2,2-dimethylpropanol
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid methyl ester	(38) (C.A.S. #151-50-8) Potassium cyanide
Methyl .alpha.-phenylmandelate	(39) (C.A.S. #7789-23-3) Potassium fluoride
Methyl diphenylglycolate	Potassium monofluoride
(28)-(31) [Reserved]	(40) (C.A.S. #7789-29-9) Potassium hydrogen fluoride
(32) (C.A.S. #10025-87-3) Phosphorus oxychloride	Hydrogen potassium difluoride
Phosphonyl trichloride	Hydrogen potassium fluoride
Phosphoric chloride	Potassium acid fluoride
Phosphoric trichloride	Potassium bifluoride
Phosphoroxychloride	Potassium hydrogen difluoride
	Potassium monohydrogen difluoride
	(41) (C.A.S. #1619-34-7) 3-Quinuclidinol
	1-Azabicyclo(2.2.2)octan-3-ol

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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 fluo-
ride
Sodium monofluoride
(46) (C.A.S. #1313–82–2) Sodium sulfide
Disodium monosulfide
Disodium sulfide
Sodium monosulfide
Sodium sulfide
(47) (C.A.S. #10025–67–9) Sulfur
Monochloride
(48) (C.A.S. #10545–99–0) Sulfur
dichloride
(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 chlo-
ride
Sulfinyl chloride
Sulfinyl dichloride
Sulfur chloride oxide
Sulfur oxychloride
Sulfurous dichloride
Sulfurous oxychloride
Thionyl dichloride
(51) (C.A.S. #102–71–6) Triethanol-
amine
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) Triethanol-
amine 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
(1) *Interpretation 12: Computers.* (1)
Digital computers or computer systems
classified under ECCN 4A003.b or .c,
that qualify for “No License Required”
(NLR) must be evaluated on the basis
of Adjusted Peak Performance (APP)
alone, to the exclusion of all other
technical parameters. Digital com-
puters or computer systems classified
under ECCN 4A003.b or .c that qualify
for License Exception APP must be
evaluated on the basis of APP, to the
exclusion of all other technical param-
eters. Assemblies performing analog-
to-digital conversions are evaluated
under Category 3—Electronics, ECCN
3A002.h.
(2) Related equipment classified
under ECCN 4A003.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 Ex-
ception APP is available for the com-
puter system and the related equip-
ment, as appropriate.
(m) *Interpretation 13: Encryption com-
modities and software controlled for EI
reasons.* Encryption commodities and
software controlled for EI reasons
under ECCNs 5A002, 5A004 and 5D002
may be pre-loaded on a laptop,
handheld device or other computer or
equipment and exported under the
tools of trade provision of License Ex-
ception TMP or the personal use ex-
emption under License Exception BAG,
subject to the terms and conditions of
such License Exceptions. Neither Li-
cense Exception TMP nor License Ex-
ception BAG contains a reporting re-
quirement. Like other “information se-
curity” “software,” components,
“electronic assemblies” or modules,
the control status of encryption com-
modities and software is determined in
Category 5—Part 2 even if they are
bundled, commingled or incorporated
in a computer or other equipment.
However, commodities and software
specially designed for medical end use
that incorporate an item in Category

5—Part 2 are not controlled in Category 5—Part 2. See paragraph (a) of supplement no. 3 to part 774 (Statements of Understanding) of the EAR.

(n) *Interpretation 14: Unfinished “600 series” commodities.* Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by any Product Group A (“End Items,” “Equipment,” “Accessories,” “Attachments,” “Parts,” “Components” and “Systems”) “600 series” ECCN are controlled in that “600 series” ECCN.

(o) *Interpretation 15: Certain integrated circuits acquired, tested, or otherwise used by or for the United States Government—*

(1) *Classification of the integrated circuit (IC).* Integrated circuits (ICs), including packaged “electronic assemblies” of ICs described by this section, that are manufactured using existing commercial fabrication process technologies and which are acquired, tested, or otherwise used by, for, or under contract with the United States Government (USG), are not considered to be radiation hardened (*e.g.*, designed to withstand a specified radiation dose or upset) or temperature rated (*e.g.*, rated to operate at prescribed temperatures) as may otherwise be specified under an Export Control Classification Number (ECCN) on the Commerce Control List (CCL) in supplement no. 1 to part 774 of the EAR, provided all of the following apply:

(i) During “development”, the IC is not designed, rated, or certified (except by or for the USG) to meet the radiation or temperature specifications of any ECCN; and

(ii) All commercial testing (including by the manufacturer during fabrication, sort, packaging or assembly) regarding radiation or temperature is limited to standard commercial tools and techniques, or else by means funded or furnished by the USG for their use in the commercial setting for these specified ICs.

(2) *Activities that do not change the classification of “software” or “technology” for the commercial fabrication of ICs.* The “development”, “production,”

or subsequent use of the ICs described by this section does not change the classification of any underlying standard commercial process “software” or “technology” used to manufacture or test these ICs, provided all of the following apply:

(i) Any utilized existing commercial “software” or “technology” specified under ECCNs 3D991, 3D992, 3D993, 3E001, 3E991, 3E992, 3E993, 9D515.d, 9D515.e, 9E515.d or 9E515.e does not meet the “required” standard (as defined in part 772 of the EAR) of any other ECCN on the CCL; and

NOTE 1 TO PARAGRAPH (o)(2)(i): The use of existing commercial “software” or “technology” by or for the USG for the purposes described in paragraph (o)(1) of this section does not, in and of itself, establish the “required” standard to meet the specifications of any ECCN on the CCL.

(ii) The functional capability of the hardware, “software,” or “technology” existing within the standard commercial fabrication process has not been modified (*e.g.*, by addition of special process steps or unique interpretation of design data), except as may be required or requested by the USG (*e.g.*, as a stipulation of contract performance) where all of the following apply:

(A) The modifications do not change the ECCN of any item subject to the EAR (except to a less restrictive classification, *e.g.*, from an ECCN on the CCL to EAR99); and

(B) The modifications are limited to the manufacture or testing of ICs by or for the USG as specified in paragraph (o)(1) of this section.

(3) *Examples.* Scenarios addressed by this section include the following:

(i) If a commercially fabricated IC specified under ECCN 3A991 is tested by the USG (or by a person or entity in a contractual relationship with the USG) and meets the radiation-hardened parameters in ECCN 3A001.a.1, the classification of the IC does not change from ECCN 3A991 and the classifications of the underlying standard process “technology”, “equipment” and “software” do not change from their original ECCNs.

(ii) If a standard commercial process for fabricating ICs includes certain “technology” specified under ECCN 3E001 (*e.g.*, for ICs specified under ECCN 3A001.a.1), or ECCN 9E515 (*e.g.*,