

upon the *de minimis* exclusion from the commingled rule only to the extent you have reported the relevant calculations, values, assumptions, and the basis or methodologies for the calculations. These values may be historic or projected. You may rely on projected values only to the extent that and for so long as they remain consistent with your report or future values reduce the U.S.-content under your reported assumptions, basis, and methodologies. You are not required to file the above report if you do not choose to take advantage of the *de minimis* exclusion from the commingled rule.

(2) *Export price.* The report must include a description of the U.S.-content including its classification on the Commerce Control List, its performance characteristics and features, and the method of calculating its fair market value. The fair market value shall be the arms-length transaction price, if it is available. If an arms-length transaction price is unavailable, then the report will describe the valuation method chosen to calculate or derive the fair market value. Such methods may include comparable market prices or costs of production and distribution. This rule does not require calculations based upon any one accounting system or U.S. accounting standards. However, you must specify the accepted accounting standards you have chosen, and cost-based methods of valuation must be based upon records you maintain in the normal course of business. You should also indicate whether reported values are actual arms-length market prices or derived from comparable transactions or costs of production, overhead, and profit. For example, if you chose to make calculations under the transfer pricing rules of the United States Internal Revenue Code at section 482, your report should indicate that this is the source for your methodology, and you should also indicate which of the several methodologies in these transfer pricing rules you have chosen.

(3) *Future software sales.* For calculations of U.S.-content in foreign software, you shall include your historic and estimated future software sales in units and value along with the rationale and basis for those estimates in the report. Unlike parts incorporated into commodities, the cost of U.S. software code will be attributed or allocated to the future sales of foreign-made software incorporating the U.S. code, to determine the percentage of U.S. controlled content. In making this calculation for foreign-made software, you must make an estimate of future software sales of that foreign software if it is commingled with or incorporated with the U.S. code. The value of the U.S. code commingled with or incorporated into the foreign made software shall be divided by the total selling price of all foreign-made software units already sold, plus the total selling price of all foreign-

made software units estimated for future sales.

(4) *Foreign technology and software.* For calculations of U.S.-content in foreign technology and software, you shall include in the report a description of the foreign technology or software and a description of its fair market value along with the rationale and basis for the selection and valuation of such foreign software or technology. The report does not require information regarding destinations and end users for reexport. The purpose of the report is solely to permit the U.S. Government to evaluate the reasonableness of U.S.-content calculations.

(5) *Report and wait.* If you have not been contacted by BXA concerning your report within thirty days after filing the report with BXA, you may rely upon the calculations in your report and the *de minimis* exclusions for software and technology for so long as you are not contacted by BXA. BXA may contact you concerning your report to inquire of you further or to indicate that BXA does not accept the assumptions or rationale for your calculations. If you receive such a contact or communication from BXA, you may not rely upon the *de minimis* exclusions for software and technology in § 734.4 of this part until BXA has indicated whether or not you may do so in the future. You must include in your report the name, title, address, telephone number, and facsimile number of the person BXA may contact concerning your report.

[61 FR 12746, Mar. 25, 1996, as amended at 62 FR 25456, May 9, 1997]

PART 736—GENERAL PROHIBITIONS

Sec.

736.1 Introduction.

736.2 General prohibitions and determination of applicability.

SUPPLEMENT NO. 1 TO PART 736—GENERAL ORDERS

SUPPLEMENT NO. 2 TO PART 736—ADMINISTRATIVE ORDERS

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp. p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp. p. 228; E.O. 13222, 66 FR 44025, August 22, 2001; Notice of November 9, 2000, 65 FR 68063, 3 CFR, 2000 Comp. p. 408.

§ 736.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. A person may undertake transactions subject to the EAR without a license or other authorization, unless the regulations affirmatively

state such a requirement. As such, if an export, reexport, or activity is subject to the EAR, the general prohibitions contained in this part and the License Exceptions specified in part 740 of the EAR must be reviewed to determine if a license is necessary. In the case of all exports from the United States, you must document your export as described in part 762 of the EAR regarding recordkeeping and clear your export through the U.S. Customs Service as described in part 758 of the EAR regarding export clearance requirements. Also note that for short supply controls all prohibitions and License Exceptions are in part 754 of the EAR.

(a) In this part we tell you:

(1) The facts that make your proposed export, reexport, or conduct subject to these general prohibitions, and

(2) The ten general prohibitions.

(b) Your obligations under the ten general prohibitions and under the EAR depend in large part upon the five types of information described in § 736.2(a) of this part and upon the general prohibitions described in § 736.2(b) of this part. The ten general prohibitions contain cross-references to other parts of the EAR that further define the breadth of the general prohibitions. For that reason, this part is not free-standing. In part 732, we provide certain steps you may follow in proper order to help you understand the general prohibitions and their relationship to other parts of the EAR.

(c) If you violate any of these ten general prohibitions, or engage in other conduct contrary to the Export Administration Act, the EAR, or any order, license, License Exception, or authorization issued thereunder, as described in part 764 of the EAR regarding enforcement, you will be subject to the sanctions described in that part.

§ 736.2 General prohibitions and determination of applicability.

(a) *Information or facts that determine the applicability of the general prohibitions.* The following five types of facts determine your obligations under the ten general prohibitions and the EAR generally:

(1) *Classification of the item.* The classification of the item on the Commerce Control List (see part 774 of the EAR);

(2) *Destination.* The country of ultimate destination for an export or reexport (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List);

(3) *End-user.* The ultimate end-user (see General Prohibition Four (paragraph (b)(4) of this section) and parts 744 and 764 of the EAR for a reference to the list of persons you may not deal with);

(4) *End-use.* The ultimate end-use (see General Prohibition Five (paragraph (b)(5) of this section) and part 744 of the EAR for general end-use restrictions); and

(5) *Conduct.* Conduct such as contracting, financing, and freight forwarding in support of a proliferation project as described in part 744 of the EAR.

(b) *General prohibitions.* The following ten general prohibitions describe certain exports, reexports, and other conduct, subject to the scope of the EAR, in which you may not engage unless you either have a license from the Bureau of Export Administration (BXA) or qualify under part 740 of the EAR for a License Exception from each applicable general prohibition in this paragraph. The License Exceptions at part 740 of the EAR apply only to General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports); however, selected License Exceptions are specifically referenced and authorized in part 746 of the EAR concerning embargo destinations and in § 744.2(c) of the EAR regarding nuclear end-uses.

(1) *General Prohibition One—Export and reexport of controlled items to listed countries (Exports and Reexports).* You may not, without a license or License Exception, export any item subject to the EAR to another country or reexport any item of U.S.-origin if each of the following is true:

(i) The item is controlled for a reason indicated in the applicable Export Control Classification Number (ECCN), and

(ii) Export to the country of destination requires a license for the control reason as indicated on the Country Chart at part 738 of the EAR. (The scope of this prohibition is determined

by the correct classification of your item and the ultimate destination as that combination is reflected on the Country Chart.)¹ Note that each License Exception described at part 740 of the EAR supersedes General Prohibition One if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(2) *General Prohibition Two—Reexport and export from abroad of foreign-made items incorporating more than a de minimis amount of controlled U.S. content (Parts and Components Reexports).* (i) You may not, without a license or License Exception, export, reexport or export from abroad any foreign-made commodity, software, or technology incorporating U.S.-origin commodities, software, or technology respectively that is controlled to the country of ultimate destination if the foreign-made item meets all three of the following conditions:

(A) It incorporates more than the *de minimis* amount of controlled U.S. content, as defined in § 734.4 of the EAR concerning the scope of the EAR;

(B) It is controlled for a reason indicated in the applicable ECCN; and

(C) Its export to the country of destination requires a license for that control reason as indicated on the Country Chart. (The scope of this prohibition is determined by the correct classification of your foreign-made item and the ultimate destination, as that combination is reflected on the Country Chart.)

(ii) Each License Exception described in part 740 of the EAR supersedes General Prohibition Two if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(3) *General Prohibition Three—Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software (Foreign-Produced Direct Product Reexports).* (i) *Country scope of prohibition.* You may not export, reexport, or export from abroad items subject to the scope of this General Prohibition Three to Cuba, Libya, or a destination in Country Group D:1

(See Supplement No. 1 to part 740 of the EAR).

(ii) *Product scope of foreign-made items subject to prohibition.* This General Prohibition 3 applies if an item meets either the Conditions defining the direct product of technology or the Conditions defining the direct product of a plant in paragraph (b)(3)(ii)(A) of this section:

(A) *Conditions defining direct product of technology.* Foreign-made items are subject to this General Prohibition 3 if they meet both of the following conditions:

(1) They are the direct product of technology or software that requires a written assurance as a supporting document for a license, as defined in paragraph (o)(3)(i) of Supplement No. 2 to part 748 of the EAR, or as a precondition for the use of License Exception TSR at § 740.6 of the EAR, and

(2) They are subject to national security controls as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR.

(B) *Conditions defining direct product of a plant.* Foreign-made items are also subject to this General Prohibition 3 if they are the direct product of a complete plant or any major component of a plant if both of the following conditions are met:

(1) Such plant or component is the direct product of technology that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR in § 740.6 of the EAR, and

(2) Such foreign-made direct products of the plant or component are subject to national security controls as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR.

(iii) *License Exceptions.* Each License Exception described at part 740 of the EAR supersedes this General Prohibition Three if all terms and conditions of a given exception are met by the exporter or reexporter.

(4) *General Prohibition Four (Denial Orders)—Engaging in actions prohibited by a denial order.* (i) You may not take any action that is prohibited by a denial order issued under part 766 of the EAR, Administrative Enforcement Proceedings. These orders prohibit many

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

actions in addition to direct exports by the person denied export privileges, including some transfers within a single country either in the United States or abroad by other persons. You are responsible for ensuring that any of your transactions in which a person who is denied export privileges is involved do not violate the terms of the order. The names of persons denied export privileges are published in the FEDERAL REGISTER and are also included on the Denied Persons List, which is referenced in Supplement No. 2 to part 764 of the EAR, Enforcement. The terms of the standard denial order are set forth in Supplement No. 1 to part 764. You should note that some denial orders differ from the standard denial order. BXA may, on an exceptional basis, authorize activity otherwise prohibited by a denial order. See § 764.3(a)(3) of the EAR.

(ii) There are no License Exceptions described in part 740 of the EAR that authorize conduct prohibited by this General Prohibition Four.

(5) *General Prohibition Five—Export or reexport to prohibited end-uses or end-users (End-Use End-User)*. You may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.

(6) *General Prohibition Six—Export or reexport to embargoed destinations (Embargo)*. (i) You may not, without a license or License Exception authorized under part 746, export or reexport any item subject to the EAR to a country that is embargoed by the United States or otherwise made subject to controls as both are described at part 746 of the EAR.

(ii) License Exceptions to General Prohibition Six are described in part 746 of the EAR, on Embargoes and Other Special Controls. Unless a License Exception or other authorization is authorized in part 746 of the EAR, the License Exceptions described in part 740 of the EAR are not available to overcome this general prohibition.

(7) *General Prohibition Seven—Support of proliferation activities (U.S. person proliferation activity)*—(i) *Support of proliferation activities (U.S. person proliferation activity)*. (A) If you are a U.S. person as that term is defined in § 744.6(c)

of the EAR, you may not engage in any activities prohibited by § 744.6(a) or (b) of the EAR, which prohibits the performance, without a license from BXA, of certain financing, contracting, service, support, transportation, freight forwarding, or employment that you know will assist in certain proliferation activities described further in part 744 of the EAR. There are no License Exceptions to this General Prohibition Seven in part 740 of the EAR unless specifically authorized in that part.

(B) If you are a U.S. person as that term is defined in § 744.6(c) of the EAR, you may not export a Schedule 1 chemical listed in Supplement No. 1 to Part 745 without first complying with the provisions of §§ 742.18 and 745.1 of the EAR.

(C) If you are a U.S. person as that term is defined in § 744.6(c) of the EAR, you may not export a Schedule 3 chemical listed in Supplement No. 1 to Part 745 to a destination not listed in Supplement No. 2 to Part 745 without complying with the End-Use Certificate requirements in § 745.2 of the EAR that apply to Schedule 3 chemicals controlled for CW reasons in ECCN 1C350 or ECCN 1C355.

(8) *General Prohibition Eight—In transit shipments and items to be unladen from vessels or aircraft (Intransit)*.

(i) *Unloading and shipping in transit*. You may not export or reexport an item through or transit through a country listed in paragraph (b)(8)(ii) of this section unless a License Exception or license authorizes such an export or reexport directly to such a country of transit, or unless such an export or reexport is eligible to such a country of transit without a license.

(ii) *Country scope*. This General Prohibition Eight applies to Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lithuania, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

(9) *General Prohibition Nine—Violation of any order, terms, and conditions (Orders, Terms, and Conditions)*. You may not violate terms or conditions of a license or of a License Exception issued under or made a part of the EAR, and you may not violate any order issued

under or made a part of the EAR. There are no License Exceptions to this General Prohibition Nine in part 740 of the EAR. Supplements Nos. 1 and 2 to this part provide for certain General Orders and Administrative Orders.

(10) *General Prohibition Ten—Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur)*. You may not sell, transfer, export, re-export, finance, order, buy, remove, conceal, store, use, loan, dispose of, transfer, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR.

[61 FR 12754, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 61 FR 68579, Dec. 30, 1996; 62 FR 25456, May 9, 1997; 64 FR 27141, May 18, 1999; 64 FR 47105, Aug. 30, 1999; 65 FR 14859, Mar. 20, 2000; 65 FR 38150, June 19, 2000; 66 FR 49523, Sept. 28, 2001]

SUPPLEMENT NO. 1 TO PART 736—
GENERAL ORDERS

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

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

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

(1) Effective September 16, 1998, all such outstanding reexport authorizations for ter-

rorist-supporting countries (see parts 742 and 746 of the EAR) are revoked.

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

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

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

(e) *Definition of "authorization"*. The term "authorization" as used in this General Order encompasses the range of reexport authorizations granted by BXA, which includes licenses, individual letters, and other types of notifications.

General Order No. 2 [Reserved]

General Order No. 3 of December 7, 2000; Imposition of license requirements and prohibition on use of any License Exceptions for exports and reexports of items subject to the EAR that are listed on the Commerce Control List to Shaykh Hamad bin Ali bin Jaber Al-Thani and entities related to or controlled by him, as follows: Gulf Falcon Group, Ltd. located in Doha, Qatar; Air Gulf Falcon located in Sharjah, United Arab Emirates; Falcon Aircraft Maintenance Center located in Sharjah, United Arab Emirates; and Falcon Air Leasing located in Sharjah, United Arab Emirates.

(a) *License requirements*. Effective December 7, 2000, a license is required for all items subject to the EAR that are listed on the Commerce Control List destined to or for: Shaykh Hamad bin Ali bin Jaber Al-Thani and entities related to or controlled by him, as follows: Gulf Falcon Group, Ltd. located in Doha, Qatar; Air Gulf Falcon located in Sharjah, United Arab Emirates; Falcon Aircraft Maintenance Center located in Sharjah, United Arab Emirates; and Falcon Air Leasing located in Sharjah, United Arab Emirates.

(b) *License Exceptions*. No License Exceptions are available for exports or reexports to the entities described in paragraph (a) of this General Order.

(c) *Licensing policy*. Items will be reviewed on a case-by-case basis to determine whether there is a risk of diversion contrary to United Nations sanctions or U.S. law.

[63 FR 49426, Sept. 16, 1998, as amended at 65 FR 76562, Dec. 7, 2000]

SUPPLEMENT NO. 2 TO PART 736—
ADMINISTRATIVE ORDERS

Administrative Order One: Disclosure of License Issuance and Other Information. Consistent with section 12(c) of the Export Administration Act of 1979, as amended, information obtained by the U.S. Department of Commerce for the purpose of consideration of or concerning license applications, as well as related information, will not be publicly disclosed without the approval of the Secretary of Commerce. Shipper's Export Declarations also are exempt from public disclosure, except with the approval of the Secretary of Commerce, in accordance with § 301(g) of Title 13, United States Code.

Administrative Order Two: Conduct of Business and Practice in Connection with Export Control Matters.

(a) Conduct of business and practice in connection with export control matters.

(1) Exclusion of persons guilty of unethical conduct or not possessing required integrity and ethical standards.

(i) *Who may be excluded.* Any person, whether acting on his own behalf or on behalf of another, who shall be found guilty of engaging in any unethical activity or who shall be demonstrated not to possess the required integrity and ethical standards, may be excluded from (denied) export privileges on his own behalf, or may be excluded from practice before BXA on behalf of another, in connection with any export control matter, or both, as provided in part 764 of the EAR.

(ii) *Grounds for exclusion.* Among the grounds for exclusion are the following:

(A) Inducing or attempting to induce by gifts, promises, bribes, or otherwise, any officer or employee of BXA or any customs or post office official, to take any action with respect to the issuance of licenses or any other aspects of the administration of the Export Administration Act, whether or not in violation of any regulation;

(B) Offering or making gifts or promises thereof to any such officer or employee for any other reason;

(C) Soliciting by advertisement or otherwise the handling of business before BXA on the representation, express or implied, that such person, through personal acquaintance or otherwise, possesses special influence over any officer or employee of BXA;

(D) Charging, or proposing to charge, for any service performed in connection with the issuance of any license, any fee wholly contingent upon the granting of such license and the amount or value thereof. This provision will not be construed to prohibit the charge of any fee agreed to by the parties; provided that the out-of-pocket expenditures and the reasonable value of the services performed, whether or not the license is issued and regardless of the amount thereof, are fairly compensated; and

(E) Knowingly violating or participating in the violation of, or an attempt to violate, any regulation with respect to the export of commodities or technical data, including the making of or inducing another to make any false representations to facilitate any export in violation of the Export Administration Act or any order or regulation issued thereunder.

(iii) *Definition.* As used in this Administrative Order, the terms "practice before BXA" and "appear before BXA" include:

(A) The submission on behalf of another of applications for export licenses or other documents required to be filed with BXA, or the execution of the same;

(B) Conferences or other communications on behalf of another with officers or employees of BXA for the purpose of soliciting or expediting approval by BXA of applications for export licenses or other documents, or with respect to quotas, allocations, requirements or other export control actions, pertaining to matters within the jurisdiction of BXA;

(C) Participating on behalf of another in any proceeding pending before BXA; and

(D) Submission to a customs official on behalf of another of a license or Shipper's Export Declaration or other export control document.

(iv) *Proceedings.* All proceedings under this Administrative Order shall be conducted in the same manner as provided in part 766 of the EAR.

(2) *Employees and former employees.* Persons who are or at any time have been employed on a full-time or part-time, compensated or uncompensated, basis by the U.S. Government are subject to the provisions of 18 U.S.C. 203, 205, and 207 (Pub. L. 87-849, 87th Congress) in connection with representing a private party or interest before the U.S. Department of Commerce in connection with any export control matter.

PART 738—COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART

Sec.

738.1 Introduction.

738.2 Commerce Control List (CCL) structure.

738.3 Commerce Country Chart structure.

738.4 Determining whether a license is required.

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 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.