

SUBCHAPTER C—EXPORT ADMINISTRATION REGULATIONS

PART 730—GENERAL INFORMATION

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AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p.133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12867, 58 FR 51747, 3 CFR, 1993 Comp., p. 649; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

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

§ 730.1 What these regulations cover.

In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C. The EAR are issued by the United States Department of Commerce, Bureau of Export Administra-

tion (BXA) under laws relating to the control of certain exports, reexports, and activities. In addition, the EAR implement antiboycott law provisions requiring regulations to prohibit specified conduct by United States persons that has the effect of furthering or supporting boycotts fostered or imposed by a country against a country friendly to United States. Supplement No. 1 to part 730 lists the control numbers assigned to information collection requirements under the EAR by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995.

§ 730.2 Statutory authority.

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

§ 730.3 Dual use exports.

The convenient term *dual use* is sometimes used to distinguish the types of items covered by the EAR from those that are covered by the regulations of certain other U.S. government departments and agencies with export licensing responsibilities. In general, the term dual use serves to distinguish EAR-controlled items that can be used both in military and other strategic uses (e.g., nuclear) and commercial applications. In general, the term dual use serves to distinguish EAR-controlled items that can be used both in military and other strategic uses and in civil applications from

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those that are weapons and military related use or design and subject to the controls of the Department of State or subject to the nuclear related controls of the Department of Energy or the Nuclear Regulatory Commission. Note, however, that although the short-hand term dual use may be employed to refer to the entire scope of the EAR, the EAR also apply to some items that have solely civil uses.

§ 730.4 Other control agencies and departments.

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

§ 730.5 Coverage of more than exports.

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

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

(b) *Foreign products.* In some cases, authorization to export technology from the United States will be subject to assurances that items produced abroad that are the direct product of that technology will not be exported to

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certain destinations without authorization from BXA.

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

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

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

§ 730.6 Control purposes.

The export control provisions of the EAR are intended to serve the national security, foreign policy, nonproliferation, and short supply interests of the United States and, in some cases, to carry out its international obligations. Some controls are designed to restrict access to dual use items by countries or persons that might apply such items to uses inimical to U.S. interests. These include controls designed to stem the proliferation of weapons of mass destruction and controls designed to limit the military and terrorism support capability of certain countries. The effectiveness of many of the controls under the EAR is enhanced by their being maintained as part of multilateral control arrangements. Multilateral export control cooperation is sought through arrangements such as the Nuclear Suppliers Group, the Australia Group, and the Missile Technology Control Regime. The EAR also include some export controls to protect

the United States from the adverse impact of the unrestricted export of commodities in short supply.

§ 730.7 License requirements and exceptions.

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

§ 730.8 How to proceed and where to get help.

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

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

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

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

items subject to the EAR unless otherwise indicated.

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

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

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

(iii) A license is required for virtually all exports to embargoed destinations, such as Cuba. Part 746 of the EAR describes all the licensing requirements, license review policies and License Exceptions that apply to such destinations. If your transaction involves one of these countries, you should first look at this part. This part also describes controls that may be maintained under the EAR to implement UN sanctions.

(iv) In addition, under §§ 736.2(b)(9) and (10) of the EAR, you may not engage in a transaction knowing a violation is about to occur or violate any orders, terms, and conditions under the

EAR. Part 764 of the EAR describes prohibited transactions with a person denied export privileges or activity that violates the terms or conditions of a denial order.

(5) *How do you file a license application and what will happen to the application once you do file it? What if you need authorization for multiple transactions?* Parts 748 and 750 of the EAR provide information on license submission and processing. Part 752 of the EAR provides for a Special Comprehensive License that authorizes multiple transactions. If your application is denied, part 756 of the EAR provides rules for filing appeals.

(6) *How do you clear shipments with the U.S. Customs Service?* Part 758 of the EAR describes the requirements for clearance of exports.

(7) *Where do you find the rules on restrictive trade practices and boycotts?* Part 760 of the EAR deals with restrictive trade practices and boycotts.

(8) *Where are the rules on record-keeping and enforcement?* Part 762 of the EAR sets out your recordkeeping requirements, and parts 764 and 766 of the EAR deal with violations and enforcement proceedings.

(9) *What is the effect of foreign availability?* Part 768 of the EAR provides rules for determining foreign availability of items subject to controls.

(10) *Do the EAR provide definitions and interpretations?* Part 770 of the EAR contains interpretations and part 772 of the EAR lists definitions used.

(b) *Why the EAR are so detailed.* Some people will find the great length of the EAR and their extensive use of technical terms intimidating. BXA believes, however, that such detail and precision can and does serve the interests of the public. The detailed listing of technical parameters in the CCL establishes precise, objective criteria. This should, in most cases, enable you to ascertain the appropriate control status. Broader, more subjective criteria would leave exporters and re-exporters more dependent upon interpretations and rulings by BXA officials. Moreover, much of the detail in the CCL is derived from multilaterally adopted lists, and the specificity serves to enhance the uniformity and effectiveness of international control prac-

tices and to promote a "level playing field". The detailed presentation of such elements as licensing and export clearance procedures enables you to find in one place what you need to know to comply with pertinent requirements. Of special importance is the detailed listing of License Exception criteria, as these will enable you to determine quickly, and with confidence, that you may proceed with a transaction without delay. Finally, some of the detail results from the need to draft the EAR with care in order to avoid loop-holes and to permit effective enforcement.

(c) *Where to get help.* Throughout the EAR you will find information on offices you can contact for various purposes and types of information. General information including; assistance in understanding the EAR, information on how to obtain forms, electronic services, publications, and information on training programs offered by BXA, is available from the Office of Exporter Services at the following locations:

Exporter Counselling Division, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Room H1099D, Washington, D.C., 20230, Telephone number: (202) 482-4811, Facsimile number: (202) 482-3617

and

Western Regional Office, U.S. Department of Commerce, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660, Telephone number: (714) 660-0144, Facsimile number: (714) 660-9347

and

Santa Clara Branch Office, U.S. Department of Commerce, 5201 Great America Parkway, Suite 333, Santa Clara, California 95054, Telephone number: (408) 748-7450, Facsimile number: (408) 748-7470.

§ 730.9 How the Bureau of Export Administration is organized.

Functionally, the Bureau of Export Administration is divided into two branches, Export Administration and Export Enforcement. Also, BXA manages a number of Technical Advisory Committees consisting of industry and government representatives which advise and assist BXA and other agencies with respect to actions designed to implement the EAR.

(a) *Export Administration.* Export Administration implements and administers the export controls reflected in

the EAR. Export Administration consists of five offices located in Washington D.C. and two field offices in California under the supervision of the Assistant Secretary for Export Administration:

(1) The Office of Nuclear and Missile Technology Controls is responsible for policy and technical issues and license applications related to the Nuclear Suppliers Group and the Missile Technology Control Regime. This office has responsibility for items associated with those regimes, and missile and nuclear related exports and reexports subject to the Enhanced Proliferation Control Initiative.

(2) The Office Chemical/Biological Controls and Treaty Compliance is responsible for implementing multilateral export controls under the Australia Group. This office has licensing responsibility for items associated with the Australia Group and related exports and reexports subject to the Enhanced Proliferation Control Initiative.

(3) The Office of Strategic Trade and Foreign Policy Controls is responsible for implementing multilateral export controls dealing with conventional arms and related dual use items. This office is also responsible for computer export control policies, and implements U.S. foreign policy controls (e.g., crime control, anti-terrorism, and regional stability). It also has licensing responsibility for items controlled for national security and foreign policy reasons.

(4) The Office of Exporter Services is responsible for the Special Comprehensive License, processing and routing all license applications, and preparing responses to requests for advisory opinions and commodity classifications. This office also provides counselling to exporters and reexporters, conducts educational seminars for the business community, maintains the Export Administration Regulations, and coordinates the operations of two field offices listed in § 730.8(c) of this part.

(5) The Office of Strategic Industries and Economic Security implements programs to ensure the continued health of the U.S. defense industrial base, facilitating diversification of U.S. defense related industries into civilian

markets, and promoting the conversion of military enterprises. This office is also responsible for analyzing the economic impact of U.S. export controls on industrial competitiveness.

(b) *Export Enforcement.* Export Enforcement implements the enforcement provisions of the EAR, including part 760 of the EAR (Restrictive Trade Practices and Boycotts). This office also conducts outreach programs to assist members of the public in understanding their obligation under EAR. The Office of Export Enforcement is organized into three offices under the supervision of the Assistant Secretary for Export Enforcement.

(1) The Office of Export Enforcement (OEE) is comprised of an office in Washington, D.C. and eight field offices. OEE is staffed with criminal investigators and analysts. This office investigates allegations of violations and supports administrative and criminal enforcement proceedings. The addresses and telephone numbers of the eight field offices are listed in § 764.5(c)(7) of the EAR.

(2) The Office of Enforcement Support (OES) is located in Washington, D.C. OES supports BXA's preventive enforcement efforts, including conducting pre-license checks and post-shipment verifications. OES also provides administrative and analytical support for OEE.

(3) The Office of Antiboycott Compliance administers and enforces the provisions of part 760 of the EAR (Restrictive Trade Practices and Boycotts). It investigates and prepares cases on alleged violations of this part.

(c) *Technical Advisory Committees.* (1) The Technical Advisory Committees (TACs) provide advice and assistance to BXA from U.S. industry regarding the creation and implementation of export controls. For further information regarding establishment of TACs and other information, see Supplement No. 2 to part 730. Existing TACs include the following:

- (i) The Information Systems TAC;
- (ii) The Materials TAC;
- (iii) The Materials Processing Equipment TAC;
- (iv) The Regulations and Procedures TAC;

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(v) The Sensors and Instrumentation TAC; and

(vi) The Transportation and Related Equipment TAC.

(2) *For more information.* For information on attending a TAC meeting or on becoming a TAC member, please contact Ms. Lee Ann Carpenter, Director, TAC Unit, OAS-EA/BXA, Room 3886C, U.S. Department of Commerce, Washington, DC 20230; Telephone number: (202) 482-2583. FAX number: (202) 501-8024.

[61 FR 12734, Mar. 25, 1996, as amended at 62 FR 25452, May 9, 1997]

§ 730.10 **Advisory information.**

The general information in this part is just that—general. To achieve brevity, so as to give you a quick overview, the information in this part is selective, incomplete, and not expressed with regulatory precision. The controlling language is the language of succeeding parts of the EAR and of any other laws or regulations referred to or applicable. The content of this part is not to be construed as modifying or interpreting any other language or as in any way, limiting the authority of BXA, any of its components or any other government department or agency. You should not take any action based solely on what you read in this part.

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

This supplement lists the control numbers assigned to the information collection requirements for the Bureau of Export Administration by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995. This supplement complies with the requirements of section 3506(c)(1)(B)(i) of the Paperwork Reduction Act requiring agencies to display current control numbers assigned by the Director of OMB for each agency information collection requirement.

Current OMB control No.	15 CFR part or section where collections of information are identified or described
0694-0001	§ 748.12(d) of the EAR.
0694-0004	Part 768 of the EAR.
0694-0008	§ 748.13, Supplement No. 5 to part 748 of the EAR.
0694-0009	§ 748.10(e) of the EAR.
0694-0012	Part 760 and § 762.2(b) of the EAR.

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Current OMB control No.	15 CFR part or section where collections of information are identified or described
0694-0013	Part 774 of the EAR.
0694-0015	§ 773.3 of the EAR.
0694-0016	§§ 748.13 and 762.2(b) of the EAR.
0694-0017	§ 748.10 of the EAR.
0694-0021	§§ 748.11 and 762.2(b) of the EAR.
0694-0023	§§ 740.3(d) and 740.4(c) of the EAR.
0694-0025	§§ 754.4 and 762.2(b) of the EAR.
0694-0026	§ 754.3 of the EAR.
0694-0027	§ 754.2 of the EAR.
0694-0029	§ 740.4(a) of the EAR.
0694-0030	Supplement No. 2 to part 748, paragraph (p) of the EAR.
0694-0031	§ 750.9 of the EAR.
0694-0032	§ 748.4(d)(2) of the EAR.
0694-0033	§§ 740.7(b) and 762.2(b) of the EAR.
0694-0038	§ 758.6(e)(2) of the EAR.
0694-0040	§§ 758.5(c)(2) and 758.8 of the EAR.
0694-0047	Supplement No. 2 to part 748, paragraph (o)(2) of the EAR.
0694-0048	§ 748.3 of the EAR.
0694-0050	§ 752.5(c)(5) of the EAR.
0694-0051	§ 750.10 of the EAR.
0694-0058	§§ 762.2(b) and 764.5 of the EAR.
0694-0064	§§ 748.9 and 762.2(b) of the EAR.
0694-0065	§ 754.4(c) of the EAR of the EAR.
0694-0073	§ 742.12, Supplement No. 3 to part 742, and § 762.2(b) of the EAR.
0694-0078	Supplement No. 1 to part 774 of the EAR.
0694-0086	Supplement No. 1 to part 774 of the EAR.
0694-0088	Parts 746, 748, and 752; § 762.2(b) of the EAR.
0694-0089	Part 752 and § 762.2(b) of the EAR.
0694-0093	§§ 748.10 and 762.2(b) of the EAR.
0694-0094	Part 758 of the EAR of the EAR.
0694-0095	§§ 740.7(a)(3)(ii) and 758.1(d) of the EAR.
0694-0096	Part 760, § 762.6(a) of the EAR.
0694-0097	§§ 752.15(b), 758.6, and 762.2(b) of the EAR.
0694-0102	§§ 754.6 and 754.7 of the EAR.
0694-0101	§ 734.4 of the EAR.
0694-0100	Supplement No. 1 to part 730.
0607-0001	§ 758.2(m) of the EAR.
0607-0018	§§ 740.1(d), 740.3(a)(3), 752.7(b), § 752.15(a) of the EAR, § 754.2(h) and (i), 754.4(c) 758.1, § 758.2(m) and 758.3 of the EAR.
0607-0152	§§ 740.1(d), 740.3(a)(3), 752.7(b), § 752.15(a) of the EAR, § 754.2(h) and (i), 754.4(c), 758.1, § 758.2(m), and 758.3 of the EAR.

SUPPLEMENT NO. 2 TO PART 730—TECHNICAL ADVISORY COMMITTEES

(a) *Purpose.* The purpose of this supplement is to describe the procedures and criteria for the establishment and operation of Technical Advisory Committees.

(b) *Technical advisory committees.* Any producer of articles, materials, or supplies, including technology, software, and other information, that are subject to export controls, or are being considered for such controls because of their significance to the national security of the United States, may request the Secretary of Commerce to establish a technical advisory committee, under the provisions of section 5(h) of the Export Administration Act of 1979, as amended (EAA) to advise and assist the Department of

Commerce and other appropriate U.S. Government agencies or officials with respect to questions involving technical matters; worldwide availability and actual utilization of production technology; licensing procedures that affect the level of export controls applicable to a clearly defined grouping of articles, materials, or supplies, including technology, software, or other information; and exports and reexports subject to all controls that the United States maintains including proposed revisions of any such controls. If producers of articles, materials, or supplies, including technology, software, and other information, that are subject to export controls because of their significance to the national security of the United States, wish a trade association or other representative to submit a written request on their behalf for the appointment to a TAC, such request shall be submitted in accordance with paragraph (b)(4) of this supplement.

(1) *Form and substance of requests.* Each request for the appointment of a TAC shall be submitted in writing to: Assistant Secretary for Export Administration, P.O. Box 273, Washington, DC 20044.

The request shall include:

(i) A description of the articles, materials, or supplies including technology and software, in terms of a clear, cohesive grouping (citing the applicable Export Control Classification Numbers where practical);

(ii) A statement of the reasons for requesting the appointment of a TAC; and

(iii) Any information in support of any contention that may be made that the request meets the criteria described in paragraph (b)(2) of this supplement.

(2) *Consideration of request for establishment of a TAC.* The Department of Commerce will review all requests for the establishment of a TAC to determine if the following criteria are met:

(i) That a substantial segment of the industry producing the specified articles, materials, or supplies including technology desires such a committee; and

(ii) That the evaluation of such articles, materials, or supplies including technology and software for export control purposes is difficult because of questions involving technical matters, worldwide availability and actual utilization of production and software technology, or licensing procedures.

(3) *Requests by a substantial segment of an industry.* In determining whether or not a substantial segment of any industry has requested the appointment of a TAC, the Department of Commerce will consider:

(i) The number of persons or firms requesting the establishment of a TAC for a particular grouping of commodities, software and technology in relation to the total number of U.S. producers of such items; and

(ii) The volume of annual production by such persons or firms of each item in the

grouping in relation to the total U.S. production. Generally, a substantial segment of an industry (for purposes of this supplement) shall consist of:

(A) Not less than 30 percent of the total number of U.S. producers of the items concerned; or

(B) Three or more U.S. producers who produce a combined total of not less than 30 percent of the total U.S. annual production, by dollar value of the items concerned; or

(C) Not less than 20 percent of the total number of U.S. producers of the items concerned, provided that the total of their annual production thereof is not less than 20 percent of the total U.S. annual production, by dollar value.

(iii) If it is determined that a substantial segment of the industry concerned has requested the establishment of a TAC concerning a specific grouping of items that the Department of Commerce determines difficult to evaluate for export control purposes, BXA will establish and use the TAC requested.

(4) *Requests from trade associations or other representatives.* Requests from trade associations or other representatives of U.S. producers for the establishment of a TAC must comply with the provisions of paragraphs (b)(1) through (3) of this supplement. In addition, in order to assist BXA in determining whether the criteria described in paragraph (b)(3) of this supplement have been met, a trade association or other representative submitting a request for the establishment of a TAC should include the following information:

(i) The total number of firms in the particular industry;

(ii) The total number of firms in the industry that have authorized the trade association or other representative to act in their behalf in this matter;

(iii) The approximate amount of total U.S. annual production by dollar value of the items concerned produced by those firms that have authorized the trade association or other representative to act in their behalf; and

(iv) A description of the method by which authorization to act on behalf of these producers was obtained.

(5) *Nominations for membership on TACs.* When the Department of Commerce determines that the establishment of a TAC is warranted, it will request nominations for membership on the committee among the producers of the items and from any other sources that may be able to suggest well-qualified nominees.

(6) *Selection of industry members of committee.* Industry members of a TAC will be selected by the Department of Commerce from a list of the nominees who have indicated

their availability for service on the committee. To the extent feasible, the Department of Commerce will select a committee balanced to represent all significant facets of the industry involved, taking into consideration such factors as the size of the firms, their geographical distribution, and their product lines. No industry representative shall serve on a TAC for more than four consecutive years. The membership of a member who is absent from four consecutive meetings shall be terminated.

(7) *Government members.* Government members of a TAC will be selected by the Department of Commerce from the agencies having an interest in the subject matter concerned.

(8) *Invitation to serve on committee.* Invitations to serve on a TAC will be sent by letter to the selected nominees.

(9) *Election of Chair.* The Chair of each TAC shall be elected by a vote of the majority of the members of the committee present and voting.

(c) *Charter.* (1) No TAC established pursuant to this supplement shall meet or take any action until an advisory committee charter has been filed with the Assistant Secretary for Export Administration of the Department of Commerce and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction over the Department. Such charter shall contain the following information:

- (i) The committee's official designation;
- (ii) The committee's objectives and the scope of its activities;
- (iii) The period of time necessary for the committee to carry out its purposes;
- (iv) The agency or official to whom the committee reports;
- (v) The agency responsible for providing the necessary support for the committee;
- (vi) A description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;
- (vii) The estimated annual operating costs in dollars and years for such committee;
- (viii) The estimated number and frequency of committee meetings;
- (ix) The committee's termination date, if less than two years from the date of the committee's establishment; and
- (x) The date the charter is filed.

(d) *Meetings.* (1) Each TAC established under the provisions of the EAA and paragraph (b) of this supplement shall meet at least once every three months at the call of its Chair unless it is specifically determined by the Chair, in consultation with other members of the committee, that a particular meeting is not necessary.

(2) No TAC may meet except at the call of its Chair.

(3) Each meeting of a TAC shall be conducted in accordance with an agenda ap-

proved by a designated Federal government employee.

(4) No TAC shall conduct a meeting in the absence of a designated Federal government employee who shall be authorized to adjourn any advisory committee meeting, whenever the Federal government employee determines adjournment to be in the public interest.

(e) *Public notice.* Notice to the public of each meeting of a TAC will be issued at least 20 days in advance and will be published in the FEDERAL REGISTER. The notice will include the time and place of the meeting and the agenda.

(f) *Public attendance and participation.* (1) Any member of the public who wishes to do so may file a written statement with any TAC before or after any meeting of a committee.

(2) A request for an opportunity to deliver an oral statement relevant to matters on the agenda of a meeting of a TAC will be granted to the extent that the time available for the meeting permits. A committee may establish procedures requiring such persons to obtain advance approval for such participation.

(3) Attendance at meetings of TACs will be open to the public unless it is determined pursuant to section 10(d) of the Federal Advisory Committee Act to be necessary to close all, or some portion, of the meeting to the public. A determination that a meeting or portion thereof be closed to the public may be made if all or a specific portion of a meeting of a TAC is concerned with matters described in section 552(b) of Title 5, U.S.C.

(4) Participation by members of the public in open TAC meetings or questioning of committee members or other participants shall not be permitted except in accordance with procedures established by the committee.

(5) Every effort will be made to accommodate all members of the public who wish to attend.

(g) *Minutes.* (1) Detailed minutes of each meeting of each TAC will be kept and will contain a record of the persons present, a complete and accurate description of the matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the TAC.

(2) The accuracy of all the minutes will be certified to by the TAC Chair.

(h) *Records.* (1) Subject to section 552 of Title 5, U.S.C. and Department of Commerce Administrative Order 205-12, "Public Information," and "Public Information" regulations issued by the Department of Commerce that are contained in 15 CFR part 4, Subtitle A, the records, reports, transcripts, minutes, appendices, working papers, draft, studies, agenda, or other documents that were made available to or prepared for or by each TAC will be available for public inspection and copying.

(2) Each TAC will prepare once each year a report describing its membership, functions, activities, and such related matters as would be informative to the public consistent with the policy of section 552(b) of Title 5, U.S.C.

(3)(i) Requests for records should be addressed to: Bureau of Export Administration, Freedom of Information, Records Inspection Facility, U.S. Department of Commerce, Room 4513, Washington, DC 20230, Telephone (202) 482-2593.

(ii) Rules concerning the use of the Records Inspection Facility are contained in 15 CFR part 4, Subtitle A, or may be obtained from this facility.

(i) *Compensation.* If the Department of Commerce deems it appropriate, a member of a TAC may be reimbursed for travel, subsistence, and other necessary expenses incurred in connection with the member's duties.

(j) *Scope of advisory committee functions.* All TACs are limited to the functions described in their charters.

(k) *Duration of committees.* Each TAC will terminate at the end of two years from the date the committee was established or two years from the effective date of its most recent extension, whichever is later. Committees may be continued only for successive two-year periods by appropriate action taken by the authorized officer of the Department of Commerce prior to the date on which such advisory committee would otherwise terminate. TACs may be extended or terminated only after consultation with the committee.

(l) *Miscellaneous.* (1) TACs established in accordance with paragraph (b) of this supplement must conform to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), Office of Management and Budget Circular A-63 (Revision of March 1974), "Advisory Committee Management," Department of Commerce Administrative Order 205-12, "Public Information," the applicable provisions of the EAA, and any other applicable Department of Commerce regulations or procedures affecting the establishment or operation of advisory committees.

(2) Whenever the Department of Commerce desires the advice or assistance of a particular segment of an industry with respect to any export control problem for which the service of a TAC, as described in paragraph (b) of this supplement is either unavailable or impracticable, an advisory committee may be established pursuant to the provisions of section 9 of the Federal Advisory Committee Act. Such committees will be subject to the requirements of the Federal Advisory Committee Act, OMB Circular A-63 (Revision of March 1974), "Advisory Committee Management," Department of Commerce Administrative Order 205-12, "Public Information," and any other applicable Department of Commerce regulations or proce-

dures affecting the establishment or operation of advisory committees.

(3) Nothing in the provisions of this supplement shall be construed to restrict in any manner the right of any person or firm to discuss any export control matter with the Department of Commerce or to offer advice or information on export control matters. Similarly, nothing in these provisions shall be construed to restrict the Department of Commerce in consulting any person or firm relative to any export control matter.

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

NOTE: The departments and agencies identified with an asterisk control exports for foreign policy or national security reasons and, in certain cases, such controls may overlap with the controls described in the EAR (see part 734 of the EAR).

Defense Services and Defense Articles

*Department of State, Office of Defense Trade Controls, Tel. (703) 875-6644, Fax: (703) 875-6647.
22 CFR parts 120 through 130.

Drugs, Chemicals and Precursors

Drug Enforcement Administration, International Chemical Control Unit, Tel. (202) 307-7202, Fax: (202) 307-8570.

21 CFR parts 1311 through 1313.
Controlled Substances: Drug Enforcement Administration, International Drug Unit, Tel. (202) 307-2414, Fax: (202) 307-8570.
21 CFR 1311 through 1313.

Drugs and Biologics: Food and Drug Administration, Import/Export, Tel. (301) 594-3150, Fax: (301) 594-0165.
21 U.S.C. 301 *et seq.*

Investigational drugs permitted: Food and Drug Administration, International Affairs, Tel. (301) 443-4480, Fax: (301) 443-0235.
21 CFR 312.1106.

Fish and Wildlife Controls; Endangered Species

Department of the Interior, Chief Office of Management Authority, Tel. (703) 358-2093, Fax: (703) 358-2280.
50 CFR 17.21, 17.22, 17.31, 17.32.

Foreign Assets and Transactions Controls

*Department of Treasury, Office of Foreign Assets Control, Licensing, Tel. (202) 622-2480, Fax: (202) 622-1657.
31 CFR parts 500 through 590.

Medical Devices

Food and Drug Administration, Office of Compliance, Tel. (301) 594-4699, Fax: (301) 594-4715.

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21 U.S.C. 301 *et seq.*

Natural Gas and Electric Power

Department of Energy, Office of Fuels Programs, Tel. (202) 586-9482, Fax: (202) 586-6050.

10 CFR 205.300 through 205.379 and part 590.

Nuclear Materials and Equipment

*Nuclear Regulatory Commission, Office of International Programs, Tel. (301) 415-2344, Fax: (301) 415-2395.
10 CFR part 110.

Nuclear Technology; Technical Data for Nuclear Weapons/Special Nuclear Materials

*Department of Energy, Office of Arms Control and Non Proliferation, Export Control Division, Tel. (202) 586-2112, Fax: (202) 586-6977.

10 CFR part 810.

Ocean Freight Forwarders

Federal Maritime Commission, Office of Freight Forwarders, Tel. (202) 523-5843, Fax: (202) 523-5830.
46 CFR part 510.

Patent Filing Data Sent Abroad

*Department of Commerce, Patent and Trademark Office, Licensing and Review; Tel. (703) 308-1722, Fax: (703) 305-3603, 3604.
37 CFR part 5.

U.S. Flagged or U.S. Manufactured Vessels Over 1,000 Gross Tons

U.S. Maritime Administration, Division of Vessel Transfer and Disposal, Tel. (202) 366-5821, Fax: (202) 366-3889.
46 CFR part 221.

[61 FR 12734, Mar. 25, 1996, as amended at 65 FR 38149, June 19, 2000]

PART 732—STEPS FOR USING THE EAR

Sec.

732.1 Steps overview.

732.2 Steps regarding scope of the EAR.

732.3 Steps regarding the ten general prohibitions.

732.4 Steps regarding License Exceptions.

732.5 Steps regarding Shipper's Export Declaration, Destination Control Statements, and recordkeeping.

732.6 Steps for other requirements.

SUPPLEMENT NO. 1 TO PART 732—DECISION TREE

SUPPLEMENT NO. 2 TO PART 732—AM I SUBJECT TO THE EAR?

SUPPLEMENT NO. 3 TO PART 732—BXA'S "KNOW YOUR CUSTOMER" GUIDANCE AND RED FLAGS

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

SOURCE: 61 FR 12740, Mar. 25, 1996, unless otherwise noted.

§ 732.1 Steps overview.

(a)(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part is intended to help you determine your obligations under the EAR by listing logical steps in §732.2 through §732.5 of this part that you can take in reviewing these regulations. A flow chart describing these steps is contained in Supplement No. 1 to part 732. By cross-references to the relevant provisions of the EAR, this part describes the suggested steps for you to determine applicability of the following:

(i) The scope of the EAR (part 734 of the EAR);

(ii) Each of the general prohibitions (part 736 of the EAR);

(iii) The License Exceptions (part 740 of the EAR); and

(iv) Other requirements such as clearing your export with the U.S. Customs Service, keeping records, and completing and documenting license applications.

(2) These steps describe the organization of the EAR, the relationship among the provisions of the EAR, and the appropriate order for you to consider the various provisions of the EAR.

(b) *Facts about your transaction.* The following five types of facts determine your obligations under the EAR and will be of help to you in reviewing these steps:

(1) *What is it?* What an item is, for export control purposes, depends on its *classification*, which is its place on the Commerce Control List (see part 774 of the EAR).

(2) *Where is it going?* The *country of ultimate destination* for an export or re-export also determines licensing requirements (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List).

(3) *Who will receive it?* The *ultimate end-user* of your item cannot be a bad end-user. See General Prohibition Four (Denial Orders) in §736.2(b)(4) and parts