

(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.

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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-diisopropylethylamine  
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-chloroethane  
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-diisopropylaminoethyl 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  
Ethyl dichlorophosphine
- (22) (C.A.S. #430-78-4) Ethylphosphonous difluoride  
Ethyl difluorophosphine
- (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  
Ethyl difluorophosphine 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-Hydroxy-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  
Methyl dichlorophosphine  
Methylphosphorus dichloride
- (29) (C.A.S. #753-59-3) Methylphosphonous difluoride  
Difluoromethylphosphine  
Methyl difluorophosphine
- (30) (C.A.S. #676-97-1) Methylphosphonyl dichloride  
Dichloromethylphosphine oxide  
Methanephosphonodichloridic acid  
Methanephosphonyl chloride  
Methylphosphonic acid dichloride  
Methylphosphonic dichloride

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- 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  
Phosphoroylchloride  
Phosphoroxylchloride  
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 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 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

(1) *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 regardless 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 in 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.