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Parts 300 to 799

Revised as of January 1, 2006

Commerce and Foreign Trade

Containing a codification of documents of general applicability and future effect

As of January 1, 2006

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To cite the regulations in this volume use title, part and section number. Thus, 15 CFR 301.1 *refers to title 15, part 301, section 1.*

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

January 1, 2006.

THIS TITLE

Title 15—COMMERCE AND FOREIGN TRADE is composed of three volumes. The parts in these volumes are arranged in the following order: parts 0–299, 300–799, and part 800–End. The first volume containing parts 0–299 is comprised of Subtitle A—Office of the Secretary of Commerce, Subtitle B, chapter I—Bureau of the Census, Department of Commerce, and chapter II—National Institute of Standards and Technology, Department of Commerce. The second volume containing parts 300–799 is comprised of chapter III—International Trade Administration, Department of Commerce, chapter IV—Foreign-Trade Zones Board, and chapter VII—Bureau of Industry and Security, Department of Commerce. The third volume containing part 800–End is comprised of chapter VIII—Bureau of Economic Analysis, Department of Commerce, chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce, chapter XI—Technology Administration, Department of Commerce, chapter XIII—East-West Foreign Trade Board, chapter XIV—Minority Business Development Agency, chapter XX—Office of the United States Trade Representative, and chapter XXIII—National Telecommunications and Information Administration, Department of Commerce. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 2006.

For this volume, Ruth Green was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

Title 15—Commerce and Foreign Trade

(This book contains parts 300–799)

Part

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SUBCHAPTER A—MISCELLANEOUS REGULATIONS

PART 301—INSTRUMENTS AND APPARATUS FOR EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

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301.10 Importation of repair components and maintenance tools under HTSUS subheadings 9810.00.65 and 9810.00.67 for instruments previously the subject of an entry liquidated under subheading 9810.00.60, HTSUS.

AUTHORITY: Sec. 6(c), Pub. L. 89–651, 80 Stat. 897, 899; Sec. 2402, Pub. L. 106–36, 113 Stat. 127, 168.

SOURCE: 47 FR 32517, July 28, 1982, unless otherwise noted.

§ 301.1 General provisions.

(a) *Purpose.* This part sets forth the regulations of the Department of Commerce and the Department of the Treasury applicable to the duty-free importation of scientific instruments and apparatus by public or private nonprofit institutions.

(b) *Background.* (1) The Agreement on the importation of Educational, Scientific and Cultural Materials (Florence Agreement; ''the Agreement'') is a multinational treaty, which seeks to further the cause of peace through the freer exchange of ideas and knowledge across national boundaries, primarily by eliminating tariffs on certain educational, scientific and cultural materials.

(2) Annex D of the Agreement provides that scientific instruments and apparatus intended exclusively for educational purposes or pure scientific research use by qualified nonprofit institutions shall enjoy duty-free entry if instruments or apparatus of equivalent scientific value are not being manufactured in the country of importation.

(3) The Annex D provisions are implemented for U.S. purposes in Subchapter X, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS).

(c) *Summary of statutory procedures and requirements.* (1) U.S. Note 1, Subchapter X, Chapter 98, HTSUS, provides, among other things, that articles covered by subheadings 9810.00.60 (scientific instruments and apparatus), 9810.00.65 (repair components therefor) and 9810.00.67 (tools for maintaining and testing the above), HTSUS, must be exclusively for the use of the institutions involved and not for distribution, sale, or other commercial use within five years after entry. These articles may be transferred to another qualified nonprofit institution, but any commercial use within five years of entry shall result in the assessment of applicable duties pursuant to § 301.9(c).

(2) An institution wishing to enter an instrument or apparatus under tariff subheading 9810.00.60, HTSUS, must file an application with the Secretary of the Treasury (U.S. Customs Service) in accordance with the regulations in this section. If the application is made in accordance with the regulations, notice of the application is published in the FEDERAL REGISTER to provide an opportunity for interested persons and government agencies to present views. The application is reviewed by the Secretary of Commerce (Director, Statutory Import Programs Staff) , who decides whether or not duty-free entry may be accorded the instrument and publishes the decision in the FEDERAL REGISTER. An appeal of the final decision may be filed with the U.S. Court of Appeals for the Federal Circuit, on questions of law only, within 20 days after publication in the FEDERAL REGISTER.

(3) Repair components for instruments or apparatus admitted duty-free

under subheading 9810.00.60, HTSUS require no application and may be entered duty-free in accordance with the procedures prescribed in § 301.10.

(4) Tools specifically designed to be used for the maintenance, checking, gauging or repair of instruments or apparatus admitted under subheadings 9810.00.65 and 9810.00.67, HTSUS, require no application and may be entered duty-free in accordance with the procedures prescribed in § 301.10.

(d) *Authority and delegations.* The Act authorizes the Secretaries of Commerce and the Treasury to prescribe joint regulations to carry out their functions under U.S. Note 6, Subchapter X, Chapter 98, HTSUS. The Secretary of the Treasury has delegated authority to the Assistant Secretary for Enforcement, who has retained rulemaking authority and further delegated administration of the regulations to the Commissioner of the U.S. Customs Service. The authority of the Secretary of Commerce has been delegated to the Assistant Secretary for Import Administration who has retained rulemaking authority and further delegated administration of the regulations to the Director of the Statutory Import Programs Staff.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982, as amended at 66 FR 28832, May 25, 2001]

§ 301.2 Definitions.

For the purposes of these regulations and the forms used to implement them:

(a) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(b) *Customs* means the U.S. Customs Service and the ''The Commissioner'' means Commissioner of the U.S. Customs Service, or the official(s) designated to act on the Commissioner's behalf.

(c) *Customs Port* or *the Port* means the port where a particular claim has been or will be made for duty-free entry of a scientific instrument or apparatus under subheading 9810.00.60, HTSUS.

(d) *Entry* means entry of an instrument into the Customs territory of the United States for consumption or withdrawal of an instrument from a Customs bonded warehouse for consumption.

(e) *United States* includes only the several States, the District of Columbia and the Commonwealth of Puerto Rico.

(f) *Instrument* means instruments and apparatus specified in U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS. A combination of basic instrument or apparatus and accompanying accessories shall be treated as a single instrument provided that, under normal commercial practice, such combination is considered to be a single instrument and provided further that the applicant has ordered or, upon favorable action on its application, firmly intends to order the combination as a unit. The term ''instrument'' also covers separable components of an instrument that are imported for assembly in the United States in such instrument where that instrument, due to its size, cannot feasibly be imported in its assembled state. The components, as well as the assembled instrument itself, must be classifiable under the tariff provisions listed in U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS. See paragraph (k) of this section and § 301.3(f). Unless the context indicates otherwise, instrument or apparatus shall mean a foreign ''instrument or apparatus'' for which duty-free entry is sought under subheading 9810.00.60, HTSUS. Spare parts typically ordered and delivered with an instrument are also considered part of an instrument for purposes of these regulations. The term ''instruments'' shall not include:

(1) Materials or supplies used in the operation of instruments and apparatus such as paper, cards, tapes, ink, recording materials, expendable laboratory materials, apparatus that loses identity or is consumed by usage or other materials or supplies.

(2) Ordinary equipment for use in building construction or maintenance; or equipment for use in supporting activities of the institution, such as its administrative offices, machine shops, libraries, centralized computer facilities, eating facilities, or religious facilities; or support equipment such as copying machines, glass working apparatus and film processors.

(3) General purpose equipment such as air conditioners, electric typewriters, electric drills, refrigerators.

(4) General-purpose computers. Accessories to computers which are not eligible for duty-free treatment are also ineligible. Scientific instruments containing embedded computers which are to be used in a dedicated process or in instrument control, as opposed to general data processing or computation, are, however, eligible for duty-free consideration.

(5) Instruments initially imported solely for testing or review purposes which were entered under bond under subheading 9813.00.30, HTSUS, subject to the provisions of U.S. Note 1(a), Subchapter XIII, Chapter 98, HTSUS, and must be exported or destroyed within the time period specified in that U.S. Note.

(g) *Domestic instrument* means an instrument which is manufactured in the United States. A domestic instrument need not be made exclusively of domestic components or accessories.

(h) *Accessory* has the meaning which it has under normal commercial usage. An accessory, whether part of an instrument or an attachment to an instrument, adds to the capability of an instrument. An accessory for which duty-free entry is sought under subheading 9810.00.60, HTSUS shall be the subject of a separate application when it is not an accompanying accessory. The existing instrument, for which the accessory is being purchased, may be domestic or, if foreign, it need not have entered duty free under subheading 9810.00.60, HTSUS.

(i) *Accompanying accessory* means an accessory for an instrument that is listed as an item in the same purchase order and that is necessary for accomplishment of the purposes for which the instrument is intended to be used.

(j) *Ancillary equipment* means an instrument which may be functionally related to the foreign instrument but is not operationally linked to it. Examples of ancillary equipment are vacuum evaporators or ultramicrotomes, which can be used to prepare specimens for electron microscopy. Further, equipment which is compatible with the foreign instrument, but is also clearly compatible with similar domestic instruments, such as automatic sampling equipment sold for use with a variety of mass spectrometers, will be treated as ancillary equipment. A separate application will be required for ancillary equipment even if ordered with the basic instrument.

(k) *Components* of an instrument means parts or assemblies of parts which are substantially less than the instrument to which they relate. A component enables an instrument to function at a specified minimum level, while an accessory adds to the capability of an instrument. Applications shall not be accepted for components of instruments that did not enter duty-free under subheading 9810.00.60, HTSUS or for components of instruments being manufactured or assembled by a commercial firm or entity in the U.S. In determining whether an item is a component ineligible for duty-free consideration or an accessory eligible for such consideration, Customs shall take into account such factors as the item's complexity, novelty, degree of integration and pertinency to the research purposes to be performed by the instrument as a whole. The above notwithstanding, separable components of some instruments may be eligible for duty-free treatment. See paragraph (f) of this section.

(l) *Produced for stock* means an instrument which is manufactured, on sale and available from a stock.

(m) *Produced on order* means an instrument which a manufacturer lists in current catalog literature and is able and willing to produce and have available without unreasonable delay to the applicant.

(n) *Custom-made* means an instrument which a manufacturer is willing and able to make to purchaser's specifications. Instruments resulting from a development effort are treated as custom-made for the purposes of these regulations. Also, a special-order variant of a produced on order instrument, with significant modifications specified by the applicant, may be treated as custom-made.

(o) *Same general category* means the category in which an instrument is customarily classified in trade directories and product-source lists, e.g., scanning electron microscope, mass

spectrometer, light microscope, x-ray spectrometer.

(p) *Comparable domestic instrument* means a domestic instrument capable or potentially capable of fulfilling the applicant's technical requirements or intended uses, whether or not in the same general category as the foreign instrument.

(q) *Specifications* means the particulars of the structural, operational and performance characteristics or capabilities of a scientific instrument.

(r) *Guaranteed* specifications are those specifications which are an explicit part of the contractual agreement between the buyer and the seller (or which would become part of the agreement if the buyer accepted the seller's offer), and refer only to the minimum and routinely achievable performance levels of the instrument under specified conditions. If a capability is listed or quoted as a range (e.g., ''5 to 10 nanometers'') or as a minimum that may be exceeded (e.g., ''5 angstroms or better''), only the inferior capability may be considered the guaranteed specification. Evidence that specifications are ''guaranteed'' will normally consist of their being printed in a brochure or other descriptive literature of the manufacturer; being listed in a purchase agreement upon which the purchase is conditioned; or appearing in a manufacturer's formal response to a request for quote. If, however, no opportunity to submit a bid was afforded the domestic manufacturer or if, for any other reason, comparable guaranteed specifications of the foreign and domestic instruments do not appear on the record, other evidence relating to a manufacturer's ability to provide an instrument with comparable specifications may, at the discretion of the Director, be considered in the comparison of the foreign and domestic instruments' capabilities. Performance results on a test sample run at the applicant's request may be cited as evidence for or against a guaranteed specification.

(s) *Pertinent* specifications are those specifications necessary for the accomplishment of the specific scientific research or science-related educational purposes described by the applicant. Specifications of features (even if guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation, servicing or maintenance are not pertinent. For example, a design feature, such as a small number of knobs or controls on an instrument primarily designed for research purposes, would be a convenience. The ability to fit an instrument into a small room, when the required operations could be performed in a larger room, would be either a cost consideration or a matter of convenience and not a pertinent specification. In addition, mere difference in design (which would, for example, broaden the educational experience of students but not provide superior scientific capability) would not be pertinent. Also, characteristics such as size, weight, appearance, durability, reliability, complexity (or simplicity), ease of operation, ease of maintenance, productivity, versatility, ''state of the art'' design, specific design and compatibility with currently owned or ordered equipment are not pertinent unless the applicant demonstrates that the characteristic is necessary for the accomplishment of its scientific purposes.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982, as amended at 66 FR 28832, May 25, 2001]

§ 301.3 Application for duty-free entry of scientific instruments.

(a) *Who may apply*. An applicant for duty-free entry of an instrument under subheading 9810.00.60, HTSUS must be a public or private nonprofit institution which is established for educational or scientific purposes and which has placed a bona fide order or has a firm intention to place a bona fide order for a foreign instrument within 60 days following a favorable decision on the institution's application.

(b) *Application forms.* Applications must be made on form ITA–338P which may be obtained from the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce, Washington, DC

20230, or from the various District Offices of the U.S. Department of Commerce. (Approved by the Office of Management and Budget under control number 0625–0037)

(c) *Where to apply*. Applications must be filed with the U.S. Customs Service, Department of the Treasury, at the address specified on page 1 of the form.

(d) Five copies of the form, including relevant supporting documents, must be submitted. One of these copies shall be signed in the original by the person in the applicant institution under whose direction and control the foreign instrument will be used and who is familiar with the intended uses of the instrument. The remaining four copies of the form may be copies of the original. Attachments should be fully identified and referenced to the question(s) on the form to which they relate.

(e) A single application (in the requisite number of copies) may be submitted for any quantity of the same type or model of foreign instrument provided that the entire quantity is intended to be used for the same purposes and provided that all units are included on a single purchase order. A separate application shall be submitted for each different type or model or variation in the type or model of instrument for which duty-free entry is sought even if covered by a single purchase order. Orders calling for multiple deliveries of the same type or model of instrument over a substantial period of time may, at the discretion of the Director, require multiple applications.

(f) An application for components of an instrument to be assembled in the United States as described in §301.2(f) may be filed provided that all of the components for the complete, assembled instrument are covered by, and fully described in, the application. See also §301.2(k).

(g) Failure to answer completely all questions on the form in accordance with the instructions on the form or to supply the requisite number of copies of the form and supporting documents may result in delays in processing of the application while the deficiencies are remedied, return of the application without processing, or denial of the application without prejudice to resubmission. Any questions on these regulations or the application form should be addressed to the Director.

[47 FR 32517, July 28, 1982, as amended at 50 FR 11501, Mar. 22, 1985; 66 FR 28833, May 25, 2001]

§301.4 Processing of applications by the Department of the Treasury (U.S. Customs Service).

(a) *Review and determination*. The Commissioner shall date each application when received by Customs. If the application appears to be complete, the Commissioner shall determine:

(1) Whether the institution is a nonprofit private or public institution established for research and educational purposes and therefore authorized to import instruments into the U.S. under subheading 9810.00.60, HTSUS. In making this determination, the Commissioner may require applicants to document their eligibility under this paragraph;

(2) Whether the instrument or apparatus falls within the classes of instruments eligible for duty-free entry consideration under subheading 9810.00.60, HTSUS. For eligible classes, see U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS; and

(3) Whether the instrument or apparatus is for the exclusive use of the applicant institution and is not intended to be used for commercial purposes. For the purposes of this section, commercial uses would include, but not necessarily be limited to: Distribution, lease or sale of the instrument by the applicant institution; any use by, or for the primary benefit of, a commercial entity; or use of the instrument for demonstration purposes in return for a fee, price discount or other valuable consideration. Evaluation, modification or testing of the foreign instrument, beyond normal, routine acceptance testing and calibration, to enhance or expand its capabilities primarily to benefit the manufacturer in return for a discount or other valuable consideration, may be considered a commercial benefit. In making the above determination, the Commissioner may consider, among other things, whether the results of any research to be performed with the instrument will be fully and timely made

available to the public. For the purposes of this section, use of an instrument for the treatment of patients is considered noncommercial.

If any of the Commissioner's determinations is in the negative, the application shall be found to be outside the scope of the Act and shall be returned to the applicant with a statement of the reason(s) for such findings.

(b) *Forwarding of applications to the Department of Commerce.* If the Commissioner finds the application to be within the scope of the Act and these regulations, the Commissioner shall (1) assign a number to the application and (2) forward one copy to the Secretary of the Department of Health and Human Services (HHS), and two copies, including the one that has been signed in the original, to the Director. The Commissioner shall retain one copy and return the remaining copy to the applicant stamped ''Accepted for Transmittal to the Department of Commerce.'' The applicant shall file the stamped copy of the form with the Port when formal entry of the article is made. If entry has already occurred under a claim of subheading 9810.00.60, HTSUS , the applicant (directly or through his/her agent) shall at the earliest possible date supply the stamped copy to the Port. Further instructions for entering instruments are contained in § 301.8 of the regulations.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982, as amended at 50 FR 11501, Mar. 22, 1985; 66 FR 28833, May 25, 2001]

§ 301.5 Processing of applications by the Department of Commerce.

(a) *Public notice and opportunity to present views.* (1) Within 5 days of receipt of an application from the Commissioner, the Director shall make a copy available for public inspection during ordinary business hours of the Department of Commerce. Unless the Director determines that an application has deficiencies which preclude consideration on its merits (e.g., insufficient description of intended purposes to rule on the scientific equivalency of the foreign instrument and potential domestic equivalents), he shall publish in the FEDERAL REGISTER a notice of the receipt of the application to afford all interested persons a reasonable opportunity to present their views with respect to the question ''whether an instrument or apparatus of equivalent scientific value for the purpose for which the article is intended to be used is being manufactured in the United States.'' The notice will include the application number, the name and address of the applicant, a description of the instrument(s) for which duty-free entry is requested, the name of the foreign manufacturer and a brief summary of the applicant's intended purposes extracted from the applicant's answer to question 7 of the application. In addition, the notice shall specify the date the application was accepted by the Commissioner for transmittal to the Department of Commerce.

(2) If the Director determines that an application is incomplete or is otherwise deficient, he may request the applicant to supplement the application, as appropriate, prior to publishing the notice of application in the FEDERAL REGISTER. Supplemental information/material requested under this provision shall be supplied to the Director in two copies within 20 days of the date of the request and shall be subject to the certification on the form. Failure to provide the requested information on time shall result in a denial of the application without prejudice to resubmission pursuant to paragraph (e) of this section.

(3) *Requirement for presentation of views (comments) by interested persons.* Any interested person or government agency may make written comments to the Director with respect to the question whether an instrument of equivalent scientific value, for the purposes for which the foreign instrument is intended to be used, is being manufactured in the United States. Except for comments specified in paragraph (a)(4) of this section, comments should be in the form of supplementary answers to the applicable questions on the application form. Comments must be postmarked no later than 20 days from the date on which the notice of application is published in the FEDERAL REGISTER. In order to be considered, comments and related attachments must be submitted to the Director in duplicate; shall state the name, affiliation and address of the person submitting the comment; and shall

specify the application to which the comment applies. In order to preserve the right to appeal the Director's decision on a particular application pursuant to §301.6 of these regulations, a domestic manufacturer or other interested person must make timely comments on the application. Separate comments should be supplied on each application in which a person has an interest. However, brochures, pamphlets, printed specifications and the like, included with previous comments, if properly identified, may be incorporated by reference in subsequent comments.

(4) *Comments by domestic manufacturers.* Comments of domestic manufacturers opposing the granting of an application should:

(i) Specify the domestic instrument considered to be scientifically equivalent to the foreign article for the applicant's specific intended purposes and include documentation of the domestic instrument's guaranteed specifications and date of availability.

(ii) Show that the specifications claimed by the applicant in response to question 8 to be pertinent to the intended purpose can be equaled or exceeded by those of the listed domestic instrument(s) whether or not it has the same design as the foreign instrument; that the applicant's alleged pertinent specifications should not be considered pertinent within the meaning of §301.2(s) of the regulations for the intended purposes of the instrument described in response to question 7 of the application; or that the intended purposes for which the instrument is to be used do not qualify the instrument for duty-free consideration under the Act.

(iii) Where the comments regarding paragraphs (a)(4)(i) and (a)(4)(ii) of this section relate to a particular accessory or optional device offered by a domestic manufacturer, cite the type, model or other catalog designation of the accessory device and include the specification therefor in the comments.

(iv) Where the justification for duty-free entry is based on excessive delivery time, show whether:

(A) The domestic instrument is as a general rule either produced for stock, produced on order, or custom-made and;

(B) An instrument or apparatus of equivalent scientific value to the article, for the purposes described in response to question 7, could have been produced and delivered to the applicant within a reasonable time following the receipt of the order.

(v) Indicate whether the applicant afforded the domestic manufacturer an opportunity to furnish an instrument or apparatus of equivalent scientific value to the article for the purposes described in response to question 7 and, if such be the case, whether the applicant issued an invitation to bid that included the technical requirements of the applicant.

(5) *Untimely comments.* Comments must be made on a timely basis to ensure their consideration by the Director and the technical consultants, and to preserve the commenting person's right to appeal the Director's decision. The Director, at his discretion, may take into account factual information contained in untimely comments.

(6) *Provision of general comments.* A domestic manufacturer who does not wish to oppose duty-free entry of a particular application, but who desires to inform the Director of the availability and capabilities of its instrument(s), may at any time supply documentation to the Director without reference to a particular application. Such documentation shall be taken into account by the Director when applications involving comparable foreign instruments are received. The provision of general comments does not preserve the provider's right to appeal the Director's decision.

(b) *Additions to the record.* The Director may solicit from the applicant, from foreign or domestic manufacturers, their agents, or any other person or Government agency considered by the Director to have related competence, any additional information the Director considers necessary to make a decision. The Director may attach conditions and time limitations upon the provision of such information and may draw appropriate inferences from a person's failure to provide the requested information.

(c) *Advice from technical consultants.* (1) The Director shall consider any written advice from the Secretary of

HHS, or his delegate, on the question whether a domestic instrument of equivalent scientific value to the foreign instrument, for the purposes for which the instrument is intended to be used, is being manufactured in the United States.

(2) After the comment period has ended (§ 301.5(a)(3)), the complete application and any comments received and related information are forwarded to appropriate technical consultants for their advice.

(3) The technical consultants relied upon for advice include, but are not limited to, the National Institutes of Health (delegated the function by the Secretary of HHS), the National Institute of Standards and Technology and the National Oceanographic and Atmospheric Administration.

(d) *Criteria for the determinations of the Department of Commerce*—(1) *Scientific equivalency*. (i) The determination of scientific equivalency shall be based on a comparison of the pertinent specifications of the foreign instrument with similar pertinent specifications of comparable domestic instruments (see § 301.2(s) for the definition of pertinent specification). Ordinarily, the Director will consider only those performance characteristics which are ''guaranteed specifications'' within the meaning of § 301.2(r) of this part. In no event, however, shall the Director consider performance capabilities superior to the manufacturer's guaranteed specifications or their equivalent. In making the comparison the Director may consider a reasonable combination of domestic instruments that brings together two or more functions into an integrated unit if the combination of domestic instruments is capable of accomplishing the purposes for which the foreign instrument is intended to be used. If the Director finds that a domestic instrument possesses all of the pertinent specifications of the foreign instrument, he shall find that there is being manufactured in the United States an instrument of equivalent scientific value for such purposes as the foreign instrument is intended to be used. If the Director finds that the foreign instrument possesses one or more pertinent specifications not possessed by the comparable domestic instrument, the Director shall find that there is not being manufactured in the United States an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument is intended to be used.

(ii) Programs that may be undertaken at some unspecified future date shall not be considered in the Director's comparison. In making the comparison, the Director shall consider only the instrument and accompanying accessories described in the application and determined eligible by the U.S. Customs Service. The Director shall not consider the planned purchase of additional accessories or the planned adaptation of the article at some unspecified future time.

(iii) In order for the Director to make a determination with respect to the ''scientific equivalency'' of the foreign and domestic instruments, the applicant's intended purposes must include either scientific research or science-related educational programs. Instruments used exclusively for nonscientific purposes have no scientific value, thereby precluding the requisite finding by the Director with respect to ''whether an instrument or apparatus of equivalent scientific value to such article, for the purposes for which the article is intended to be used, is being manufactured in the United States.'' In such cases the Director shall deny the application for the reason that the instrument has no scientific value for the purposes for which it is intended to be used. Examples of nonscientific purposes would be the use of an instrument in routine diagnosis or patient care and therapy (as opposed to clinical research); in teaching a nonscientific trade (e.g., printing, shoemaking, metalworking or other types of vocational training); in teaching nonscientific courses (e.g., music, home economics, journalism, drama); in presenting a variety of subjects or merely for presenting coursework, whether or not science related (e.g., video tape editors, tape recorders, projectors); and in conveying cultural information to the public (e.g., a planetarium in the Smithsonian Institution).

(2) *Manufactured in the United States.* An instrument shall be considered as being manufactured in the United

States if it is customarily ''produced for stock,'' ''produced on order'' or ''custom-made'' within the United States. In determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case. For example, in determining whether a domestic manufacturer is able to produce a custom-made instrument, the Director may take into account the production experience of the domestic manufacturer including (i) the types, complexity and capabilities of instruments the manufacturer has produced, (ii) the extent of the technological gap between the instrument to which the application relates and the manufacturer's customary products, (iii) the manufacturer's technical skills, (iv) the degree of saturation of the manufacturer's production capability, and (v) the time required by the domestic manufacturer to produce the instrument to the purchaser's specification. Whether or not the domestic manufacturer has field tested or demonstrated the instrument will not, in itself, enter into the decision regarding the manufacturer's ability to manufacture an instrument. Similarly, in determining whether a domestic manufacturer is willing to produce an instrument, the Director may take into account the nature of the bid process, the manufacturer's policy toward manufacture of the product(s) in question, the minimum size of the manufacturer's production runs, whether the manufacturer has bid similar instruments in the past, etc. Also, if a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument.

(3) *Burden of proof.* The burden of proof shall be on the applicant to demonstrate that no instrument of equivalent scientific value for the purposes for which the foreign instrument is to be used is being manufactured in the United States. Evidence of applicant favoritism towards the foreign manufacturer (advantages not extended to domestic firms, such as additional lead time, know-how, methods, data on pertinent specifications or intended uses, results of research or development, tools, jigs, fixtures, parts, materials or test equipment) may be, at the Director's discretion, grounds for rejecting the application.

(4) *Excessive delivery time.* Duty-free entry of the instrument shall be considered justified without regard to whether there is being manufactured in the United States an instrument of equivalent scientific value for the intended purposes if excessive delivery time for the domestic instrument would seriously impair the accomplishment of the applicant's intended purposes. For purposes of this section, (i) except when objective and convincing evidence is presented that, at the time of order, the actual delivery time would significantly exceed quoted delivery time, no claim of excessive delivery time may be made unless the applicant has afforded the domestic manufacturer an opportunity to quote and the delivery time for the domestic instrument exceeds that for the foreign instrument; and (ii) failure by the domestic manufacturer to quote a specific delivery time shall be considered a non-responsive bid (see §301.5(d)(2)). In determining whether the difference in delivery times cited by the applicant justifies duty-free entry on the basis of excessive delivery time, the Director shall take into account (A) the normal commercial practice applicable to the production of the general category of instrument involved; (B) the efforts made by the applicant to secure delivery of the instruments (both foreign and domestic) in the shortest possible time; and (C) such other factors as the Director finds relevant under the circumstances of a particular case.

(5) *Processing of applications for components.* (i) The Director may process an application for components which

are to be assembled in the United States into an instrument or apparatus which, due to its size, cannot be imported in its assembled state (see § 301.2(k)) as if it were an application for the assembled instrument. A finding by the Director that no equivalent instrument is being manufactured in the United States shall, subject to paragraph (d)(5)(ii) of this section, qualify all the associated components, provided they are entered within the period established by the Director, taking into account both the scientific needs of the importing institution and the potential for development of related domestic manufacturing capacity.

(ii) Notwithstanding a finding under paragraph (d)(5)(i) of this section that no equivalent instrument is being manufactured in the United States, the Director shall disqualify a particular component for duty-free treatment if the Director finds that the component is being manufactured in the United States.

(e) Denial without prejudice to resubmission (DWOP). The Director may, at any stage in the processing of an application by the Department of Commerce, DWOP an application if it contains any deficiency which, in the Director's judgment, prevents a determination on its merits. The Director shall state the deficiencies of the application in the DWOP letter to the applicant.

(1) The applicant has 60 days from the date of the DWOP to correct the cited deficiencies in the application unless a request for an extension of time for submission of the supplemental information has been received by the Director prior to the expiration of the 60-day period and is approved.

(2) If granted, extensions of time will generally be limited to 30 days.

(3) Resubmissions must reference the application number of the earlier submission. The resubmission may be made by letter to the Director. The record of a resubmitted application shall include the original submission on file with the Department. Any new material or information contained in a resubmission, which should address the specific deficiencies cited in the DWOP letter, should be clearly labeled and referenced to the applicable question on the application form. The resubmission must be for the instrument covered by the original application unless the DWOP letter specifies to the contrary. The resubmission shall be subject to the certification made on the original application.

(4) If the applicant fails to resubmit within the applicable time period, the prior DWOP shall, irrespective of the merits of the case, result in a denial of the application.

(5) The Director shall use the postmark date of the fully completed resubmission in determining whether the resubmission was made within the allowable time period. Certified or registered mail, or some other means which can unequivocally establish the date of mailing, is recommended. Resubmission by fax, e-mail or other electronic means is acceptable provided an appropriate return number or address is provided in the transmittal. Resubmissions must clearly indicate the date of transmittal to the Director.

(6) The applicant may, at any time prior to the end of the resubmission period, notify the Director in writing that it does not intend to resubmit the application. Upon such notification, the application will be deemed to have been withdrawn. (See § 301.5(g).)

(7) Information provided in a resubmission that, in the judgment of the Director, contradicts or conflicts with information provided in a prior submission, or is not a reasonable extension of the information contained in the prior submission, shall not be considered in making the decision on an application that has been resubmitted. Accordingly, an applicant may elect to reinforce an orginal submission by elaborating in the resubmission on the description of the purposes contained in a prior submission and may supply additional examples, documentation and/or other clarifying detail, but the applicant shall not introduce new purposes or other material changes in the nature of the original application. The resubmission should address the specific deficiencies cited in the DWOP. The Director may draw appropriate inferences from the failure of an applicant to attempt to provide the information requested in the DWOP.

(8) In the event an applicant fails to address the noted deficiencies in the response to the DWOP, the Director may deny the application.

(f) *Decisions on applications.* The Director shall prepare a written decision granting or denying each application. However, when he deems appropriate, the Director may issue a consolidated decision on two or more applications. The Director shall promptly forward a copy of the decision to each applicant institution and to the FEDERAL REGISTER for publication.

(g) *Withdrawal of applications.* The Director shall discontinue processing an application withdrawn by the applicant and shall publish notice of such withdrawal in the FEDERAL REGISTER. If at any time while its application is pending before the Director, either during the intital application or resubmission stage, an applicant cancels an order for the instrument to which the application relates or ceases to have a firm intention to order such instrument or apparatus, the institution shall promptly notify the Director. Such notification shall constitute a withdrawal. Withdrawals shall be considered as having been finally denied for purposes of §301.7(c) below.

(h) Nothing in this subsection shall be construed as limiting the Director's discretion at any stage of processing to insert into the record and consider in making his decision any information in the public domain which he deems relevant.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982, as amended at 50 FR 11501, Mar. 22, 1985; 66 FR 28833, May 25, 2001]

§301.6 Appeals.

(a) An appeal from a final decision made by the Director under §301.5(f) may be taken in accordance with U.S. Note 6(e), Subchapter X, Chapter 98, HTSUS, only to the U.S. Court of Appeals for the Federal Circuit and only on questions of law, within 20 days after publication of the decision in the FEDERAL REGISTER. If at any time while its application is under consideration by the Court of Appeals on an appeal from a finding by the Director an institution cancels an order for the instrument to which the application relates or ceases to have a firm intention to order such instrument, the institution shall promptly notify the court.

(b) An appeal may be taken by: (1) The institution which makes the application;

(2) A person who, in the proceeding which led to the decision, timely represented to the Secretary of Commerce in writing that he/she manufactures in the United States an instrument of equivalent scientific value for the purposes for which the instrument to which the application relates is intended to be used;

(3) The importer of the instrument, if the instrument to which the application relates has been entered at the time the appeal is taken; or

(4) An agent of any of the foregoing.

(c) Questions regarding appeal procedures should be addressed directly to the U.S. Court of Appeals for the Federal Circuit, Clerk's Office, Washington, DC 20439.

[47 FR 32517, July 28, 1982, as amended at 66 FR 28834, May 25, 2001]

§301.7 Final disposition of an application.

(a) Disposition of an application shall be final when 20 days have elapsed after publication of the Director's final decision in the FEDERAL REGISTER and no appeal has been taken pursuant to §301.6 of these regulations, of if such appeal has been taken, when final judgment is made and entered by the Court.

(b) The Director shall notify the Customs Port when disposition of an application becomes final. If the Director has not been advised of the port of entry of the instrument, or if entry has not been made when the decision on the application becomes final, the Director shall notify the Commissioner of final disposition of the application.

(c) An instrument, the duty-free entry of which has been finally denied, may not be the subject of a new application from the same institution.

[47 FR 32517, July 28, 1982, as amended at 66 FR 28834, May 25, 2001]

§ 301.8 Instructions for entering instruments through U.S. Customs under subheading 9810.00.60, HTSUS.

Failure to follow the procedures in this section may disqualify an instrument for duty-free entry notwithstanding an approval of an application on its merits by the Department of Commerce.

(a) *Entry procedures.* (1) An applicant desiring duty-free entry of an instrument may make a claim at the time of entry of the instrument into the Customs territory of the United States (as defined in 19 CFR 101.1) that the instrument is entitled to duty-free classification under subheading 9810.00.60, HTSUS.

(2) If no such claim is made the instrument shall be immediately classified without regard to subheading 9810.00.60, HTSUS , duty will be assessed, and the entry liquidated in the ordinary course.

(3) If a claim is made for duty-free entry under subheading 9810.00.60, HTSUS , the entry shall be accepted without requiring a deposit of estimated duties provided that a copy of the form, stamped by Customs as accepted for transmittal to the Department of Commerce in accordance with § 301.4(b), is filed simultaneously with the entry.

(4) If a claim for duty-free entry under subheading 9810.00.60, HTSUS is made but is not accompanied by a copy of the properly stamped form, a deposit of the estimated duty is required. Liquidation of the entry shall be suspended for a period of 180 days from the date of entry. On or before the end of this suspension period the applicant must file with the Customs Port a properly stamped copy of the form. In the event that the Customs Port does not receive a copy of the properly stamped form within 180 days the instrument shall be classified and liquidated in the ordinary course, without regard to subheading 9810.00.60, HTSUS.

(5) Entry of an instrument after the Director's approval of an application. Whenever an institution defers entry until after it receives a favorable final determination on the application for duty-free entry of the instrument, either by delaying importation or by placing the instrument in a bonded warehouse or foreign trade zone, the importer shall file with the entry of the instrument (i) the stamped copy of the form, (ii) the institution's copy of the favorable final determination and (iii) proof that a bona fide order for the merchandise was placed on or before the 60th day after the favorable decision became final pursuant to § 301.7 of these regulations. Liquidation in such case shall be made under subheading 9810.00.60, HTSUS.

(b) *Normal Customs entry requirements.* In addition to the entry requirements in paragraph (a) of this section, the normal Customs entry requirements must be met. In most of the cases, the value of the merchandise will be such that the formal Customs entry requirements, which generally include the filing of a Customs entry bond, must be complied with. (For further information, see 19 CFR 142.3 and 142.4 (TD–221).)

(c) *Late filing.* Notwithstanding the preceding provisions of this section any document, form, or statement required by regulations in this section to be filed in connection with the entry may be filed at any time before liquidation of the entry becomes final, provided that failure to file at the time of entry or within the period for which a bond was filed for its production was not due to willful negligence or fraudulent intent. Liquidation of any entry becomes conclusive upon all persons if the liquidation is not protested in writing in accordance with 19 CFR part 174, or the necessary document substantiating duty-free entry is not produced in accordance with 19 CFR 10.112, within 90 days after notice of liquidation. Upon notice of such final and conclusive liquidation, the Department of Commerce will cease the processing of any pending application for duty-free entry of the subject article. In all other respects, the provisions of this section do not apply to Department of Commerce responsibilities and procedures for processing applications pursuant to other sections of these regulations.

(d) *Payment of duties.* The importer of record will be billed for payment of duties when Customs determines that such payment is due. If a refund of a deposit made pursuant to paragraph

(a)(4) of this section is due, the importer should contact Customs officials at the port of entry, not the Department of Commerce.

[47 FR 32517, July 28, 1982, as amended at 66 FR 28834, May 25, 2001]

§ 301.9 Uses and disposition of instruments entered under subheading 9810.00.60, HTSUS.

(a) An instrument granted duty-free entry may be transferred from the applicant institution to another eligible institution provided the receiving institution agrees not to use the instrument for commercial purposes within 5 years of the date of entry of the instrument. In such cases title to the instrument must be transferred directly between the institutions involved. An institution transferring a foreign instrument entered under subheading 9810.00.60, HTSUS within 5 years of its entry shall so inform the Customs Port in writing and shall include the following information:

(1) The name and address of the transferring institution.

(2) The name and address of the transferee.

(3) The date of transfer.

(4) A detailed description of the instrument.

(5) The serial number of the instrument and any accompanying accessories.

(6) The entry number, date of entry, and port of entry of the instrument.

(b) Whenever the circumstances warrant, and occasionally in any event, the fact of continued use for 5 years for noncommercial purposes by the applicant institution shall be verified by Customs.

(c) If an instrument is transferred in a manner other than specified above or is used for commercial purposes within 5 years of entry, the institution for which such instrument was entered shall promptly notify the Customs officials at the Port and shall be liable for the payment of duty in an amount determined on the basis of its condition as imported and the rate applicable to it.

[47 FR 32517, July 28, 1982, as amended at 66 FR 28834, May 25, 2001]

§ 301.10 Importation of repair components and maintenance tools under HTSUS subheadings 9810.00.65 and 9810.00.67 for instruments previously the subject of an entry liquidated under subheading 9810.00.60, HTSUS.

(a) An institution owning an instrument that was the subject of an entry liquidated duty-free under subheading 9810.00.60, HTSUS, that wishes to enter repair components or maintenance tools for that instrument may do so without regard to the application procedures required for entry under subheading 9810.00.60, HTSUS. The institution must certify to Customs officials at the port of entry that such components are repair components for that instrument under subheading 9810.00.65, HTSUS, or that the tools are maintenance tools necessary for the repair, checking, gauging or maintenance of that instrument under subheading 9810.00.67, HTSUS.

(b) Instruments entered under subheading 9810.00.60, HTSUS, and subsequently returned to the foreign manufacturer for repair, replacement or modification are not covered by subheading 9810.00.65 or 9810.00.67, HTSUS, although they may, upon return to the United States, be eligible for a reduced duty payment under subheading 9802.00.40 or 9802.00.50, HTSUS (covering articles exported for repairs or alterations) or may be made the subject of a new application under subheading 9810.00.60, HTSUS.

[66 FR 28834, May 25, 2001]

PART 302 [RESERVED]

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

Subpart A—Watches and Watch Movements

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AUTHORITY: Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat. 167; Pub. L. 108–429, 118 Stat. 2582.

SOURCE: 49 FR 17740, Apr. 25, 1984, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 303 appear at 68 FR 56555, Oct. 1, 2003.

Subpart A—Watches and Watch Movements

§ 303.1 Purpose.

(a) This part implements the responsibilities of the Secretaries of Commerce and the Interior (''the Secretaries'') under Pub. L. 97–446, enacted on 12 January 1983, which substantially amended Pub. L. 89–805, enacted 10 November 1966, amended by Pub. L. 94–88, enacted 8 August 1975, and amended by Pub. L. 94–241, enacted 24 March 1976, amended by Public Law 103–465, enacted 8 December 1994 and amended by Public Law 108–429 enacted 3 December 2004. The law provides for exemption from duty of territorial watches and watch movements without regard to the value of the foreign materials they contain, if they conform with the provisions of U.S. Legal Note 5 to Chapter 91 of the Harmonized Tariff Schedule of the United States (''91/5''). 91/5 denies this benefit to articles containing any material which is the product of any country with respect to which Column 2 rates of duty apply; authorizes the Secretaries to establish the total quantity of such articles, provided that the quantity so established does not exceed 10,000,000 units or one-ninth of apparent domestic consumption, whichever is greater, and provided also that the quantity is not decreased by more than ten percent nor increased by more than twenty percent (or to more than 7,000,000 units, whichever is greater) of the quantity established in the previous year.

(b) The law directs the International Trade Commission to determine apparent domestic consumption for the preceding calendar year in the first year U.S. insular imports of watches and watch movements exceed 9,000,000 units. 91/5 authorizes the Secretaries to establish territorial shares of the overall duty-exemption within specified limits; and provides for the annual allocation of the duty-exemption among insular watch producers equitably and on the basis of allocation criteria, including minimum assembly requirements, that will reasonably maximize the net amount of direct economic benefits to the insular possessions.

(c) The amended law also provides for the issuance to producers of certificates entitling the holder (or any transferee) to obtain duty refunds on watches and watch movements and parts (except discrete watchcases) imported into the customs territory of the United States. The amounts of these certificates may not exceed specified percentages of the producers' verified creditable wages in the insular possessions (90% of wages paid for the production of the first 300,000 units and declining percentages, established by the Secretaries, of wages paid for incremental production up to 750,000 units by each producer) nor an aggregate annual amount for all certificates exceeding $5,000,000 adjusted for growth by the ratio of the previous year's gross national product to the gross national product in 1982. Refund requests are governed by regulations issued by the Department of Homeland Security. The Secretaries are authorized to issue regulations necessary to carry out their duties under Headnote 6 and may

cancel or restrict the license or certificate of any insular manufacturer found violating the regulations.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988; 61 FR 55884, Oct. 30, 1996; 70 FR 67647, Nov. 8, 2005]

§303.2 Definitions and forms.

(a) *Definitions.* Unless the context indicates otherwise:

(1) *Act* means Pub. L. 97–446, enacted January 12, 1983 (19 U.S.C. 1202), 96 Stat. 2329, as amended by Pub. L. 103–465, enacted on December 8, 1994, 108 Stat. 4991, Public Law 108–429, enacted on 3 December 2004, 118 Stat. 2582.

(2) *Secretaries* means the Secretary of Commerce and the Secretary of Interior or their delegates, acting jointly.

(3) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(4) *Sale or tranfer of a business* means the sale or transfer of control, whether temporary or permanent, over a firm to which a duty-exemption has been allocated, to any other firm, corporation, partnership, person or other legal entity by any means whatsoever, including, but not limited to, merger and transfer of stock, assets or voting trusts.

(5) New firm is a watch firm not affiliated through ownership or control with any other watch duty-refund recipient. In assessing whether persons or parties are affiliated, the Secretaries will consider the following factors, among others: stock ownership; corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretaries may not find that control exists on the basis of these factors unless the relationship has the potential to affect decisions concerning production, pricing, or cost. Also, no watch duty-refund recipient may own or control more than one jewelry duty-refund recipient. A new entrant is a new watch firm which has received an allocation.

(6) *Producer* means a duty-exemption holder which has maintained its eligibility for further allocations by complying with these regulations.

(7) *Established industry* means all producers, including new entrants, that have maintained their eligibility for further allocations.

(8) *Territories, territorial, and insular possessions* refer to the insular possessions of the United States (i.e., the U.S. Virgin Islands, Guam, and American Samoa) and the Northern Mariana Islands.

(9) *Duty-exemption* refers to the authorization of duty-free entry of a specified number of watches and watch movements into the Customs Territory of the United States.

(10) *Total annual duty-exemption* refers to the entire quantity of watches or watch components which may enter duty-free into the customs territory of the United States from the territories under 91/5 in a calendar year, as determined by the Secretaries or by the International Trade Commission in accordance with the Act.

(11) *Territorial distribution* refers to the apportionment by the Secretaries of the total annual duty-exemption among the separate territories; *territorial share* means the portion consigned to each territory by this apportionment.

(12) *Allocation* refers to the distribution of all parts of a territorial share, or a portion thereof, among the several producers in a territory.

(13) Creditable wages, creditable fringe benefits and creditable duty differentials eligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages up to an amount equal to 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the insular possessions employed in a firm's 91/5 watch and watch movement program.

(A) Wages paid for the repair of watches up to an amount equal to 85 percent of the firm's total creditable wages.

(B) Wages paid to watch and watch movement assembly workers involved in the complete assembly of watches and watch movements which have entered the United States duty-free and have complied with the laws and regulations governing the program.

(C) Wages paid to watch and watch movement assembly workers involved in the complete assembly of watches, excluding the movement, only in situations where the desired movement can not be purchased unassembled and the producer has documentation establishing this.

(D) Wages paid to those persons engaged in the day-to-day assembly operations on the premises of the company office, wages paid to administrative employees working on the premises of the company office, wages paid to security employees and wages paid to servicing and maintenance employees if these services are integral to the assembly and manufacturing operations and the employees are working on the premises of the company office.

(E) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations may be credited proportionally provided the firm maintains production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(F) Wages paid to new permanent residents who have met the requirements of permanent residency in accordance with the Departments' regulations, along with meeting all other creditable wage requirements of the regulations, which must be documented and verified to the satisfaction of the Secretaries.

(ii) The combined creditable amount of individual health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 100 percent of the ''weighted average'' yearly federal employee health insurance, which is calculated from the individual health plans weighted by the number of individual contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the ''weighted average'' of all individual health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is $50,000 for each employee.

(A) The combined creditable amount of family health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 120 percent of the ''weighted average'' yearly federal employee health insurance, which is calculated from the family health plans weighted by the number of family contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the ''weighted average'' of all family health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is $50,000 for each employee.

(B) The creditable pension benefit, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, is up to 3 percent of the employee's wages unless the employee's wages exceed the maximum annual creditable wage allowed under the program (see paragraph (a)(13)(i) of this section). An employee earning more than the maximum creditable wage allowed under the program will be eligible for only 3 percent of the maximum creditable wage.

(iii) If tariffs on watches and watch movements are reduced, then companies would be required to provide the annual aggregate data by individual HTSUS watch tariff numbers for the following components contained therein: the quantity and value of watch cases, the quantity of movements, the quantity and value of each type of strap, bracelet or band, and the quantity and value of batteries shipped free of duty into the United States. If discrete watch movements are shipped free of duty into the United States, then the annual aggregate quantity by individual HTSUS movement tariff numbers would also be required along with the value of each battery if it is contained within. These data would be used to calculate the annual duty rate before each HTSUS tariff reduction, and the annual duty rate after the HTSUS tariff reduction. The amount of the difference would be creditable toward the duty refund. The tariff information would only be collected and used in the calculation of the annual

duty-refund certificate and would not be used in the calculation of the mid-year duty-refund.

(14) Non-creditable wages and non-creditable fringe benefits. Wages ineligible for the duty refund benefit wages include, but are not limited to, the following:

(i) Wages over 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the territories employed in a firm's 91/5 watch and watch movement program.

(A) Wages paid for the repair of watches in an amount over 85 percent of the firm's total creditable wages.

(B) Wages paid for the assembly of watches and watch movements which are shipped outside the customs territory of the United States; wages paid for the assembly of watches and watch movements that do not meet the regulatory assembly requirements; or wages paid for the assembly of watches or watch movements that contain HTSUS column 2 components.

(C) Wages paid for the complete assembly of watches, excluding the movement, when the desired movement can be purchased unassembled, if the producer does not have adequate documentation, demonstrating to the satisfaction of the Secretaries, that the movement could not be purchased unassembled whether or not it is entering the United States.

(D) Wages paid to persons not engaged in the day-to-day assembly operations on the premises of the company office; wages paid to any outside consultants; wages paid to outside the office personnel, including but not limited to, lawyers, gardeners, construction workers, and accountants; wages paid to employees not working on the premises of the company office; and wages paid to employees who do not qualify as permanent residents in accordance with the Departments' regulations.

(E) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations if the producer does not maintain production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(ii) Any costs, for the year in which the wages were paid, of the combined creditable amount of individual health and life insurance for employees over 100 percent of the ''weighted average'' yearly individual health insurance costs for all federal employees. The cost of any life insurance over the $50,000 limit for each employee.

(A) Any costs, for the year in which the wages were paid, of the combined creditable amount of family health and life insurance for employees over 120 percent of the ''weighted average'' yearly family health insurance costs for all federal employee. The cost of any life insurance over the $50,000 limit for each employee.

(B) The cost of any pension benefit per employee over 3 percent of the employee's creditable wages unless the employee's wages exceed the maximum annual creditable annual maximum creditable wage allowed under the program (*see* paragraph (a)(13)(i) of this section). Employees earning over the maximum creditable wage allowed under the program would have a creditable annual pension benefit of up to 3 percent of the maximum creditable wage and wages over 3 percent of the maximum creditable wage would not be creditable.

(15) *Non-91/5 watches and watch movements* include, but are not limited to, watches and movements which are liquidated as dutiable by the Bureau of Customs and Border Protection but do not include, for purposes of the duty refund, watches that are completely assembled in the insular possessions, with the exception of a desired movement if the movement cannot be purchased in an unassembled condition; contains any material which is the product of any country with respect to which Column 2 rates of duty apply; are ineligible for duty-free treatment pursuant to law or regulation; or are units the assembly of which the Departments have determined not to involve substantial and meaningful work in the territories (as elsewhere defined in these regulations).

(16) *Discrete movements and components* means screws, parts, components

and subassemblies not assembled together with another part, component or subassembly at the time of importation into the territory. (A mainplate containing set jewels or shock devices, together with other parts, would be considered a single discrete component, as would a barrel bridge subassembly.)

(17) *Permanent resident* means a person with one residence which is in the insular possessions or a person with one or more residences outside the insular possessions who meets criteria that include maintaining his or her domicile in the insular possessions, residing (*i.e.,* be physically present for at least 183 days within a continuous 365 day period) and working in the territory at a program company, and maintaining his or her primary office for day-to-day work in the insular possessions.

(b) *Forms*—(1) *ITA–334P ''Application for License to Enter Watches and Watch Movements into the Customs Territory of the United States.''* This form must be completed annually by all producers desiring to receive an annual allocation. It is also used, with appropriate special instructions for its completion, by new firms applying for duty-exemptions and by producers who wish to receive the duty refund in installments on a biannual basis.

(2) *ITA–333 ''License to Enter Watches and Watch Movements into the Customs Territory of the United States.''* This form is issued by the Director to producers who have received an allocation and constitutes authorization for issuing specific shipment permits by the territorial governments. It is also used to record the balance of a producer's remaining duty-exemptions after each shipment permit is issued.

(3) *ITA–340 ''Permit to Enter Watches and Watch Movements into the Customs Territory of the United States.''* This form may be obtained, by producers holding a valid license, from the territorial government or may be produced by the licensee in an approved computerized format or any other medium or format approved by the Departments of Commerce and the Interior. The completed form authorizes duty-free entry of a specified amount of watches or watch movements at a specified U.S. Customs port.

(4) *ITA–360P ''Certificate of Entitlement to Secure the Refund of Duties on Articles that Entered the Customs Territory of The United State Duty Paid.''* This document authorizes an insular watch producer to request the refund of duties on imports of articles that entered the customs territory of the United States duty paid, up to the specified value of the certificate. Certificates may be used to obtain duty refunds only when presented with a properly executed Form ITA–361P.

(5) *ITA–361P ''Request for Refund of Duties on Articles that Entered the Customs Territory of the United States Duty Paid.''* This form must be completed to obtain the refund of duties authorized by the Director through Form ITA–360P. After authentication by the Department of Commerce, it may be used for the refund of duties on items which were entered into the customs territory of the United States during a specified time period. Copies of the appropriate Customs entries must be provided with this form to establish a basis for issuing the claimed amounts. The forms may also be used to transfer all or part of the producer's entitlement to another party. (See § 303.12.)

(The information collection requirements in paragraph (b)(1) were approved by the Office of Management and Budget under control number 0625–0040. The information collection requirements in paragraphs (b) (4) through (6) were approved under control number 0625–0134)

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988; 56 FR 9621, Mar. 7, 1991; 61 FR 55884, 55885, Oct. 30, 1996; 65 FR 8049, Feb. 17, 2000; 66 FR 34812, July 2, 2001; 67 FR 77408, Dec. 18, 2002; 68 FR 56555, Oct. 1, 2003; 70 FR 67647, Nov. 8, 2005]

§ 303.3 Determination of the total annual duty-exemption.

(a) *Procedure for determination.* If, after considering the productive capacity of the territorial watch industry and the economic interests of the territories, the Secretaries determine that the amount of the total annual duty-exemption, or the territorial shares of the total amount, should be changed, they shall publish in the FEDERAL REGISTER a proposed limit on the quantity

of watch units which may enter duty-free into the customs territory of the United States and proposed territorial shares thereof and, after considering comments, establish the limit and shares by FEDERAL REGISTER notice. If the Secretaries take no action under this section, they shall make the allocations in accordance with the limit and shares last established by this procedure.

(b) *Standards for determination.* (1) Notwithstanding paragraph (b)(2) of this section, the limit established for any year may be 7,000,000 units if the limit established for the preceding year was a smaller amount.

(2) Subject to paragraph (c) of this section, the total annual duty-exemption shall not be decreased by more than 10% of the quantity established for the preceding calendar year, or increased, if the resultant total is larger than 7,000,000, by more than 20% of the quantity established for the calendar year immediately preceding.

(3) The Secretaries shall determine the limit after considering the interests of the territories; the domestic or international trade policy objectives of the United States; the need to maintain the competitive nature of the territorial industry; the total contribution of the industry to the economic well-being of the territories; and the territorial industry's utilization of the total duty-exemption established in the preceding year.

(c) *Determinations based on consumption.* (1) The Secretaries shall notify the International Trade Commission whenever they have reason to believe duty-free watch imports from the territories will exceed 9,000,000 units, or whenever they make a preliminary determination that the total annual duty-exemption should exceed 10,000,000 units.

(2) In addition to the limitations in paragraph (b) of this section, the Secretaries shall not establish a limit exceeding one-ninth of apparent domestic consumption if such consumption, as determined by International Trade Commission, exceeds 90 million units.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 7170, Feb. 21, 1985; 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988]

§303.4 Determination of territorial distribution.

(a) *Procedure for determination.* The Secretaries shall determine the territorial shares concurrently with their determination of the total annual duty exemption, and in the same manner (see §303.3, above).

(b) *Standards for determination*—(1) *Limitations.* A territorial share may not be reduced by more than 500,000 units in any calendar year. No territorial share shall be less than 500,000 units.

(2) *Criteria for setting precise quantities.* The Secretaries shall determine the precise quantities after considering, *inter alia,* the territorial capacity to produce and ship watch units. The Secretaries shall further bear in mind the aggregate benefits to the territories, such as creditable wages paid, creditable wages per unit exported, and corporate income tax payments.

(3) *Limitations on reduction of share.* The Secretaries shall not reduce a territory's share if its producers use 85% or more of the quantity distributed to that territory in the immediately preceding year, except in the case of a major increase or decrease in the number of producers in a territory or if they believe that a territorial industry will decrease production by more than 15% from the total of the preceding year.

(4) *Standby redistribution authority.* The Secretaries may redistribute territorial shares if such action is warranted by circumstances unforeseen at the time of the initial distributions, such as that a territory will use less than 80% of its total by the end of a calendar year, or if a redistribution is necessary to maintain the competitive nature of the territorial industries.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 7170, Feb. 21, 1985]

§303.5 Application for annual allocations of duty-exemptions.

(a) Application forms (ITA–334P) shall be furnished to producers by January 1, and must be completed and returned to the Director no later than January 31, of each calendar year.

(b) All data supplied are subject to verification by the Secretaries and no allocation shall be made to producer until the Secretaries are satisfied that

the data are accurate. To verify the data, representatives of the Secretaries shall have access to relevant company records including:

(1) Work sheets used to answer all questions on the application form;

(2) Original records from which such data are derived;

(3) Records pertaining to ownership and control of the company and to the satisfaction of eligibility requirements of duty-free treatment of its product by the Bureau of Customs and Border Protection;

(4) Records pertaining to corporate income taxes, gross receipts taxes and excise taxes paid by each producer in the territories on the basis of which a portion of each producer's annual allocation is or may be predicated;

(5) Customs, bank, payroll, production records, and all shipping records including the importer of record number and proof of residency, as requested;

(6) Records on purchases of components, including documentation on the purchase of any preassembled movements, which demonstrate that such movements could not have been purchased from the vendor in an unassembled condition, and records on the sales of insular watches and movements, including proof of payment; and

(7) Any other records in the possession of the parent or affiliated companies outside the territory pertaining to any aspect of the producer's 91/5 watch assembly operation.

(8) All records pertaining to health insurance, life insurance and pension benefits for each employee; and

(9) If HTSUS tariffs on watches and watch movements are reduced, records of the annual aggregate data by individual HTSUS watch tariff numbers for the following components contained therein would be required: the quantity and value of watch cases; the quantity of movements; the quantity and value of each type of strap, bracelet or band; and the quantity and value of batteries shipped free of duty into the United States. In addition, if applicable, records of the annual aggregate quantity of discrete watch movements shipped free of duty into the United States by HTSUS tariff number.

(c) Data verification shall be performed in the territories, unless other arrangements satisfactory to the Departments are made in advance, by the Secretaries' representatives by the end of February of each calendar year. In the event a company cannot substantiate the data in its application before allocations must be calculated, the Secretaries shall determine which data will be used.

(d) Records subject to the requirements of paragraph (b), above, shall be retained for a period of two years following their creation.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988; 68 FR 56556, Oct. 1, 2003; 70 FR 67648, Nov. 8, 2005]

§ 303.6 Allocation and reallocation of exemptions among producers.

(a) *Interim allocations.* As soon as practicable after January 1 of each year the Secretaries shall make an interim allocation to each producer equaling 70% of the number of watch units it has entered duty-free into the customs territory of the United States during the first eight months of the preceding calendar year, or any lesser amount requested in writing by the producer. The Secretaries may also issue a lesser amount if, in their judgment, the producer might otherwise receive an interim allocation in an amount greater than the producer's probable annual allocation. In calculating the interim allocations, the Director shall count only duty-free watches and watch movements verified by the Bureau of Customs and Border Protection, or verified by other means satisfctory to the Secretaries, as having been entered on or before August 31 of the preceding year. Interim allocations shall not be published.

(b) *Annual allocations.* (1) By March 1 of each year the Secretaries shall make annual allocations to the producers in accordance with the allocation formula based on data supplied in their annual application (Form ITA–334P) and verified by the Secretaries.

(2) The excess of a producer's duty-exemption earned under the allocation

criteria over the amount formally requested by the producer shall be considered to have been relinquished voluntarily (see paragraph (f) below). A producer's request may be modified by written communication received by the Secretaries by February 28, or, at the discretion of the Secretaries, before the annual allocations are made. An allocation notice shall be published in the FEDERAL REGISTER.

(c) *Supplemental allocations.* At the request of a producer, the Secretaries may supplement a producer's interim allocation if the Secretaries determine the producer's interim allocation will be used before the Secretaries can issue the annual allocation. Allocations to supplement a producer's annual allocation shall be made under the reallocation provisions prescribed below.

(d) *Allocations to new entrants.* In making interim and annual allocations to producers selected the preceding year as new entrants, the Secretaries shall take into account that such producers will not have had a full year's operation as a basis for computation of its duty-exemption. The Secretaries may make an interim or annual allocation to a new entrant even if the firm did not operate during the preceding calendar year.

(e) *Special allocations.* A producer may request a special allocation if unusual circumstances kept it from making duty-free shipments at a level comparable with its past record. In considering such requests, the Secretaries shall take into account the firm's proposed assembly operations; its record in contributing to the territorial economy; and its intentions and capacity to make meaningful contributions to the territory. They shall also first determine that the amount of the special allocation requested will not significantly affect the amounts allocated to other producers pursuant to §303.6(b)(1).

(f) *Reallocations.* Duty-exemptions may become available for reallocation as a result of cancellation or reduction for cause, voluntary relinquishment or nonplacement of duty-exemption set aside for new entrants. At the request of a producer, the Secretaries may reallocate such duty-exemptions among the remaining producers who can use additional quantities in a manner judged best for the economy of the territories. The Secretaries shall consider such factors as the wage and income tax contributions of the respective producers during the preceding year and the nature of the producer's present assembly operations. In addition, the Secretaries may consider other factors which, in their judgment, are relevant to determining that applications from new firms, in lieu of reallocations, should be considered for part or all of unused portions of the total duty exemptions. Such factors may include:

(1) The ability of the established industry to use the duty-exemption;

(2) Whether the duty-exemption is sufficient to support new entrant operations;

(3) The impact upon the established industry if new entrants are selected, particularly with respect to the effect on local employment, tax contributions to the territorial government, and the ability of the established industry to maintain satisfactory production levels; and

(4) Whether additional new entrants offer the best prospect for adding economic benefits to the territory.

(g) Section 303.14 of this part contains the criteria and formulae used by the Secretaries in calculating each watch producer's annual watch duty-exemption allocation, and other special rules or provisions the Secretaries may periodically adopt to carry out their responsibilities in a timely manner while taking into account changing circumstances. References to duty-exemptions, unless otherwise indicated, are to the amount available for reallocation in the current calendar year. Specifications of or references to data or bases used in the calculation of current year allocations (e.g., economic contributions and shipments) are, unless indicated otherwise, those which were generated in the previous year.

(h) The Secretaries may propose changes to §303.14 at any time they consider it necessary to fulfill their responsibilities. Normally, such changes will be proposed towards the end of each calendar year. Interested parties

shall be given an opportunity to submit written comments on proposed changes.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 61 FR 55885, Oct. 30, 1996; 63 FR 5888, Feb. 5, 1998]

§ 303.7 Issuance of licenses and shipment permits.

(a) *Issuance of Licenses (ITA–333).* (1) Concurrently with annual allocations under § 303.5 the Director shall issue a non-transferable license (Form ITA–333) to each producer. The Director shall also issue a replacement license if a producer's allocation is reduced pursuant to § 303.6.

(2) Annual duty-exemption licenses shall be for only that portion of a producer's annual duty-exemption not previously licensed.

(3) If a producer's duty-exemption has been reduced, the Director shall not issue a replacement license for the reduced amount until the producer's previous license has been received for cancellation by the Director.

(4) A producer's license shall be used in their entirety, except when they expire or are cancelled, in order of their date of issuance, i.e., an interim license must be completely used before shipment permits can be issued against an interim supplemental license.

(5) Outstanding licenses issued by the Director automatically expire at midnight, December 31, of each calendar year. No unused allocation of duty-exemption may be carried over into the subsequent calendar year.

(6) The Director shall ensure that all licenses issued are conspicuously marked to show the type of license issued, the identity of the producer, and the year for which the license is valid. All licenses shall bear the signature of the Director.

(7) Each producer is responsible for the security of its licenses. The loss of a license shall be reported immediately to the Director. Defacing, tampering with, and unauthorized use of a license are forbidden.

(b) *Shipment Permit Requirements (ITA–340).* (1) Producers may obtain shipment permits from the territorial government officials designated by the Governor. Permits may also be produced in any computerized or other format or medium approved by the Departments. The permit is for use against a producer's valid duty-exemption license and a permit must be completed for every duty-free shipment.

(2) Each permit must specify the license and permit number, the number of watches and watch movements included in the shipment, the unused balance remaining on the producer's license, pertinent shipping information and must have the certification statement signed by an official of the licensee's company. A copy of the completed permit must be sent electronically or taken to the designated territorial government officials, no later than the day of shipment, for confirmation that the producer's duty-exemption license has not been exceeded and that the permit is properly completed.

(3) The permit (form ITA–340) shall be filed with Customs along with the other required entry documents to receive duty-free treatment unless the importer or its representative clears the documentation through Customs' automated broker interface. Entries made electronically do not require the submission of a permit to Customs, but the shipment data must be maintained as part of a producer's recordkeeping responsibilities for the period prescribed by Customs' recordkeeping regulations. Bureau of Customs and Border Protection Import Specialists may request the documentation they deem appropriate to substantiate claims for duty-free treatment, allowing a reasonable amount of time for the importer to produce the permit.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 61 FR 55885, Oct. 30, 1996]

§ 303.8 Maintenance of duty-exemption entitlements.

(a) The Secretaries may order a producer to show cause within 30 days of receipt of the order why the duty-exemption to which the firm would otherwise be entitled should not be cancelled, in whole or in part, if:

(1) At any time after June 30 of the calendar year:

(i) A producer's assembly and shipment record provides a reasonable basis to conclude that the producer will use less than 80 percent of its total

allocation by the end of the calendar year, *and*

(ii) The producer refuses a request from the Departments to relinquish that portion of its allocation which they conclude will not be used; *or*

(2) A producer fails to satisfy or fulfill any term, condition or representation, whether undertaken by itself or prescribed by the Departments, upon which receipt of allocation has been predicated or upon which the Departments have relied in connection with the sale or transfer of a business together with its allocation; *or*

(3) A producer, in the judgment of the Secretaries, has failed to make a meaningful contribution to the territory for a period of two or more consecutive calendar years, when compared with the performance of the duty-free watch assembly industry in the territory as a whole. This comparison shall include the producer's quantitative use of its allocations, amount of direct labor employed in the assembly of watches and watch movements, and the net amount of corporate income taxes paid to the government of the territory. If the producer fails to satisfy the Secretaries as to why such action should not be taken, the firm's allocation shall be reduced or cancelled, whichever is appropriate under the show-cause order. The eligibility of a firm whose allocation has been cancelled to receive further allocations may also be terminated.

(b) The Secretaries may also issue a show-cause order to reduce or cancel a producer's allocation or production incentive certificate (see §303.12, below), as appropriate, or to declare the producer ineligible to receive an allocation or certificate if it violates any regulation in this part, uses a form, license, permit, or certificate in an unauthorized manner, or fails to provide information or data required by these regulations or requested by the Secretaries or their delegates in the performance of their responsibilities.

(c) If a firm's allocation is reduced or cancelled, or if a firm voluntarily relinquishes a part of its allocation, the Secretaries may:

(1) Reallocate the allocation involved among the remaining producers in a manner best suited to contribute to the economy of the territory;

(2) Reallocate the allocation or part thereof to a new entrant applicant; or

(3) Do neither of the above if deemed in the best interest of the territories and the established industry.

[49 FR 17740, Apr. 25, 1984, as amended at 61 FR 55885, Oct. 31, 1996]

§303.9 Restrictions on the transfer of duty-exemptions.

(a) The sale or transfer of a duty-exemption from one firm to another shall not be permitted.

(b) The sale or transfer of a business together with its duty-exemption shall be permitted with prior written notification to the Departments. Such notification shall be accompanied by certifications and representations, as appropriate, that:

(1) If the transferee is a subsidiary of or in any way affiliated with any other company engaged in the production of watch movements components being offered for sale to any territorial producer, the related company or companies will continue to offer such watch and watch movement components on equal terms and conditions to all willing buyers and shall not engage in any practice, in regard to the sale of components, that competitively disadvantages the non-affiliated territorial producers *vis-a-vis* the territorial subsidiary;

(2) The sale or transfer price for the business together with its duty-exemption does not include the capitalization of the duty-exemption *per se;*

(3) The transferee is neither directly or indirectly affiliated with any other territorial duty-exemption holder in any territory;

(4) The transferee will not modify the watch assembly operations of the duty-exemption firm in a manner that will significantly diminish its economic contributions to the territory.

(c) At the request of the Departments, the transferee shall permit representatives of the Departments to inspect whatever records are necessary to establish to their satisfaction that the certifications and representations contained in paragraph (b) of this section have been or are being met.

(d) Any transferee who is either unwilling or unable to make the certifications and representations specified in

paragraph (b) of this section shall secure the Departments' approval in advance of the sale or transfer of the business together with its duty-exemption. The request for approval shall specify which of the certifications specified in paragraph (b) of this section the firm is unable or unwilling to make, and give reasons why such fact should not constitute a basis for the Departments' disapproval of the sale or transfer.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985]

§§ 303.10–303.11 [Reserved]

§ 303.12 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) The total annual amount of the Certificate of Entitlement, Form ITA–360, may be divided and issued on a biannual basis. The first portion of the total annual certificate amount will be based on reported duty-free shipments and creditable wages paid during the first six months of the calendar year, using the formula in § 303.14(c). The Departments require the receipt of the data by July 31 for each producer who wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued on or before August 31 of the same calendar year in which the wages were earned unless the Departments have unresolved questions. The process of determining the total annual amount of the duty refund will remain the same. The completed annual application (Form ITA–334P) shall be received by the Departments on or before January 31 and the annual verification of data and the calculation of each producer's total annual duty refund, based on the verified data, will continue to take place in February. Once the calculations for each producer's duty refund has been completed, the portion of the duty refund that has already been issued to each producer will be deducted from the total amount of each producer's annual duty refund amount. The duty refund certificate will continue to be issued by March 1 unless the Departments have unresolved questions.

(2) Certificates shall not be issued to more than one company in the territories owned or controlled by the same corporate entity.

(b) *Securities and handling of certificates.* (1) Certificate holders are responsible for the security of the certificates. The certificates shall be kept at the territorial address of the insular producer or at another location having the advance approval of the Departments.

(2) All refund requests made pursuant to the certificates shall be entered on the reverse side of the certificate.

(3) Certificates shall be returned by registered, certified or express carrier mail to the Departments when:

(i) A refund is requested which exhausts the entitlement on the face of the certificate,

(ii) The certificate expires, or

(iii) The Departments request their return with good cause.

(4) Certificate entitlements may be transferred according to the procedures described in (c) of this section.

(c) *The use and transfer of certificate entitlements.* (1) Insular producers issued a certificate may request a refund by executing Form ITA–361P (*see* § 303.2(b)(5) and the instructions on the form). After authentication by the Department of Commerce, Form ITA–361P may be used to obtain duty refunds on articles that entered the customs territory of the United States duty paid except for any article containing a material which is the product of a country to which column 2 rates of duty apply. Articles for which duty refunds are claimed must have entered the customs territory of the United States during the two-year period prior to the issue date of the certificate or during the one-year period the certificate remains valid. Copies of the appropriate Customs entries must be provided with the refund request in order to establish a basis for issuing the claimed amounts. Certification regarding drawback claims and liquidated refunds relating to the presented entries is required from the claimant on the form.

(2) Regulations issued by the Bureau of Customs and Border Protection, U.S. Department of Homeland Security, govern the refund of duties under Public Law 97–446, as amended by Public Law 103–465 and Public Law 108–429. If the Departments receive information

from the Bureau of Customs and Border Protection that a producer has made unauthorized use of any official form, they shall cancel the affected certificate.

(3) The insular producer may transfer a portion of all of its certificate entitlement to another party by entering in block C of Form ITA–361P the name and address of the party.

(4) After a Form ITA–361P transferring a certificate entitlement to a party other than the certificate holder has been authenticated by the Department of Commerce, the form may be exchanged for any consideration satisfactory to the two parties. In all cases, authenticated forms shall be transmitted to the certificate holder or its authorized custodian for disposition (see paragraph (b) above).

(5) All disputes concerning the use of an authenticated Form ITA–361P shall be referred to the Departments for resolution. Any party named on an authenticated Form ITA–361P shall be considered an ''interested party'' within the meaning of § 303.13 of this part.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 56 FR 9621, Mar. 7, 1991; 61 FR 55885, Oct. 30, 1996; 66 FR 34812, July 2, 2001; 70 FR 67648, Nov. 8, 2005]

§ 303.13 Appeals.

(a) Any official decision or action relating to the allocation of duty-exemptions or to the issuance or use of production incentive certificates may be appealed to the Secretaries by any interested party. Such appeals must be received within 30 days of the date on which the decision was made or the action taken in accordance with the procedures set forth in paragraph (b) of this section. Interested parties may petition for the issuance of a rule, or amendment or repeal of a rule issued by the Secretaries. Interested parties may also petition for relief from the application of any rule on the basis of hardship or extraordinary circumstances resulting in the inability of the petitioner to comply with the rule.

(b) Petitions shall bear the name and post office address of the petitioner and the name and address of the principal attorney or authorized representative (if any) for the party concerned. They shall be addressed to the Secretaries and filed in one original and two copies with the U.S. Department of Commerce, Import Administration, International Trade Administration, Washington, D.C. 20230, Attention: Statutory Import Programs Staff. Petitions shall contain the following:

(1) A reference to the decision, action or rule which is the subject of the petition;

(2) A short statement of the interest of the petitioner;

(3) A statement of the facts as seen by the petitioner;

(4) The petitioner's argument as to the points of law, policy of fact. In cases where policy error is contended, the alleged error together with the policy the submitting party advocates as the correct one should be described in full;

(5) A conclusion specifying the action that the petitioner believes the Secretaries should take.

(c) The Secretaries may at their discretion schedule a hearing and invite the participation of other interested parties.

(d) The Secretaries shall communicate their decision which shall be final, to the petitioner by registered mail.

(e) If the outcome of any petition materially affects the amount of the petitioner's allocation and if the Secretaries' consideration of the petition continues during the calculation of the annual allocations, the Secretaries shall set aside a portion of the affected territorial share in an amount which, in their judgment, protects the petitioner's interest and shall allocate the remainder among the other producers.

[49 FR 17740, Apr. 25, 1984, as amended at 56 FR 9622, Mar. 7, 1991]

§ 303.14 Allocation factors and miscellaneous provisions.

(a) *The allocation formula.* (1) Except as provided in (a)(2) of this section, the territorial shares (excluding any amount set aside for possible new entrants) shall be allocated among the several producers in each territory in accordance with the following formula:

(i) Fifty percent of the territorial share shall be allocated on the basis of

the net dollar amount of economic contributions to the territory consisting of the dollar amount of creditable wages, up to an amount equal to 65% of the contribution and benefit base for Social Security as defined in the Social Security Act for the year in which the wages were earned, paid by each producer to territorial residents, plus the dollar amount of income taxes (excluding penalty and interest payments and deducting any income tax refunds and subsidies paid by the territorial government), and

(ii) Fifty percent of the territorial share shall be allocated on the basis of the number of units of watches and watch movements assembled in the territory and entered by each producer duty-free into the customs territory of the United States.

(2) If there is only one producer in a territory, the entire territorial share, excluding any amount set aside for possible new entrants, may be allocated without recourse to any distributive formula.

(b) *Minimum assembly requirements and prohibition of preferential supply relationship.* (1) No insular watch movement or watch may be entered free of duty into the customs territory of the United States unless the producer used 30 or more discrete parts and components to assemble a mechanical watch movement and 33 or more discrete parts and components to assemble a mechanical watch.

(2) Quartz analog watch movements must be assembled from parts knocked down to the maximum degree possible for the technical capabilities of the insular industry as a whole. The greatest degree of disassembly specified, for each manufacturer's brand and model, by any producer in any territory purchasing such brands and models shall constitute the disassembly required as a minimum for the industry as a whole.

(3) Watch movements and watches assembled from components with a value of more than $35 for watch movements and $800 for watches shall not be eligible for duty-exemption upon entry into the U.S. Customs territory. Value means the value of the merchandise plus all charges and costs incurred up to the last point of shipment (i.e., prior to entry of the parts and components into the territory).

(4) No producer shall accept from any watch parts and components supplier advantages and preferences which might result in a more favorable competitive position for itself vis-a-vis other territorial producers relying on the same supplier. Disputes under this paragraph may be resolved under the appeals procedures contained in § 303.13(b).

(c) Calculation of the value of production incentive certificates. (1) The value of each producer's certificate shall equal the producer's average creditable wages per unit shipped (including non-91/5 units as provided for in § 303.2(a)(13)) multiplied by the sum of:

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus

(iii) Incremental units shipped up to 600,000 times a factor of 80%; plus

(iv) Incremental shipments up to 750,000 units times a factor of 75%.

(2) The Departments may make adjustments for these data in the manner set forth in § 303.5(c).

(d) *New entrant invitations.* Applications from new firms are invited for any unused portion of any territorial share.

(e) *Territorial shares.* The shares of the total duty exemption are 1,866,000 for the Virgin Islands, 500,000 for Guam, 500,000 for American Samoa, and 500,000 for the Northern Mariana Islands.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 17825, May 19, 1988; 53 FR 52679, Dec. 29, 1988; 53 FR 52994, Dec. 30, 1988; 56 FR 9622, Mar. 7, 1991; 58 FR 21348, Apr. 21, 1993; 59 FR 8847, 8848, Feb. 24, 1994; 61 FR 55885, Oct. 30, 1996; 63 FR 49667, Sept. 17, 1998; 65 FR 8049, Feb. 17, 2000; 69 FR 51533, Aug. 20, 2004]

Subpart B—Jewelry

SOURCE: 64 FR 67150, Dec. 1, 1999, unless otherwise noted.

§ 303.15 Purpose.

(a) This subpart implements the responsibilities of the Secretaries of Commerce and the Interior (''the Secretaries'') under Pub. L. 106–36, enacted 25 June 1999 which substantially

amended Pub. L. 97–446, enacted 12 January 1983, amended by Pub. L. 89–805, enacted 10 November 1966, amended by Pub. L. 94–88, enacted 8 August 1975, amended by Pub. L. 94–241, enacted 24 March 1976, and amended by Pub. L. 103–465, enacted 8 December 1994, and Public Law 108–429, enacted on 3 December 2004.

(b) The amended law provides for the issuance of certificates to insular jewelry producers who have met the requirements of the laws and regulations, entitling the holder (or any transferee) to obtain refunds of duties on watches and watch movements and parts (except discrete watch cases) imported into the customs territory of the United States. The amounts of these certificates may not exceed specified percentages of the producers' verified creditable wages in the insular possessions (90% of wages paid for the production of the first 300,000 duty-free units and declining percentages, established by the Secretaries, of wages paid for incremental production up to 750,000 units by each producer) nor an aggregate annual amount for all certificates exceeding $5,000,000 adjusted for growth by the ratio of the previous year's gross national product to the gross national product in 1982. However, the law specifies that watch producer benefits are not to be diminished as a consequence of extending the duty refund to jewelry manufacturers. In the event that the amount of the calculated duty refunds for watches and jewelry exceeds the total aggregate annual amount that is available, the watch producers shall receive their calculated amounts and the jewelry producers would receive amounts proportionately reduced from the remainder. Refund requests are governed by regulations issued by the Department of Homeland Security (*see* 19 CFR 7.4).

(c) Section 2401(a) of Pub. L. 106–36 and additional U.S. note 5 to chapter 91 of the HTSUS authorize the Secretaries to issue regulations necessary to carry out their duties. The Secretaries may cancel or restrict the certificate of any insular manufacturer found violating the regulations.

[49 FR 17740, Apr. 25, 1984, as amended at 70 FR 67648, Nov. 8, 2005]

§ 303.16 Definitions and forms.

(a) *Definitions.* For purposes of the subpart, unless the context indicates otherwise:

(1) *Act* means Pub. L. 97–446, enacted 12 January 1983 (19 U.S.C. 1202), 96 Stat. 2329, as amended by Pub. L. 103–465, enacted on 8 December 1994, 108 Stat. 4991 and, as amended by Pub. L. 106–36, enacted on 25 June 1999, and Public Law 108–429, enacted on 3 December 2004.

(2) *Secretaries* means the Secretary of Commerce and the Secretary of the Interior or their delegates, acting jointly.

(3) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(4) *Sale or transfer of a business* means the sale or transfer of control, whether temporary or permanent, over a firm which is eligible for a jewelry program duty-refund to any other firm, corporation, partnership, person or other legal entity by any means whatsoever, including, but not limited to, merger and transfer of stock, assets or voting trusts.

(5) *New firm* means a jewelry company which has requested in writing to the Secretaries permission to participate in the program. In addition to any other information required by the Secretaries, new firm requests shall include a representation that the company agrees to abide by the laws and regulations of the program, an outline of the company's anticipated economic contribution to the territory (including the number of employees) and a statement as to whether the company is affiliated by ownership or control with any other watch or jewelry company in the insular possessions. The Secretaries will then review the request and make a decision based on the information provided and the economic contribution to the territory. A new jewelry firm may not be affiliated through ownership or control with any other jewelry duty-refund recipient. In assessing whether persons or parties are affiliated, the Secretaries will consider the following factors, among others: stock ownership; corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretaries

may not find that control exists on the basis of these factors unless the relationship has the potential to affect decisions concerning production, pricing, or cost. Also, no jewelry duty-refund recipient may own or control more than one watch duty-refund recipient.

(6) *Jewelry producer* means a company, located in one of the insular territories (*see* paragraph (a)(8) of this section), that produces jewelry provided for in heading 7113, HTSUS, which meets all the Bureau of Customs and Border Protection requirements for duty-free entry set forth in General Note 3(a)(iv), HTSUS, and 19 CFR 7.3, and has maintained its eligibility for duty refund benefits by complying with these regulations.

(7) Unit of Jewelry means a single article (*e.g.*, ring, bracelet, necklace), pair (e.g, cufflinks), gram for links which are sold in grams and stocked in grams, and other subassemblies and components in the customary unit of measure they are stocked and sold within the industry.

(8) *Territories, territorial and insular possessions* refers to the insular possessions of the United States (i.e., the U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands).

(9) Creditable wages and creditable fringe benefits eligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages up to an amount equal to 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the insular possessions employed in a firm's manufacture of HTSUS heading 7113 articles of jewelry which are a product of the insular possessions and have met the Bureau of Customs and Border Protection's criteria for duty-free entry into the United States, plus any wages paid for the repair of non-insular HTSUS heading 7113 jewelry up to an amount equal to 50 percent of the firm's total creditable wages.

(A) Wages paid to persons engaged in the day-to-day assembly operations at the company office, wages paid to administrative employees working on the premises of the company office, wages paid to security operations employees and wages paid to servicing and maintenance employees if these services are integral to the assembly and manufacturing operations and the employees are working on the premises of the company office.

(B) Wages paid to permanent residents who are employees of a new company involved in the jewelry assembly and jewelry manufacturing of HTSUS heading 7113 jewelry for up to 18 months after such jewelry company commences jewelry manufacturing or jewelry assembly operations in the insular possessions.

(C) Wages paid when a maximum of two producers work on a single piece of HTSUS heading 7113 jewelry which entered the United States free of duty under the program. Wages paid by the two producers will be credited proportionally provided both producers demonstrate to the satisfaction of the Secretaries that they worked on the same piece of jewelry, the jewelry received duty-free treatment into the customs territory of the United States, and the producers maintained production and payroll records sufficient for the Departments' verification of the creditable wage portion (*see* § 303.17(b)).

(D) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations may be credited proportionally provided the firm maintains production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(E) Wages paid to new permanent residents who have met the requirements of permanent residency in accordance with the Departments' regulations along with meeting all other creditable wage requirements of the regulations, which must be documented and verified to the satisfaction of the Secretaries.

(ii) The combined creditable amount of individual health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 100 percent of the ''weighted average'' yearly federal employee health insurance, which is calculated from the individual health plans

weighted by the number of individual contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the ''weighted average'' of all individual health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is $50,000 for each employee.

(A) The combined creditable amount of family health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 120 percent of the ''weighted average'' yearly federal employee health insurance, which is calculated from the family health plans weighted by the number of family contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the ''weighted average'' of all family health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is $50,000 dollars for each employee.

(B) The creditable pension benefit, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, is up to 3 percent of the employee's wages unless the employee's wages exceed the maximum annual creditable wage allowed under the program (see paragraph (a)(9)(i) of this section). An employee earning more than the maximum creditable wage allowed under the program will be eligible for only 3 percent of the maximum creditable wage.

(10) Non-creditable wages and non-creditable fringe benefits. Wages ineligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages over 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the territories employed in a firm's 91/5 heading 7113, HTSUS, jewelry program.

(A) Wages paid for the repair of jewelry in an amount over 50 percent of the firm's total creditable wages.

(B) Wages paid to employees who are involved in assembling HTSUS heading 7113 jewelry beyond 18 months after such jewelry company commences jewelry manufacturing or jewelry assembly operations in the insular possessions if the jewelry does not meet the Bureau of Customs and Border Protection's substantial transformation requirements and other criteria for duty-free enter into the United States.

(C) Wages paid for the assembly and manufacturing of jewelry which is shipped to places outside the customs territory of the United States; wages paid for the assembly and manufacturing of jewelry that does not meet the regulatory assembly requirements; or wages paid for the assembly and manufacture of jewelry that contain HTSUS column 2 components.

(D) Wages paid to those persons not engaged in the day-to-day assembly operations on the premises of the company office, wages paid to any outside consultants, wages paid to outside the office personnel, including but not limited to, lawyers, gardeners, construction workers and accountants; wages paid to employees not working on the premises of the company office and wages paid to employees who do not qualify as permanent residents in accordance with the Departments' regulations.

(E) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations if the producer does not maintain production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(ii) Any costs, for the year in which the wages were paid, of the combined creditable amount of individual health and life insurance for employees over 100 percent of the ''weighted average'' yearly individual health insurance costs for all federal employees. The cost of any life insurance over the $50,000 limit for each employee.

(A) Any costs, for the year in which the wages were paid, of the combined creditable amount of family health and life insurance for employees over 120 percent of the ''weighted average''

yearly family health insurance costs for all federal employee. The cost of any life insurance over the $50,000 limit for each employee.

(B) The cost of any pension benefit per employee over 3 percent of the employee's creditable wages unless the employee's wages exceed the maximum annual creditable annual maximum creditable wage allowed under the program (*see* paragraph (a)(9)(i) of this section). Employees earning over the maximum creditable wage allowed under the program would have a creditable annual pension benefit of up to 3 percent of the maximum creditable wage and wages over 3 percent of the maximum creditable wage would not be creditable.

(11) *Dutiable jewelry* includes jewelry which does not meet the requirements for duty-free entry under General Note 3(a)(iv), HTSUS, and 19 CFR 7.3, contains any material which is the product of any country with respect to which Column 2 rates of duty apply or is ineligible for duty-free treatment pursuant to other laws or regulations.

(12) *Permanent resident* means a person with one residence which is in the insular possessions or a person with one or more residences outside the insular possessions who meets criteria that include maintaining his or her domicile in the insular possessions, residing (*i.e.*, be physically present for at least 183 days within a continuous 365 day period year) and working in the territory at a program company, and maintaining his or her primary office for day-to-day work in the insular possessions.

(b) *Forms.* (1) *ITA—334P* ''Annual Application for License to Enter Watches and Watch Movements into the Customs Territory of the United States.'' The Director shall issue instructions for jewelry manufacturers on the completion of the relevant portions of the form. The form must be completed annually by all jewelry producers desiring to receive a duty refund and, with special instructions for its completion, by producers who wish to receive the total annual amount of the duty refund in installments on a biannual basis.

(2) *ITA–360P ''Certificate of Entitlement to Secure the Refund of Duties on Articles that Entered the Customs Territory of The United State Duty Paid.''* This document authorizes an insular jewelry producer to request the refund of duties on imports of articles that entered the customs territory of the United States duty paid, with certain exceptions, up to the specified value of the certificate. Certificates may be used to obtain duty refunds only when presented with a properly executed Form ITA–361P.

(3) *ITA–361P ''Request for Refund of Duties on Articles that Entered the Customs Territory of the United States Duty Paid.''* This form must be completed to obtain the refund of duties authorized by the Director through Form ITA–360P. After authentication by the Department of Commerce, it may be used for the refund of duties on items which were entered into the customs territory of the United States during a specified time period. Copies of the appropriate Customs entries must be provided with this form to establish a basis for issuing the claimed amounts. The forms may also be used to transfer all or part of the producer's entitlement to another party (*see* Sec. 303.19(c)).

(The information collection requirements in paragraph (b)(1) were approved by the Office of Management and Budget under control number 0625–0040. The information collection requirements in paragraphs (b) (2) and (3) were approved under control number 0625–0134)

[64 FR 67150, Dec. 1, 1999, as amended at 65 FR 8049, Feb. 17, 2000; 66 FR 34812, July 2, 2001; 67 FR 77409, Dec. 18, 2202; 70 FR 67648, Nov. 8, 2005]

§ 303.17 Annual jewelry application.

(a) Form ITA–334P shall be furnished to producers by January 1 and must be completed and returned to the Director no later than January 31 of each calendar year.

(b) All data supplied are subject to verification by the Secretaries and no duty refund shall be made to producers until the Secretaries are satisfied that the data are accurate. To verify the data, representatives of the Secretaries shall have access to relevant company records including, but not limited to:

(1) Work sheets used to answer all questions on the application form, as specified by the instructions;

(2) Original records from which such data are derived;

(3) Records pertaining to ownership and control of the company;

(4) Records pertaining to all duty-free and dutiable shipments of HTSUS 7113 jewelry, including Customs entry documents, or the certificate of origin for the shipment, or, if a company did not receive such documents from Customs, a certification from the consignee that the jewelry shipment received duty-free treatment, or a certification from the producer, if the producer can attest that the jewelry shipment received duty-free treatment;

(5) Records pertaining to corporate income taxes, gross receipts taxes and excise taxes paid by each producer in the territories;

(6) Customs, bank, payroll, production records, and all shipping records including the importer of record number and proof of residency, as requested;

(7) All records pertaining to health insurance, life insurance and pension benefits for each employee;

(8) Records on purchases of components and sales of jewelry, including proof of payment; and

(9) Any other records in the possession of the parent or affiliated companies outside the territory pertaining to any aspect of the producer's jewelry operations.

(c) Data verification shall be performed in the territories, unless other arrangements satisfactory to the Departments are made in advance, by the Secretaries' representatives by the end of February of each calendar year. In the event a company cannot substantiate the data in its application, the Secretaries shall determine which data will be used.

(d) Records subject to the requirements of paragraph (b) of this section, shall be retained for a period of two years following their creation.

[49 FR 17740, Apr. 25, 1984, as amended at 66 FR 34813, July 2, 2001; 70 FR 67650, Nov. 8, 2005]

§303.18 Sale or transfer of business.

(a) The sale or transfer of a business together with its duty refund entitlement shall be permitted with prior written notification to the Departments. Such notification shall be accompanied by certifications and representations, as appropriate, that:

(1) The transferee is neither directly nor indirectly affiliated with any other territorial duty refund jewelry recipient in any territory;

(2) The transferee will not modify the jewelry operations in a manner that will significantly diminish its economic contributions to the territory.

(b) At the request of the Departments, the transferee shall permit representatives of the Departments to inspect whatever records are necessary to establish to their satisfaction that the certifications and representations contained in paragraph (a) of this section have been or are being met.

(c) Any transferee who is either unwilling or unable to make the certifications and representations specified in paragraph (a) of this section shall secure the Departments' approval in advance of the sale or transfer of the business. The request for approval shall specify which of the certifications specified in paragraph (a) of this section the firm is unable or unwilling to make, and give reasons why such fact should not constitute a basis for the Departments' disapproval of the sale or transfer.

§303.19 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) The total annual amount of the Certificate of Entitlement, Form ITA–360, may be divided and issued on a biannual basis. The first portion of the total annual certificate amount will be based on reported duty-free shipments and creditable wages paid during the first six month of the calendar year, using the formula in §303.20(b). The Departments require the receipt of the data by July 31 for each producer who wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued on or before August 31 of the same year in which the wages were earned unless the Departments have unresolved questions. The process of determining the total annual amount of the duty refund will remain the same. The completed annual application (Form ITA–334P) shall be received by the Departments on or before

January 31 and the annual verification of data and calculation of each producer's total annual duty refund, based on the verified data, will continue to take place in February. Once the calculations for each producer's duty refund has been completed, the portion of the duty refund that has already been issued to each producer will be deducted from the total amount of each producer's annual duty refund amount. The duty refund certificate will continue to be issued by March 1 unless the Departments have unresolved questions.

(2) Certificates shall not be issued to more than one jewelry company in the territories owned or controlled by the same corporate entity.

(b) *Security and handling of certificates.* (1) Certificate holders are responsible for the security of the certificates. The certificates shall be kept at the territorial address of the producer or at another location having the advance approval of the Departments.

(2) All refund requests made pursuant to the certificates shall be entered on the reverse side of the certificate.

(3) Certificates shall be returned by registered, certified or express carrier mail to the Department of Commerce when:

(i) A refund is requested which exhausts the entitlement on the face of the certificate,

(ii) The certificate expires, or

(iii) The Departments request their return with good cause.

(4) Certificate entitlements may be transferred according to the procedures described in paragraph (c) of this section.

(c) *The use and transfer of certificate entitlements.* (1) Insular producers issued a certificate may request a refund by executing Form ITA–361P (*see* § 303.16(b)(3)) and the instruction on the form). After authentication by the Department of Commerce, Form ITA–361P may be used to obtain duty refunds on article that entered the customs territory of the United States duty paid. Duties on an article which is the product of a country with respect to column 2 rates of duty apply may not be refunded Articles for which duty refunds are claimed must have entered the customs territory of the United States during the two-year period prior to the issue date of the certificate or during the one-year period the certificate remains valid. Copies of the appropriate Customs entries must be provided with the refund request in order to establish a basis for issuing the claimed amounts. Certification regarding drawback claims and liquidated refunds relating to the presented entries is required from the claimant on the form.

(2) Regulations issued by the Bureau of Customs and Border Protection, U.S. Department of Homeland Security, govern the refund of duties under 19 CFR 7.4. If the Departments receive information from the Bureau of Customs and Border Protection that a producer has made unauthorized use of any official form, they may cancel the affected certificate.

(3) The territorial producer may transfer a portion of all of its certificate entitlement to another party by entering in block C of Form ITA–361P the name and address of the party.

(4) After a Form ITA–361P transferring a certificate entitlement to a party other than the certificate holder has been authenticated by the Department of Commerce, the form may be exchanged for any consideration satisfactory to the two parties. In all cases, authenticated forms shall be transmitted to the certificate holder or its authorized custodian for disposition (*see* paragraph (b) of this section).

(5) All disputes concerning the use of an authenticated Form ITA–361P shall be referred to the Departments for resolution. Any party named on an authenticated Form ITA–361P shall be considered an ''interested party'' within the meaning of § 303.21 of this part.

[49 FR 17740, Apr. 25, 1984, as amended at 66 FR 34813, July 2, 2001; 70 FR 67650, Nov. 8, 2005]

§ 303.20 Duty refund.

(a) Territorial jewelry producers are entitled to duty refund certificates only for jewelry that they produce which is provided for in heading 7113, HTSUS, is a product of a territory and otherwise meets the requirements for duty-free entry under General Note 3 (a)(iv), HTSUS, and 19 CFR 7.3.

(1) An article of jewelry is considered to be a product of a territory if:

(i) The article is wholly the growth or product of the territory; or

(ii) The article became a new and different article of commerce as a result of production or manufacture performed in the territories.

(2) Eighteen month exemption. Any article of jewelry provided for in HTSUS heading 7113, assembled in the insular possessions by a new entrant jewelry manufacturer shall be treated as a product of the insular possessions if such article is entered into the customs territory of the United States no later than 18 months after such producer commences jewelry manufacturing or jewelry assembly operations in the insular possessions.

(b) Calculation of the value of production incentive certificates. (1) The value of each producer's certificate shall equal the producer's average creditable wages per unit shipped free of duty into the United States multiplied by the sum of:

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 3,533,334 units times a factor of 85%; plus

(iii) Incremental units shipped up to 6,766,667 times a factor of 80%; plus

(iv) Incremental shipments up to 10,000,000 units times a factor of 75%.

(2) The Departments may make adjustments for these data in the manner set forth in § 303.17(c).

[64 FR 67150, Dec. 1, 1999, as amended at 70 FR 67650, Nov. 8, 2005]

§ 303.21 Appeals.

(a) Any official decision or action relating to the issuance or use of production incentive certificates may be appealed to the Secretaries by any interested party. Such appeals must be received within 30 days of the date on which the decision was made or the action taken in accordance with the procedures set forth in paragraph (b) of this section. Interested parties may petition for the issuance of a rule, or amendment or repeal of a rule issued by the Secretaries. Interested parties may also petition for relief from the application of any rule on the basis of hardship or extraordinary circumstances resulting in the inability of the petitioner to comply with the rule.

(b) Petitions shall bear the name and post office address of the petitioner and the name and address of the principal attorney or authorized representative (if any) for the party concerned. They shall be addressed to the Secretaries and filed in one original and two copies with the U.S. Department of Commerce, Import Administration, International Trade Administration, Washington, DC 20230, Attention: Statutory Import Programs Staff. Petitions shall contain the following:

(1) A reference to the decision, action or rule which is the subject of the petition;

(2) A short statement of the interest of the petitioner;

(3) A statement of the facts as seen by the petitioner;

(4) The petitioner's argument as to the points of law, policy or fact. In cases where policy error is contended, the alleged error together with the policy the submitting party advocates as the correct one should be described in full;

(5) A conclusion specifying the action that the petitioner believes the Secretaries should take.

(c) The Secretaries may at their discretion schedule a hearing and invite the participation of other interested parties.

(d) The Secretaries shall communicate their decision, which shall be final, to the petitioner by registered, certified or express mail.

PART 310—OFFICIAL U.S. GOVERNMENT RECOGNITION OF AND PARTICIPATION IN INTERNATIONAL EXPOSITIONS HELD IN THE UNITED STATES

Sec.

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310.9 Report of the Secretary on Federal participation.

AUTHORITY: Pub. L. 91–269, 84 Stat. 271 (22 U.S.C. 2801 *et seq.).*

SOURCE: 40 FR 34107, Aug. 14, 1975, unless otherwise noted. Redesignated at 46 FR 57457, Nov. 24, 1981.

§ 310.1 Background and purpose.

The regulations in this part are issued under the authority of Pub. L. 91–269 (84 Stat. 271, 22 U.S.C. 2801 et seq.) which establishes an orderly procedure for Federal Government recognition of, and participation in, international expositions to be held in the United States. The Act provides, inter alia, that Federal recognition of an exposition is to be granted upon a finding by the President that such recognition will be in the national interest. In making this finding, the President is directed to consider, among other factors, a report from the Secretary of Commerce as to the purposes and reasons for an exposition and the extent of financial and other support to be provided by the State and local officials and business and community leaders where the exposition is to be held, and a report by the Secretary of State to determine whether the exposition is qualified for registration under Bureau of International Expositions (BIE) rules. The BIE is an international organization established by the Paris Convention of 1928 (T.I.A.S. 6548 as amended by T.I.A.S. 6549) to regulate the conduct and scheduling of international expositions in which foreign nations are officially invited to participate. The BIE divides international expositions into different categories and types and requires each member nation to observe specified minimum time intervals in scheduling each of these categories and types of expositions.[1] Under BIE rules, member nations may not ordinarily participate in an international exposition unless such exposition has been approved by the BIE. The United States became a member of the BIE on April 30, 1968, upon ratification of the Paris Convention by the U.S. Senate (114 Cong. Rec. 11012).

Federal participation in a recognized international exposition requires a specific authorization by the Congress, upon a finding by the President that such participation would be in the national interest. The Act provides for the transmission to Congress of a participation proposal by the President. This proposal transmits to the Congress information regarding the exposition, including a statement that it has been registered by the BIE and a plan for Federal participation prepared by the Secretary of Commerce in cooperation with other interested Federal departments and agencies.

§ 310.2 Definitions.

For the purpose of this part, except where the context requires otherwise:

(a) *Act* means Pub. L. 91–269.

(b) *Secretary* means the Secretary of Commerce.

(c) *Commissioner General* means the person appointed to act as the senior Federal official for the exposition as required by BIE rules and regulations.

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[1] The BIE defines a General Exposition of the First Category as an exposition dealing with progress achieved in a particular field applying to several branches of human activity at which the invited countries are obligated to construct national pavilions. A General Exposition of the Secondary Category is a similar exposition at which invited countries are not authorized to construct national pavilions, but occupy space provided by the exposition sponsors. Special Category Expositions are those dealing only with one particular technique, raw material, or basic need.

The BIE frequency rules require that an interval of 15 years must elapse between General Expositions of the First Category held in one country. General Expositions of the Second Category require an interval of 10 years. An interval of 5 years must ordinarily elapse between Special Category Expositions of the same kind in one country or three months between Special Category Expositions of different kinds. These frequency intervals are computed from the date of the opening of the exposition.

More detailed BIE classification criteria and regulations are contained in the Paris Convention of 1928, as amended in 1948 and 1966. Applicants not having a copy of the text of this convention may obtain one by writing the Director. (The Convention may soon be amended by a Protocol which has been approved by the BIE and ratified by the United States. This amendment would increase authorized frequencies or intervals for BIE approved expositions.)

(d) *Director* means the Director of the International Expositions Staff, Office of the Deputy Assistant Secretary for Export Development, International Trade Administration, Department of Commerce.

(e) *Applicant* means a State, County, municipality, a political subdivision of the foregoing, private non-profit or not-for-profit organizations, or individuals filing an application with the Director seeking Federal recognition of an international exposition to be held in the United States.

(f) *State* means one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(g) *Exposition* means an international exposition proposed to be held in the United States for which an application has been filed with the Director seeking Federal recognition under the Act; which proposes to invite more than one foreign country to participate; and, which would exceed three weeks in duration. Any event under three weeks in duration is not considered an international exposition under BIE rules.

[40 FR 34107, Aug. 14, 1975. Redesignated and amended at 46 FR 57457, Nov. 24, 1981]

§310.3 Applications for Federal recognition.

(a) Applications for Federal recognition of an exposition shall be filed with, and all official communications in connection therewith addressed to, the International Expositions Staff, International Trade Administration, Department of Commerce, Washington, DC 20230.

(b) Every application, exhibit, or enclosure, except where specifically waived by the Director, shall be in quadruplicate, duly authenticated and referenced.

(c) Every application shall be in letter form and shall contain the date, address, and official designation of the applicant and shall be signed by an authorized officer or individual.

(d) Every application, except where specifically waived by the Director, shall be accompanied by the following exhibits:

1. *Exhibit No. 1.* A study setting forth in detail the purpose for the exposition, including any historical, geographic, or other significant event of the host city, State, or region related to the exposition.

2. *Exhibit No. 2.* An exposition plan setting forth in detail (i) the theme of the exposition and the ''storyline'' around which the entire exposition is to be developed; (ii) whatever preliminary architectural and design plans are available on the physical layout of the site plus existing and projected structures; (iii) the type of participation proposed in the exposition (e.g., foreign and domestic exhibits); (iv) cultural, sports, and special events planned; (v) the proposed BIE category of the event and evidence of its conformity to the regulations of the BIE (a copy of these regulations can be obtained from the Director upon request); (vi) the proposed steps that will be taken to protect foreign exhibitors under the BIE model rules and regulations and (vii) in writing commit its organization to the completion of the exposition.

3. *Exhibit No. 3.* Documentary evidence of State, regional and local support (e.g., letters to the applicant from business and civic leadership of the region, pledging assistance and/or financing; State and/or municipal resolutions, acts, or appropriations; referendums on bond issues, and others).

4. *Exhibit No. 4.* An organization chart of the exposition management structure (actual or proposed) of the applicant, including description of the functions, duties and responsibilities of each official position along with bibliographic material, including any professional experience in the fields of architecture, industrial design, engineering, labor relations, concession management, interpretative theme planning, exhibit development, etc., on principal officers, if available. (The principal officials should also be prepared to submit subsequent individual statements under oath of their respective financial holdings and other interests.)

5. *Exhibit No. 5.* A statement setting forth in detail (i) the availability of visitor services in existence or projected to accommodate tourists at the exposition (e.g., number of hotel and motel units, number and type of restaurants, health facilities, etc.); (ii) evidence of adequate transportation facilities and accessibility of the host city to large groups of national and international visitors (e.g., number and schedule of airlines, bus lines, railroads, and truck lines serving the host city); and (iii) plans to promote the exposition as a major national and international tourist destination.

6. *Exhibit No. 6.* A statement setting forth in detail the applicant's plans for acquiring title to, or the right to occupy and use real property, other than that owned by the applicant or by the United States, essential for implementing the project or projects covered by the application. If the applicant, at the

time of filing the application, has acquired title to the real property, he should submit a certified copy of the deed(s). If the applicant, at the time of filing the application, has by easement, lease, franchise, or otherwise acquired the right to occupy and use real property owned by others, he should submit a certified copy of the appropriate legal instrument(s) evidencing this right.

7. *Exhibit No. 7.* A statement of the latest prevailing hourly wage rates for construction workers in the host city (e.g., carpenters, cement masons, sheet metal workers, etc.).

8. *Exhibit No. 8.* Information on attitudes of labor leaders as to ''no strike'' agreements during the development and operation of the exposition. Actual ''no strike'' pledges are desirable.

9. *Exhibit No. 9.* A detailed study conducted and certified by a nationally recognized firm(s) in the field of economics, accounting, management, etc., setting forth (i) proposed capital investment cost; cash flow projections; and sources of financing available to meet these costs, including but not limited to funds from State and municipal financing, general obligation and/or general revenue bond issues, and other public or private sources of front-end capital; (ii) assurances that the ''guaranteed financing'' is or will be available in accordance with Section 2(a)(1)(b) of Pub. L. 91–269; (iii) the projected expenses for managing the exposition; (iv) projected operational revenues broken down to include admissions, space rental, concessions, service fees and miscellaneous income; and (v) cost-benefit projections. These should be accompanied by a statement of the firm that the needed cash flow, sources of funding, and revenue projections are realistic and attainable.

10. *Exhibit No. 10.* A description of the exposition implementation time schedule and the management control system to be utilized to implement the time schedule (e.g., PERT, CPM, etc.).

11. *Exhibit No. 11.* A statement setting forth in detail the public relations, publicity and other promotional plans of the applicant. For example, the statement could include: (i) an outline of the public relations/publicity program broken down by percentage allocations among the various media; (ii) a public relations/publicity program budget with the various calendar target dates for completion of phases prior to the opening, the opening and post-opening of the exposition; and (iii) protocol plans for U.S. and foreign dignitaries, as well as for special ceremonies and events and how these plans are to be financed.

12. *Exhibit No. 12.* A study setting forth in detail the benefits to be derived from the exposition and residual use plans. For example, the study might include: (i) extent of immediate economic benefits for the city/region/nation in proportion to total investment in the exposition; (ii) extent of long range economic benefits for the city/region/nation in proportion to total investment in the exposition; and (iii) extent of intangible (social, psychological, ''good will'') benefits accruing to the city/region/nation including the solution or amelioration of any national/local problems.

13. *Exhibit No. 13.* A statement committing the applicant to develop and complete an environmental impact statement which complies with section 102(2)(c) of the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4331). Sample copies of environmental impact statements may be obtained from the Director. Prior to the Director's submitting a report to the Secretary containing his findings on the application for Federal recognition pursuant to § 310.4, the applicant must have completed the required Environmental Impact Statement (EIS), in a form acceptable to the Department of Commerce.

14. *Exhibit No. 14.* A detailed set of general and special rules and regulations governing the exposition and participation in it, which, if Federal recognition is obtained, can be used by the Federal Government in seeking BIE registration.

15. *Exhibit No. 15.* A statement from the applicant agreeing to accept a U.S. Commissioner General, appointed by the President. He will be recognized as the senior Federal official and titular head of the exposition, final arbiter in disputes with exhibitors, and the official contact with foreign governments. The applicant should also agree to furnish the Commissioner General and his staff with suitable facilities in the host community during the development and operation of the exposition.

[40 FR 34107, Aug. 14, 1975. Redesignated and amended at 46 FR 57457, Nov. 24, 1981]

§ 310.4 Action on application.

(a) Upon receipt of an application, the Director will analyze the application and all accompanying exhibits to insure compliance with the provisions of § 310.3 and report his findings with respect thereto to the Secretary.

(b) If more than one applicant applies for Federal recognition for expositions to be held within three years or less of each other, the applications will be reviewed concurrently by the Director. The following standards will be considered in determining which if any of the competing applicants will be recommended for Federal recognition:

(1) The order of receipt of the applications by the Director, complete with all exhibits required by § 310.3.

(2) The financial plans of the applications. Primary consideration will be given to those applications which do not require Federal financing for exposition development. This does not extend to funding for a Federal pavilion, if one is desired.

(3) The relative merit of the applications in terms of their qualifications as tourism destination sites, both with respect to existing facilities and those facilities planned for the proposed exposition. If necessary, to assist in making this determination, the Director will appoint a panel of travel industry experts representing tour developers, the transportation, entertainment and hotel/motel industries for the purpose of studying the competing applications and reporting to the Director its views as to which proposed site best meets the above criteria. If such a panel is deemed necessary, the provisions of the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. I) will be applicable.

(c) In analyzing the applications, the Director may hold public hearings with the objective of clarifying issues that might be raised by the application. If desired, the Director may utilize the services of an examiner.

(d) If the Director, in his discretion, decides to hold a public hearing, notice of such hearing shall be published in the FEDERAL REGISTER, and a copy of the notice shall be furnished to local newspapers. The notice shall state the subject to be considered and when and where the hearing will be held, specifically designating the date, hour, and place.

(e) The following general procedure shall govern the conduct of public hearings: (1) Stenographic minutes of the proceedings shall be made; (2) the names and addresses of all parties present or represented at the hearing shall be recorded; and (3) the Director or Examiner shall read aloud for the record and for the benefit of the public such parts of the Act and of these regulations as bear on the application. He shall also read aloud for the record and for the benefit of the public such other important papers, or extracts therefrom, as may be necessary for a full understanding of the issues which require clarification. The Director or Examiner shall impress upon the parties in attendance at the public hearing, and shall specifically state at the commencement of the hearing, that the hearing is not adversary in nature and that the sole objective thereof is to clarify issues that might have been raised by the application.

(f) Statements of interested parties may be presented orally at the hearing, or submitted in writing for the record.

(g) Within six months after receipt of a fully completed application and/or the adjournment of the public hearing, the Director shall submit his report containing his findings on the application to the Secretary.

§310.5 Report of the Secretary on Federal recognition.

If the Director's report recommends Federal recognition, the Secretary, within a reasonable time, shall submit a report to the President.

(a) The Secretary's report shall include: (1) An evaluation of the purposes and reasons for the exposition; and (2) a determination as to whether guaranteed financial and other support has been secured by the exposition from affected State and local governments and from business and civic leaders of the region and others in amounts sufficient to assure the successful development and progress of the exposition.

(b) Based on information from, and coordination with the Department of Commerce the Secretary of State shall also file a report with the President that the exposition qualifies for recognition by the BIE.

§310.6 Recognition by the President.

If the President concurs in the favorable reports from the Secretaries of State and Commerce, he may grant Federal recognition to the exposition by indicating his concurrence to the two Secretaries and authorizing them to seek BIE registration.

§310.7 Statement for Federal participation.

If Federal participation in the exposition, as well as Federal recognition thereof is desired, the applicant shall in a statement to the Director outline the nature of the Federal participation

envisioned, including whether construction of a Federal pavilion is contemplated. (It should be noted, however, that before Federal participation can be authorized by the Congress under the Act, the exposition must have (i) met the criteria for Federal recognition and be so recognized, and (ii) been registered by the BIE. Although applicants need not submit such a statement until these prerequisites are satisfied, they are encouraged to do so.) Where the desired Federal participation includes a request for construction of a Federal pavilion, the statement shall be accompanied by the following exhibits:

1. *Exhibit No. 1.* A survey drawing of the proposed Federal pavilion site, showing its areas and boundaries, its grade elevations, and surface and subsoil conditions.

2. *Exhibit No. 2.* Evidence of resolutions, statutes, opinions, etc., as to the applicant's ability to convey by deed the real property comprising the proposed Federal pavilion site in fee-simple and free of liens and encumbrances to the Federal Government. The only consideration on the part of the Government for the conveyance of the property shall be the Government's commitment to participate in the exposition.

3. *Exhibit No. 3.* A certified copy of the building code which would be applicable should a pavilion be constructed.

4. *Exhibit No. 4.* An engineering drawing showing the accessibility of the proposed pavilion site to utilities (e.g., sewerage, water, gas, electricity, etc.).

5. *Exhibit No. 5.* A statement setting forth the security and maintenance and arrangements which the applicant would undertake (and an estimate of their cost) while a pavilion is under construction.

6. *Exhibit No. 6.* A study pursuant to Executive Order 11296 of August 10, 1966, entitled ''Evaluation of flood hazard in locating Federally owned or financed buildings, roads and other facilities and in disposing of Federal land and properties.''

§ 310.8 Proposed plan for Federal participation.

(a) Upon receipt of the statement, and the exhibits referred to in § 310.7, the Director shall prepare a proposed plan in cooperation with other interested departments and agencies of the Federal Government for Federal participation in the exposition.

(b) In preparing the proposed plan for Federal participation in the exposition, the Director shall conduct a feasibility study of Federal participation including cost estimates by utilizing the services within the Federal Government, professional consultants and private sources as required and in accordance with applicable laws and regulations.

(c) The Director, in the proposed plan for Federal participation in the exposition, shall determine whether or not a Federal pavilion should be constructed and, if so, whether or not the Government would have need for a permanent structure in the area of the exposition or whether a temporary structure would be more appropriate.

(d) The Director shall seek the advice of the Administrator of the General Services Administration to the extent necessary in carrying out the proposed plan for Federal participation in the exposition.

(e) Upon completion of the proposed plan for Federal participation in the exposition, the Director shall submit the plan to the Secretary.

§ 310.9 Report of the Secretary on Federal participation.

Upon receipt of the Director's proposed plan for Federal participation, the Secretary, within a reasonable time, shall submit a report to the President including: (a) Evidence that the exposition has met the criteria for Federal recognition and has been so recognized; (b) a statement that the exposition has been registered by the BIE; and (c) a proposed plan for the Federal participation referred to in § 310.8.

PART 315—DETERMINATION OF BONA FIDE MOTOR-VEHICLE MANUFACTURER

Sec.
315.1 Scope and purpose.
315.2 Definitions.
315.3 Application.
315.4 Determination by the Under Secretary.
315.5 Maintenance and publication of a list of bona fide motor-vehicle manufacturers.

AUTHORITY: Headnote 2, subpart B, part 6, schedule 6, Tariff Schedules of the United States (19 U.S.C. 1202); sec. 501(2) of Title V, Automotive Products Trade Act of 1965 (19 U.S.C. 2031).

SOURCE: 45 FR 42214, June 23, 1980, unless otherwise noted. Redesignated at 53 FR 52115, Dec. 27, 1988.

§ 315.1 Scope and purpose.

The purpose of this part is to set forth regulations implementing headnote 2 to subpart B, part 6, schedule 6 of the Tariff Schedules of the United States as proclaimed by Proclamation No. 3682 of October 21, 1965 (3 CFR 140–65 Comp.). issued pursuant to the Automotive Products Trade Act of 1965 (19 U.S.C. 2031), by establishing a procedure under which a person may apply to be determined a bona fide motor-vehicle manufacturer. Under headnote 2 to subpart B, part 6, schedule 6 of the Tariff Schedules of the United States, whenever the Secretary of Commerce has determined a person to be a bona fide motor-vehicle manufacturer, such person is eligible to obtain duty-free importation of certain Canadian articles and to issue certain orders, contracts, or letters of intent under or pursuant to which other persons, not themselves bona fide motor-vehicle manufacturers, may obtain duty-free treatment for such Canadian articles. The responsibilities of Secretary of Commerce relating to the development, maintenance and publication of a list of bona fide motor-vehicle manufacturers and the authority to promulgate rules and regulations pertaining thereto have been delegated to Under Secretary for International Trade, Department of Commerce pursuant to Department of Commerce Organization Order 40–1, Amendment 9 of January 22, 1984 (49 FR 4538).

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

§ 315.2 Definitions.

For the purpose of the regulations in this part and the forms issued to implement it:

(a) *Act* means the Automotive Products Trade Act of 1965 (79 Stat. 1016, 19 U.S.C. 2001 through 2033).

(b) *Under Secretary* means Under Secretary for International Trade of the Department of Commerce, or such official as may be designated by the Under Secretary to act in his or her behalf.

(c) *Motor vehicle* means a motor vehicle of a kind described in item 692.05 or 692.10 of subpart B, part 6, schedule 6, of the Tariff Schedules of the United States (excluding an electric trolley bus and a three-wheeled vehicle) or an automotive truck tractor.

(d) *Bona fide motor-vehicle manufacturer* means a person who upon application to the Under Secretary is determined by the Under Secretary to have produced no fewer than 15 complete motor vehicles in the United States during the 12-month period preceding the date certified in the application, and to have had as of such date installed capacity in the United States to produce 10 or more complete motor vehicles per 40-hour week. A person shall only be regarded as having had the capacity to produce a complete motor vehicle if his operation included the assembly of two or more major components (e.g., the attachment of a body to a chassis) to create a new motor vehicle ready for use.

(e) *Person* includes any individual, corporation, partnership, association, company, or any kind of organization.

(f) *United States* includes only the States, the District of Columbia and Puerto Rico.

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

§ 315.3 Application.

Any person in the United States desiring to be determined a bona fide motor vehicle manufacturer shall apply to the Under Secretary by filing two copies of Form BIE–3 in accordance with the instructions set forth on the form and this part. Application forms may be obtained from the Under Secretary, District offices of the U.S. Department of Commerce, or from U.S. Collectors of Customs, and should be mailed or delivered to the:

U.S. Department of Commerce, International Trade Administration, Office of Automotive Industry Affairs—APTA, 14th and Constitution Avenue, NW., Room 4036, Washington, DC 20230.

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

§ 315.4 Determination by the Under Secretary.

(a) As soon as practicable after receipt of the application, the Under Secretary shall determine whether an applicant has produced no fewer than 15 complete motor vehicles in the United States during the 12-month period preceding the date certified in the application and as of such date, had installed capacity in the United States to produce 10 or more complete motor vehicles per 40 hour week. The Under Secretary may request such additional data from an applicant as he may deem appropriate to establish whether the applicant has satisfied the requirements of this part.

(b) A determination by the Under Secretary under this part shall be effective for a 12-month period to begin on the date as of which the Under Secretary determines that the applicant qualified under this part. Within 60 days prior to the termination of such period, a bona fide motor vehicle manufacturer may apply for another determination under this part.

(c) The Under Secretary will promptly notify each applicant in writing of the final action taken on his application.

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

§ 315.5 Maintenance and publication of a list of bona fide motor-vehicle manufacturers.

The Under Secretary shall maintain and publish from time to time in the FEDERAL REGISTER, a list of the names and addresses of bona fide motor vehicle manufacturers, and the effective dates from each determination.

[45 FR 42214, June 23, 1980. Redesignated and amended at 53 FR 52115, Dec. 27, 1988]

PART 325—EXPORT TRADE CERTIFICATES OF REVIEW

Sec.

325.1 Scope.
325.2 Definitions.
325.3 Applying for a certificate of review.
325.4 Calculating time periods.
325.5 Issuing the certificate.
325.6 Publishing notices in the FEDERAL REGISTER.
325.7 Amending the certificate.
325.8 Expediting the certification process.
325.9 Reconsidering an application that has been denied.
325.10 Modifying or revoking a certificate.
325.11 Judicial review.
325.12 Returning the applicant's documents.
325.13 Nonadmissibility in evidence.
325.14 Submitting reports.
325.15 Relinquishing a certificate.
325.16 Protecting confidentiality of information.
325.17 Waiver.

AUTHORITY: Title III of the Export Trading Company Act, Pub. L. 97–290 (96 Stat. 1240–1245, 15 U.S.C. 4011–4021).

SOURCE: 50 FR 1806, Jan. 11, 1985, unless otherwise noted.

§ 325.1 Scope.

This part contains regulations for issuing export trade certificates of review under title III of the Export Trading Company Act, Pub. L. 97–290. A holder of a certificate of review and the members named in the certificate will have specific protections from private treble damage actions and government criminal and civil suits under U.S. Federal and State antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

§ 325.2 Definitions.

As used in this part:

(a) *Act* means title III of Pub. L. 97–290, Export Trade Certificates of Review.

(b) *Antitrust laws* means the antitrust laws, as the term is defined in the first section of the Clayton Act (15 U.S.C. 12), section 5 of the Federal Trade Commission Act (15 U.S.C. 45) (to the extent that section 5 prohibits unfair methods of competition), and any State antitrust or unfair competition law.

(c) *Applicant* means the person or persons who submit an application for a certificate.

(d) *Application* means an application for a certificate to be issued under the Act.

(e) *Attorney General* means the Attorney General of the United States or his designee.

(f) *Certificate* means a certificate of review issued pursuant to the Act.

(g) *Control* means either (1) holding 50 percent or more of the outstanding voting securities of an issuer; or (2) having the contractual power presently to designate a majority of the directors of a corporation, or in the case of an unincorporated entity, a majority of the individuals who exercise similar functions.

(h) *Controlling entity* means an entity which directly or indirectly controls a member or applicant, and is not controlled by any other entity.

(i) *Export conduct* means specified export trade activities and methods of operation carried out in specified export trade and export markets.

(j) *Export trade* means trade or commerce in goods, wares, merchandise, or services that are exported, or are in the course of being exported, from the United States or any territory of the United States to any foreign nation.

(k) *Export trade activities* means activities or agreements in the course of export trade.

(l) *Member* means an entity (U.S. or foreign) or a person which is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement.

(m) *Method of operation* means any method by which an applicant or member conducts or proposes to conduct export trade.

(n) *Person* means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether it is organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons.

(o) *Secretary* means the Secretary of Commerce or his designee.

(p) *Services* means intangible economic output, including, but not limited to—

(1) business, repair, and amusement services,

(2) management, legal, engineering, architectural, and other professional services, and

(3) financial, insurance, transportation, informational and any other data-based services, and communication services.

(q) *United States* means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

§325.3 Applying for a certificate of review.

(a) *Place of filing.* The applicant shall submit an original and two copies of a completed application form (ITA 4093–P, OMB control number 0625–0125) by personal delivery during normal business hours or by first class mail to the Office of Export Trading Company Affairs, Room 5618, International Trade Administration, Department of Commerce, Washington, DC 20230. Although not required, the applicant should consider using registered mail or some other delivery method that provides evidence of receipt.

(b) *Contents of application.* Any person may submit an application for certification. The application shall contain, where applicable, the information listed below. Some information, in particular the identification of goods or services that the applicant exports or proposes to export, is requested in a certain form (Standard Industrial Classification [SIC] numbers) if reasonably available. Where information does not exist in this form, the applicant may satisfy the request for information by providing it in some other convenient form. If the applicant is unable to provide any of the information requested or if the applicant believes that any of the information requested would be both burdensome to obtain and unnecessary for a determination on the application, the applicant should state that the information is not being provided or is being provided in lesser detail, and explain why.

(1) Name and principal address of the applicant and of its controlling entity, if any. Include the name, title, address, telephone number, and relationship to the applicant of each individual to whom the Secretary should address correspondence.

(2) The name and principal address of each member, and of each member's controlling entity, if any.

(3) A copy of any legal instrument under which the applicant is organized or will operate. Include copies, as applicable, of its corporate charter, bylaws, partnership, joint venture, membership or other agreements or contracts under which the applicant is organized.

(4) A copy of the applicant's most recent annual report, if any, and that of its controlling entity, if any. To the extent the information is not included in the annual report, or other documents submitted in connection with the application, a description of the applicant's domestic (including import) and export operations, including the nature of its business, the types of products or services in which it deals, and the places where it does business. This description may be supplemented by a chart or table.

(5) A copy of each member's most recent annual report, if any, and that of its controlling entity, if any. To the extent the information is not included in the annual report, or other documents submitted in connection with the application, a description of each member's domestic (including import) and export operations, including the nature of its business, the types of products or services in which it deals, and the places where it does business. This description may be supplemented by a chart or table.

(6) The names, titles, and responsibilities of the applicant's directors, officers, partners and managing officials, and their business affiliations with other members or other businesses that produce or sell any of the types of goods or services described in paragraph (b)(7) of this section.

(7)(i) A description of the goods or services which the applicant exports or proposes to export under the certificate of review. This description should reflect the industry's customary definitions of the products and services.

(ii) If it is reasonably available, an identification of the goods or services according to the Standard Industrial Classification (SIC) number. Goods should normally be identified according to the 7-digit level. Services should normally be identified at the most detailed SIC level available.

(iii) The foreign geographic areas to which the applicant and each member export or intend to export their goods and services.

(8) For each class of the goods, wares, merchandise or services described in paragraph (b)(7) of this section:

(i) The principal geographic area or areas in the United States in which the applicant and each member sell their goods and services.

(ii) For their previous two fiscal years, the dollar value of the applicant's and each member's (A) total domestic sales, if any; and (B) total export sales, if any. Include the value of the sales of any controlling entities and all entities under their control.

(9) For each class of the goods, wares, merchandise or services described in paragraph (b)(7) of this section, the best information or estimate accessible to the applicant of the total value of sales in the United States by all companies for the last two years. Identify the source of the information or the basis of the estimate.

(10) A description of the specific export conduct which the applicant seeks to have certified. Only the specific export conduct described in the application will be eligible for certification. For each item, the applicant should state the antitrust concern, if any, raised by that export conduct. (Examples of export conduct which applicants may seek to have certified include the manner in which goods and services will be obtained or provided; the manner in which prices or quantities will be set; exclusive agreements with U.S. suppliers or export intermediaries; territorial, quantity, or price agreements with U.S. suppliers or export intermediaries; and restrictions on membership or membership withdrawal. These examples are given only to illustrate the type of export conduct which might be of concern. The specific activities

which the applicant may wish to have certified will depend on its particular circumstances or business plans.).

(11) If the export trade, export trade activities, or methods of operation for which certification is sought will involve any agreement or any exchange of information among suppliers of the same or similar products or services with respect to domestic prices, production, sales, or other competitively sensitive business information, specify the nature of the agreement or exchange of information. Such information exchanges are not necessarily impermissible and may be eligible for certification. Whether or not certification is sought for such exchanges, this information is necessary to evaluate whether the conduct for which certification is sought meets the standards of the Act.

(12) A statement of whether the applicant intends or reasonably expects that any exported goods or services covered by the proposed certificate will re-enter the United States, either in their original or modified form. If so, identify the goods or services and the manner in which they may re-enter the U.S.

(13) The names and addresses of the suppliers of the goods and services to be exported (and the goods and services to be supplied by each) unless the goods and services to be exported are to be supplied by the applicant and/or its members.

(14) A proposed non-confidential summary of the export conduct for which certification is sought. This summary may be used as the basis for publication in the FEDERAL REGISTER.

(15) Any other information that the applicant believes will be necessary or helpful to a determination of whether to issue a certificate under the standards of the Act.

(16) (Optional) A draft proposed certificate.

(c) The applicant must sign the application and certify that (1) each member has authorized the applicant to submit the application, and (2) to the best of its belief the information in the application is true, correct, and fully responsive.

(d) *Conformity with regulations.* No application shall be deemed submitted unless it complies with these regulations. Applicants are encouraged to seek guidance and assistance from the Department of Commerce in preparing and documenting their applications.

(e) *Review and acceptance.* The Secretary will stamp the application on the day that it is received in the Office of Export Trading Company Affairs. From that date, the Secretary will have five working days to decide whether the application is complete and can be deemed submitted under the Act. On the date on which the application is deemed submitted, the Secretary will stamp it with that date and notify the applicant that the application has been accepted for review. If the application is not accepted for review, the Secretary shall advise the applicant that it may file the application again after correcting the deficiencies that the Secretary has specified. If the Secretary does not take action on the application within the five-day period, the application shall be deemed submitted as of the sixth day.

(f) *Withdrawal of application.* The applicant may withdraw an application by written request at any time before the Secretary has determined whether to issue a certificate. An applicant who withdraws an application may submit a new application at any time.

(g) *Supplemental information.* After an application has been deemed submitted, if the Secretary or the Attorney General finds that additional information is necessary to make a determination on the application, the Secretary will ask the applicant in writing to supply the supplemental information. The running of the time period for a determination on the application will be suspended from the date on which the request is sent until the supplemental information is received and is considered complete. The Secretary shall promptly decide whether the supplemental information is complete, and shall notify the applicant of his decision. If the information is being sought by the Attorney General, the supplemental information may be deemed complete only if the Attorney General concurs. If the applicant does not agree to provide the additional information,

or supplies information which the Secretary or the Attorney General considers incomplete, the Secretary and the Attorney General will decide whether the information in their possession is sufficient to make a determination on the application. If either the Secretary or the Attorney General considers the information in their possession insufficient, the Secretary may make an additional request or shall deny the application. If they consider the information in their possession sufficient to make a determination on the application, the Secretary shall notify the applicant that the time period for a determination has resumed running.

(Information collection requirements in paragraph (a) approved by the Office of Management and Budget under control number 0625–0125)

§ 325.4 Calculating time periods.

(a) When these regulations require action to be taken within a fixed time period, and the last day of the time period falls on a non-working day, the time period shall be extended to the next working day.

(b) The day after an application is deemed submitted shall be deemed the first of the days within which the Secretary must make a determination on the application.

§ 325.5 Issuing the certificate.

(a) *Time period.* The Secretary shall determine whether to issue a certificate within ninety days after the application is deemed submitted (excluding any suspension pursuant to § 325.3(f) of the time period for making a determination). If the Secretary or the Attorney General considers it necessary, and the applicant agrees, the Secretary may take up to an additional thirty days to determine whether to issue a certificate.

(b) *Determination.* The Secretary shall issue a certificate to the applicant if he determines, and the Attorney General concurs, that the proposed export trade, export trade activities and methods of operation will—

(1) Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

(2) Not unreasonably enhance, stabilize, or depress prices within the United States of the class of the goods, wares, merchandise or services exported by the applicant;

(3) Not constitute unfair methods of competition against competitors who are engaged in the export of goods, wares, merchandise or services of the class exported by the applicant; and

(4) Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(c) *Concurrence of the Attorney General.* (1) Not later than seven days after an application is deemed submitted, the Secretary shall deliver to the Attorney General a copy of the application, any information submitted in connection with the application, and any other relevant information in his possession. The Secretary and the Attorney General shall make available to each other copies of other relevant information that was obtained in connection with the application, unless otherwise prohibited by law.

(2) Not later than thirty days before the day a determination on the application is due, the Secretary shall deliver a proposed certificate to the Attorney General for discussion and comment. If the Attorney General does not agree that the proposed certificate may be issued, he shall, not later than ten days before the day a determination on the application is due, so advise the Secretary and state the reasons for the disagreement. The Secretary with the concurrence of the Attorney General, may modify or revise the proposed certificate to resolve the objections and problems raised by the Attorney General, or deny the application.

(3) If the Attorney General receives the proposed certification by the date specified in the preceding paragraph and does not respond within the time period specified in that paragraph, he shall be deemed to concur in the proposed certificate.

(d) *Content of certificate.* The certificate shall specify the export conduct and all persons or entities which are

protected from liability under the antitrust laws. The Secretary may certify the proposed export conduct contained in the application, in whole or in part, with such changes, modifications, terms, or conditions as are appropriate. If the Secretary intends to issue a certificate different from a draft certificate submitted by the applicant, the Secretary shall first consult with the applicant.

(e) *Certificate obtained by fraud.* A certificate shall be void *ab initio* with respect to any export conduct for which a certificate was obtained by fraud.

(f) *Minimum thirty-day period.* The Secretary may not issue a certificate until thirty days after the summary of the application is published in the FEDERAL REGISTER.

§325.6 Publishing notices in the Federal Register.

(a) Within ten days after an application is deemed submitted, the Secretary shall deliver to the FEDERAL REGISTER a notice summarizing the application. The notice shall identify the applicant and each member and shall include a summary of the export conduct for which certification is sought. If the Secretary does not intend to publish the summary proposed by the applicant, he shall notify the applicant. Within twenty days after the date the notice is published in the FEDERAL REGISTER, interested parties may submit written comments to the Secretary on the application. The Secretary shall provide a copy of such comments to the Attorney General.

(b) If a certificate is issued, the Secretary shall publish a summary of the certification in the FEDERAL REGISTER. If an application is denied, the Secretary shall publish a notice of denial. Certificates will be available for inspection and copying in the International Trade Administration Freedom of Information Records Inspection Facility.

(c) If the Secretary initiates proceedings to revoke or modify a certificate, he shall publish a notice of his final determination in the FEDERAL REGISTER.

(d) If the applicant requests reconsideration of a determination to deny an application, in whole or in part, the Secretary shall publish notice of his final determination in the FEDERAL REGISTER.

§325.7 Amending the certificate.

An application for an amendment to a certificate shall be treated in the same manner as an original application. The application for an amendment shall set forth the proposed amendment(s) and the reasons for them. It shall contain any information specified in §325.3(b) that is relevant to the determination on the application for an amendment. The effective date of an amendment will be the date on which the application for the amendment was deemed submitted.

§325.8 Expediting the certification process.

(a) *Request for expedited action.* (1) An applicant may be granted expedited action on its application in the discretion of the Secretary and the Attorney General. The Secretary and the Attorney General will consider such requests in light of an applicant's showing that it has a special need for a prompt decision. A request for expedited action should include an explanation of why expedited action is needed, including a statement of all relevant facts and circumstances, such as bidding deadlines or other circumstances beyond the control of the applicant, that require the applicant to act in less than ninety days and that have a significant impact on the applicant's export trade.

(2) The Secretary shall advise the applicant within ten days after the application is deemed submitted whether it will receive expedited action. The Secretary may grant the request in whole or in part and process the remainder of the application through the normal procedures. Expedited action may be granted only if the Attorney General concurs.

(b) *Time period.* The Secretary shall determine whether to issue a certificate to the applicant within forty-five days after the Secretary granted the request for expedited action, or within a longer period if agreed to by the applicant (excluding any suspension pursuant to §325.3(f) of the time period for making a determination). The Secretary may not issue a certificate until

thirty days after the summary of the application is published in the FEDERAL REGISTER.

(c) *Concurrence of the Attorney General.* (1) Not later than ten working days before the date on which a determination on the application is due, the Secretary shall deliver a proposed certificate to the Attorney General for discussion and comment. If the Attorney General does not agree that the proposed certificate may be issued, he shall, not later than five working days before the date on which a determination on the application is due, so advise the Secretary and state the reasons for the disagreement. The Secretary, with the concurrence of the Attorney General, may revise the proposed certificate to resolve the objections and problems raised by the Attorney General, or deny the application.

(2) If the Attorney General receives the proposed certificate by the date specified in the preceding paragraph and does not respond within the time period specified in that paragraph, he shall be deemed to concur in the proposed certificate.

(Information collection requirements in paragraph (a)(1) approved by the Office of Management and Budget under control number 0625–0125)

§ 325.9 Reconsidering an application that has been denied.

(a) If the Secretary determines to deny an application in whole or in part, he shall notify the applicant in writing of his decision and the reasons for his determination.

(b) Within thirty days after receiving a notice of denial, the applicant may request the Secretary to reconsider his determination.

(1) The request for reconsideration shall include a written statement setting forth the reasons why the applicant believes the decision should be reconsidered, and any additional information that the applicant considers relevant.

(2) Upon the request of the applicant, the Secretary and the Attorney General will meet informally with the applicant and/or his representative to discuss the applicant's reasons why the determination on the application should be changed.

(c) The Secretary shall consult with the Attorney General with regard to reconsidering an application. The Secretary may modify his original determination only if the Attorney General concurs.

(d) The Secretary shall notify the applicant in writing of his final determination after reconsideration and of his reasons for the determination within thirty days after the request for reconsideration has been received.

§ 325.10 Modifying or revoking a certificate.

(a) *Action subject to modification or revocation.* The Secretary shall revoke a certificate, in whole or in part, or modify it, as the Secretary or the Attorney General considers necessary, if:

(1) The export conduct of a person or entity protected by the certificate no longer complies with the requirements set forth in § 325.4(b);

(2) A person or entity protected by the certificate fails to comply with a request for information under paragraph (b) of this section; or

(3) The certificate holder fails to file a complete annual report.

(b) *Request for information.* If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person or entity protected by a certificate no longer comply with the requirements set forth in § 325.4(b), the Secretary shall request any information that he or the Attorney General considers to be necessary to resolve the matter.

(c) *Proceedings for the revocation or modification of a certificate*—(1) *Notification letter.* If, after reviewing the relevant information in their possession, it appears to the Secretary or the Attorney General that a certificate should be revoked or modified for any of the reasons set forth in paragraph (a) above, the Secretary shall so notify the certificate holder in writing. The notification shall be sent by registered or certified mail to the address specified in the certificate. The notification shall include a detailed statement of the facts, conduct, or circumstances which may warrant the revocation or modification of the certificate.

(2) *Answer.* The certificate holder shall respond to the notification letter within thirty days after receiving it, unless the Secretary, in his discretion, grants a thirty day extension for good cause shown. The certificate holder shall respond specifically to the statement included with the notification letter and state in detail why the facts, conduct or circumstances described in the notification letter are not true, or if they are true, why they do not warrant the revoking or modifying of the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter.

(3) *Resolution of factual disputes.* Where material facts are in dispute, the Secretary and the Attorney General shall, upon request, meet informally with the certificate holder. The Secretary or the Attorney General may require the certificate holder to provide any documents or information that are necessary to support its contentions. After reviewing the statements of the certificate holder and the documents or information that the certificate holder has submitted, and upon considering other relevant documents or information in his possession, the Secretary shall make proposed findings of the factual matters in dispute. The Attorney General is not bound by the proposed findings.

(4) *Final determination.* The Secretary and the Attorney General shall review the notification letter and the certificate holder's answer to it, the proposed factual findings made under paragraph (c)(3) of this section, and any other relevant documents or information in their possession. If, after review, the Secretary or the Attorney General determines that the export conduct of a person or entity protected by the certificate no longer complies with the standards set forth in § 325.4(b), the Secretary shall revoke or modify the certificate as appropriate. If the Secretary or the Attorney General determines that the certificate holder has failed to comply with the request for information under paragraph (b) of this section, or has failed to file a complete annual report, and that the failure to comply or file should result in revocation of modification, the Secretary shall revoke or modify the certificate as appropriate. The determination will be final and will be issued to the certificate holder in writing. The notice to the certificate holder shall include a statement of the circumstances underlying and the reasons in support of the determination. If the Secretary determines to revoke or modify the certificate, the decision shall specify the effective date of the revocation or modification; this date must be at least thirty days but not more than ninety days after the Secretary notifies the certificate holder of his determination. The Secretary shall publish notice in the FEDERAL REGISTER of a revocation or modification or a decision not to revoke or modify.

(d) *Investigative information.* In proceedings under this section, the Attorney General shall make available to the Secretary any information that has been obtained in response to Civil Investigative Demands issued under section 304(b)(3) of the Act. Unless prohibited by law, the Attorney General and the Secretary shall also make available to each other any other information which each is relying upon under these proceedings.

§ 325.11 Judicial review.

(a) *Review of certain determinations.* (1) Any person aggrieved by a final determination of the Secretary under § 325.5, § 325.7, § 325.9, or § 325.10 of these regulations may, within thirty days of the determination, bring an action in an appropriate district court of the United States to set aside the determination on the ground that it is erroneous. If a certificate is denied, the applicant may bring suit within thirty days after the notice of denial is published in the FEDERAL REGISTER, or, if the applicant seeks reconsideration, within thirty days after the Secretary publishes in the FEDERAL REGISTER notice of his determination after reconsideration.

(b) For purposes of judicial review, determinations of the Secretary are final when notice is published in the FEDERAL REGISTER.

(c) *Record for judicial review.* For purposes of judicial review, the record shall include all information presented to or obtained by the Secretary which

had a bearing on the determination, the determination itself, the supporting statement setting forth the reasons for the determination, and the Attorney General's response to the Secretary indicating concurrence or nonconcurrence.

(d) *Limitation of judicial review*. Except as provided in paragraph (a) of this section, no agency action taken under the Act shall be subject to judicial review.

§ 325.12 Returning the applicant's documents.

(a) Upon the denial or withdrawal of an application for a certificate in its entirety, the applicant may request the return of all copies of the documents submitted by the applicant in connection with the application to the Department of Commerce or the Department of Justice. The applicant shall submit this request in writing to both the Secretary and the Attorney General.

(b) The Secretary and the Attorney General shall return the documents to the applicant within thirty days after they receive the applicant's request.

§ 325.13 Nonadmissibility in evidence.

If the Secretary denies, in whole or in part, an application for a certificate or for an amendment to a certificate, or revokes or amends a certificate, neither the negative determination nor the statement of reasons therefor shall be admissible in evidence in any administrative or judicial proceeding in support of any claim under the antitrust laws.

§ 325.14 Submitting reports.

(a) Not later than each anniversary of a certificate's effective date, the Secretary shall notify the certificate holder of the information to be included in the annual report. This report shall contain any changes relevant to the matters specified in the certificate, an update of the information contained in the application brought current to the anniversary date, and any other information the Secretary considers appropriate, after consultation with the Attorney General.

(b) Not later than forty-five days after each anniversary of a certificate's effective date, a certificate holder shall submit its annual report to the Secretary. The Secretary shall deliver a copy of the annual report to the Attorney General.

(c) Failure to submit a complete annual report may be the basis for modification or revocation of a certificate.

§ 325.15 Relinquishing a certificate.

A certificate holder may relinquish a certificate at any time through written notice to the Secretary. The certificate will cease to be effective on the day the Secretary receives the notice.

§ 325.16 Protecting confidentiality of information.

(a) Any information that is submitted by any person under the Act is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

(b)(1) Except as authorized under paragraph (b)(3) of this section, no officer or employee of the United States shall disclose commercial or financial information submitted under this Act if the information is privileged or confidential, and if disclosing the information would cause harm to the person who submitted it.

(2) A person submitting information shall designate the documents or information which it considers privileged or confidential and the disclosure of which would cause harm to the person submitting it. The Secretary shall endeavor to notify these persons of any requests or demands before disclosing any of this information.

(3) An officer or employee of the United States may disclose information covered under paragraph (b)(1) of this section only under the following circumstances—

(i) Upon a request made by either House of Congress or a Committee of the Congress,

(ii) In a judicial or administrative proceeding subject to issuance of an appropriate protective order,

(iii) With the written consent of the person who submitted the information,

(iv) When the Secretary considers disclosure of the information to be necessary for determining whether or not

to issue, amend, or revoke a certificate, if—

(A) The Secretary determines that a non-confidential summary of the information is inadequate; and

(B) The person who submitted the information is informed of the intent to disclose the information, and has an opportunity to advise the Secretary of the potential harm which disclosure may cause,

(v) In accordance with any requirement imposed by a statute of the United States.

(c) In any judicial or administrative proceeding in which disclosure is sought from the Secretary or the Attorney General of any confidential or privileged documents or information submitted under this Act, the Secretary or Attorney General shall attempt to notify the party who submitted the information of the request or demand for disclosure. In appropriate circumstances the Secretary or Attorney General may seek or support an appropriate protective order on behalf of the party who submitted the documents or information.

§325.17 Waiver.

The Secretary may waive any of the provisions of this part in writing for good cause shown, if the Attorney General concurs and if permitted by law.

PART 335—IMPORTS OF WORSTED WOOL FABRIC

Sec.
335.1 Purpose.
335.2 Definitions.
335.3 Applications to receive allocation.
335.4 Allocation.
335.5 Licenses.
335.6 Surrender, reallocation and license utilization requirement.

AUTHORITY: Title V of the Trade and Development Act of 2000 (Public Law No. 106-200) as amended by Trade Act of 2002 and the Miscellaneous Trade Act of 2004 (Public Law 108-429), Presidential Proclamation No. 7383 (December 1, 2000).

SOURCE: 66 FR 6461, Jan. 22, 2001, unless otherwise noted.

§335.1 Purpose.

This part sets forth regulations regarding the issuance and effect of licenses for the allocation of Worsted Wool Fabric under the TRQs established by Section 501 of the Act, including the new HTS categories 9902.51.15 and 9902.51.16 added by the amended Act.

[70 FR 25777, May 16, 2005]

§335.2 Definitions.

For purposes of these regulations and the forms used to implement them:

The Act means the Trade and Development Act of 2000 (Public Law No. 106–200, 114 Stat 251).

The Department means the United States Department of Commerce.

HTS means the Harmonized Tariff Schedule of the United States.

Imports subject to Tariff Rate Quotas are defined by date of presentation as defined in 19 CFR 132.1(d) and 19 CFR 132.11(a).

Licensee means an applicant for an allocation of the Tariff Rate Quotas that receives an allocation and a license.

Production means cutting and sewing garments in the United States.

Tariff Rate Quota or Quotas means the temporary duty reduction provided under Section 501 of the Act for limited quantities of fabrics of worsted wool with average diameters greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (HTS heading 9902.51.11), and for limited quantities of fabrics of worsted wool with average diameters of 18.5 microns or less, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers for the benefit of persons (including firms, corporations, or other legal entities) who cut and sew men's and boy's wool suits, suit-type jackets and trousers in the United States (HTS heading 9902.51.15), and worsted wool fabric with average fiber diameters of 18.5 microns or less for the benefit of persons (including firms, corporations, or other legal entities) who weave worsted wool fabric in the United States (HTS 9902.51.16).

Tariff Rate Quota Year means a calendar year for which the Tariff Rate Quotas are in effect.

Worsted Wool Fabric means fabric containing at least 85 percent by weight worsted wool.

Worsted Wool Suits means men's and boys' worsted wool suits, containing at

least 85 percent by weight worsted wool fabric.

Worsted Wool Suit-Type Jackets mean men's and boys' worsted wool suit-type jackets, containing at least 85 percent by weight worsted wool fabric.

Worsted Wool Trousers means men's and boys' worsted wool trousers, containing at least 85 percent by weight worsted wool fabric.

[66 FR 6461, Jan. 22, 2001, as amended at 70 FR 25777, May 16, 2005]

§ 335.3 Applications to receive allocation.

(a) In each year prior to a Tariff Rate Quota Year, the Department will cause to be published a FEDERAL REGISTER notice soliciting applications to receive an allocation of the Tariff Rate Quotas.

(b) An application for a Tariff Rate Quota allocation must be received, or postmarked by the U.S. Postal Service, within 30 calendar days after the date of publication of the FEDERAL REGISTER notice soliciting applications.

(c) For applying for TRQs 9902.51.11 or 9902.51.15 during the calendar year of the date of the application, an applicant must have cut and sewed in the United States all three of the following apparel products: Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers. The applicant may either have cut and sewn these products on its own behalf or had another person cut and sew the products on the applicant's behalf, provided the applicant owned the fabric at the time it was cut and sewn. The application must contain a statement to this effect. For applying for TRQ 9902.51.16 during the calendar year of the date of the application, an applicant must have woven in the United States worsted wool fabrics with average fiber diameters of 18.5 microns or less, suitable for use in making suits, suit-type jackets, and trousers. The application must contain a statement to this effect.

(d) An applicant must provide the following information in the format set forth in the application form provided by the Department:

(1) *Identification*. Applicant's name, address, telephone number, fax number, and federal tax identification number; name of person submitting the application, and title, or capacity in which the person is acting for the applicant.

(2)(i) *Production*. Applicants for TRQs 9902.51.11 and 9902.51.15 must provide the name and address of each plant or location where Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers were cut and sewn or woven by the applicant and the name and address of all plants or locations that cut and sewed such products on behalf of the applicant. Production data, including the following: the quantity and value of the Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers cut and sewn in the United States by applicant, or on behalf of applicant, from fabric owned by applicant. This data must indicate actual production (not estimates) of Worsted Wool Suits, Worsted Wool Suit-Type Jackets and Worsted Wool Trousers containing at least 85 percent worsted wool fabric by weight with an average diameter of 18.5 microns or less. This data must also indicate actual production (not estimates) of Worsted Wool Suits, Worsted Wool Suit-Type Jackets and Worsted Wool Trousers containing at least 85 percent worsted wool fabric by weight with average diameter greater than 18.5 microns. Production data must be provided for the first six months of the year of the application. This data will be annualized for the purpose of making Tariff Rate Quota allocations.

(ii) Applicants for TRQ 9902.51.16 must provide the name and address of each plant or location where Worsted Wool Fabric was woven by the applicant. The quantity and value of the Worsted Wool Fabric woven in the United States by applicant. This data must indicate actual production (not estimates) of Worsted Wool Fabric containing at least 85 percent worsted wool fabric by weight with an average diameter of 18.5 microns or less. For applications for the 2005 Tariff Rate Quota year, production data must be provided for full calendar year 2004. For allocations of Tariff Rate Quota years after 2005, production data must be provided for the first six months of the year of the application. This data will be annualized for the purpose of making Tariff Rate Quota allocations.

(3) *Worsted Wool Fabric.* Data indicating the quantity and value of the Worsted Wool Fabric used in reported production.

(4) *Certification.* A statement by the applicant (if a natural person), or on behalf of applicant, by an employee, officer or agent, with personal knowledge of the matters set out in the application, certifying that the information contained therein is complete and accurate, signed and sworn before a Notary Public, and acknowledging that false representations to a federal agency may result in criminal penalties under federal law.

(e) *Confidentiality.* Any business confidential information provided pursuant to this section that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

(f) *Record Retention:* The applicant shall retain records substantiating the information provided in §335.3(d)(2), (3), and (4) for a period of 3 years and the records must be made available upon request by an appropriate U.S. government official.

[66 FR 6461, Jan. 22, 2001, as amended at 70 FR 25777, May 16, 2005]

§335.4 Allocation.

(a) For HTS 9902.51.11 and HTS 9902.51.15 each Tariff Rate Quota will be allocated separately. Allocation will be based on an applicant's Worsted Wool Suit production, on a weighted average basis, and the proportion of imported Worsted Wool Fabric consumed in the production of Worsted Wool Suits. In regards to HTS 9902.51.16 the Tariff Rate Quota will be allocated based on an applicant's Worsted Wool Fabric production, on a weighted average basis.

(b) For the purpose of calculating allocations for HTS 9902.51.11 and HTS 9902.51.15 only, Worsted Wool Suit production will be increased by the percentage of imported fabric consumed in the production of Worsted Wool Suits to total fabric consumed in this production. For example, if an applicant uses 30 percent imported fabric in the production of Worsted Wool Suits, that applicant's production level will be increased by 30 percent.

(c) The Department will cause to be published in the FEDERAL REGISTER its determination to allocate the Tariff Rate Quotas and will notify applicants of their respective allocation as soon as possible. Promptly thereafter, the Department will issue licenses.

[66 FR 6461, Jan. 22, 2001, as amended at 70 FR 25777, May 16, 2005]

§335.5 Licenses.

(a) Each Licensee will receive a license, which will include a unique control number. The license is subject to the surrender and reallocation provisions in §335.6.

(b) A license may be exercised only for fabric entered for consumption, or withdrawn from warehouse for consumption, during the Tariff Rate Quota Year specified in the license. A license will be debited on the basis of date of entry for consumption or withdrawal from warehouse for consumption.

(c) A Licensee may import fabric certified by the importer as suitable for use in making suits, suit-type jackets, or trousers under the appropriate Tariff Rate Quota as specified in the license (*i.e.*, under the Tariff Rate Quota for fabric of worsted wool with average fiber diameters greater than 18.5 micron or the Tariff Rate Quota for fabric of worsted wool with average fiber diameters of 18.5 micron or less) up to the quantity specified in the license subject to the Tariff Rate Quota duty rate. Only a Licensee or an importer authorized by a Licensee will be permitted to import fabric under the Tariff Rate Quotas and to receive the Tariff Rate Quota duty rate.

(d) The term of a license shall be the Tariff Rate Quota Year for which it is issued. Fabric may be entered or withdrawn from warehouse for consumption under a license only during the term of that license. The license cannot be used for fabric entered or withdrawn from warehouse for consumption after December 31 of the year of the term of the license.

(e) The importer of record of fabric entered or withdrawn from warehouse for consumption under a license must be the Licensee or an importer authorized by the Licensee to act on its behalf. If the importer of record is the Licensee, the importer must possess the

license at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501).

(f) A Licensee may only authorize an importer to import fabric under the license on its behalf by making such an authorization in writing or by electronic notice to the importer and providing a copy of such authorization to the Department. A Licensee may only withdraw authorization from an importer by notifying the importer, in writing or by electronic notice, and providing a copy to the Department.

(g) The written authorization must include the unique number of the license, must specifically cover the type of fabric imported, and must be in the possession of the importer at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501), or its electronic equivalent, in order for the importer to obtain the applicable Tariff Rate Quota duty rate.

(h) It is the responsibility of the Licensee to safeguard the use of the license issued. The Department and the U.S. Customs Service will not be liable for any unauthorized or improper use of the license.

§ 335.6 Surrender, reallocation and license utilization requirement.

(a) Not later than September 30 of each Tariff Rate Quota Year, a Licensee that will not import the full quantity granted in a license during the Tariff Rate Quota Year shall surrender the allocation that will not be used to the Department for purposes of reallocation through a written or electronic notice to the Department, including the license control number and the amount being surrendered. The surrender shall be final, and shall apply only to that Tariff Rate Quota Year.

(b) For purposes of this section, ''unused allocation'' means the amount by which the quantity set forth in a license, including any additional amount received pursuant to paragraph (d) of this section, exceeds the quantity entered under the license, excluding any amount surrendered pursuant to paragraph (a) of this section.

(c) The Department will notify Licensees of any amount surrendered and the application period for requests for reallocation. A Licensee that has imported, or intends to import, a quantity of Worsted Wool Fabric exceeding the quantity set forth in its license may apply to receive additional allocation from the amount to be reallocated. The application shall state the maximum amount of additional allocation the applicant will be able to use.

(d) The amount surrendered will be reallocated to Licensees that have applied for reallocation. The entire amount surrendered will be reallocated pro-rata among applicants based on the applicant's share of the annual allocation, but will not exceed the amount set forth in the reallocation application as the maximum amount able to be used.

(e) A Licensee whose unused allocation in a Tariff Rate Quota Year exceeds five percent of the quantity set forth in its license shall be subject to having its allocation reduced in the subsequent Tariff Rate Quota Year. The subsequent Tariff Rate Quota Year allocation will be reduced from the quantity such Licensee would otherwise have received by a quantity equal to 25 percent of its unused allocation from the prior year. A Licensee whose unused allocation in two or more consecutive Tariff Rate Quota Years exceeds five percent of the quantity set forth in its license shall have its allocation reduced in the subsequent Tariff Rate Quota Year by a quantity equal to 50 percent of its unused allocation from the prior year.

(f) No penalty will be imposed under paragraph (e) of this section if the Licensee demonstrates to the satisfaction of the Department that the unused allocation resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the fabric, act of God, or force majeure.

[66 FR 6461, Jan. 22, 2001, as amended at 70 FR 25777, May 16, 2005]

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PART 400—REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD

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AUTHORITY: Foreign-Trade Zones Act of June 18, 1934, as amended (Pub. L. 397, 73rd Congress, 48 Stat. 998–1003 (19 U.S.C. 81a–81u)).

SOURCE: 56 FR 50798, Oct. 8, 1991, unless otherwise noted.

Subpart A—Scope and Definitions

§ 400.1 Scope.

(a) This part sets forth the regulations, including the rules of practice and procedure, of the Foreign-Trade Zones Board with regard to foreign-trade zones in the United States pursuant to the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u). It includes the substantive and procedural rules for the authorization of zones and the regulation of zone activity. The purpose of zones as stated in the Act is to ''expedite and encourage foreign commerce, and other purposes.'' The regulations provide the legal framework for accomplishing this purpose in the context of evolving U.S. economic and trade policy, and economic factors relating to international competition.

(b) Part 146 of the regulations of the United States Customs Service (19 CFR part 146) governs zone operations, including the admission of merchandise into zones, zone activity involving such merchandise, and the transfer of merchandise from zones.

(c) To the extent ''activated'' under Customs procedures in 19 CFR part 146, and only for the purposes specified in the Act (19 U.S.C. 81c), zones are treated for purposes of the tariff laws and Customs entry procedures as being outside the Customs territory of the United States. Under zone procedures, foreign and domestic merchandise may be admitted into zones for operations such as storage, exhibition, assembly, manufacture and processing, without being subject to formal Customs entry procedures and payment of duties, unless and until the foreign merchandise enters Customs territory for domestic consumption. At that time, the importer ordinarily has a choice of paying duties either at the rate applicable to the foreign material in its condition as admitted into a zone, or if used in manufacturing or processing, to the emerging product. Quota restrictions do not normally apply to foreign goods in zones. The Board can deny or limit the

use of zone procedures in specific cases on public interest grounds. Merchandise moved into zones for export (zone-restricted status) may be considered exported for purposes such as federal excise tax rebates and Customs drawback. Foreign merchandise (tangible personal property) admitted to a zone and domestic merchandise held in a zone for exportation are exempt from certain state and local *ad valorem* taxes (19 U.S.C. 81o(e)). Articles admitted into zones for purposes not specified in the Act shall be subject to the tariff laws and regular entry procedures, including the payment of applicable duties, taxes, and fees.

[56 FR 50798, Oct. 8, 1991; 56 FR 56544, Nov. 5, 1991]

§ 400.2 Definitions.

(a) *Act* means the Foreign-Trade Zones Act of 1934, as amended.

(b) *Board* means the Foreign-Trade Zones Board, which consists of the Secretary of the Department of Commerce (chairman) and the Secretary of the Treasury, or their designated alternates.

(c) *Customs Service* means the United States Customs Service of the Department of the Treasury.

(d) *Executive Secretary* is the Executive Secretary of the Foreign-Trade Zones Board.

(e) *Foreign-trade zone* is a restricted-access site, in or adjacent to a Customs port of entry, operated pursuant to public utility principles under the sponsorship of a corporation granted authority by the Board and under supervision of the Customs Service.

(f) *Grant of authority* is a document issued by the Board which authorizes a zone grantee to establish, operate and maintain a zone project or a subzone, subject to limitations and conditions specified in this part and in 19 CFR part 146. The authority to establish a zone includes the authority to operate and the responsibility to maintain it.

(g) *Manufacturing*, as used in this part, means activity involving the substantial transformation of a foreign article resulting in a new and different article having a different name, character, and use.

(h) *Port Director* is normally the director of Customs for the Customs jurisdictional area in which the zone is located.

(i) *Port of entry* means a port of entry in the United States, as defined by part 101 of the regulations of the Customs Service (19 CFR part 101), or a user fee airport authorized under 19 U.S.C. 58b and listed in part 122 of the regulations of the Customs Service (19 CFR part 122).

(j) *Private corporation* means any corporation, other than a public corporation, which is organized for the purpose of establishing a zone project and which is chartered for this purpose under a law of the state in which the zone is located.

(k) *Processing*, when referring to zone activity, means any activity involving a change in condition of merchandise, other than manufacturing, which results in a change in the Customs classification of an article or in its eligibility for entry for consumption.

(l) *Public corporation* means a state, a political subdivision (including a municipality) or public agency thereof, or a corporate municipal instrumentality of one or more states.

(m) *State* includes any state of the United States, the District of Columbia, and Puerto Rico.

(n) *Subzone* means a special-purpose zone established as an adjunct to a zone project for a limited purpose.

(o) *Zone* means a foreign-trade zone established under the provisions of the Act and these regulations. Where used in this part, the term also includes subzones, unless the context indicates otherwise.

(p) *Zone grantee* is the corporate recipient of a grant of authority for a zone project. Where used in this part, the term ''grantee'' means ''zone grantee'' unless otherwise indicated.

(q) *Zone operator* is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee or an intermediary entity, with the concurrence of the Port Director.

(r) *Zone project* means the zone plan, including all of the zone and subzone sites that the Board authorizes a single grantee to establish.

(s) *Zone site* means the physical location of a zone or subzone.

(t) *Zone user* is a party using a zone under agreement with the zone grantee or operator.

[62 FR 53534, Oct. 15, 1997]

Subpart B—Foreign-Trade Zones Board

§400.11 Authority of the Board.

(a) *In general.* In accordance with the Act and procedures of this part, the Board has authority to:

(1) Prescribe rules and regulations concerning zones;

(2) Issue grants of authority for zones and subzones, and approve modifications to the original zone project;

(3) Approve manufacturing and processing activity in zones and subzones as described in subpart D of this part;

(4) Make determinations on matters requiring Board decisions under this part;

(5) Decide appeals in regard to certain decisions of the Commerce Department's Assistant Secretary for Import Administration or the Executive Secretary;

(6) Inspect the premises, operations and accounts of zone grantees and operators;

(7) Require zone grantees to report on zone operations;

(8) Report annually to the Congress on zone operations;

(9) Restrict or prohibit zone operations;

(10) Impose fines for violations of the Act and this part;

(11) Revoke grants of authority for cause; and

(12) Determine, as appropriate, whether zone activity is or would be in the public interest or detrimental to the public interest.

(b) *Authority of the Chairman of the Board.* The Chairman of the Board (Secretary of the Department of Commerce) has the authority to:

(1) Appoint the Executive Secretary of the Board;

(2) Call meetings of the Board, with reasonable notice given to each member; and

(3) Submit to the Congress the Board's annual report as prepared by the Executive Secretary.

(c) *Alternates.* Each member of the Board will designate an alternate with authority to act in an official capacity for that member.

(d) *Determinations of the Board.* (1) The determination of the Board will be based on the unanimous vote of the members (or alternate members) of the Board.

(2) All votes will be recorded.

(3) The Board will issue its determination in proceedings under the regulations in the form of a Board order.

[56 FR 50798, Oct. 8, 1991, as amended at 62 FR 53535, Oct. 15, 1997

§400.12 Responsibilities and authority of the Executive Secretary.

The Executive Secretary has the following responsibilities and authority:

(a) Represent the Board in administrative, regulatory, operational, and public affairs matters;

(b) Serve as director of the Commerce Department's Foreign-Trade Zones staff;

(c) Execute and implement orders of the Board;

(d) Arrange meetings and direct circulation of action documents for the Board;

(e) Arrange with other sections of the Department of Commerce, Board agencies and other governmental agencies for studies and comments on zone issues and proposals;

(f) Maintain custody of the seal, records, files and correspondence of the Board, with disposition subject to the regulations of the Department of Commerce;

(g) Issue notices on zone matters for publication in the FEDERAL REGISTER;

(h) Determine subzone sponsorship questions as provided in §400.22(d);

(i) Determine whether additional information is needed for evaluation of applications and other requests for decisions under this part, as provided for in various sections of this part, including §§400.24, 400.25, and 400.26;

(j) Issue guidelines on information required for subzone applications under §400.25(a)(6);

(k) Determine whether proposed modifications involve major changes under §400.26(a)(2);

(l) Determine whether applications meet prefiling requirements under § 400.27(b);

(m) Direct processing of applications, including designation of examiners and scheduling of hearings under §§ 400.27 and 400.32;

(n) Authorize minor modifications to zone projects under § 400.27(f);

(o) Review changes in sourcing under § 400.28(a)(3);

(p) Direct monitoring of zone activity under § 400.31(d);

(q) Direct reviews and make recommendations on requests for manufacturing/processing approvals under § 400.32(b);

(r) Determine questions of scope under § 400.32(c);

(s) Accept rate schedules and determine their sufficiency under § 400.42(b)(3);

(t) Review and decide zone rate complaints cases under § 400.42(b)(5);

(u) Make recommendations in cases involving questions as to whether zone activity should be prohibited or restricted for public interest reasons, including reviews under § 400.43;

(v) Authorize under certain circumstances the return of ''zone-restricted merchandise'' for entry into Customs territory under § 400.44;

(w) Authorize certain duty-paid retail trade under § 400.45;

(x) Determine the format for the annual reports of zone grantees to the Board and direct preparation of an annual report to Congress from the Board under § 400.46(d); and

(y) Designate an acting Executive Secretary.

§ 400.13 Board headquarters.

The headquarters of the Board is located within the U.S. Department of Commerce (Herbert C. Hoover Building), Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, as part of the office of the Foreign-Trade Zones staff.

Subpart C—Establishment and Modification of Zone Projects

§ 400.21 Number and location of zones and subzones.

(a) *Number of zone projects—port of entry entitlement.* (1) Provided that the other requirements of this subpart are met:

(i) Each port of entry is entitled to at least one zone project;

(ii) If a port of entry is located in more than one state, each of the states in which the port of entry is located is entitled to a zone project; and

(iii) If a port of entry is defined to include more than one city separated by a navigable waterway, each of the cities is entitled to a zone project.

(2) Zone projects in addition to those approved under the entitlement provision of paragraph (a)(1) of this section may be authorized by the Board if it determines that existing project(s) will not adequately serve the public interest (convenience of commerce).

(b) *Location of zones and subzones—port of entry adjacency requirements.* (1) The Act provides that the Board may approve ''zones in or adjacent to ports of entry'' (19 U.S.C. 81b).

(2) The ''adjacency'' requirement is satisfied if:

(i) A general-purpose zone is located within 60 statute miles or 90 minutes' driving time from the outer limits of a port of entry;

(ii) A subzone meets the following requirements relating to Customs supervision:

(A) Proper Customs oversight can be accomplished with physical and electronic means; and

(B) All electronically produced records are maintained in a format compatible with the requirements of the U.S. Customs Service for the duration of the record period; and

(C) The grantee/operator agrees to present merchandise for examination at a Customs site selected by Customs when requested, and further agrees to present all necessary documents directly to the Customs oversight office.

§ 400.22 Eligible applicants.

(a) *In general.* Subject to the other provisions of this section, public or private corporations may apply for a grant of authority to establish a zone project. The board will give preference to public corporations.

(b) *Public and non-profit corporations.* The eligibility of public and non-profit

corporations to apply for a grant of authority shall be supported by an enabling legislation of the legislature of the state in which the zone is to be located, indicating that the corporation, individually or as part of a class, is authorized to so apply.

(c) *Private for-profit corporations.* The eligibility of private for-profit corporations to apply for a grant of authority shall be supported by a special act of the state legislature naming the applicant corporation and by evidence indicating that the corporation is chartered for the purpose of establishing a zone.

(d) *Applicants for subzones*—(1) *Eligibility*. The following entities are eligible to apply for a grant of authority to establish a subzone:

(i) The zone grantee of the closest zone project in the same state;

(ii) The zone grantee of another zone in the same state, which is a public corporation, if the Board, or the Executive Secretary, finds that such sponsorship better serves the public interest; or

(iii) A state agency specifically authorized to submit such an application by an act of the state legislature.

(2) *Complaints.* If an application is submitted under paragraph (d)(1) (ii) or (iii) of this section, the Executive Secretary will:

(i) Notify, in writing, the grantee specified in paragraph (d)(1)(i) of this section, who may, within 30 days, object to such sponsorship, in writing, with supporting information as to why the public interest would be better served by its acting as sponsor;

(ii) Review such objections prior to filing the application to determine whether the proposed sponsorship is in the public interest, taking into account:

(A) The complaining zone's structure and operation;

(B) The views of State and local public agencies; and

(C) The views of the proposed subzone operator;

(iii) Notify the applicant and complainants in writing of the Executive Secretary's determination;

(iv) If the Executive Secretary determines that the proposed sponsorship is in the public interest, file the application (see §400.47 regarding appeals to decisions of the Executive Secretary).

§400.23 Criteria for grants of authority for zones and subzones.

(a) *Zones.* The Board will consider the following factors in determining whether to issue a grant of authority for a zone project:

(1) The need for zone services in the port of entry area, taking into account existing as well as projected international trade related activities and employment impact;

(2) The adequacy of the operational and financial plans and the suitability of the proposed sites and facilities, with justification for duplicative sites;

(3) The extent of state and local government support, as indicated by the compatibility of the zone project with the community's master plan or stated goals for economic development and the views of State and local public officials involved in economic development. Such officials shall avoid commitments that anticipate outcome of Board decisions;

(4) The views of persons and firms likely to be affected by proposed zone activity; and

(5) If the proposal involves manufacturing or processing activity, the criteria in §400.31.

(b) *Subzones.* In reviewing proposals for subzones the Board will also consider:

(1) Whether the operation could be located in or otherwise accommodated by the multi-purpose facilities of the zone project serving the area;

(2) The specific zone benefits sought and the significant public benefit(s) involved supported by evidence to meet the requirement in §400.31(c); and

(3) Whether the proposed activity is in the public interest, taking into account the criteria in §400.31.

§400.24 Application for zone.

(a) *In general.* An application for a grant of authority to establish a zone project shall consist of a transmittal letter, an executive summary and five exhibits.

(b) *Letter of transmittal.* The transmittal letter shall be currently dated and signed by an authorized officer of

the corporation and bear the corporate seal.

(c) *Executive summary*. The executive summary shall describe:

(1) The corporation's legal authority to apply;

(2) The type of authority requested from the Board;

(3) The proposed zone site and facilities and the larger project of which the zone is a part;

(4) The project background, including surveys and studies;

(5) The relationship of the project to the community's and state's overall economic development plans and objectives;

(6) The plans for operating and financing the project; and

(7) Any additional pertinent information needed for a complete summary description of the proposal.

(d) *Exhibits*. (1) Exhibit One (Legal Authority for the Application) shall consist of:

(i) A certified copy of the state enabling legislation described in § 400.22;

(ii) A copy of pertinent sections of the applicant's charter or organization papers; and

(iii) A certified copy of the resolution of the governing body of the corporation authorizing the official signing the application.

(2) Exhibit Two (Site Description) shall consist of:

(i) A detailed description of the zone site, including size, location, address, and a legal description of the area proposed for approval; a table with site designations shall be included when more than one site is involved;

(ii) A summary description of the larger project of which the zone is a part, including type, size, location and address;

(iii) A statement as to whether the zone is within or adjacent to a customs port of entry;

(iv) A description of zone facilities and services, including dimensions and types of existing and proposed structures;

(v) A description of existing or proposed site qualifications including: land-use zoning, relationship to floodplain, infrastructure, utilities, security, and access to transportation services;

(vi) A description of current activities carried on in or contiguous to the project;

(vii) If part of a port facility, a summary of port and transportation services and facilities; if not, a summary description of transportation systems indicating connections from local and regional points of arrival to the zone; and

(viii) A statement as to the possibilities and plans for zone expansion.

(3) Exhibit Three (Operation and Financing) shall consist of:

(i) A statement as to site ownership (if not owned by the applicant or proposed operator, evidence as to their legal right to use the site);

(ii) A discussion of the operational plan (if the zone or a portion thereof is to be operated by other than the grantee, a summary of the selection process used or to be used, the type of operation agreement and, if available, the name and qualifications of the proposed operator);

(iii) A brief explanation of the plans for providing facilities, physical security, and for satisfying the requirements for Customs automated systems;

(iv) A summary of the plans for financing capital and operating costs, including a statement as to the source and use of funds; and

(v) The estimated time schedule for construction and activation.

(4) Exhibit Four (Economic Justification) shall include:

(i) A statement of the community's overall economic goals and strategies in relation to those of the region and state;

(ii) A reference to the plan or plans on which the goals are based and how they relate to the zone project;

(iii) An economic profile of the community including identification and discussion of dominant sectors in terms of percentage of employment or income, area resources and problems, economic imbalances, unemployment rates, area foreign trade statistics, and area port facilities and transportation networks;

(iv) A statement as to the role and objective of the zone project, and a justification for each of the proposed sites;

(v) A discussion of the anticipated economic impact, direct and indirect, of the zone project, including references to public costs and benefits, employment, U.S. international trade, and environmental impact;

(vi) A statement as to the need for zone services in the community, with information on surveys of business, and specific expressions of interest from proposed zone users, with letters of intent from those firms that are considered prime prospects; and

(vii) A description of proposed manufacturing and processing operations, if applicable, with information covering the factors described in §400.31(b), including the nature and scope of the operation and production process, materials and components used, items to be foreign sourced with relevant tariff information, zone benefits anticipated and how they will affect the firm's plans, and the economic impact of the operation on the community and on related domestic industries.

(5) Exhibit Five (Maps) shall consist of:

(i) The following maps and drawings:

(A) State and county maps showing the general location of the zone in terms of the area's transportation network;

(B) A local community map showing in red the location of the proposed zone; and

(C) A detailed blueprint of the zone or subzone area showing zone boundaries in red, with dimensions and metes and bounds, or other legal description, and showing existing and proposed structures.

(ii) Proposals involving existing zones shall include a drawing showing existing zone sites and the proposed changes.

(e) *Additional information.* The Board or the Executive Secretary may require additional information needed to adequately evaluate a proposal.

(f) *Amendment of application.* The Board or the Executive Secretary may allow amendment of the application.

(g) *Drafts.* Applicants may submit a draft application to the Executive Secretary for review.

(h) *Format and number of copies.* Unless the Executive Secretary alters the requirements of this paragraph, submit an original and 8 copies of the application on 8½″ × 11″ (216 × 279 mm) paper. Exhibit Five of the original application shall contain full-sized maps, and copies shall contain letter-sized reductions.

(i) *Where to file.* Address and mail the application to the Secretary of Commerce, Attention: Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

(Approved by the Office of Management and Budget under control number 0625–0139)

[56 FR 50798, Oct. 8, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§400.25 Application for subzone.

(a) *In general.* An application to establish a subzone as part of a proposed or existing zone shall be submitted in accordance with the format in §400.24, except that the focus of the information provided in Exhibit Four shall be on the specific activity involved and its net economic effect. The information submitted in Exhibit Four shall include:

(1) A summary as to the reasons for the subzone and an explanation of its anticipated economic effects;

(2) Identity of the subzone user and its corporate affiliation;

(3) Description of the proposed activity, including:

(i) Products;

(ii) Materials and Components;

(iii) Sourcing plans (domestic/foreign);

(iv) Tariff rates and other import requirements or restrictions;

(v) Information to assist the Board in making a determination under §§400.31(b)(1)(iii) and 400.31(b)(2);

(vi) Benefits to subzone user;

(vii) Information required in §400.24(d)(4)(vii);

(viii) Information as to whether alternative procedures have been considered as a means of obtaining the benefits sought;

(ix) Information on the industry involved and extent of international competition; and

(x) Economic impact of the operation on the area;

(4) Reason operation cannot be conducted within a general-purpose zone;

(5) Statement as to environmental impact; and

(6) Any additional information requested by the Board or the Executive Secretary in order to conduct the review. The Executive Secretary may issue guidelines as to the kind of detailed information needed for various types of subzone cases.

(b) *Burden of proof.* An applicant for a subzone must demonstrate to the Board that the proposed operation meets the criteria in § 400.23(b).

(Approved by the Office of Management and Budget under control number 0625–0139)

§ 400.26 Application for expansion or other modification to zone project.

(a) *In general.* (1) A grantee may apply to the Board for authority to expand or otherwise modify its zone project.

(2) The Executive Secretary, in consultation with the Port Director, will determine whether the proposed modification involves a major change in the zone plan and is thus subject to paragraph (b) of this section, or is minor and subject to paragraph (c) of this section. In making this determination the Executive Secretary will consider the extent to which the proposed modification would:

(i) Substantially modify the plan originally approved by the Board; or

(ii) Expand the physical dimensions of the approved zone area as related to the scope of operations envisioned in the original plan.

(b) *Major modification to zone project.* An application for a major modification to an approved zone project shall be submitted in accordance with the format in § 400.24, except that:

(1) Reference may be made to current information in an application from the same applicant on file with the Board; and

(2) The content of Exhibit Four shall relate specifically to the proposed change.

(c) *Minor modification to zone project.* Other applications or requests under this subpart, including those for minor revisions of zone boundaries, grant of authority transfers, or time extensions, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary, who shall determine whether the proposed change is a minor one subject to this paragraph (c) instead of paragraph (b) of this section (see, § 400.27(f)).

(d) *Applications for other revisions to grants of authority.* Applications or requests for revisions to grants of authority, such as restriction modifications, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary. If the change involves removal or significant modification of a restriction included by the Board in a grant of authority, the review procedures of § 400.32 shall apply. If not, the procedure set forth in § 400.27(f) shall apply.

(Approved by the Office of Management and Budget under control number 0625–0139)

[56 FR 50798, Oct. 8, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§ 400.27 Procedure for processing application.

(a) *In general.* This section outlines the procedure followed in processing applications submitted under §§ 400.24–400.26. In addition, it sets forth the time schedules which will normally be applied in processing applications. The schedules will provide guidance to applicants with respect to the time frames for each of the procedural steps involved in the Board's review. Under these schedules, applications involving manufacturing or processing activity would be processed within 1 year, and those not involving such activity, within 10 months. While the schedules set forth a standard time frame, the Board may determine that it requires additional time based on special circumstances, such as when the public comment period must be reopened pursuant to paragraphs (d)(2)(v)(B) and (d)(3)(vi)(B) of this section.

(b) *Prefiling review.* Applications subject to § 400.29 shall be accompanied with a check in accordance with that section, and will be dated upon receipt at the headquarters of the Board. The Executive Secretary will determine whether the application satisfies the requirements of §§ 400.22–400.24, 400.25, 400.26, 400.32, and other applicable provisions of this part.

(1) If the application is deficient, the Executive Secretary will notify the applicant within 20 days of receipt of the application, specifying the deficiencies. The applicant shall correct the deficiencies and submit the correct application within 30 days of notification. Otherwise, the application (original) will be returned.

(2) If the application is sufficient, the Executive Secretary will within 45 days of receipt of the application:

(i) Formally file the application, thereby initiating the proceeding or review;

(ii) Assign a case docket number in cases requiring a Board order; and

(iii) Notify the applicant.

(c) *Procedure—Executive Secretary responsibilities.* After initiating a proceeding based on an application under §§ 400.24–400.25, or 400.26(b), the Executive Secretary will:

(1) Designate an examiner to conduct a review and prepare a report with recommendations for the Board;

(2) Publish in the FEDERAL REGISTER a notice of the formal filing of the application and initiation of the review which includes the name of the applicant, a description of the zone project, information as to any hearing scheduled at the outset, and an invitation for public comment, including a time period during which the public may submit evidence, factual information, and written arguments. Normally, the comment period will close 60 days after the date the notice appears, except that, if a hearing is held (see, § 400.51), the period will not close prior to 15 days after the date of the hearing. The closing date for general comment will ordinarily be followed by an additional 15-day period for rebuttal comments;

(3) Send copies of the filing and initiation notice and the application to the Commissioner of Customs and the Port Director, or a designee;

(4) Arrange for hearings, as appropriate;

(5) Transmit the reports and recommendations of the examiner and of the officials identified in paragraph (c)(3) of this section to the Board for appropriate action; and

(6) Notify the applicant in writing and publish notice in the FEDERAL REGISTER of the Board's determination.

(d) *Case reviews—procedure and time schedule*—(1) *Customs review.* The Port Director, or a designee, in accordance with agency regulations and directives, will submit a technical report to the Executive Secretary within 45 days of the conclusion of the public comment period described in paragraph (c)(2) of this section.

(2) *Examiners reviews—non-manufacturing/processing.* Examiners assigned to cases not involving manufacturing or processing activity shall conduct a review taking into account the factors enumerated in § 400.23 and other appropriate sections of this part, which shall include:

(i) Conducting or participating in necessary hearings scheduled by the Executive Secretary;

(ii) Reviewing case records, including public comments;

(iii) Requesting information and evidence from parties of record;

(iv) Developing information and evidence necessary for evaluation and analysis of the application in accordance with the criteria of the Act and this part;

(v) Preparing a report with recommendations to the Board and submitting it to the Executive Secretary within 120 days of the close of the period for public comment (see, paragraph (c)(2) of this section).

(A) If the report is unfavorable to the applicant, it shall be considered a preliminary report and the applicant shall be notified within 5 days (in writing or by phone) and given 30 days from the date of notification in which to respond to the report and submit additional evidence.

(B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the FEDERAL REGISTER after completion of the review of the response. The new material will be made available for public inspection and the FEDERAL REGISTER notice will invite further public comment for 30 days, with an additional 15-day period for rebuttal comments.

(C) The Customs adviser shall be notified when necessary for further comments, which shall be submitted within 45 days after notification.

(D) The examiners report in a situation under paragraph (d)(2)(v)(A) of this section shall be completed and submitted to the Executive Secretary within 30 days after receipt of additional evidence or notice from the applicant that there will be none; except that, if paragraph (d)(2)(v)(B) of this section applies, the report will be submitted within 30 days of the close of the period for public comment.

(3) *Examiners reviews—cases involving manufacturing or processing activity*. Examiners shall conduct a review taking into account the factors enumerated in § 400.23, § 400.31, and other appropriate sections of this part, which shall include:

(i) Conducting or participating in hearings scheduled by the Executive Secretary;

(ii) Reviewing case records, including public comments;

(iii) Requesting information and evidence from parties of record;

(iv) Developing information and evidence necessary for analysis of the threshold factors and the economic factors enumerated in § 400.31;

(v) Conducting an analysis to include:

(A) An evaluation of policy considerations pursuant to §§ 400.31(b)(1)(i) and 400.31(b)(1)(ii);

(B) An evaluation of the economic factors enumerated in §§ 400.31(b)(1)(iii) and 400.31(b)(2), which shall include an evaluation of the economic impact on domestic industry, considering both producers of like products and producers of components/materials used in the manufacture/processing or assembly of the products. The evaluation will take into account such factors as market conditions, price sensitivity, degree and nature of foreign competition, effect on exports and imports, and the net effect on U.S. employment;

(vi) Conducting appropriate industry surveys when necessary; and

(vii) Preparing a report with recommendations to the Board and submitting it to the Executive Secretary within 150 days of the close of the period for public comment:

(A) If the report is unfavorable to the applicant, it shall be considered a preliminary report and the applicant shall be notified (in writing or by phone) and given 45 days from the date of notification in which to respond to the report and submit additional evidence pertinent to the factors considered in the report.

(B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the FEDERAL REGISTER after completion of the review of the response. The new material will be made available for public inspection and the FEDERAL REGISTER notice will invite further public comment for 30 days, with an additional 15-day period for rebuttal comments.

(e) *Procedure—Completion of review*—(1) The Executive Secretary will circulate the examiners report with recommendations to Board members for their review and votes (by resolution).

(2) The Treasury and Army Board members will return their votes to the Executive Secretary within 30 days, unless a formal meeting is requested (see, § 400.11(d)).

(3) The Commerce Department will complete the decision process within 15 days of receiving the votes of both other Board members, and the Executive Secretary will publish the Board decision.

(f) *Procedure—Application for minor modification of zone project*. (1) The Executive Secretary, with the concurrence of the Port Director, will make a determination in cases under § 400.26(c) involving minor changes to zone projects that do not require a Board order, such as boundary modifications, including certain relocations, and will notify the applicant in writing of the decision within 30 days of the determination that the application or request can be processed under § 400.26(c).

(2) The Port Director shall provide the decision as to concurrence within 20 days after being notified of the request or application.

[56 FR 50798, Oct. 8, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§ 400.28 Conditions, prohibitions and restrictions applicable to grants of authority.

(a) *In general*. Grants of authority issued by the Board for the establishment of zones or subzones, including

those already issued, are subject to the Act and this part and the following general conditions or limitations:

(1) Approvals from the grantee and the Port Director, pursuant to 19 CFR part 146, are required prior to the activation of any portion of an approved zone project; and

(2) Approval of the Board or the Commerce Department's Assistant Secretary for Import Administration pursuant to subpart D of this part is required prior to the commencement of manufacturing beyond the scope of that approved as part of the application or pursuant to reviews under this part (e.g., new end products, significant expansions of plant production capacity), and of similar changes in processing activity which involves foreign articles subject to quantitative import controls (quotas) or results in articles subject to a lower (actual or effective) duty rate (inverted tariff) than any of their foreign components.

(3) *Sourcing changes*—(i) *Notification requirement.* The grantee or operator of a zone or subzone shall notify the Executive Secretary when there is a change in sourcing for authorized manufacturing or processing activity which involves the use of new foreign articles subject to quotas or inverted tariffs, unless—

(A) Entries for consumption are not to be made at the lower duty rate; or

(B) The product in which the foreign articles are to be incorporated is being produced for exportation.

(ii) *Notification procedure.* Notification shall be given prior to the commencement of the activity, when possible, otherwise at the time the new foreign articles arrive in the zone or are withdrawn from inventory for use in production. Requests may be made to the Executive Secretary for authority to submit notification of sourcing changes on a quarterly federal fiscal year basis covering changes in the previous quarter.

(iii) *Reviews.* (A) Upon notification of a sourcing change under paragraph (a)(3)(i) of this section, within 30 days, the Executive Secretary will conduct a preliminary review of the changes in relation to the approved activity to determine whether they could have significant adverse effects, taking into account the factors enumerated in § 400.31(b), and will submit a report and recommendation to the Commerce Department's Assistant Secretary for Import Administration, who shall determine whether review is necessary. The procedures of § 400.32(b) shall be used in these situations when appropriate.

(B) The Board or the Commerce Department's Assistant Secretary for Import Administration may, based on public interest grounds, prohibit or restrict the use of zone procedures in regard to the change in sourcing, including requiring that items be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone.

(C) The Executive Secretary shall direct reviews necessary to ensure that activity involved in these situations continues to be in the public interest.

(4) Prior to activation of a zone, the zone grantee or operator shall obtain all necessary permits from federal, state and local authorities, and except as otherwise specified in the Act or this part, shall comply with the requirements of those authorities.

(5) A grant of authority for a zone or a subzone shall lapse unless the zone project (in case of subzones, the subzone facility) is activated, pursuant to 19 CFR part 146, and in operation not later than five years from:

(i) A Board order (authorizing the zone or subzone) issued after November 7, 1991; or

(ii) November 7, 1991.

(6) A grant of authority approved under this subpart includes authority for the grantee to permit the erection of buildings necessary to carry out the approved zone project subject to concurrence of the Port Director.

(7) Zone grantees, operators, and users shall permit federal government officials acting in an official capacity to have access to the zone project and records during normal business hours and under other reasonable circumstances.

(8) A grant of authority may not be sold, conveyed, transferred, set over, or assigned (FTZ Act, section 17; 19 U.S.C. 81q). Private ownership of zone land and facilities is permitted provided the zone grantee retains the control necessary to implement the approved zone

project. Should title to land or facilities be transferred after a grant of authority is issued, the zone grantee must retain, by agreement with the new owner, a level of control which allows the grantee to carry out its responsibilities as grantee. The sale of a zone site or facility for more than its fair market value without zone status could, depending on the circumstances, be subject to section 17 of the Act.

(9) A grant of authority will not be construed to make the zone grantee automatically liable for violations by operators, users, or other parties.

(b) *Additional conditions, prohibitions and restrictions.* Other requirements, conditions or restrictions under Federal, State or local law may apply to the zone or subzone authorized by the grant of authority.

(c) *Revocation of grants of authority*—(1) *In general.* As provided in this section, the Board can revoke in whole or in part a grant of authority for a zone or subzone whenever it determines that the zone grantee or, in the case of subzones, the subzone operator, has violated, repeatedly and willfully, the provisions of the Act.

(2) *Procedure.* When the Board has reason to believe that the conditions for revocation, as described in paragraph (a) of this section, are met, the Board will:

(i) Notify the zone or subzone grantee in writing stating the nature of the alleged violations, and provide the grantee an opportunity to request a hearing on the proposed revocation;

(ii) Conduct a hearing, if requested or otherwise if appropriate;

(iii) Make a determination on the record of the proceeding not earlier than 4 months after providing notice to the zone grantee under paragraph (b)(1) of this section; and

(iv) If the Board's determination is affirmative, publish notice of revocation of the grant of authority in the FEDERAL REGISTER.

(3) As provided in section 18 of the Act (19 U.S.C. 81r(c)), the zone or subzone grantee may appeal an order of the Board revoking the grant of authority.

[56 FR 50798, Oct. 8, 1991; 56 FR 65833, Dec. 19, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§ 400.29 Application fees.

(a) *In general.* This section sets forth a uniform system of charges in the form of fees to recover some costs incurred by the Foreign-Trade Zones staff of the Department of Commerce in processing the applications listed in paragraph (b) of this section. The legal authority for the fees is 31 U.S.C. 9701, which provides for the collection of user fees by agencies of the Federal Government.

(b) *Uniform system of user fee charges.* The following graduated fee schedule establishes fees for certain types of applications and requests for authority based on their average processing time. Applications combining requests for more than one type of approval are subject to the fee for each category.

(1) Additional general-purpose zones (§ 400.24; § 400.21(a)(2))	$3,200
(2) Special-purpose subzones (§ 400.25):	
(i) Non-manufacturing/processing or less than three products	4,000
(ii) Manufacturing/processing—three or more products	6,500
(3) Expansions (§ 400.26(b))	1,600

(c) Applications submitted to the Board shall include a check drawn on a national or state bank or trust company of the United States or Puerto Rico in the amount called for in paragraph (b) of this section. Uncertified checks must be acceptable for deposit by a Federal Reserve bank or branch.

(d) Applicants shall make their checks payable to the U.S. Department of Commerce ITA. The checks will be deposited by ITA into the Treasury receipts account. If applications are found deficient under § 400.27(b)(1), or withdrawn by applicants prior to formal filing, refunds will be made.

Subpart D—Manufacturing and Processing Activity—Reviews

§ 400.31 Manufacturing and processing activity; criteria.

(a) *In general.* Pursuant to section 15(c) of the Act (19 U.S.C. 81o(c)), the Board has authority to restrict or prohibit zone activity ''that in its judgment is detrimental to the public interest.'' When evaluating zone and subzone manufacturing and processing activity, either as proposed in an application, in a request for manufacturing/

processing approval, or as part of a review of an ongoing operation, the Board shall determine whether the activity is in the public interest by reviewing it in relation to the evaluation criteria contained in paragraph (b) of this section. With regard to processing activity, this section shall apply only when the activity involves foreign articles subject to quantitative import controls (quotas) or results in articles subject to a lower duty rate (inverted tariff) than any of their foreign components. Such a review involves consideration of whether the activity is consistent with trade policy and programs, and whether its net economic effect is positive.

(b) *Evaluation criteria*—(1) *Threshold factors.* It is the policy of the Board to authorize zone activity only when it is consistent with public policy and, in regard to activity involving foreign merchandise subject to quotas or inverted tariffs, when zone procedures are not the sole determining cause of imports. Thus, without undertaking a review of the economic factors enumerated in § 400.31(b)(2), the Board shall deny or restrict authority for proposed or ongoing activity if it determines that:

(i) The activity is inconsistent with U.S. trade and tariff law, or policy which has been formally adopted by the Executive branch;

(ii) Board approval of the activity under review would seriously prejudice U.S. tariff and trade negotiations or other initiatives; or

(iii) The activity involves items subject to quantitative import controls or inverted tariffs, and the use of zone procedures would be the direct and sole cause of imports that, but for such procedures, would not likely otherwise have occurred, taking into account imports both as individual items and as components of imported products.

(2) *Economic factors.* After its review of threshold factors, if there is a basis for further consideration, the Board shall consider the following factors in determiing the net economic effect of the activity or proposed activity:

(i) Overall employment impact;

(ii) Exports and reexports;

(iii) Retention or creation of manufacturing or processing activity;

(iv) Extent of value-added activity;

(v) Overall effect on import levels of relevant products, including import displacement;

(vi) Extent and nature of foreign competition in relevant products;

(vii) Impact on related domestic industry, taking into account market conditions; and

(viii) Other relevant information relating to public interest and net economic impact considerations, including technology transfers and investment effects.

(c) *Methodology and evidence*—(1)(i) The first phase (§ 400.31(b)) involves consideration of threshold factors. If an examiner or reviewer makes a negative finding on any of the factors in paragraph (b)(1) of this section in the course of a review, the applicant shall be informed pursuant to § 400.27(d)(3)(vii)(A). When threshold factors are the basis for a negative recommendation in a review of ongoing activity, the zone grantee and directly affected party shall be notified and given an opportunity to submit evidence pursuant to § 400.27(d)(3)(vii)(A). If the Board determines in the negative any of the factors in paragraph (b)(1) of this section, it shall deny or restrict authority for the proposed or ongoing activity.

(ii) The process for paragraph (b)(2) of this section involves consideration of the enumerated economic factors, taking into account their relative weight and significance under the circumstances. Previous evaluations in similar cases are considered. The net effect is arrived at by balancing the positive and negative factors and arriving at a net economic effect.

(2) *Contributory effect.* In assessing the significance of the economic effect of the zone activity as part of the consideration of economic factors, and in consideration of whether there is a significant public benefit, the Board may consider the contributory effect zone savings have as an incremental part of cost effectiveness programs adopted by companies to improve their international competitiveness.

(3) *Burden of proof.* Applicants for subzones shall have the burden of submitting evidence establishing that the

activity does or would result in a significant public benefit, taking into account the factors in paragraph (b) of this section. Applicants for approval of manufacturing or processing in general-purpose zones shall submit evidence regarding the positive economic effects that would result from activity within the zone and may submit evidence and comments as to policy considerations. Both types of applicants are expected to submit information in response to evidence of adverse economic effects during the public comment period. Parties should submit evidence that is probative and substantial in addressing the matter in issue.

(d) *Monitoring and post-approval reviews*—(1) Ongoing zone activity may be reviewed at anytime to determine whether it is in compliance with the Act and regulations, as well as the authority granted by the Board. Reviews may also be conducted to determine whether there are changed circumstances that raise questions as to whether the activity is detrimental to the public interest, taking into account the factors enumerated in § 400.31. The Board may prescribe special monitoring requirements in its decisions when appropriate.

(2) Reviews may be initiated by the Board, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary; or, they may be undertaken in response to requests from parties directly affected by the activity in question and showing good cause.

(3) Upon review, if the Board finds that zone activity is no longer in the public interest, taking into account the provisions of § 400.31, it may restrict the activity in question. The appropriateness of a delayed effective date will be considered in such cases.

[56 FR 50798, Oct. 8, 1991; 56 FR 56544, Nov. 5, 1991]

§ 400.32 Procedure for review of request for approval of manufacturing or processing.

(a) *Request as part of application for grant of authority.* A request for approval of proposed manufacturing or processing activity may be submitted as part of an application under §§ 400.24–400.26(a). The Board will review the request taking into account the criteria in § 400.31(b).

(b) *Request for manufacturing/processing in approved zone or subzone.* Prior to the commencement of manufacturing in a zone or subzone involving activity beyond the scope of that which has been previously authorized at the facility (i.e., new end products, significant expansions of plant production capacity), and of similar changes in processing activity that involves foreign articles subject to quotas or inverted tariffs, zone grantees or operators shall request the determination referred to in § 400.31(a) by submitting a request in writing to the Executive Secretary (§ 400.28(a)(2)). Such requests shall include the information required by §§ 400.24(d)(4)(vii) and 400.25.

(1) The Commerce Department's Assistant Secretary for Import Administration may make determinations in these cases based upon a review by the FTZ staff and the recommendation of the Executive Secretary, when:

(i) The proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances; or

(ii) The activity is for export only; or

(iii) The zone benefits sought do not involve the election of non-privileged foreign status (19 CFR 146.42) on items involving inverted tariffs; or

(iv) The Port Director determines that the activity could otherwise be conducted under Customs bonded procedures.

(2) When the informal procedure in paragraph (b)(1) of this section is not appropriate—

(i) The Executive Secretary will:

(A) Assign a case docket number and give notice in the FEDERAL REGISTER inviting public comment;

(B) Arrange a public hearing, if appropriate;

(C) Appoint an examiner, if appropriate, to conduct a review and prepare a report with recommendations for the Board; and

(D) Prepare and transmit a report with recommendations, or transmit the examiners report, to the Board for appropriate action; and

(ii) The Board will make a determination on the requests, and the Executive Secretary will notify the grantee in writing of the Board's determination, and will publish notice of the determination in the FEDERAL REGISTER.

(c) *Scope determinations.* Determinations shall be made by the Executive Secretary as to whether changes in activity are within the scope of related activity already approved for the facility involved under this part. When warranted, the procedures of paragraph (b)(2) of this section will be followed.

[56 FR 50798, Oct. 8, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§400.33 Restrictions on manufacturing and processing activity.

(a) *In general.* In approving manufacturing or processing activity for a zone or subzone the Board may adopt restrictions to protect the public interest, health, or safety. The Commerce Department's Assistant Secretary for Import Administration may similarly adopt restrictions in exercising authority under §400.32(b)(1).

(b) *Restrictions on items subject to antidumping and countervailing duty actions*—(1) *Board policy.* Zone procedures shall not be used to circumvent antidumping (AD) and countervailing duty (CVD) actions under 19 CFR parts 353 and 355.

(2) *Admission of items subject to AD/CVD actions.* Items subject to AD/CVD orders or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures, if they entered U.S. Customs territory, shall be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone. Upon entry for consumption, such items shall be subject to duties under AD/CVD orders or to suspension of liquidation, as appropriate, under 19 CFR parts 353 and 355.

Subpart E—Zone Operations and Administrative Requirements

§400.41 Zone operations; general.

Zones shall be operated by or under the contractual oversight of zone grantees, subject to the requirements of the Act and this part, as well as those of other federal, state and local agencies having jurisdiction over the site and operation. Zone grantees shall ensure that the reasonable zone needs of the business community are served by their zone projects. The Port Director represents the Board with regard to the zone projects in the district and is responsible for enforcement, including physical security and access requirements, as provided in 19 CFR part 146.

[56 FR 50798, Oct. 8, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§400.42 Requirements for commencement of operations in a zone project.

(a) *In general.* The following actions are required before operations in a zone may commence:

(1) Approval by the Port Director of an application for activation is required as provided in 19 CFR part 146; and

(2) The Executive Secretary will review proposed manufacturing or processing, pursuant to §400.32, and a zone schedule as provided in this section.

(b) *Zone schedule.* (1) The zone grantee shall submit to the Executive Secretary and to the Port Director a zone schedule which sets forth:

(i) Internal rules and regulations for the zone; and

(ii) A statement of the rates and charges (fees) applicable to zone users.

(2) A zone schedule shall consist of typed, loose-leaf, numbered, letter-sized pages, enclosed in covers, and shall contain:

(i) A title page, with information to include:

(A) The name of the zone grantee and operator(s);

(B) Schedule identification;

(C) Site description;

(D) Date of original schedule; and

(E) Name of the preparer;

(ii) A table of contents;

(iii) Administrative information;

(iv) A statement of zone operating policy, rules and regulations, including uniform procedures regarding the construction of buildings and facilities; and

(v) A section listing rates and charges for zones and subzones with information sufficient for the Board or the Executive Secretary to determine

whether the rates and charges are reasonable based on other like operations in the port of entry area, and whether there is uniform treatment under like circumstances among zone users.

(3) The Executive Secretary will review the schedule to determine whether it contains sufficient information for users concerning the operation of the facility and a statement of rates and charges as provided in paragraph (b)(2) of this section. If the Executive Secretary determines that the schedule satisfies these requirements, the Executive Secretary will notify the zone grantee, unless there is a basis for review under paragraph (b)(5) of this section. A copy of the schedule shall be available for public inspection at the offices of the zone grantee and operator. The zone grantee shall send a copy to the Port Director, who may submit comments to the Executive Secretary.

(4) Amendments to the schedule shall be prepared and submitted in the manner described in paragraphs (b)(1) through (b)(3) of this section, and listed in the concluding section of the schedule, with dates.

(5) A zone user or prospective user showing good cause may object to the zone or subzone fee on the basis that it is not reasonable, fair and uniform, by submitting to the Executive Secretary a complaint in writing with supporting information. The Executive Secretary will review the complaint and issue a report and decision, which will be final unless appealed to the Board within 30 days. The Board or the Executive Secretary may otherwise initiate a review for cause. The factors considered in reviewing reasonableness and fairness, will include:

(i) The going-rates and charges for like operations in the area and the extra costs of operating a zone, including return on investment; and

(ii) In the case of subzones, the value of actual services rendered by the zone grantee or operator, and reasonable out-of-pocket expenses.

[56 FR 50798, Oct. 8, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§ 400.43 Restriction and prohibition of certain zone operations.

(a) *In general.* After review, the Board may restrict or prohibit any admission of merchandise into a zone project or operation in a zone project when it determines that such activity is detrimental to the public interest, health or safety.

(b) *Initiation of review.* The Board may conduct a proceeding, or the Executive Secretary a review, to consider a restriction or prohibition under paragraph (a) of this section either self-initiated, or in response to a complaint made to the Board by a party directly affected by the activity in question and showing good cause.

§ 400.44 Zone-restricted merchandise.

(a) *In general.* Merchandise which has been given export status by Customs officials (''zone-restricted merchandise''—19 CFR 146.44) may be returned to the Customs Territory of the United States only when the Board determines that the return would be in the public interest. Such returns are subject to the Customs laws and the payment of applicable duties and excise taxes (19 U.S.C. 81c, 4th proviso).

(b) *Criteria.* In making the determination described in paragraph (a) of this section, the Board will consider:

(1) The intent of the parties;

(2) Why the goods cannot be exported;

(3) The public benefit involved in allowing their return; and

(4) The recommendation of the Port Director.

(c) *Procedure.* (1) A request for authority to return ''zone-restricted'' merchandise into Customs territory shall be made to the Executive Secretary in letter form by the zone grantee or operator of the zone in which the merchandise is located, with supporting information and documentation.

(2) The Executive Secretary will investigate the request and prepare a report for the Board.

(3) The Executive Secretary may act for the Board under this section in cases involving merchandise valued at 500,000 dollars or less, provided requests

are accompanied with a letter of concurrence from the Port Director.

[56 FR 50798, Oct. 8, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§400.45 Retail trade.

(a) *In general.* Retail trade is prohibited in zones, except that sales or other commercial activity involving domestic, duty-paid, and duty-free goods may be conducted within an activated zone project under permits issued by the zone grantee and approved by the Board, with the further exception that no permits shall be necessary for sales involving domestic, duty-paid or duty-free food and non-alcoholic beverage products sold within the zone or subzone for consumption on premises by persons working therein. The Port Director will determine whether an activity is retail trade, subject to review by the Board when the zone grantee requests such a review with a good cause.

(b) *Procedure.* Requests for Board approval under this section shall be submitted in letter form, with supporting documentation, to the Port Director, who is authorized to act for the Board in these cases, subject to the concurrence of the Executive Secretary.

(c) *Criteria.* In evaluating requests under this section, the Port Director and the Executive Secretary will consider:

(1) Whether any public benefits would result from approval; and

(2) The economic effect such activity would have on the retail trade outside the zone in the port of entry area.

[56 FR 50798, Oct. 8, 1991; 57 FR 2319, Jan. 21, 1992, as amended at 62 FR 53535, Oct. 15, 1997]

§400.46 Accounts, records and reports.

(a) *Zone accounts.* Zone accounts shall be maintained in accordance with generally accepted accounting principles, and in compliance with the requirements of Federal, State or local agencies having jurisdiction over the site or operation.

(b) *Records and forms.* Zone records and forms shall be prepared and maintained in accordance with the requirements of the Customs Service and the Board, and the zone grantee shall retain copies of applications it submits to the Board.

(c) *Maps and drawings.* Zone grantees or operators, and Port Directors, shall keep current layout drawings of approved sites as described in §400.24(d)(5), showing activated portions, and a file showing required approvals. The zone grantee shall furnish necessary maps to the Port Director.

(d) *Annual reports.* (1) Zone grantees shall submit annual reports to the Board at the time and in the format prescribed by the Executive Secretary, for use by the Executive Secretary in the preparation of the Board's annual report to the Congress.

(2) The Board shall submit an annual report to the Congress.

(Approved by the Office of Management and Budget under control number 0625-0109)

[56 FR 50798, Oct. 8, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§400.47 Appeals to the Board from decisions of the Assistant Secretary for Import Administration and the Executive Secretary.

(a) *In general.* Decisions of the Assistant Secretary for Import Administration and the Executive Secretary made pursuant to §§400.22(d)(2)(ii), 400.32(b)(1), 400.44(c)(3), and 400.45(b)(2) may be appealed to the Board by adversely affected parties showing good cause.

(b) *Procedures.* Parties appealing a decision under paragraph (a) of this section shall submit a request for review to the Board in writing, stating the basis for the request, and attaching a copy of the decision in question, as well as supporting information and documentation. After a review, the Board will notify the complaining party of its decision in writing.

Subpart F—Notice, Hearings, Record and Information

§400.51 Notice and hearings.

(a) *In general.* The Executive Secretary will publish notice in the FEDERAL REGISTER inviting public comment on applications docketed for Board action (see, §400.27(c)), and with regard to other reviews or matters considered under this part when public comment is necessary. Applicants shall

give appropriate notice of their proposals in local newspapers. The Board, the Secretary, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary, as appropriate, may schedule and/or hold hearings during any proceedings or reviews conducted under this part whenever necessary or appropriate.

(b) *Requests for hearings*—(1) A directly affected party showing good cause may request a hearing during a proceeding or review.

(2) The request must be made within 30 days of the beginning of the period for public comment (see, § 400.27) and must be accompanied by information establishing the need for the hearing and the basis for the requesting party's interest in the matter.

(3) A determination as to the need for the hearing will be made by the Commerce Department's Assistant Secretary for Import Administration within 15 days after the receipt of such a request.

(c) *Procedure for public hearings.* The Board will publish notice in the FEDERAL REGISTER of the date, time and location of a hearing. All participants shall have the opportunity to make a presentation. Applicants and their witnesses shall ordinarily appear first. The presiding officer may adopt time limits for individual presentations.

§ 400.52 Official record; public access.

(a) *Content.* The Executive Secretary will maintain at the location stated in § 400.53(d) an official record of each proceeding within the Board's jurisdiction. The Executive Secretary will include in the official record all factual information, written argument, and other material developed by, presented to, or obtained by the Board in connection with the proceeding. The official record will contain material that is public, business proprietary, privileged, and classified. While there is no requirement that a verbatim record shall be kept of public hearings, the proceedings of such hearings shall ordinarily be recorded and transcribed when significant opposition is involved.

(b) *Opening and closing of official record.* The official record opens on the date the Executive Secretary files an application or receives a request that satisfies the applicable requirements of this part and closes on the date of the final determination in the proceeding or review, as applicable.

(c) *Protection of the official record.* Unless otherwise ordered in a particular case by the Executive Secretary, the official record will not be removed from the Department of Commerce. A certified copy of the record will be made available to any court before which any aspect of a proceeding is under review, with appropriate safeguards to prevent disclosure of proprietary or privileged information.

§ 400.53 Information.

(a) *Request for information.* The Board may request submission of any information, including business proprietary information, and written argument necessary or appropriate to the proceeding.

(b) *Public information.* Except as provided in paragraph (c) of this section, the Board will consider all information submitted in a proceeding to be public information. If the person submitting the information does not agree to its public disclosure, the Board will return the information and not consider it in the proceeding.

(c) *Business proprietary information.* Persons submitting business proprietary information and requesting protection from public disclosure shall mark the cover page ''business proprietary,'' as well as the top of each page on which such information appears.

(d) *Disclosure of information.* Disclosure of public information will be governed by 15 CFR part 4. Public information in the official record will be available for inspection and copying at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce Building, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

CHAPTER VII—BUREAU OF INDUSTRY AND SECURITY, DEPARTMENT OF COMMERCE

EDITORIAL NOTE: Nomenclature changes to chapter VII appear at 67 FR 20632, Apr. 26, 2002 and 69 FR 60546 and 60547, Oct. 12, 2004.

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SUBCHAPTER A—NATIONAL SECURITY INDUSTRIAL BASE REGULATIONS

PART 700—DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

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AUTHORITY: Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), Executive Order 12919, 59 FR 29525, 3 CFR, 1994 Comp. 901, and Executive Order 13286, 68 FR 10619, 3 CFR, 2003 Comp. 166; section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, 50 U.S.C. 82, and Executive Order 12742, 56 FR 1079, 3 CFR, 1991 Comp. 309; and Executive Order 12656, 53 FR 226, 3 CFR, 1988 Comp. 585.

SOURCE: 49 FR 30414, July 30, 1984, unless otherwise noted. Redesignated at 54 FR 601, Jan. 9, 1989.

Subpart A—Purpose

§ 700.1 Purpose of this regulation.

(a) Title I of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) (Defense Production Act),

authorizes the President: to require the priority performance of contracts and orders necessary or appropriate to promote the national defense over other contracts or orders; to allocate materials, services, and facilities as necessary or appropriate to promote the national defense; and to require the allocation of, or the priority performance under contracts or orders relating to, supplies of materials, equipment, and services in order to assure domestic energy supplies for national defense needs.

(b) Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468) (Selective Service Act) authorizes the President to place an order with a supplier for any articles or materials required for the exclusive use of the U.S. armed forces whenever the President determines that in the interest of national security, prompt delivery of the articles and materials is required. The supplier must give precedence to the order so as to deliver the articles or materials in a required time period. 10 U.S.C. 2538, and 50 U.S.C. 82, provide similar authority specifically for Department of Defense procurement, but only in time of war or when war is imminent.

(c) Section 602(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(b)) provides that the terms ''national defense'' and ''defense'' as used in the Defense Production Act includes ''emergency preparedness activities'' conducted pursuant to Title VI of the Stafford Act. The definition of ''national defense'' in Section 702(13) of the Defense Production Act provides that this term includes ''emergency preparedness activities'' conducted pursuant to Title VI of the Stafford Act.

(d) The Defense Priorities and Allocations System (DPAS) regulation implements the priorities and allocations authority of the Defense Production Act and as this authority pertains to Title VI of the Stafford Act, and the priorities authority of the Selective Service Act and related statutes, all with respect to industrial resources. The DPAS ensures the timely availability of industrial resources for approved programs and provides an operating system to support rapid industrial response to a national emergency.

(e) To aid in understanding and using the DPAS, an overview of its major provisions is incorporated into this regulation as subpart B—Overview. The full text of the DPAS is found in subparts D through L.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31921, June 11, 1998]

Subpart B—Overview

§ 700.2 Introduction.

(a) Certain national defense and energy programs (including emergency preparedness activities) are approved for priorities and allocations support. For example, military aircraft production, ammunition, and certain programs which maximize domestic energy supplies are ''approved programs.'' A complete list of currently approved programs is provided at Schedule 1 to this part.

(b) The Department of Commerce administers the DPAS to ensure the timely delivery of industrial items to meet approved program requirements.

(c) Commerce has delegated authority to place priority ratings on contracts or orders necessary or appropriate to promote the national defense to the government agencies that issue such contracts or orders. Schedule I includes a list of agencies delegated this authority. Copies of the Delegations of Authority are provided at Appendix II. They set forth the authorities delegated and those retained by Commerce.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31921, June 11, 1998]

§ 700.3 Priority ratings and rated orders.

(a) Rated orders are identified by a priority rating consisting of the rating—either DX or DO—and a program identification symbol. Rated orders take preference over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take preference over DO rated orders. Program identification symbols

indicate which approved program is involved with the rated order. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. The program identification symbols, in themselves, do not connote any priority.

(b) Persons receiving rated orders must give them preferential treatment as required by this regulation. This means a person must accept and fill a rated order for items that the person normally supplies. The existence of previously accepted unrated or lower rated orders is not sufficient reason for rejecting a rated order. Persons are required to reschedule unrated orders if they conflict with performance against a rated order. Similarly, persons must reschedule DO rated orders if they conflict with performance against a DX rated order.

(c) All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date.

(d) Persons who receive rated orders must in turn place rated orders with their suppliers for the items they need to fill the orders. This provision ensures that suppliers will give priority treatment to rated orders from contractor to subcontractor to suppliers throughout the procurement chain.

(e) Persons may place a priority rating on orders only when they are in receipt of a rated order, have been explicitly authorized to do so by the Department of Commerce or a Delegate Agency, or are otherwise permitted to do so by this regulation.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31921, June 11, 1998]

§700.4 Priorities and allocations in a national emergency.

(a) In the event of a national emergency, special rules may be established as needed to supplement this part, thus ensuring rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent national defense requirements, including domestic emergency preparedness requirements, of approved programs.

(b) The special rules established in response to the emergency may include provisions for the taking of certain emergency official actions and the allocation of critical and scarce materials and facilities.

[63 FR 31921, June 11, 1998]

§700.5 Special priorities assistance.

(a) The DPAS is designed to be largely self-executing. However, from time-to-time production or delivery problems will arise. In this event, special priorities assistance is available from Commerce and from the Delegate Agencies.

(b) Special priorities assistance is available for any reason consistent with this regulation. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items not automatically ratable.

§700.6 Official actions.

When necessary, Commerce takes specific official actions to implement or enforce the provisions of this regulation and to provide special priorities assistance. Such actions may include the issuance of: Rating Authorizations, Directives, Letters of Understanding, Set-asides, and compliance documents (Administrative Subpoenas, Demands for Information, and Inspection Authorizations).

§700.7 Compliance.

(a) Compliance with the provisions of this regulation and official actions is required by the Defense Production Act and the Selective Service Act and related statutes. Violators are subject to criminal penalties.

(b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31921, June 11, 1998]

Subpart C—Definitions

§ 700.8 Definitions.

In addition to the definitions provided in Section 702 of the Defense Production Act (excepting the definition of ''industrial resources'') and Section 602(a) of the Stafford Act, the following definitions pertain to all sections of this part:

Approved program—a program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Director, Federal Emergency Management Agency, under the authority of the Defense Production Act, the Stafford Act, and Executive Order 12919, or the Selective Service Act and related statutes and Executive Order 12742.

Construction. The erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Delegate Agency. A government agency authorized by delegation from the Department of Commerce to place priority ratings on contracts or orders needed to support approved programs.

Defense Production Act. the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.)*.

Industrial resources—all materials, services, and facilities, including construction materials, the authority for which has not been delegated to other agencies under Executive Order 12919. This term also includes the term ''item'' as defined and used in this part.

Item. Any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

Maintenance and repair and operating supplies (MRO):

(a) *Maintenance* is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(b) *Repair* is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

(c) *Operating supplies* are any items carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals and other expendable items.

(d) MRO does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

Official action. An action taken by Commerce under the authority of the Defense Production Act, the Selective Service Act and related statutes, and this regulation. Such actions include the issuance of Set-asides, Rating Authorizations, Directives, Letters of Understanding, Demands for Information, Inspection Authorizations, and Administrative Subpoenas.

Person—any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any authorized State or local government or agency thereof; and for purposes of administration of this part, includes the United States Government and any authorized foreign government or agency thereof, delegated authority as provided in this part.

Production equipment. Any item of capital equipment used in producing materials or furnishing services that has a unit acquisition cost of $2,500 or more, an anticipated service life in excess of one year, and the potential for maintaining its integrity as a capital item.

Rated order. A prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of this regulation.

Selective Service Act and related statutes—Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468), 10 U.S.C. 2538, and 50 U.S.C. 82.

Set-aside. The amount of an item for which a supplier must reserve order book space in anticipation of the receipt of rated orders.

Stafford Act—Title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195 *et seq.*).

[49 FR 30414, July 30, 1984; 49 FR 50172, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31921, June 11, 1998]

Subpart D—Industrial Priorities

§ 700.10 Delegation of authority.

(a) The priorities and allocations authorities of the President under Title I of the Defense Production Act with respect to industrial resources have been delegated to the Secretary of Commerce under Executive Order 12919 of June 3, 1994 (59 FR 29525). The priorities authorities of the President under the Selective Service Act and related statutes with respect to industrial resources have also been delegated to the Secretary of Commerce under Executive Order 12742 of January 8, 1991 (56 FR 1079).

(b) Within the Department of Commerce, these responsibilities have been assigned to the Office of Strategic Industries and Economic Security. The Department of Commerce has authorized the Delegate Agencies to assign priority ratings to orders for items needed for approved programs. Copies of these Delegations of Authority are provided at Appendix II. They set forth the authorities delegated and those retained by Commerce.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31922, June 11, 1998]

§ 700.11 Priority ratings.

(a) *Levels of priority*. (1) There are two levels of priority established by this regulation, identified by the rating symbols ''DO'' and ''DX''.

(2) All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see § 700.14(c).)

(3) In addition, a Directive issued by Commerce takes preference over any DX rated order, DO rated order, or unrated order, as stipulated in the Directive. (For a full discussion of Directives, see § 700.62.)

(b) *Program identification symbols.* Program identification symbols indicate which approved program is being supported by a rated order. The list of approved programs and their identification symbols are listed in Schedule I. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. Program identification symbols, in themselves, do not connote any priority.

(c) *Priority ratings.* A priority rating consists of the rating symbol—DO and DX—and the program identification symbol, such as A1, B2, or H6. Thus, a contract for the production of an aircraft will contain a DO-A1 or DX-A1 priority rating. A contract for a radar set will contain a DO-A7 or DX-A7 priority rating.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31922, June 11, 1998]

§ 700.12 Elements of a rated order.

Each rated order must include:

(a) The appropriate priority rating (e.g. DO-A1, DX-A4, DO-H1);

(b) A required delivery date or dates. The words ''immediately'' or ''as soon as possible'' do not constitute a delivery date. A ''requirements contract'', ''basic ordering agreement'', ''prime vendor contract'', or similar procurement document bearing a priority rating may contain no specific delivery date or dates and may provide for the furnishing of items from time-to-time or within a stated period against specific purchase orders, such as ''calls'', ''requisitions'', and ''delivery orders''. These purchase orders must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document;

(c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature or use of the name certifies that the rated order is authorized under this part and that the requirements of this part are being followed; and

(d) A statement that reads in substance:

This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700).

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31922, June 11, 1998]

§ 700.13 Acceptance and rejection of rated orders.

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person shall accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.

(2) A person shall not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by Commerce:

(1) A person shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person shall not accept a DO rated order for delivery on a date which would interfere with delivery of any previously accepted DO or DX rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person shall not accept a DX rated order for delivery on a date which would interfere with delivery of any previously accepted DX rated orders, but must offer to accept the order based on the earliest delivery date otherwise possible.

(4) If a person is unable to fill all the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders which can be filled, and reject the other orders. For example, a person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. However, the person must offer to accept the rejected orders based on the earliest delivery dates otherwise possible.

(c) *Optional rejection.* Unless otherwise directed by Commerce, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not performed;

(3) If the order is for an item produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items, the supplier is obligated to accept rated orders up to that quantity or portion of production, whichever is greater, sold within the past two years;

(4) If the person placing the rated order, other than the U.S. Government, makes the item or performs the service being ordered;

(5) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of the Department of Commerce issued under the authority of the Defense Production Act or the Selective Service Act and related statutes [See § 700.75].

(d) *Customer notification requirements.* (1) A person must accept or reject a rated order and transmit the acceptance or rejection in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the

person must also provide the reasons for the rejection, pursuant to paragraphs (b) and (c) of this section, in writing (hard copy) or electronic format.

(2) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written or electronic confirmation must be provided within five (5) working days.

(The information collection requirements in paragraphs (d)(1) and (d)(2) are approved by the Office of Management and Budget under OMB control number 0694–0053)

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31922, June 11, 1998; 70 FR 10864, Mar. 7, 2005]

§ 700.14 Preferential scheduling.

(a) A person must schedule operations, including the acquisition of all needed production items, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery dates for rated orders cannot otherwise be met.

(b) DO rated orders must be given production preference over unrated orders, if necessary to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery against unrated orders. Similarly, DX rated orders must be given preference over DO rated orders and unrated orders.

Examples: If a person receives a DO rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX rated order is received calling for delivery on July 15 and a person has a DO rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order.

(c) *Conflicting rated orders.* (1) If a person finds that delivery or performance against any accepted rated orders conflicts with the delivery or performance against other accepted rated orders of equal priority status, the person shall give preference to the conflicting orders in the sequence in which they are to be delivered or performed (not to the receipt dates). If the conflicting rated orders are scheduled to be delivered or performed on the same day, the person shall give preference to those orders which have the earliest receipt dates.

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities assistance as provided in §§ 700.50 through 700.54. If the person's customer objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in §§ 700.50 through 700.54. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 700.13(d)(2).

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in § 700.17(b).

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31922, June 11, 1998]

§ 700.15 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this regulation or as directed by the Department of Commerce.

For example, if a person is in receipt of a DO-A3 rated order for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO-A3 rated order to obtain the needed semiconductors.

(b) The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain.

§ 700.16 Changes or cancellations of priority ratings and rated orders.

(a) The priority rating on a rated order may be changed or cancelled by:

(1) An official action of the Department of Commerce; or

(2) Written notification from the person who placed the rated order (including a Delegate Agency).

(b) If an unrated order is amended so as to make it a rated order, or a DO, rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of § 700.13.

(d) The following amendments do not constitute a new rated order: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design; or a change which is agreed upon between the supplier and the customer.

(e) If a person no longer needs items to fill a rated order, any rated orders placed with suppliers for the items, or the priority rating on those orders, must be cancelled.

(f) When a priority rating is added to an unrated order, or is changed or cancelled, all suppliers must be promptly notified in writing.

§ 700.17 Use of rated orders.

(a) A person must use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed, or converted into scrap or by-products, in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders; and

(4) MRO needed to produce the finished items to fill rated orders. However, for MRO, the priority rating used must contain the program identification symbol H7 along with the rating symbol contained on the customer's rated order. For example, a person in receipt of a DO-A3 rated order, who needs MRO, would place a DO-H7 rated order with the person's supplier.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating symbol and the program identification symbol indicated on the customer's rated order must be used on the order. A DX rating symbol may not be used even if the inventory was used to fill a DX rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined. In this case, the program identification symbol H1 must be used (i.e., DO-H1).

(c) A person may combine DX and DO rated orders from one customer or several customers if the items covered by each level of priority are identified separately and clearly. If different program identification symbols are indicated on those rated orders of equal priority, the person must use the program identification symbol H1 (i.e., DO-H1 or DX-H1).

(d) *Combining rated and unrated orders.* (1) A person may combine rated and unrated order quantities on one purchase order provided that:

(i) The rated quantities are separately and clearly identified; and

(ii) The four elements of a rated order, as required by § 700.12, are included on the order with the statement required in § 700.12(d) modified to read in substance:

> This purchase order contains rated order quantities certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700) only as it pertains to the rated quantities.

(2) A supplier must accept or reject the rated portion of the purchase order

as provided in §700.13 and give preferential treatment only to the rated quantities as required by this part. This part may not be used to give preferential treatment to the unrated portion of the order.

(3) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this regulation or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under §700.80.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than $50,000, or one half of the Federal Acquisition Regulation (FAR) Simplified Acquisition Threshold (see FAR 2.101), whichever amount is larger, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31923, June 11, 1998]

§700.18 Limitations on placing rated orders.

(a) *General limitations.* (1) A person may not place a DO or DX rated order unless entitled to do so under this regulation.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item than needed, except to obtain a minimum procurable quantity. Separate rated orders may not be placed solely for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items in advance of the receipt of a rated order, *except* as specifically authorized by Commerce (see §700.51(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(iv) Any of the following items unless specific priority rating authority has been obtained from a Delegate Agency or Commerce:

(A) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order; and

(B) Production or construction equipment or items to be used for the manufacture of production equipment. [For information on requesting priority rating authority, see §700.53.]

(v) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

(b) *Jurisdictional limitations.* (1) The priorities and allocations authority for certain items has been delegated under Executive Orders 12919 and 12742, other executive order, or Interagency Memoranda of Understanding to other agencies. Unless otherwise agreed to by the concerned agencies, the provisions of this part are not applicable to these items which include:

(i) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (Department of Agriculture—see Attachment A to DPAS Delegation 1 in Appendix II to part 700 concerning combat rations);

(ii) All forms of energy, including radioisotopes, stable isotopes, source material, and special nuclear material produced in Government-owned plants or facilities operated by or for the Department of Energy (Department of Energy);

(iii) Health resources (Department of Health and Human Services);

(iv) All forms of civil transportation (Department of Transportation);

(v) Water resources (Department of Defense/U.S. Army Corps of Engineers);

(vi) Communications services (National Communications System under Executive Order 12472 of April 3, 1984); and

(vii) Mineral resources and mineral processing facilities (Department of the Interior/U.S. Geological Survey—see Memorandum of Understanding Between Interior and Commerce in DPAS Appendix III to part 700).

(2) The jurisdiction of the Department of Commerce and the Departments of Energy, Agriculture, and the Interior over certain specific items included in the categories listed above has been clarified by Interagency Memoranda of Understanding. Copies of these Memoranda are provided for information at appendix III.

(3) The following items under the jurisdiction of Commerce are currently excluded from the rating provisions of this regulation; however, these items are subject to Commerce Directives. These excluded items are:

Copper raw materials
Crushed stone
Gravel
Sand
Scrap
Slag
Steam heat, central
Waste paper

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31923, June 11, 1998]

Subpart E—Industrial Priorities for Energy Programs

§ 700.20 Use of priority ratings.

(a) Section 101(c) of the Defense Production Act authorizes the use of priority ratings for projects which maximize domestic energy supplies.

(b) Projects which maximize domestic energy supplies include those which maintain or further domestic energy exploration, production, refining, and transportation; maintain or further the conservation of energy; or are involved in the construction or maintenance of energy facilities.

§ 700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical, and essential supplies of materials, equipment, and services (related to the production of materials or equipment, or the installation, repair, or maintenance of equipment) by submitting DOE Form PR 437 to the Department of Energy. Blank applications and further information may be obtained from the U.S. Department of Energy, Office of Clearance and Support, Field/Headquarters Support Division, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Attn.: PR–132.

(b) On receipt of the application, the Department of Energy will:

(1) Determine if the project maximizes domestic energy supplies; and

(2) Find whether the materials, equipment, or services involved in the application are critical and essential to the project.

(c) If the Department of Energy notifies Commerce that the project maximizes domestic energy supplies and that the materials, equipment, or services are critical and essential, Commerce must find whether the items in question are scarce and whether there is a need to use the priorities and allocations authorities.

(1) Scarcity implies an unusual difficulty in obtaining the materials, equipment, or services in a timeframe consistent with the timely completion of the energy project. Among the factors to be used in making the scarcity finding will be the following:

(i) Value and volume of material or equipment shipments;

(ii) Consumption of material and equipment;

(iii) Volume and market trends of imports and exports;

(iv) Domestic and foreign sources of supply;

(v) Normal levels of inventories;

(vi) Rates of capacity utilization;

(vii) Volume of new orders; and

(viii) Lead times for new orders.

(2) In finding whether there is a need to use the priorities and allocations authorities, Commerce will consider alternative supply solutions and other measures.

(d) If Commerce does not find that the items of materials, equipment, or services are scarce, it will not proceed to analyze the need to use the priorities and allocations authorities.

(e) Commerce will inform the Department of Energy of the results of its analysis. If Commerce has made the two required findings, it will authorize the Department of Energy to grant the use of a priority rating to the applicant.

(f) Schedule I includes a list of approved programs to support the maximization of domestic energy supplies. A Department of Energy regulation setting forth the procedures and criteria used by the Department of Energy in making its determination and findings is published in 10 CFR part 216.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31923, June 11, 1998]

Subpart F—National Emergency Preparedness and Critical Items

SOURCE: 63 FR 31923, June 11, 1998, unless otherwise noted.

§ 700.30 Priorities and allocations in a national emergency.

(a) In the event of a national emergency, special rules may be established as needed to supplement this part, thus ensuring rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent national defense requirements, including domestic emergency preparedness requirements, of approved programs.

(1) *Emergency official actions.* (i) As needed, this part may be supplemented to include additional definitions to cover civilian emergency preparedness industrial items, support for essential civilian programs, and provisions for the taking of certain emergency official actions under sections §§ 700.60 through 700.63.

(ii) Emergency official actions may include:

(A) Controlling inventories of critical and scarce defense and/or emergency preparedness items;

(B) Restricting the purchase, use, or distribution of critical and scarce defense and/or emergency preparedness items, or the use of production or distribution facilities, for non-essential purposes; and

(C) Converting the production or distribution of non-essential items to the production or distribution of critical and scarce defense and/or emergency preparedness items.

(2) *Allocation of critical and scarce items and facilities.* (i) As needed, this part may be supplemented to establish special rules for the allocation of scarce and critical items and facilities to ensure the timely availability of these items and facilities for approved programs, and to provide for an equitable and orderly distribution of requirements for such items among all suppliers of the items. These rules may provide for the allocation of individual items or they may be broad enough to direct general industrial activity as required in support of emergency requirements.

(ii) Allocation rules (i.e., controlled materials programs) were established in response to previous periods of national security emergency such as World War II and the Korean Conflict. The basic elements of the controlled materials programs were the set-aside (the amount of an item for which a producer or supplier must reserve order book space in anticipation of the receipt of rated orders), the production directive (requires a producer to supply a specific quantity, size, shape, and type of an item within a specific time period), and the allotment (the maximum quantity of an item authorized for use in a specific program or application). These elements can be used to assure the availability of any scarce and critical item for approved programs. Currently, a set-aside applies only to metalworking machines (see § 700.31).

(3) In the event that certain critical items become scarce, and approved program requirements for these items cannot be met without creating a significant dislocation in the civilian market place so as to create appreciable hardship, Commerce may establish special rules under section 101(b) of the Defense Production Act to control the general distribution of such items in the civilian market.

(b) *Regional Emergency Coordinators.* (1) If due to a catastrophic national security emergency event, communications with Commerce headquarters in Washington, D.C. are severed, DPAS Emergency Delegation 1 will provide authority to the Regional Emergency Coordinators (REC) located in the Standard Federal Region Council cities (Boston, New York, Philadelphia, Atlanta, Dallas, Kansas City, Chicago, Denver, San Francisco, and Seattle) to represent the Secretary of Commerce,

and as necessary, act for the Secretary to carry out the emergency industrial production and distribution control functions of Commerce as set forth in this part, in any supplement thereto, or other applicable authority. See DPAS Emergency Delegation 1 for further information about the authority and duties of the RECs, and the effective date of the Delegation.

(2) If DPAS Emergency Delegation 1 is implemented due to a catastrophic national security emergency event, requests for special priorities assistance under §§ 700.50 through 700.55 should be filed with the nearest Regional Emergency Coordinator located in one of the Standard Federal Region Council cities as provided in DPAS Delegation 1.

§ 700.31 Metalworking machines.

(a) ''Metalworking machines'' include power driven, manual or automatic, metal cutting and metal forming machines and complete machines not supported in the hands of an operator when in use. Basic machines with a list price of $2,500 or less are not covered by this section.

(b) Metalworking machines covered by this section include:

Bending and forming machines
Boring machines
Broaching machines
Drilling and tapping machines
Electrical discharge, ultrasonic and chemical erosion machines
Forging machinery and hammers
Gear cutting and finishing machines
Grinding machines
Hydraulic and pneumatic presses, power driven
Machining centers and way-type machines
Manual presses
Mechanical presses, power driven
Milling machines
Miscellaneous machine tools
Miscellaneous secondary metal forming and cutting machines
Planers and shapers
Polishing, lapping, boring, and finishing machines
Punching and shearing machines
Riveting machines
Saws and filing machines
Turning machines, lathes, including automatic
Wire and metal ribbon forming machines

(c) A metalworking machine producer is not required to accept DO rated orders calling for delivery in any month of a total quantity of any size of machine in excess of 60 percent of scheduled production of that size of machine for that month, or any DO rated orders received less than three months prior to the beginning of the month for which delivery is requested. However, DX rated orders must be accepted without regard to a set-aside or the lead time, if delivery can be made by the required date.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989. Further redesignated at 63 FR 31924, June 11, 1998]

Subpart G [Reserved]

Subpart H—Special Priorities Assistance

§ 700.50 General provisions.

(a) The DPAS is designed to be largely self-executing. However, it is anticipated that from time-to-time problems will occur. In this event, a person should immediately contact the appropriate contract administration officer for guidance or assistance. If additional formal aid is needed, special priorities assistance should be sought from the Delegate Agency through the contract administration officer. If the Delegate Agency is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Delegate Agency may forward the request to the Department of Commerce for action. Special priorities assistance is a service provided to alleviate problems that do arise.

(b) Special priorities assistance can be provided for any reason in support of this regulation, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not automatically ratable under this regulation.

(c) A request for special priorities assistance or priority rating authority must be submitted on Form BIS–999 (OMB control number 0694–0057) to the local contract administration representative. Form BIS–999 may be obtained from the Delegate Agency representative or from the Department of

Commerce. A sample Form BIS–999 is attached at Appendix I.

[49 FR 30414, July 30, 1984; 49 FR 50171, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.51 Requests for priority rating authority.

(a) If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this regulation, the person may request the authority to use a priority rating in ordering the needed items. Examples of items for which priority ratings can be authorized include:

(1) Production or construction equipment;

(2) Computers when not used as production items; and

(3) Expansion, rebuilding or replacing plant facilities.

(b) *Rating authority for production or construction equipment.* (1) A request for priority rating authority for production or construction equipment must be submitted to the appropriate Delegate Agency. The Delegate Agency may establish particular forms to be used for these requests (*e.g.,* Department of Defense Form DD 691.)

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) *Rating authority in advance of a rated prime contract.* (1) In certain cases and upon specific request, Commerce, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders if these orders have to be cancelled in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from a Delegate Agency and our use of that priority rating with our suppliers in no way commits the Delegate Agency, the Department of Commerce or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, Commerce will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time;

(v) The political sensitivity of the project; and

(vi) The time period for which the rating is being requested.

(4) Commerce may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders is cancelled.

§ 700.52 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this regulation, it is usually provided in situations where:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

§ 700.53 Criteria for assistance.

Requests for special priorities assistance should be timely, *i.e.*, the request has been submitted promptly and enough time exists for the Delegate Agency or Commerce to effect a meaningful resolution to the problem, and must establish that:

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

§ 700.54 Instances where assistance will not be provided.

Special priorities assistance is provided at the discretion of the Delegate Agencies and Commerce when it is determined that such assistance is warranted to meet the objectives of this regulation. Examples where assistance may not be provided include situations when a person is attempting to:

(a) Secure a price advantage;

(b) Obtain delivery prior to the time required to fill a rated order;

(c) Gain competitive advantage;

(d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or

(e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.55 Assistance programs with Canada and other nations.

(a) To promote military assistance to foreign nations, this section provides for authorizing priority ratings to persons in Canada and in other foreign nations to obtain items in the United States in support of approved programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Canada.

(b) *Canada.* (1) The joint U.S.-Canadian military arrangements for the defense of North America and the integrated nature of their defense industries as set forth in the *U.S.-Canadian Statement of Principles for Economic Cooperation* (October 26, 1950) require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(2) The Department of Commerce coordinates with the Canadian Public Works and Government Services Canada on all matters of mutual concern relating to the administration of this regulation. A copy of the Memorandum of Understanding between the two departments is provided at appendix IV.

(3) Any person in the United States ordering defense items in Canada should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the supplier's vendor to fill the order, they should contact the Canadian Public Works and Government Services Canada for authority to place rated orders in the United States.

(4) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applying to the Canadian Public Works and Government Services Canada in accordance with procedures specified by that Department.

(5) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply for such assistance to the Canadian Public Works and Government Services Canada. Public Works and Government Services Canada will forward appropriate requests to Commerce.

(6) Any person in the United States requiring assistance in obtaining items in Canada must submit a request through the Delegate Agency to Commerce on Form BIS–999. Commerce will

forward appropriate requests to the Canadian Public Works and Government Services Canada.

(c) *Foreign nations.* (1) Any person in a foreign nation other than Canada requiring assistance in obtaining defense items in the United States or priority rating authority for defense items to be purchased in the United States, should apply for such assistance or rating authority to the U.S. Department of Defense. The request must be sponsored by the government of the foreign nation prior to its submission.

(2) If the Department of Defense endorses the request, it will be forwarded to Commerce for appropriate action.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

Subpart I—Official Actions

§700.60 General provisions.

(a) Commerce may, from time-to-time, take specific official actions to implement or enforce the provisions of this regulation.

(b) Several of these official actions (Rating Authorizations, Directives, and Letters of Understanding) are discussed in this subpart. Other official actions which pertain to compliance (Administrative Subpoenas, Demands for Information, and Inspection Authorizations) are discussed in §700.71(b).

§700.61 Rating Authorizations.

(a) A Rating Authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item not normally ratable under this regulation; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see §700.51.

§700.62 Directives.

(a) A Directive is an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

(b) A person must comply with each Directive issued. However, a person may not use or extend a Directive to obtain any items from a supplier, unless expressly authorized to do so in the Directive.

(c) Directives take precedence over all DX rated orders, DO rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

§700.63 Letters of Understanding.

(a) A Letter of Understanding is an official action which may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (Commerce, the Delegate Agency, the supplier, and the customer).

(b) A Letter of Understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this regulation, or to take other official actions. Rather, Letters of Understanding are used to confirm production or shipping schedules which do not require modifications to other rated orders.

Subpart J—Compliance

§700.70 General provisions.

(a) Compliance actions may be taken for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action. Such actions include audits, investigations, or other inquiries.

(b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.

(c) Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act, this regulation, or an official action of the Department of Commerce, is a criminal act, punishable as provided in the Defense Production Act and as set forth in §700.74 of this regulation.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.71 Audits and investigations.

(a) Audits and investigations are official examinations of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act, the Selective Service Act and related statutes, this regulation, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this regulation.

(b) When undertaking an audit, investigation, or other inquiry, the Department of Commerce shall:

(1) Define the scope and purpose in the official action given to the person under investigation, and

(2) Have ascertained that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this regulation, Commerce may issue the following documents which constitute official actions:

(1) *Administrative Subpoenas.* An Administrative Subpoena requires a person to appear as a witness before an official designated by the Department of Commerce to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions. An Administrative Subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demand for Information.* A Demand for Information requires a person to furnish to a duly authorized representative of the Department of Commerce any information necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions.

(3) *Inspection Authorizations.* An Inspection Authorization requires a person to permit a duly authorized representative of Commerce to interview the person's employees or agents, to inspect books, records, documents, other writings and information in the person's possession or control at the place where that person usually keeps them, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions.

(d) The production of books, records, documents, other writings and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the Administrative Subpoena or Demand for Information, a duly authorized official of Commerce is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of Commerce as to the content of the material.

(e) An Administrative Subpoena, Demand for Information, or Inspection Authorization, shall include the name, title or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the Administrative Subpoena, Demand for Information, or Inspection Authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) Service of a Demand for Information or Inspection Authorization shall be made personally, or by Certified Mail—Return Receipt Requested at the person's last known address. Service of an Administrative Subpoena shall be made personally. Personal service may also be made by leaving a copy of the document with someone of suitable age and discretion at the person's last known dwelling or place of business.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of

the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or over may serve an Administrative Subpoena, Demand for Information, or Inspection Authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of Commerce to have access to any premises or source of information necessary to the administration or the enforcement of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions, the Commerce representative may seek compulsory process. Compulsory process means the institution of appropriate legal action, including *ex parte* application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Director of the Office of Industrial Resource Administration, U.S. Department of Commerce, in consultation with the Chief Counsel for Industry and Security, U.S. Department of Commerce, there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998; 67 FR 45633, July 10, 2002]

§ 700.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, Commerce may inform the person in writing where compliance with the requirements of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action were not met.

(b) In cases where Commerce determines that failure to comply with the provisions of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willfull violation of the Defense Production Act, this regulation, or an official action.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or Sections 705 or 707 of the Defense Production Act, the priorities provisions of the Selective Service Act and related statutes, this part, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a $10,000 fine, or one year in prison, or both. The maximum penalty provided by the Selective Service Act and related statutes is a $50,000 fine, or three years in prison, or both.

(b) The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this regulation, or an official action.

(c) In order to secure the effective enforcement of the Defense Production Act, this regulation, and official actions, the following are prohibited (see section 704 of the Defense Production Act; see also, for example, sections 2 and 371 of Title 18, United States Code):

(1) No person may solicit, influence or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act, this regulation, or an official action. In such instances, the person must immediately notify the Department of Commerce that, in accordance with this provision, delivery has not been made.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.75 Compliance conflicts.

If compliance with any provision of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, this regulation, or an official action, the person must immediately notify the Department of Commerce for resolution of the conflict.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

Subpart K—Adjustments, Exceptions, and Appeals

§ 700.80 Adjustments or exceptions.

(a) A person may submit a request to the Office of Strategic Industries and Economic Security, U.S. Department of Commerce, for an adjustment or exception on the ground that:

(1) A provision of this regulation or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequence of following a provision of this regulation or an official action is contrary to the intent of the Defense Production Act, the Selective Service Act and related statutes, or this regulation.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this regulation or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the request is being considered unless such interim relief is granted in writing by the Office of Strategic Industries and Economic Security.

(d) A decision of the Office of Strategic Industries and Economic Security under this section may be appealed to the Assistant Secretary for Export Administration, U.S. Department of Commerce. (For information on the appeal procedure, see § 700.81.)

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, 31925, June 11, 1998]

§ 700.81 Appeals.

(a) Any person who has had a request for adjustment or exception denied by the Office of Strategic Industries and Economic Security under § 700.80, may appeal to the Assistant Secretary for Export Administration, U.S. Department of Commerce, who shall review and reconsider the denial.

(b) An appeal must be received by the Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Washington, D. C. 20230, Ref: DPAS, no later than 45 days after receipt of a written notice of denial from the Office of Strategic Industries and Economic Security. After this 45-day period, an appeal may be accepted at the discretion of the Assistant Secretary for Trade Administration for good cause shown.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Assistant Secretary for Export Administration.

(e) When a hearing is granted, the Assistant Secretary for Export Administration may designate an employee of the Department of Commerce to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(f) When determining an appeal, the Assistant Secretary for Export Administration may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to the Department of Commerce, or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the appeal is being considered unless such relief is granted in writing by the Assistant Secretary for Export Administration.

(h) The decision of the Assistant Secretary for Export Administration shall be made within a reasonable time after receipt of the appeal and shall be the final administrative action. It shall be issued to the appellant in writing with a statement of the reasons for the decision.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31925, June 11, 1998]

Subpart L—Miscellaneous Provisions

§700.90 Protection against claims.

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this regulation, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

§700.91 Records and reports.

(a) Persons are required to make and preserve for at least three years, accurate and complete records of any transaction covered by this regulation (OMB control number 0694–0053) or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this regulation or any official action. However, this regulation does not specify any particular method or system to be used.

(c) Records required to be maintained by this regulation must be made available for examination on demand by duly authorized representatives of Commerce as provided in §700.71.

(d) In addition, persons must develop, maintain, and submit any other records and reports to Commerce that may be required for the administration of the Defense Production Act, the Selective Service Act and related statutes, and this regulation.

(e) Section 705(e) of the Defense Production Act provides that information obtained under this section which the President deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the President determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to Commerce in connection with the enforcement or administration of the Act, this regulation, or an official action, is deemed to be confidential under section 705(e) of the Act and shall not be published or disclosed except as required by law.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, 31925, June 11, 1998]

§700.92 Applicability of this regulation and official actions.

(a) This regulation and all official actions, unless specifically stated otherwise, apply to transactions in any

state, territory, or possession of the United States and the District of Columbia.

(b) This regulation and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.

(c) This regulation and its schedules shall not be construed to affect any administrative actions taken by Commerce, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules or delegations of authority under the Defense Materials System and Defense Priorities System previously issued by Commerce. Such actions, contracts, or orders shall continue in full force and effect under this regulation unless modified or terminated by proper authority.

(d) The repeal of the regulations, orders, schedules and delegations of authority of the Defense Materials System (DMS) and Defense Priorities System (DPS) shall not have the effect to release or extinguish any penalty or liability incurred under the DMS/DPS. The DMS/DPS shall be treated as still remaining in force for the purpose of sustaining any action for the enforcement of such penalty or liability.

§ 700.93 Communications.

All communications concerning this regulation, including requests for copies of the regulation and explanatory information, requests for guidance or clarification, and requests for adjustment or exception shall be addressed to the Office of Industrial Resource Administration, Room 3876, U.S. Department of Commerce, Washington, DC 20230, Ref: DPAS; telephone: (202) 482–3634 or FAX: (202) 482–5650.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31925, June 11, 1998]

SCHEDULE I TO PART 700—APPROVED PROGRAMS AND DELEGATE AGENCIES

The programs listed in this schedule have been approved for priorities and allocations support under this part. They have equal preferential status. The Department of Commerce has authorized the Delegate Agencies to use this part in support of those programs assigned to them, as indicated below.

Program identification symbol	Approved program	Delegate agency
Defense programs:		
A1	Aircraft	Department of Defense.[1]
A2	Missiles	Do.
A3	Ships	Do.
A4	Tank—Automotive	Do.
A5	Weapons	Do.
A6	Ammunition	Do.
A7	Electronic and communications equipment	Do.
B1	Military building supplies	Do.
B8	Production equipment (for defense contractor's account).	Do.
B9	Production equipment (Government owned)	Do.
C1	Food resources (combat rations)	Do.
C2	Department of Defense construction	Do.
C3	Maintenance, repair, and operating supplies (MRO) for Department of Defense facilities.	Do.
C9	Miscellaneous	Do.
International defense programs:		
Canada:		
D1	Canadian military programs	Department of Commerce.
D2	Canadian production and construction	Do.
D3	Canadian atomic energy program	Do.
Other Foreign Nations:		
G1	Certain munitions items purchased by foreign governments through domestic commercial channels for export.	Department of Commerce.
G2	Certain direct defense needs of foreign governments other than Canada.	Do.
G3	Foreign nations (other than Canada) production and construction.	Do.

Program identification symbol	Approved program	Delegate agency
Co-Production:		
J1	F–16 Co-Production Program	Departments of Commerce and Defense.
Atomic energy programs:		
E1	Construction	Department of Energy.
E2	Operations—including maintenance, repair, and operating supplies (MRO).	Do.
E3	Privately owned facilities	Do.
Domestic energy programs:		
F1	Exploration, production, refining, and transportation.	Department of Energy.
F2	Conservation	Do.
F3	Construction, repair, and maintenance	Do.
Other defense, energy, and related programs:		
H1	Certain combined orders (see section 700.17(c))	Department of Commerce.
H5	Private domestic production	Do.
H6	Private domestic construction	Do.
H7	Maintenance, repair, and operating supplies (MRO).	Do.
H8	Designated Programs	Do.
K1	Federal supply items	General Services Administration.
N1	Emergency preparedness activities	Federal Emergency Management Agency.

[1] Department of Defense includes: Armed Services—Army, Navy (including Marines and Coast Guard), and Air Force; Component Agencies, including Defense Logistics Agency, National Security Agency, Defense Advanced Research Projects Agency, Defense Information Systems Agency, Defense Nuclear Agency, Defense Mapping Agency, and On-Site Inspection Agency; and Associated Agencies, including Central Intelligence Agency and National Aeronautics and Space Administration.

[63 FR 31925, June 11, 1998]

APPENDIX I TO PART 700—FORM BIS–999—REQUEST FOR SPECIAL PRIORITIES ASSISTANCE

FORM BXA-999
REV. 4-98

U.S. DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION

FOR DOC USE OMB NO. 0694-0057

CASE NO. _____

RECEIVED _____

ASSIGNED TO _____

REQUEST FOR SPECIAL PRIORITIES ASSISTANCE

READ INSTRUCTIONS ON BACK PAGE
TYPE OR PRINT IN INK

Submission of a completed application is required to request Special Priorities Assistance (SPA). See sections 700.50-55 of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR 700). It is a criminal offense under 18 U.S.C. 1001 to make a wilfully false statement or representation to any U.S. Government agency as to any matter within its jurisdiction. All company information furnished related to this application will be deemed BUSINESS CONFIDENTIAL under Sec. 705(d) of the Defense Production Act of 1950 [50 U.S.C. app. 2155(d)] which prohibits publication or disclosure of this information unless the President determines that withholding it is contrary to the interest of the national defense. The Department of Commerce will assert the appropriate Freedom of Information Act (FOIA) exemptions if such information is the subject of FOIA requests. The unauthorized publication or disclosure or such information by Government personnel is prohibited by law. Violators are subject to fine and/or imprisonment.

1. APPLICANT INFORMATION

a. Name and complete address of Applicant (Applicant can be any person needing assistance - government agency, contractor, or supplier. See definition of "Applicant" in Footnotes section on back page of this form).

Contact's name _____

Title _____

Telephone _____

FAX _____

b. If Applicant is not end-user Government agency, give name and complete address of Applicant's customer.

Contact's name _____

Title _____

Telephone _____ FAX _____

Contract/purchase order no. _____

Dated _____ Priority rating _____

2. APPLICANT ITEM(S). If Applicant is **not** end-user Government agency, describe item(s) to be delivered by Applicant under its customer's contract or purchase order through the use of item(s) listed in Block 3. If known, identify Government program and end-item for which these items are required. If Applicant is end-user Government agency and Block 3 item(s) are not end-items, identify the end-item for which the Block 3 item(s) are required. See definition of "item" in Footnotes section on page 4 of this form.

3. ITEM(S) (including service) FOR WHICH APPLICANT REQUESTS ASSISTANCE

Quantity *Pieces, units*	**Description** *Include identifying information such as model or part number*	**Dollar Value** *Each quantity listed*

4. SUPPLIER INFORMATION

a. Name and complete address of Applicant's Supplier.

Contact's name _____

Title _____

Telephone _____ FAX _____

b. Applicant's contract or purchase order to Supplier.

Number _____

Dated _____

Priority rating _____
(If none, so state)

If Supplier is an agent or distributor, give complete producer or lower tier supplier information in Continuation Block on page 3, including purchase order number, date, and priority rating (if none, so state).

5. SHIPMENT SCHEDULE OF ITEM(S) SHOWN IN BLOCK 3

a. Applicant's original shipment/performance requirement	Month Year							Total units
	Number of units							
b. Supplier's original shipment/performance promise	Month Year							Total units
	Number of units							
c. Applicant's current shipment/performance requirement	Month Year							Total units
	Number of units							
d. Supplier's current shipment/performance promise	Month Year							Total units
	Number of units							

6. REASONS GIVEN BY SUPPLIER for inability to meet Applicant's required shipment or performance date(s).

7. BRIEF STATEMENT OF NEED FOR ASSISTANCE. As applicable, explain effect of delay in receipt of Block 3 item(s) on achieving timely shipment of Block 2 item(s) (e.g., production line shutdown), or the impact on program or project schedule. Describe attempts to resolve problems and give specific reasons why assistance is required. If priority rating authority is requested, please so state.

8. CERTIFICATION: I certify that the information contained in Blocks 1 - 7 of this form, and all other information attached, is correct and complete to the best of my knowledge and belief (omit signature if this form is electronically generated and transmitted - use of name is deemed certification).

_____ _____
Signature of Applicant's authorized official Title

_____ _____
Print or type name of authorized official Date

9. U.S. GOVERNMENT AGENCY INFORMATION

a. Name/complete address of cognizant sponsoring service/agency/activity headquarters office. Provide lower level activity, program, project, contract administration, or field office information in Continuation Block below, on duplicate of this page, or on separate sheet of paper.

Contact's name _____

Signature _____ Date ___/___/___

Title _____

Telephone _____ FAX _____

b. Case reference no. _____

c. Government agency program or project to be supported by Block 2 item(s). Identify end-user agency if not sponsoring agency.

d. Statement of urgency of particular program or project and Applicant's part in it. Specify the extent to which failure to obtain requested assistance will adversely affect the program or project.

e. Government agency/activity actions taken to attempt resolution of problem.

f. Recommendation.

10. ENDORSEMENT by authorized Department or Agency headquarters official (omit signature if this form is electronically generated and transmitted - use of name is deemed authorization). This endorsement is required for all Department of Defense and foreign government requests for assistance.

Signature of authorized official _____ Title _____

Print or type name of authorized official _____ Date _____

CONTINUATION BLOCK

Identify each statement with appropriate block number

INSTRUCTIONS FOR FILING FORM BXA-999

REQUESTS FOR SPECIAL PRIORITIES ASSISTANCE (SPA) MAY BE FILED for any reason in support of the Defense Priorities and Allocations System (DPAS); e.g.: when its regular provisions are not sufficient to obtain delivery of item(s)[1] in time to meet urgent customer or program/project requirements; for help in locating a supplier or placing a rated order; to ensure that rated orders are receiving necessary preferential treatment by suppliers; to resolve production or delivery conflicts between or among rated orders; to verify the urgency or determine the validity of rated orders; or to request authority to use a priority rating. **Requests for SPA must be sponsored by the cognizant U.S. Government agency responsible for the program or project supported by the Applicant's[2] contract or purchase order.**

REQUESTS FOR SPA SHOULD BE TIMELY AND MUST ESTABLISH:

- The urgent defense (including civil emergency preparedness) or energy program or project related need for the item(s); and that
- The Applicant has made a reasonable effort to resolve the problem.

APPLICANT MUST COMPLETE BLOCKS 1-8. SPONSORING U.S. GOVERNMENT AGENCY/ACTIVITY MUST COMPLETE BLOCKS 9-10. Sponsoring agency, if not the Department of Defense (DOD), must obtain DOD concurrence if the agency is supporting a DOD program or project. This form may be mechanically or electronically prepared and may be mailed, FAXed, or electronically transmitted.

WHERE TO FILE THIS FORM:

- Private sector Applicants should file with their respective customers as follows: **lower-tier suppliers** file with customer/subcontractor for forwarding to subcontractor/prime contractor; **subcontractors/suppliers** file with prime contractor for forwarding to one of the below listed cognizant U.S. Government (DPAS Delegate) agencies; **prime contractors** file directly with one of the below listed cognizant U.S. Government (DPAS Delegate) agencies:
  - **Department of Defense (DOD)** -- File with the local Defense Contract Management Area Office, plant representative or contracting officer, or the appropriate DOD military service, associated agency, program, or project office.
  - **Department of Energy (DOE)** -- File with the appropriate Field Operations Office. Requests for SPA for domestic energy projects should be filed with DOE headquarters in Washington, D.C.
  - **General Services Administration (GSA)** and **Federal Emergency Management Agency (FEMA)** -- File with the contracting officer in the agency's regional office or with its headquarters office in Washington, D.C.
- Applicants who are lower level **contract administration, program, project, or field offices**, or when these activities can not resolve the private sector request for assistance, should forward this form to cognizant sponsoring service/agency/activity headquarters for review, Block 10 endorsement, and forwarding to the U.S. Department of Commerce. **Foreign government or private sector entities** should file directly with the DOD Office of the Secretary of Defense. **Timely review and forwarding is essential to providing timely assistance.**
- If for any reason the Applicant is unable to file this form as specified above, see CONTACTS FOR FURTHER INFORMATION below.

CONTACTS FOR FURTHER INFORMATION:

- For any information related to the production or delivery of items against particular rated contracts or purchase orders, contact the cognizant U.S. Government agency, activity, contract administration, program, project, or field office (see WHERE TO FILE above).
- If for any reason the Applicant is unable to file this form as specified in WHERE TO FILE above, if the cognizant U.S. Government agency for filing this form cannot be determined, or for any other information or problems related to the completion and filing of this form, the operation or administration of the DPAS, or to obtain a copy of the DPAS or any DPAS training materials, contact the **Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230 (Attn.: DPAS); telephone (202) 482-3634, or FAX (202) 482-5650.**

APPLICANTS REQUIRING PRIORITY RATING AUTHORIZATION TO OBTAIN PRODUCTION OR CONSTRUCTION EQUIPMENT for the performance of rated contracts or orders in support of DOD programs or projects must file **DOD Form DD-691, "Application for Priority Rating for Production or Construction Equipment"** in accordance with the instructions on that form. For DOE, GSA, or FEMA programs or projects, Applicants may use this form unless the agency requires its own form.

SPECIAL INSTRUCTIONS:

- If the space in any block is insufficient to provide a clear and complete statement of the information requested, use the **Continuation Block** provided on this form or a separate sheet to be attached to this form.
- Entries in Block 3 should be limited to information from a single contract or purchase order. If SPA is requested for additional contracts or purchase orders placed with a supplier for the same or similar items, information from these contracts or purchase orders may be included in one application. However, each contract or purchase order number must be identified and the quantities, priority rating, delivery requirements, etc., must be shown separately.
- If disclosure of certain information on this form is prohibited by security regulations or other security considerations, enter "classified" in the appropriate block in lieu of the restricted information.

FOOTNOTES:

1. "Item" is defined in the DPAS as any raw, in process or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process or service.
2. "Applicant," as used in this form, refers to any person requiring Special Priorities Assistance, and eligible for such assistance under the DPAS. "Person" is defined in the DPAS to include any individual, corporation, partnership, association, any other organized group of persons, a U.S. Government agency, or any other government.

BURDEN ESTIMATE AND REQUEST FOR COMMENT

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing the form. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Robert Kugelman, Director of Administration, Bureau of Export Administration, Room 3889, U.S. Department of Commerce, Washington, D.C. 20230. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

[63 FR 31926, June 11, 1998]

PART 701—REPORTING OF OFFSETS AGREEMENTS IN SALES OF WEAPON SYSTEMS OR DEFENSE-RELATED ITEMS TO FOREIGN COUNTRIES OR FOREIGN FIRMS

Sec.
701.1 Purpose.
701.2 Definitions.
701.3 Applicability and scope.
701.4 Procedures.
701.5 Confidentiality.

AUTHORITY: Title I, sec. 124, Pub. L 102–558, 106 Stat. 4207 (50 U.S.C App. 2099).

SOURCE: 59 FR 61796, Dec. 2, 1994, unless otherwise noted.

§ 701.1 Purpose.

The Defense Production Act Amendments of 1992 require the Secretary of Commerce to promulgate regulations for U.S. firms entering into contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offset agreements exceeding $5,000,000 in value to furnish information regarding such agreements. The Secretary of Commerce has designated the Bureau of Industry and Security as the organization responsible for implementing this provision. The information provided by U.S. firms will be aggregated and used to determine the impact of offset transactions on the defense preparedness, industrial competitiveness, employment, and trade of the United States. Summary reports will be submitted annually to the Congress pursuant Section 309 of the Defense Production Act of 1950, as amended.

§ 701.2 Definitions.

(a) *Offsets*—Compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations.

(b) *Military Export Sales*—Exports that are either Foreign Military Sales (FMS) or commercial (direct) sales of defense articles and/or defense services as defined by the Arms Export Control Act and International Traffic in Arms Regulations.

(c) *Prime Contractor*—A firm that has a sales contract with a foreign entity or with the U.S. Government for military export sales.

(d) *United States*—Includes the 50 states, the District of Columbia, Puerto Rico, and U.S. territories.

(e) *Offset Agreement*—Any offset as defined above that the U.S. firm agrees to in order to conclude a military export sales contract. This includes all offsets, whether they are ''best effort'' agreements or are subject to penalty clauses.

(f) *Offset Transaction*—Any activity for which the U.S. firm claims credit for full or partial fulfillment of the offset agreement. Activities to implement offset agreements may include, but are not limited to, coproduction, licensed production, subcontractor production, overseas investment, technology transfer countertrade, barter, counterpurchase, and buy back.

(g) *Direct Offset*—Contractual arrangements that involve defense articles and services referenced in the sales agreement for military exports.

(h) *Indirect Offset*—Contractual arrangements that involve defense goods and services unrelated to the exports referenced in the sales agreement.

§ 701.3 Applicability and scope.

(a) This rule applies to U.S. firms entering contracts for the sale of defense articles or defense services (as defined in the Arms Export Control Act and International Traffic in Arms Regulations) to a foreign country or foreign firm for which the contract is subject to an offset agreement exceeding $5,000,000 in value.

(b) This rule applies to all offset transactions completed in performance of existing offset commitments since January 1, 1993 for which offset credit of $250,000 or more has been claimed from the foreign representative, and new offset agreements entered into since that time.

§ 701.4 Procedures.

(a) To avoid double counting, firms should report only offset transactions for which they are directly responsible for reporting to the foreign customer (i.e., prime contractors should report

for their subcontractors if the subcontractors are not a direct party to the offset agreement).

(b) Reports should be delivered to the Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, Room 3878, 14th Street and Pennsylvania Avenue, N.W., Washington DC 20230. The first industry reports should be submitted to the Bureau of Industry and Security not later than March 15, 1995 and should cover offset transactions completed during the calendar year 1993, as well as information regarding unfulfilled offset agreements. After this initial submission, companies should provide information once yearly not later than June 15 covering the preceding calendar year. All submissions should include a point of contact (name and telephone number) and should be by a company official authorized to provide such information.

(c) Companies may submit this information in computerized spreadsheet/database format (e.g., Lotus 1–2–3, Quattro Pro, dbase IV) using a 3.5 inch 1.44 megabyte diskette, accompanied by a printed copy.

(d) *Offset Transaction Reporting.* (1) Reports should include an itemized list of offset transactions completed during the reporting period, including the following data elements (Estimates are acceptable when actual figures are unavailable; estimated figures should be followed by the letter ''E''):

(i) Name of Country—Country of entity purchasing the weapon system, defense item or service subject to offset.

(ii) Name or Description of Weapon system, Defense Item, or Service Subject to Offset.

(iii) Name of Offset Fulfilling Entity—Entity fulfilling offset transaction (including first tier subcontractors).

(iv) Name of Offset Receiving Entity—Entity receiving benefits from offset transaction.

(v) Offset Credit Value—Dollar value credits claimed by fulfilling entity including any intangible factors/multipliers.

(vi) Actual Offset Value—Dollar value of the offset transaction without multipliers/intangible factors.

(vii) Description of Offset Product/Service—Short description of the type of offset (e.g., coproduction, technology transfer, subcontract activity, training, purchase, cash payment, etc.).

(viii) Broad Industry Category—Broad classification of the industry in which the offset transaction was fulfilled (e.g., aerospace, electronics, chemicals, industrial machinery, textiles, etc.). Firms may request a list of the Standard Industry Classification (SIC) codes to assist in identifying an appropriate industry category. Forward such requests to the Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, Room 3878, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230 or Fax 202–482–5650.

(ix) Direct or Indirect Offset—Specify whether the offset transaction was direct or indirect offset.

(x) Name of Country in Which Offset was Fulfilled—United States, purchasing country, or third country.

(2) Offset transactions of the same type (same fulfilling entity, receiving entity, and offset product/service) completed during the same reporting period may be combined.

(3) Any necessary comments or explanations relating to the above information should be footnoted and supplied on separate sheets attached to the report.

(e) *Reporting on Offset Agreements Entered Into.* (1) In addition to the itemized list of offset transactions completed during the year as specified above, U.S. firms should provide information regarding *new offset agreements entered* into during the year, including the following elements:

(i) Name of Country—Country of entity purchasing the weapon system, defense item, or service subject to offset;

(ii) Name or Description of Weapon System, Defense Item, or Service Subject to Offset;

(iii) Names/Titles of Signatories to the Offset Agreement;

(iv) Value of Export Sale Subject to Offset (approximate);

(v) Total Value of the Offset Agreement;

(vi) Term of Offset Agreement (months);

(vii) Description of Performance Measures—(e.g., ''Best Efforts,'' Liquidated Damages, (describe)).

(2) [Reserved]

§ 701.5 Confidentiality.

(a) As provided by § 309(c) of the Defense Production Act of 1950, as amended, BIS shall not publicly disclose the information it receives pursuant to this part, unless the firm furnishing the information subsequently specifically authorizes public disclosure.

(b) Public disclosure must be authorized in writing by an official of the firm competent to make such an authorization.

(c) Nothing in this provision shall prevent the use of data aggregated from information provided pursuant to this part in the summary report to the Congress described in § 701.1.

PARTS 702–704 [RESERVED]

PART 705—EFFECT OF IMPORTED ARTICLES ON THE NATIONAL SECURITY

Sec.

705.1 Definitions.
705.2 Purpose.
705.3 Commencing an investigation.
705.4 Criteria for determining effect of imports on the national security.
705.5 Request or application for an investigation.
705.6 Confidential information.
705.7 Conduct of an investigation.
705.8 Public hearings.
705.9 Emergency action.
705.10 Report of an investigation and recommendation.
705.11 Determination by the President and adjustment of imports.
705.12 Disposition of an investigation and report to the Congress.

AUTHORITY: Sec. 232, Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

SOURCE: 47 FR 14693, Apr. 6, 1982, unless otherwise noted. Redesignated at 54 FR 601, Jan. 9, 1989.

§ 705.1 Definitions.

As used in this part:

Department means the United States Department of Commerce and includes the Secretary of Commerce and the Secretary's designees.

Secretary means the Secretary of Commerce or the Secretary's designees.

Applicant means the person or entity submitting a request or application for an investigation pursuant to this part.

§ 705.2 Purpose.

These regulations set forth the procedures by which the Department shall commence and conduct an investigation to determine the effect on the national security of the imports of any article. Based on this investigation, the Secretary shall make a report and recommendation to the President for action or inaction regarding an adjustment of the imports of the article.

§ 705.3 Commencing an investigation.

(a) Upon request of the head of any government department or agency, upon application of an interested party, or upon motion of the Secretary, the Department shall immediately conduct an investigation to determine the effect on the national security of the imports of any article.

(b) The Secretary shall immediately provide notice to the Secretary of Defense of any investigation initiated under this part.

[47 FR 14693, Apr. 6, 1982. Redesignated at 54 FR 601, Jan. 9, 1989, and amended at 63 FR 31623, June 10, 1998]

§ 705.4 Criteria for determining effect of imports on the national security.

(a) To determine the effect on the national security of the imports of the article under investigation, the Department shall consider the quantity of the article in question or other circumstances related to its import. With regard for the requirements of national security, the Department shall also consider the following:

(1) Domestic production needed for projected national defense requirements;

(2) The capacity of domestic industries to meet projected national defense requirements;

(3) The existing and anticipated availabilities of human resources, products, raw materials, production equipment and facilities, and other

supplies and services essential to the national defense;

(4) The growth requirements of domestic industries to meet national defense requirements and the supplies and services including the investment, exploration and development necessary to assure such growth; and

(5) Any other relevant factors.

(b) In recognition of the close relation between the strength of our national economy and the capacity of the United States to meet national security requirements, the Department shall also, with regard for the quantity, availability, character and uses of the imported article under investigation, consider the following:

(1) The impact of foreign competition on the economic welfare of any domestic industry essential to our national security;

(2) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; and

(3) Any other relevant factors that are causing or will cause a weakening of our national economy.

§705.5 Request or application for an investigation.

(a) A request or application for an investigation shall be in writing. The original and 1 copy shall be filed with the Director, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, Washington, DC 20230.

(b) When a request, application or motion is under investigation, or when an investigation has been completed pursuant to §705.10 of this part, any subsequently filed request or application concerning imports of the same or related article that does not raise new or different issues may be either consolidated with the investigation in progress as provided in §705.7(e) of this part, or rejected. In either event, an explanation for taking such action shall be promptly given to the applicant. If the request or application is rejected, it will not be returned unless requested by the applicant.

(c) Requests or applications shall describe how the quantity, availability, character, and uses of a particular imported article, or other circumstances related to its import, affect the national security, and shall contain the following information to the fullest extent possible:

(1) Identification of the applicant;

(2) A precise description of the article;

(3) Description of the domestic industry affected, including pertinent information regarding companies and their plants, locations, capacity and current output of the industry;

(4) Pertinent statistics on imports and domestic production showing the quantities and values of the article;

(5) Nature, sources, and degree of the competition created by imports of the article;

(6) The effect that imports of the article may have upon the restoration of domestic production capacity in the event of national emergency;

(7) Employment and special skills involved in the domestic production of the article;

(8) Extent to which the national economy, employment, investment, specialized skills, and productive capacity is or will be adversely affected;

(9) Revenues of Federal, State, or local Governments which are or may be adversely affected;

(10) National security supporting uses of the article including data on applicable contracts or sub-contracts, both past and current; and

(11) Any other information or advice relevant and material to the subject matter of the investigation.

(d) Statistical material presented should be, if possible, on a calendar-year basis for sufficient periods of time to indicate trends. Monthly or quarterly data for the latest complete years should be included as well as any other breakdowns which may be pertinent to show seasonal or short-term factors.

[47 FR 14693, Apr. 6, 1982. Redesignated at 54 FR 601, Jan. 9, 1989, and amended at 63 FR 31623, June 10, 1998; 65 FR 62600, Oct. 19, 2000]

§705.6 Confidential information.

(a) Any information or material which the applicant or any other party desires to submit in confidence at any stage of the investigation that would

disclose national security classified information or business confidential information (trade secrets, commercial or financial information, or any other information considered senstitive or privileged), shall be submitted on separate sheets with the clear legend ''National Security Classified'' or ''Business Confidential,'' as appropriate, marked at the top of each sheet. Any information or material submitted that is identified as national security classified must be accompanied at the time of filing by a statement indicating the degree of classification, the authority for the classification, and the identity of the classifying entity. By submitting information or material identified as business confidential, the applicant or other party represents that the information is exempted from public disclosure, either by the Freedom of Information Act (5 U.S.C. 552 et seq.) or by some other specific statutory exemption. Any request for business confidential treatment must be accompanied at the time of filing by a statement justifying non-disclosure and referring to the specific legal authority claimed.

(b) The Department may refuse to accept as business confidential any information or material it considers not intended to be protected under the legal authority claimed by the applicant, or under other applicable legal authority. Any such information or material so refused shall be promptly returned to the submitter and will not be considered. However, such information or material may be resubmitted as non-confidential in which case it will be made part of the public record.

§ 705.7 Conduct of an investigation.

(a) If the Department determines that it is appropriate to afford interested parties an opportunity to present information and advice relevant and material to an investigation, a public notice shall be published in the FEDERAL REGISTER soliciting from any interested party written comments, opinions, data, information or advice relative to the investigation. This material shall be submitted as directed within a reasonable time period to be specified in the notice. All material shall be submitted with 6 copies. In addition, public hearings may be held pursuant to § 705.8 of this part.

(b) All requests and applications filed and all material submitted by interested parties, except information on material that is classified or determined to be confidential as provided in § 705.6 of this part, will be available for public inspection and copying in the Bureau of Industry and SecurityFreedom of Information Records Inspection Facility, Room H–4525, U.S. Department of Commerce, Washington, DC 20230, in accordance with regulations published in part 4 of title 15, Code of Federal Regulations.

(c) Further information may be requested by the Department from other sources through the use of questionnaires, correspondence, or other appropriate means.

(d) The Department shall, as part of an investigation, seek information and advice from, and consult with, appropriate officers of the United States or their designees, as shall be determined. The Department shall also consult with the Secretary of Defense regarding the methodological and policy questions raised in the investigation. Upon the request of the Secretary, the Secretary of Defense shall provide the Secretary with an assessment of the defense requirements of the article in question. Communications received from agencies of the U.S. government or foreign governments will not be made available for public inspection.

(e) Any request or application that is filed while an investigation is in progress, concerning imports of the same or related article and raising similar issues, may be consolidated with the request, application or motion that initiated the investigation.

[47 FR 14693, Apr. 6, 1982. Redesignated at 54 FR 601, Jan. 9, 1989 and amended at 54 FR 19355, May 5, 1989; 63 FR 31623, June 10, 1998]

§ 705.8 Public hearings.

(a) If it is deemed appropriate by the Department, public hearings may be held to elicit further information.

(1) A notice of hearing shall be published in the FEDERAL REGISTER describing the date, time, place, the subject matter of each hearing and any

other information relevant to the conduct of the hearing. The name of a person to contact for additional information or to request time to speak at the hearing shall also be included. Public hearings may be held in more than one location.

(2) Hearings shall be open to the public unless national security classified information will be presented. In that event the presiding officer at the hearing shall close the hearing, as necessary, to all persons not having appropriate security clearances or not otherwise authorized to have access to such information. If it is known in sufficient time prior to the hearing that national security classified information will be presented the notice of hearing published in the FEDERAL REGISTER shall state that national security classified information will be presented and that the hearing will be open only to those persons having appropriate security clearances or otherwise specifically authorized to have access to such information.

(b) Hearings shall be conducted as follows:

(1) The Department shall appoint the presiding officer;

(2) The presiding officer shall determine all procedural matters during the hearing;

(3) Interested parties may appear, either in person or by representation, and produce oral or written information relevant and material to the subject matter of the investigation;

(4) Hearings will be fact-finding proceedings without formal pleadings or adverse parties. Formal rules of evidence will not apply;

(5) After a witness has testified, the presiding officer may question the witness. Questions submitted to the presiding officer in writing by any interested party may, at the discretion of the presiding officer, be posed to the witness. No cross examination of any witness by a party shall be allowed.

(6) Each hearing will be stenographically reported. Transcripts of the hearing, excluding any national security classified information, may be purchased from the Department at actual cost of duplication, and will be available for public inspection in the Bureau of Industry and Security Freedom of Information Records Inspection Facility, Room H–4525, U.S. Department of Commerce, Washington, DC 20230.

[47 FR 14693, Apr. 6, 1982. Redesignated at 54 FR 601, Jan. 9, 1989 and amended at 54 FR 19355, May 5, 1989; 63 FR 31623, June 10, 1998]

§ 705.9 Emergency action.

In emergency situations, or when in the judgment of the Department, national security interests require it, the Department may vary or dispense with any or all of the procedures set forth in § 705.7 of this part.

§ 705.10 Report of an investigation and recommendation.

(a) When an investigation conducted pursuant to this part is completed, a report of the investigation shall be promptly prepared.

(b) The Secretary shall report to the President the findings of the investigation and a recommendation for action or inaction within 270 days after beginning an investigation under this part.

(c) An Executive Summary of the Secretary's report to the President of an investigation, excluding any classified or proprietary information, shall be published in the FEDERAL REGISTER. Copies of the full report, excluding any classified or proprietary information, will be available for public inspection and copying in the Bureau of Industry and Security Freedom of Information Records Inspection Facility, Room H–4525, U.S. Department of Commerce, 14th Street, N.W., Washington, D.C. 20230; tel. (202) 482–5653.

[63 FR 31623, June 10, 1998]

§ 705.11 Determination by the President and adjustment of imports.

(a) Upon the submission of a report to the President by the Secretary under § 705.10(b) of this part, in which the Department has found that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President is required by Section 232(c) of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862(c)) to take the following action

(1) Within 90 days after receiving the report from the Secretary, the President shall determine:

(i) Whether the President concurs with the Department's finding; and

(ii) If the President concurs, the nature and duration of the action that must be taken to adjust the imports of the article and its derivatives so that the such imports will not threaten to impair the national security.

(2) If the President determines to take action under this section, such action must be taken no later than fifteen (15) days after making the determination.

(3) By no later than thirty (30) days after making the determinations under paragraph (a)(1) of this section, the President shall submit to the Congress a written statement of the reasons why the President has decided to take action, or refused to take action.

(b) If the action taken by the President under this section is the negotiation of an agreement to limit or restrict the importation into the United States of the article in question, and either no such agreement is entered into within 180 days after making the determination to take action, or an executed agreement is not being carried out or is ineffective in eliminating the threat to the national security, the President shall either:

(1) Take such other action as deemed necessary to adjust the imports of the article so that such imports will not threaten to impair the national security. Notice of any such additional action taken shall be published in the FEDERAL REGISTER; or

(2) Not take any additional action. This determination and the reasons on which it is based, shall be published in the FEDERAL REGISTER.

[63 FR 31623, June 10, 1998]

§ 705.12 Disposition of an investigation and report to the Congress.

(a) Upon the disposition of each request, application, or motion made under this part, a report of such disposition shall be submitted by the Secretary to the Congress and published in the FEDERAL REGISTER.

(b) As required by Section 232(e) of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862(c)), the President shall submit to the Congress an annual report on the operation of this part.

[63 FR 31623, June 10, 1998]

PARTS 706–709 [RESERVED]

SUBCHAPTER B—CHEMICAL WEAPONS CONVENTION REGULATIONS

PART 710—GENERAL INFORMATION AND OVERVIEW OF THE CHEMICAL WEAPONS CONVENTION REGULATIONS (CWCR)

Sec.
710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).
710.2 Scope of the CWCR.
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710.5 Authority.
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SUPPLEMENT NO. 1 TO PART 710—STATES PARTIES TO THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73764, Dec. 30, 1999, unless otherwise noted.

§ 710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).

The following are definitions of terms used in the CWCR (parts 710 through 722 of this subchapter, unless otherwise noted):

Act (The): Means the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701 *et seq.*).

Bureau of Industry and Security (BIS). Means the Bureau of Industry and Security of the United States Department of Commerce (formerly the Bureau of Export Administration).

By-product. Means any chemical substance or mixture produced without a separate commercial intent during the manufacture, processing, use or disposal of another chemical substance or mixture.

Chemical Weapon. Means the following, together or separately:

(1) A toxic chemical and its precursors, except where intended for purposes not prohibited under the Chemical Weapons Convention (CWC), provided that the type and quantity are consistent with such purposes;

(2) A munition or device, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in paragraph (1) of this definition, which would be released as a result of the employment of such munition or device; or

(3) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in paragraph (2) of this definition.

Chemical Weapons Convention (CWC or Convention). Means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, and its annexes opened for signature on January 13, 1993.

Chemical Weapons Convention Regulations (CWCR). Means the regulations contained in 15 CFR parts 710 through 722.

Consumption. Consumption of a chemical means its conversion into another chemical via a chemical reaction. Unreacted material must be accounted for as either waste or as recycled starting material.

Declaration or report form. Means a multi-purpose form due to BIS regarding activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals. Declaration forms will be used by facilities that have data declaration obligations under the CWCR and are ''declared'' facilities whose facility-specific information will be transmitted to the OPCW. Report forms will be used by entities that are ''undeclared'' facilities or trading companies that have limited reporting requirements for only export and import activities under the CWCR and whose facility-specific information will not be transmitted to the OPCW. Information from declared facilities, undeclared facilities and trading companies will also be used to compile U.S. national aggregate figures on the production, processing, consumption, export and import of specific chemicals.

See also related definitions of declared facility, undeclared facility and report.

Declared facility or plant site. Means a facility or plant site required to complete data declarations of activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals above specified threshold quantities. Only certain declared facilities and plant sites are subject to routine inspections under the CWCR. Plant sites that produced either Schedule 2 or Schedule 3 chemicals for CW purposes at any time since January 1, 1946, are also ''declared'' plant sites. However, such plant sites are not subject to routine inspection if they are not subject to declaration requirements because of past production, processing or consumption of Scheduled or unscheduled discrete organic chemicals above specified threshold quantities.

Discrete organic chemical. Means any chemical belonging to the class of chemical compounds consisting of all compounds of carbon, except for its oxides, sulfides, and metal carbonates, identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned.

Domestic transfer. Means, with regard to declaration requirements for Schedule 1 and chemicals under the CWCR, any movement of any amount of Schedule 1 chemical outside the geographical boundary of a facility in the United States to another destination in the United States, for any purpose. Domestic transfer includes movement between two divisions of one company or a sale from one company to another. Note that any movement to or from a facility outside the United States is considered an export or import for reporting purposes, not a domestic transfer.

EAR. Means the Export Administration Regulations (15 CFR parts 730 through 799).

Explosive. Means a chemical (or a mixture of chemicals) that is included in Class 1 of the United Nations Organization hazard classification system.

Facility. Means any plant site, plant or unit.

Facility agreement. Means a written agreement or arrangement between a State Party and the Organization relating to a specific facility subject to on-site verification pursuant to Articles IV, V, and VI of the Convention.

Host Team. Means the U.S. Government team that accompanies the inspection team from the Organization for the Prohibition of Chemical Weapons during a CWC inspection for which the regulations in this subchapter apply.

Host Team Leader. Means the representative from the Department of Commerce who heads the U.S. Government team that accompanies the Inspection Team during a CWC inspection for which the regulations in this subchapter apply.

Hydrocarbon. Means any organic compound that contains only carbon and hydrogen.

Impurity. Means a chemical substance unintentionally present with another chemical substance or mixture.

Inspection Team. Means the group of inspectors and inspection assistants assigned by the Director-General of the Technical Secretariat to conduct a particular inspection.

ITAR. Means the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

Organization for the Prohibition of Chemical Weapons (OPCW). Means the international organization, located in The Hague, the Netherlands, that administers the CWC.

Person. Means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Plant. Means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

(1) Small administrative area;

(2) Storage/handling areas for feedstock and products;

(3) Effluent/waste handling/treatment area;

(4) Control/analytical laboratory;

(5) First aid service/related medical section; and

(6) Records associated with the movement into, around, and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

Plant site. Means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as:

(1) Administration and other offices;

(2) Repair and maintenance shops;

(3) Medical center;

(4) Utilities;

(5) Central analytical laboratory;

(6) Research and development laboratories;

(7) Central effluent and waste treatment area; and

(8) Warehouse storage.

Precursor. Means any chemical reactant which takes part, at any stage in the production, by whatever method, of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system.

Processing. Means a physical process such as formulation, extraction and purification in which a chemical is not converted into another chemical.

Production. Means the formation of a chemical through chemical reaction.

Purposes not prohibited by the CWC. Means the following:

(1) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;

(2) Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(3) Any military purpose of the United States that is not connected with the use of a chemical weapon and that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm; or

(4) Any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

Report. Means information due to BIS on exports and imports of Schedule 1, Schedule 2 or Schedule 3 chemicals above applicable thresholds. Such information is included in the national aggregate declaration transmitted to the OPCW. Facility-specific information is *not* included in the national aggregate declaration. Note: This definition does not apply to parts 719 and 720 (see § 719.1) of this subchapter.

Schedules of Chemicals. Means specific lists of toxic chemicals, groups of chemicals, and precursors contained in the CWC. See Supplements No. 1 to parts 712 through 714 of this subchapter.

State Party. Means a country for which the CWC is in force. See Supplement No. 1 to this part.

Storage. For purposes of Schedule 1 chemical reporting, means any quantity that is not accounted for under the categories of production, export, import, consumption or domestic transfer.

Synthesis. Means production of a chemical from its reactants.

Technical Secretariat. Means the organ of the OPCW charged with carrying out administrative and technical support functions for the OPCW, including carrying out the verification measures delineated in the CWC.

Toxic Chemical. Means any chemical which, through its chemical action on life processes, can cause death, temporary incapacitation, or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions, or elsewhere. Toxic chemicals that have been identified for the application of verification measures are in schedules contained in Supplements No. 1 to parts 712 through 714 of this subchapter.

Trading company. Means any person involved in the export and/or import of scheduled chemicals in amounts greater than specified thresholds, but not in the production, processing or consumption of such chemicals in amounts greater than threshold amounts requiring declaration. If such persons exclusively export or import scheduled chemicals in amounts greater than specified thresholds, they are subject to reporting requirements but are not subject to routine inspections.

Transfer. See domestic transfer.

Undeclared facility or plant site. Means a facility or plant site that is not subject to declaration requirements because of past or anticipated production, processing or consumption involving scheduled or unscheduled discrete organic chemicals above specified threshold quantities. However, such facilities and plant sites may have a reporting requirement for exports or imports of such chemicals.

Unit. Means the combination of those items of equipment, including vessels and vessel set up, necessary for the production, processing or consumption of a chemical.

United States. Means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States, and includes all places under the jurisdiction or control of the United States, including any of the places within the provisions of paragraph (41) of section 40102 of Title 49 of the United States Code, any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (1) and (37), respectively, of section 40102 of Title 49 of the United States Code, and any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (section 1903(b) of Title 46 App. of the United States Code).

United States National Authority (USNA). Means the Department of State serving as the national focal point for the effective liaison with the Organization for the Prohibition of Chemical Weapons and other States Parties to the Convention and implementing the provisions of the Chemical Weapons Convention Implementation Act of 1998 in coordination with an interagency group designated by the President consisting of the Secretary of Commerce, Secretary of Defense, Secretary of Energy, the Attorney General, and the heads of other agencies considered necessary or advisable by the President, or their designees. The Secretary of State is the Director of the USNA.

Unscheduled chemical. Means a chemical that is not contained in Schedule 1, Schedule 2, or Schedule 3 (see Supplements No. 1 to parts 712 through 714 of this subchapter).

Unscheduled Discrete Organic Chemical (UDOC). Means any ''discrete organic chemical'' that is not contained in the Schedules of Chemicals (see Supplements No. 1 to parts 712 through 714 of this subchapter) and subject to the declaration requirements of part 715 of this subchapter. Unscheduled discrete organic chemicals subject to declaration under this subchapter are those produced by synthesis that are isolated for use or sale as a specific end-product.

You. The term ''you'' or ''your'' means any person (see also definition of ''person''). With regard to the declaration and reporting requirements of the CWCR, ''you'' refers to persons that have an obligation to report certain activities under the provisions of the CWCR.

[64 FR 73764, Dec. 30, 1999, as amended at 67 FR 20631, Apr. 26, 2002]

§ 710.2 Scope of the CWCR.

The Chemical Weapons Convention Regulations (parts 710 through 722 of this subchapter), or CWCR, implement certain obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as the CWC or Convention.

(a) *Persons and facilities subject to the CWCR.* (1) The CWCR declaration, reporting, and inspection requirements apply to all persons and facilities located in the United States, except U.S. Government facilities as follows:

(i) Department of Defense facilities;

(ii) Department of Energy facilities; and

(iii) Facilities of other U.S. Government agencies that notify the USNA of their decision to be excluded from the CWCR.

(2) For purposes of this subchapter, ''United States Government facilities'' are those facilities owned and operated by a U.S. Government agency (including those operated by contractors to the agency), and those facilities leased to and operated by a U.S. Government agency (including those operated by contractors to the agency). ''United States Government facilities'' does not

include facilities owned by a U.S. Government agency and leased to a private company or other entity such that the private company or entity may independently decide for what purposes to use the facilities.

(b) *Activities subject to the CWCR.* The CWCR compel data declarations and reports from facilities subject to the CWCR (parts 710 through 722 of this subchapter) on activities, including production, processing, consumption, exports and imports, involving chemicals further described in parts 712 through 715 of this subchapter. These regulations do not apply to activities involving inorganic chemicals other than those listed in the Schedules of Chemicals or to other specifically exempted unscheduled discrete organic chemicals. In addition, these regulations set forth procedures for routine inspections of ''declared'' facilities by teams of international inspectors in part 716 of this subchapter, and set forth clarification procedures and procedures for challenge inspections (see part 717) that could be requested at any facility or location in the United States subject to the CWCR. Finally, the CWCR restrict certain imports of Schedule 1 and 2 chemicals into the United States from non-States Parties and prohibit imports of Schedule 1 chemicals except for research, medical, pharmaceutical, or protective purposes.

§710.3 Purposes of the Convention and CWCR.

(a) *Purposes of the Convention.* (1) The Convention imposes upon the United States, as a State Party, certain declaration, inspection, and other obligations. In addition, the United States and other States Parties to the Convention undertake never under any circumstances to:

(i) Develop, produce, otherwise acquire, stockpile, or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;

(ii) Use chemical weapons;

(iii) Engage in any military preparations to use chemical weapons; or

(iv) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited by the Convention.

(2) One objective of the Convention is to assure States Parties that lawful activities of chemical producers and users are not converted to unlawful activities related to chemical weapons. To achieve this objective and to give States Parties a mechanism to verify compliance, the Convention requires the United States and all other States Parties to submit declarations concerning chemical production, consumption, processing and other activities, and to permit international inspections within their borders.

(b) *Purposes of the Chemical Weapons Convention Regulations.* To fulfill the United States' obligations under the Convention, the CWCR (parts 710 through 722 of this subchapter) prohibit certain activities, and compel the submission of information from all facilities in the United States, except for Department of Defense and Department of Energy facilities and facilities of other U.S. Government agencies that notify the USNA of their decision to be excluded from the CWCR on activities, including exports and imports of scheduled chemicals and certain information regarding unscheduled discrete organic chemicals as described in parts 712 through 715 of this subchapter. U.S. Government facilities are those owned by or leased to the U.S Government, including facilities that are contractor-operated. The CWCR also require access for on-site inspections and monitoring by the OPCW, as described in parts 716 and 717 of this subchapter.

§710.4 Overview of scheduled chemicals and examples of affected industries.

The following provides examples of the types of industries that may be affected by the CWCR (parts 710 through 722 of this subchapter). These examples are not exhaustive, and you should refer to parts 712 through 715 of this subchapter to determine your obligations.

(a) Schedule 1 chemicals are listed in Supplement No. 1 to part 712 of this subchapter. Schedule 1 chemicals have little or no use in industrial and agricultural industries, but may have limited use for research, pharmaceutical,

medical, public health, or protective purposes.

(b) Schedule 2 chemicals are listed in Supplement No. 1 to part 713 of this subchapter. Although Schedule 2 chemicals may be useful in the production of chemical weapons, they also have legitimate uses in areas such as:

(1) Flame retardant additives and research;

(2) Dye and photographic industries (e.g., printing ink, ball point pen fluids, copy mediums, paints, etc.);

(3) Medical and pharmaceutical preparation (e.g., anticholinergics, arsenicals, tranquilizer preparations);

(4) Metal plating preparations;

(5) Epoxy resins; and

(6) Insecticides, herbicides, fungicides, defoliants, and rodenticides.

(c) Schedule 3 chemicals are listed in Supplement No. 1 to part 714 of this subchapter. Although Schedule 3 chemicals may be useful in the production of chemical weapons, they also have legitimate uses in areas such as:

(1) The production of:

(i) Resins;

(ii) Plastics;

(iii) Pharmaceuticals;

(iv) Pesticides;

(v) Batteries;

(vi) Cyanic acid;

(vii) Toiletries, including perfumes and scents;

(viii) Organic phosphate esters (e.g., hydraulic fluids, flame retardants, surfactants, and sequestering agents); and

(2) Leather tannery and finishing supplies.

(d) Unscheduled discrete organic chemicals are used in a wide variety of commercial industries, and include acetone, benzoyl peroxide and propylene glycol.

§ 710.5 Authority.

The CWCR (parts 710 through 722 of this subchapter) implement certain provisions of the Chemical Weapons Convention under the authority of the Chemical Weapons Convention Implementation Act of 1998 (Act), the National Emergencies Act, the International Emergency Economic Powers Act (IEEPA), as amended, and the Export Administration Act of 1979, as amended, by extending verification and trade restriction requirements under Article VI and related parts of the Verification Annex of the Convention to U.S. persons. In Executive Order 13128 of June 25, 1999, the President delegated authority to the Department of Commerce to promulgate regulations to implement the Act, and consistent with the Act, to carry out appropriate functions not otherwise assigned in the Act but necessary to implement certain reporting, monitoring and inspection requirements of the Convention and the Act.

§ 710.6 Relationship between the Chemical Weapons Convention Regulations and the Export Administration Regulations.

Certain obligations of the U.S. government under the CWC pertain to exports. These obligations are implemented in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). See in particular § 742.18 and part 745 of the EAR, and Export Control Classification Numbers 1C350, 1C351 and 1C355 of the Commerce Control List (Supplement No. 1 to part 774 of the EAR).

SUPPLEMENT NO. 1 TO PART 710—STATES PARTIES TO THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING, AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION

LIST OF STATES PARTIES AS OF DECEMBER 30, 1999

Albania	Cameroon
Algeria	Canada
Argentina	Chile
Armenia	China*
Australia	Cook Islands
Austria	Costa Rica
Bahrain	Cote d'Ivoire (Ivory Coast)
Bangladesh	Croatia
Belarus	Cuba
Belgium	Cyprus
Benin	Czech Republic
Bolivia	Denmark
Bosnia-Herzegovina	Ecuador
Botswana	El Salvador
Brazil	Equatorial Guinea
Brunei Darussalam	Ethiopia
Bulgaria	Estonia
Burkina Faso	Fiji
Burundi	

Finland
France
Gambia
Georgia
Germany
Ghana
Greece
Guinea
Guyana
Holy See
Hungary
Iceland
India
Indonesia
Iran
Ireland
Italy
Japan
Jordan
Kenya
Korea (Republic of)
Kuwait
Laos (P.D.R.)
Latvia
Lesotho
Liechtenstein
Lithuania
Luxembourg
Macedonia
Malawi
Maldives
Mali
Malta
Mauritius
Mauritania
Mexico
Moldova (Republic of)
Monaco
Mongolia
Morocco
Namibia
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Saint Lucia
Saudi Arabia
Senegal
Seychelles
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Tajikistan
Tanzania, United Republic of
Togo
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Ukraine
United Kingdom
United States
Uruguay
Uzbekistan
Venezuela
Vietnam
Zimbabwe

*For CWC States Parties purposes, China includes Hong Kong and Macau.

PART 711—GENERAL INFORMATION REGARDING DECLARATION, REPORTING AND NOTIFICATION REQUIREMENTS

Sec.

711.1 Overview of declaration, reporting, and notification requirements.
711.2 Who submits declarations, reports, and notifications.
711.3 Assistance in determining your obligations.
711.4 Declaration and reporting of activities occurring prior to December 30, 1999.
711.5 Numerical precision of submitted data.
711.6 Where to obtain forms.
711.7 How to request authorization from BIS to make electronic submissions of declarations or reports.

AUTHORITY: 22 U.S.C. 6701 et seq.; E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73768, Dec. 30, 1999, unless otherwise noted.

§711.1 Overview of declaration, reporting, and notification requirements.

Parts 712 through 715 of the CWCR (parts 710 through 722 of this subchapter) describe the declaration, notification and reporting requirements for Schedules 1, 2 and 3 chemicals and for unscheduled discrete organic chemicals (UDOCs). For each type of chemical, the Convention requires an initial declaration and subsequent annual declarations. If, after reviewing parts 712 through 715 of this subchapter, you determine that you have declaration, notification or reporting requirements, you may obtain the appropriate forms by contacting the Bureau of Industry and Security (see §711.6).

§711.2 Who submits declarations, reports, and notifications.

The owner, operator, or senior management official of a facility subject to declaration, report, or notification requirements under the CWCR (parts 710 through 722 of this subchapter) is responsible for the submission of all required documents in accordance with all applicable provisions of the CWCR.

§711.3 Assistance in determining your obligations.

(a) *Determining if your chemical is subject to declaration, reporting or notification requirements.*

(1) If you need assistance in determining if your chemical is classified as a Schedule 1, Schedule 2, or Schedule 3 chemical, or is an unscheduled discrete organic chemical, submit your written request for a chemical determination to BIS. Such requests may be faxed to (703) 235–1481, e-mailed to *cdr@cwc.gov*, or mailed to Information Technology Team, Bureau of Industry and Security, U.S. Department of Commerce, 1555 Wilson Boulevard, Suite 710, Arlington, Virginia 22209–2405. Your request should include the information

noted in paragraph (a)(2) of this section to ensure an accurate determination. Also include any additional information that you feel is relevant to the chemical or process involved (see part 718 of this subchapter for provisions regarding treatment of confidential business information). If you are unable to provide all of the information required in paragraph (a)(2) of this section, you should include an explanation identifying the reasons or deficiencies that preclude you from supplying the information. If BIS cannot make a determination based upon the information submitted, BIS will return the request to you and identify the additional information that is necessary to complete a chemical determination.

(2) Include the following information in each chemical determination request:

(i) Date of request;

(ii) Company name and complete street address;

(iii) Point of contact;

(iv) Phone and fax number of contact;

(v) E-mail address of contact, if you want an acknowledgment of receipt sent via e-mail;

(vi) Chemical Name;

(vii) Structural formula of the chemical, if the chemical is not specifically identified by name and chemical abstract service registry number in Supplements No. 1 to parts 712 through 714 of the CWCR; and

(viii) Chemical Abstract Service registry number, if assigned.

(b) *Other inquiries.* If you need assistance in interpreting the provisions of this subchapter or need assistance with other CWC-related issues, and you require a response from BIS in writing, submit a detailed request to BIS that explains your question, issue, or request. Send the request to the address or fax included in paragraph (a) of this section, or e-mail the request to *cwcqa@cwc.gov*.

(c) *BIS response to your request.* BIS will respond in writing to your chemical determination request submitted under paragraph (a) of this section within 10 working days of receipt of the request. BIS will respond to other inquiries about industry obligations under the CWCR in a timely manner.

(d) *Other BIS contact information*—(1) *Declaration and report requirements.* For questions on declaration or report requirements, or help in completing forms, you may also contact BIS's Information Technology Team (ITT) by phone at (703) 235–1335.

(2) *Inquiries regarding inspections and facility agreements.* For questions regarding inspections and facility agreements, contact BIS's Inspection Management Team (IMT) by phone at (202) 482–6114 or fax (202) 482–4744.

§ 711.4 Declaration and reporting of activities occurring prior to December 30, 1999.

(a) Facilities subject to the CWCR are required to prepare and submit declarations and reports, to the extent that the necessary information and records are available, on activities occurring prior to December 30, 1999. Willful failure or refusal to submit such declarations and reports constitutes a violation under part 719 of this subchapter. Declarations and reports are not required if records and information necessary to prepare them are not available for one or more of the following reasons:

(1) The necessary information was not collected, or the necessary records were not kept, because no regulatory requirement to do so was in effect prior to December 30, 1999 and at the time of the activity;

(2) The information, though collected at the time of the activity, was discarded prior to December 30, 1999 in accordance with normal business practices; or

(3) The current custodian of the records or information is no longer affiliated with a facility subject to the CWCR due to changes in ownership or control of that facility which took place prior to December 30, 1999.

(b) If partial information is available, facilities are required to provide whatever information is available, on the appropriate forms, with a notation on Form A indicating that complete information is not available.

(c) This § 711.4 applies only to initial declarations and reports, and to annual declarations and reports for calendar years 1997, 1998, and 1999.

§711.5 Numerical precision of submitted data.

Numerical information submitted in declarations and reports is to be provided per applicable rounding rules in each part (i.e., parts 712 through 715 of this subchapter) with a precision equal to that which can be reasonably provided using existing documentation, equipment, and measurement techniques.

§711.6 Where to obtain forms.

Forms to complete declarations and reports required by the CWCR may be obtained by contacting: Information Technology Team, Bureau of Industry and Security, U.S. Department of Commerce, 1555 Wilson Blvd., Suite 710, Arlington, VA 22209–2405, Telephone: (703) 235-1335. Forms may also be downloaded from the Internet at *www.cwc.gov*.

§711.7 How to request authorization from BIS to make electronic submissions of declarations or reports.

(a) *Scope.* This section provides an optional method of submitting declarations or reports. Specifically, this section applies to the electronic submission of declarations and reports required under the CWCR. If you choose to submit declarations and reports by electronic means, all such electronic submissions must be made through the Web-Data Entry System for Industry (Web-DESI), which can be accessed on the CWC Web site at *http://www.cwc.gov*.

(b) *Authorization.* If you or your company has a facility, plant site, or trading company that has been assigned a U.S. Code Number (U.S.C. Number), you may submit declarations and reports electronically, once you have received authorization from BIS to do so. An authorization to submit declarations and reports electronically may be limited or withdrawn by BIS at any time. There are no prerequisites for obtaining permission to submit electronically, nor are there any limitations with regard to the types of declarations or reports that are eligible for electronic submission. However, BIS may direct, for any reason, that any electronic declaration or report be resubmitted in writing, either in whole or in part.

(1) *Requesting approval to submit declarations and reports electronically.* To submit declarations and reports electronically, you or your company must submit a written request to BIS at the address identified in §711.6 of the CWCR. Both the envelope and letter must be marked ''Attn: Electronic Declaration or Report Request.'' Your request should be on company letterhead and must contain your name or the company's name, your mailing address at the company, the name of the facility, plant site or trading company and its U.S. Code Number, the address of the facility, plant site or trading company (this address may be different from the mailing address), the list of individuals who are authorized to view, edit, or edit and submit declarations and reports on behalf of your company, and the telephone number and name and title of the official responsible for certifying that each individual listed in the request is authorized to view, edit, or edit and submit declarations and reports on behalf of you or your company. Additional information required for submitting electronic declarations and reports may be found on BIS's Web site at *http://www.cwc.gov*. Once you have completed and submitted the necessary certifications, you may be authorized by BIS to view, edit, or edit and submit declarations and reports electronically.

NOTE TO §711.7(b)(1): You must submit a separate request for each facility, plant site or trading company owned by your company (*e.g.*, each site that is assigned a unique U.S. Code Number).

(2) Assignment and use of passwords for facilities, plant sites and trading companies (U.S.C. password) and Web-DESI user accounts (user name and password).

(i) Each person, facility, plant site or trading company authorized to submit declarations and reports electronically will be assigned a password (U.S.C. password) that must be used in conjunction with the U.S.C. Number. Each individual authorized by BIS to view, edit, or edit and submit declarations and reports electronically for a facility, plant site or trading company will be assigned a Web-DESI user account

(user name and password) telephonically by BIS. A Web-DESI user account will be assigned to you only if your company has certified to BIS that you are authorized to act for it in viewing, editing, or editing and submitting electronic declarations and reports under the CWCR.

NOTE TO § 711.7(b)(2)(i): When individuals must have access to multiple Web-DESI accounts, their companies must identify such individuals on the approval request for each of these Web-DESI accounts. BIS will coordinate with such individuals to ensure that the assigned user name and password is the same for each account.

(ii) Your company may reveal the facility, plant site or trading company password (U.S.C. password) only to Web-DESI users with valid passwords, their supervisors, and employees or agents of the company with a commercial justification for knowing the password.

(iii) If you are an authorized Web-DESI account user, you may not:

(A) Disclose your user name or password to anyone;

(B) Record your user name or password, either in writing or electronically;

(C) Authorize another person to use your user name or password; or

(D) Use your user name or password following termination, either by BIS or by your company, of your authorization or approval for Web-DESI use.

(iv) To prevent misuse of the Web-DESI account:

(A) If Web-DESI user account information (*i.e.*, user name and password) is lost, stolen or otherwise compromised, the company and the user must report the loss, theft or compromise of the user account information, immediately, by calling BIS at (703) 235–1335. Within two business days of making the report, the company and the user must submit written confirmation to BIS at the address provided in § 711.6 of the CWCR.

(B) Your company is responsible for immediately notifying BIS whenever a Web-DESI user leaves the employ of the company or otherwise ceases to be authorized by the company to submit declarations and reports electronically on its behalf.

(v) No person may use, copy, appropriate or otherwise compromise a Web-DESI account user name or password assigned to another person. No person, except a person authorized access by the company, may use or copy the facility, plant site or trading company password (U.S.C password), nor may any person steal or otherwise compromise this password.

(c) *Electronic submission of declarations and reports*—(1) *General instructions.* Upon submission of the required certifications and approval of the company's request to use electronic submission, BIS will provide instructions on both the method for transmitting declarations and reports electronically and the process for submitting required supporting documents, if any. These instructions may be modified by BIS from time to time.

(2) *Declarations and reports.* The electronic submission of a declaration or report will constitute an official document as required under parts 712 through 715 of the CWCR. Such submissions must provide the same information as written declarations and reports and are subject to the recordkeeping provisions of part 720 of the CWCR. The company and Web-DESI user submitting the declaration or report will be deemed to have made all representations and certifications as if the submission were made in writing by the company and signed by the certifying official. Electronic submission of a declaration or report will be considered complete upon transmittal to BIS.

(d) *Updating.* A company approved for electronic submission of declarations or reports under Web-DESI must promptly notify BIS of any change in its name, ownership or address. If your company wishes to have an individual added as a Web-DESI user, your company must inform BIS and follow the instructions provided by BIS. Your company should conduct periodic reviews to ensure that the company's designated certifying official and Web-DESI users are individuals whose current responsibilities make it necessary and appropriate that they act for the company in either capacity.

[69 FR 2502, Jan. 16, 2004]

PART 712—ACTIVITIES INVOLVING SCHEDULE 1 CHEMICALS

Sec.

712.1 Round to zero rule that applies to activities involving Schedule 1 chemicals.
712.2 Prohibitions involving imports of Schedule 1 chemicals.
712.3 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.
712.4 New Schedule 1 production facility.
712.5 Advance notification and annual report of all exports and imports of Schedule 1 chemicals to, or from, other States' Parties.
712.6 Frequency and timing of declarations, reports and notifications.
712.7 Amended declaration or report.
SUPPLEMENT NO. 1 TO PART 712—SCHEDULE 1 CHEMICALS

AUTHORITY: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938 (59 FR 59099; 3 CFR, 1994 Comp., p. 950), as amended by E.O. 13094 (63 FR 40803; 3 CFR, 1998 Comp., p. 200); E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73769, Dec. 30, 1999, unless otherwise noted.

§712.1 Round to zero rule that applies to activities involving Schedule 1 chemicals.

(a) See §711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 1 chemicals.

(b) Facilities that produce, export or import mixtures containing less than 0.5% aggregate quantities of Schedule 1 chemicals as unavoidable by-products or impurities may round to zero and are not subject to the provisions of this part 712. Schedule 1 content may be calculated by volume or weight, whichever yields the lesser percent. Note that such mixtures may be subject to regulatory requirements of other federal agencies.

§712.2 Prohibitions involving imports of Schedule 1 chemicals.

(a) You may not import any Schedule 1 chemical unless:

(1) The import is from a State Party;

(2) The import is for research, medical, pharmaceutical, or protective purposes;

(3) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(4) You have notified BIS 45 calendar days prior to the import pursuant to §712.5.

(b)(1) The provisions of paragraph (a) of this section do not apply to the retention, ownership, possession, transfer, or receipt of a Schedule 1 chemical by a department, agency, or other entity of the United States, or by a person described in paragraph (b)(2) of this section, pending destruction of the Schedule 1 chemical;

(2) A person referred to in paragraph (b)(1) of this section is:

(i) Any person, including a member of the Armed Forces of the United States, who is authorized by law or by an appropriate officer of the United States to retain, own, possess transfer, or receive the Schedule 1 chemical; or

(ii) In an emergency situation, any otherwise non-culpable person if the person is attempting to seize or destroy the Schedule 1 chemical.

NOTE TO §712.2: For specific provisions relating to the prior notification of exports of all Schedule 1 chemicals, see §742.18 of the Export Administration Regulations (EAR) (15 CFR parts 730 through 799). For specific provisions relating to license requirements for exports of Schedule 1 chemicals, see §§742.2 and 742.18 of the EAR for Schedule 1 chemicals subject to the jurisdiction of the Department of Commerce and see the International Traffic in Arms Regulations (22 CFR parts 120 through 130) for Schedule 1 chemicals subject to the jurisdiction of the Department of State.

§712.3 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.

(a) *Declaration requirements*—(1) *Initial declaration*. You must complete the forms specified in paragraph (b)(1) of this section, providing a current technical description of your facility or its relevant parts, if you produced Schedule 1 chemicals at your facility in excess of 100 grams aggregate in any one of the calendar years 1997, 1998, or 1999. Note: Do not include production data in your initial declaration. Such information should be included in your annual declaration on past activities. See paragraph (a)(2) of this section.

(2) *Annual declaration on past activities.* You must complete the forms specified in paragraph (b)(2) of this section if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, beginning with calendar year 1997. As a declared Schedule 1 facility, in addition to declaring the production of each Schedule 1 chemical that comprises your aggregate production of Schedule 1 chemicals, you must also declare the total amount of each Schedule 1 chemical used (consumed) and stored at your facility, and domestically transferred from your facility during the previous calendar year, whether or not you produced that Schedule 1 chemical at your facility.

(3) *Annual declaration on anticipated activities.* You must complete the forms specified in paragraph (b)(3) of this section if you anticipate that you will produce at your facility more than 100 grams aggregate of Schedule 1 chemicals in the next calendar year. If you are not already a declared facility, you must complete an initial declaration (see paragraph (a)(1) of this section) 200 calendar days before commencing operations or increasing production which will result in production of more than 100 grams aggregate of Schedule 1 chemicals (see § 712.4).

(b) *Declaration forms to be used*—(1) *Initial declaration.* (i) You must complete the Certification Form, Form 1–1 and Form A if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in calendar year 1997, 1998, or 1999. You must provide a detailed current technical description of your facility or its relevant parts including a narrative statement, a detailed diagram of the declared areas in the facility, and an inventory of equipment in the declared area.

(ii) If you plan to change the technical description of your facility from your initial declaration completed and submitted pursuant to paragraph (a)(1) of this section and § 712.6, you must notify BIS 200 calendar days prior to the change. Such notifications must be made through an amended declaration by completing a Certification Form, Form 1–1 and Form A, including the new description of the facility. See § 712.7 for additional instructions on amending Schedule 1 declarations.

(2) *Annual declaration on past activities.* If you are subject to the declaration requirement of paragraph (a)(2) of this section, you must complete the Certification Form and Forms 1–1, 1–2, 1–2A, 1–2B, and Form A if your facility was involved in the production of Schedule 1 chemicals in the previous calendar year, beginning with calendar year 1997. Form B is optional.

(3) *Annual declaration on anticipated activities.* If you anticipate that you will produce at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the next calendar year you must complete the Certification Form and Forms 1–1, 1–4, and Form A. Form B is optional.

(c) *Quantities to be declared.* If you produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, you must declare the entire quantity of such production, rounded to the nearest gram. You must also declare the quantity of any Schedule 1, Schedule 2 or Schedule 3 precursor chemical used to produce the declared Schedule 1 chemical, rounded to the nearest gram. You must further declare the quantity of each Schedule 1 chemical consumed or stored by, or domestically transferred from, your facility, whether or not the Schedule 1 chemical was produced by your facility, rounded to the nearest gram. In calculating the amount of Schedule 1 chemical you produced, consumed or stored, count only the amount of the Schedule 1 chemical(s) in a mixture, not the total weight of the mixture (i.e., do not count the weight of the solution, solvent, or container).

NOTE TO § 712.3(c): Schedule 1 reaction intermediates which exist or might exist during the course of synthesis to produce non-scheduled chemicals and which cannot be isolated using available technology should not be declared if the reaction is allowed to go to completion, completely consuming the real or hypothetical intermediates.

(d) *''Declared'' Schedule 1 facilities and routine inspections.* Only facilities that produced in excess of 100 grams aggregate of Schedule 1 chemicals in calendar year 1997 or 1998, or during the

previous calendar year, or that anticipate producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year are considered ''declared'' Schedule 1 facilities for the years declared. A ''declared'' Schedule 1 facility is subject to initial and routine inspection by the OPCW (see part 716 of this subchapter).

(e) *Approval of declared Schedule 1 production facilities.* Facilities that submit declarations pursuant to this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BIS within 30 days of receipt by BIS of an annual declaration on past activities or annual declaration on anticipated activities (see paragraphs (a)(2) and (a)(3) of this section). If your facility does not produce more than 100 grams aggregate of Schedule 1 chemicals, no approval by BIS is required.

§712.4 New Schedule 1 production facility.

(a) *Establishment of a new Schedule 1 production facility*. (1) If your facility was not declared under §712.3 in a previous calendar year, and you intend to begin production of Schedule 1 chemicals at your facility in quantities greater than 100 grams aggregate per year for research, medical, or pharmaceutical purposes, you must provide an initial declaration (a current detailed technical description of your facility) to BIS at least 200 calendar days in advance of commencing such production. Such facilities are considered ''new Schedule 1 production facilities'' and are subject to an initial inspection within 200 calendar days of submitting an initial declaration.

(2) New Schedule 1 production facilities that submit an initial declaration pursuant to paragraph (a)(1) of this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BIS within 30 days of receipt by BIS of that initial declaration.

(b) *Types of declaration forms required.* If your new Schedule 1 production facility will produce in excess of 100 grams aggregate of Schedule 1 chemicals, you must complete the Certification Form, Form 1–1 and Form A. You must also provide a detailed technical description of the new facility or its relevant parts, including a detailed diagram of the declared areas in the facility, and an inventory of equipment in the declared areas.

(c) Two hundred days after a new Schedule 1 production facility submits its initial declaration, it is subject to the annual declaration requirements of §712.3(a)(2) and (a)(3).

§712.5 Advance notification and annual report of all exports[1] and imports of Schedule 1 chemicals to, or from, other States Parties.

Pursuant to the Convention, the United States is required to notify the OPCW not less than 30 days in advance of every export or import of a Schedule 1 chemical, in any quantity, to or from another State Party. In addition, the United States is required to provide a report of all exports and imports of Schedule 1 chemicals to or from other States Parties during each calendar year. If you plan to export or import any quantity of a Schedule 1 chemical from or to your declared facility, undeclared facility or trading company, you must notify BIS in advance of the export or import and complete an annual report of exports and imports that actually occurred during the previous calendar year. The United States will transmit to the OPCW the advance notifications and a detailed annual declaration of each actual export or import of a Schedule 1 chemical from/to the United States. Note that the notification and annual report requirements of this section do not relieve you of any requirement to obtain a license from the Department of Commerce for the export of Schedule 1 chemicals subject to the Export Administration Regulations (15 CFR parts 730 through 799) or from the Department of State for the export of Schedule 1 chemicals subject to the International Traffic in Arms Regulations (22 CFR parts 120 through 130). Only facilities that produce in excess of 100 grams aggregate of Schedule 1 chemicals annually are ''declared'' facilities

[1] Effective May 18, 1999, these advance notification and annual report requirements for exports are set forth in parts 742 and 745 of the Export Administration Regulations (EAR) (15 CFR parts 742 and 745).

and are subject to routine inspections pursuant to part 716 of this subchapter.

(a) *Advance notification of exports and imports.* (1) You must notify BIS at least 45 calendar days prior to exporting or importing any quantity of a Schedule 1 chemical listed in Supplement No. 1 to this part to or from another State Party. Note that notifications for exports may be sent to BIS prior to or after submission of a license application to BIS for Schedule 1 chemicals subject to the EAR and controlled under ECCNs 1C350 or 1C351 or to the Department of State for Schedule 1 chemicals controlled under the ITAR. Such notices must be submitted separately from license applications.

(i) Notifications should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and fax numbers, along with the following information:

(A) Chemical name;

(B) Structural formula of the chemical;

(C) Chemical Abstract Service (CAS) Registry Number;

(D) Quantity involved in grams;

(E) Planned date of export or import;

(F) Purpose (end-use) of export or import (i.e., research, medical, pharmaceutical, or protective purpose);

(G) Name(s) of exporter and importer;

(H) Complete street address(es) of exporter and importer;

(I) U.S. export license or control number, if known; and

(J) Company identification number, once assigned by BIS.

(ii) Send the notification by fax to (703) 235–1481 or to the following address for mail and courier deliveries:

Information Technology Team, Bureau of Industry and Security, Department of Commerce, 1555 Wilson Boulevard, Suite 710, Arlington, VA 22209–2405, Attn: ''Advance Notification of Schedule 1 Chemical [Export] [Import].''

(iii) Upon receipt of the notification, BIS will inform the exporter of the earliest date the shipment may occur under the notification procedure. To export the Schedule 1 chemical subject to an export license requirement either under the EAR or the ITAR, the exporter must have applied for and been granted a license (see §§ 742.2 and 742.18 of the EAR, or the ITAR at 22 CFR parts 120 through 130).

(b) *Annual report requirements for exports and imports of Schedule 1 chemicals.* Any person subject to the CWCR that exported or imported any quantity of Schedule 1 chemical to or from another State Party during the previous calendar year, beginning with calendar year 1997, has a reporting requirement under this section.

(1) *Annual report on exports and imports.* Declared and undeclared facilities, trading companies, and any other person subject to the CWCR that exported or imported any quantity of a Schedule 1 chemical to or from another State Party in a previous calendar year, beginning with calendar year 1997, must submit an annual report on exports and imports.

NOTE TO PARAGRAPH (b)(1): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 1 chemicals contained in *reports.* The U.S. Government will add all export and import information contained in *reports* to establish the U.S. national aggregate declaration on exports and imports.

(2) *Report forms to submit.* (i) *Declared Schedule 1 facilities.* (A) If your facility declared production of a Schedule 1 chemical and you also exported or imported any amount of that *same* Schedule 1 chemical, you may report the export or import by:

(*1*) Submitting, along with your declaration, Form 1–3 for that same Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or

(*2*) Submitting, separately from your declaration, a Certification, Form 1–1, and a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(B) If your facility declared production of a Schedule 1 chemical and exported or imported any amount of a different Schedule 1 chemical, you may report the export or import by:

(*1*) Submitting, along with your declaration, a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or

(*2*) Submitting, separately from your declaration, a Certification Form, Form 1–1, and a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared facility, trading company, or any other person subject to the CWCR, and you exported or imported any amount of a Schedule 1 chemical, you must submit a Certification Form, Form 1–1, and a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(c) Paragraph (a) of this section does not apply to the activities and persons set forth in § 712.2(b).

§ 712.6 Frequency and timing of declarations, reports and notifications.

Declarations, reports and notifications required under this part must be postmarked by the appropriate date identified in Table 1 of this section. Required declarations, reports and notifications include:

(a) Initial declaration (technical description);

(b) Annual declaration on past activities (production during the previous calendar year, beginning with 1997);

(c) Annual report on exports and imports from trading companies, facilities and other persons (during the previous calendar year, beginning with 1997);

(d) Annual declaration on anticipated activities (production in the next calendar year, beginning in calendar year 2000 for production anticipated for calendar year 2001);

(e) Advance notification of any export to or import from another State Party; and

(f) Initial declaration of a new Schedule 1 production facility.

TABLE 1 TO § 712.6—DEADLINES FOR SUBMISSION OF SCHEDULE 1 DECLARATIONS

Declarations and notifications	Applicable forms	Due dates
Initial Declaration—Declared facility (technical description).	Certification, 1–1, A, B (optional)	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared facility (past production).	Certification, 1–1, 1–2, 1–2A, 1–2B, 1–3 (if also exported or imported), A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.
Annual report on exports and imports (previous calendar year, starting with 1997) (facility, trading company, other persons).	Certification, 1–1, 1–3, A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 1–1, 1–4, A (as appropriate), B (optional).	August 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000.
Advance Notification of any export to or import from another State Party.	Notify on letterhead. See § 712.5 of this subchapter.	45 calendar days prior to the export or import.
Initial Declaration of a new Schedule 1 facility.	Certification, 1–1, A (as appropriate), B (optional).	200 calendar days before commencing such production.

§ 712.7 Amended declaration or report.

(a) You must submit an amended declaration or report for changes to previously submitted information on chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared Schedule 1 facilities, changes that may affect verification activities, such as changes of owner or operator, company name, address, or inspection point of contact, require an amended declaration. Non-substantive typographical errors and changes to the declaration point of contact do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports.

(c) For undeclared Schedule 1 facilities, trading companies and other persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, point of contact, or non-substantive typographical errors, do not require submission of an amended report and may be corrected in subsequent reports.

(d) If you are required to submit an amended declaration or report pursuant to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities, annual declaration on anticipated activities). Only complete that portion of each form that corrects the previously submitted information.

SUPPLEMENT NO. 1 TO PART 712—SCHEDULE 1 CHEMICALS

	(CAS registry number)
A. Toxic chemicals:	
(1) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates	
e.g. Sarin: O-Isopropyl methylphosphonofluoridate	(107–44–8)
Soman: O-Pinacolyl methylphosphonofluoridate	(96–64–0)
(2) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate	(77–81–6)
(3) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) S–2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts e.g. VX: O-Ethyl S–2-diisopropylaminoethyl methyl phosphonothiolate	(50782–69–9)
(4) Sulfur mustards:	
2-Chloroethylchloromethylsulfide	(2625–76–5)
Mustard gas: Bis(2-chloroethyl)sulfide	(505–60–2)
Bis(2-chloroethylthio)methane	(63869–13–6)
Sesquimustard: 1,2–Bis(2-chloroethylthio)ethane	(3563–36–8)
1,3-Bis(2-chloroethylthio)-n-propane	(63905–10–2)
1,4-Bis(2-chloroethylthio)-n-butane	(142868–93–7)
1,5-Bis(2-chloroethylthio)-n-pentane	(142868–94–8)
Bis(2-chloroethylthiomethyl)ether	(63918–90–1)
O-Mustard: Bis(2-chloroethylthioethyl)ether	(63918–89–8)
(5) Lewisites:	
Lewisite 1: 2-Chlorovinyldichloroarsine	(541–25–3)
Lewisite 2: Bis(2-chlorovinyl)chloroarsine	(40334–69–8)
Lewisite 3: Tris(2-chlorovinyl)arsine	(40334–70–1)
(6) Nitrogen mustards:	
HN1: Bis(2-chloroethyl)ethylamine	(538–07–8)
HN2: Bis(2-chloroethyl)methylamine	(51–75–2)
HN3: Tris(2-chloroethyl)amine	(555–77–1)
(7) Saxitoxin	(35523–89–8)
(8) Ricin	(9009–86–3)
B. Precursors:	
(9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides e.g. DF: Methylphosphonyldifluoride	(676–99–3)
(10) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) O–2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, N-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts e.g. QL: O-Ethyl O–2-diisopropylaminoethyl methylphosphonite	(57856–11–8)
(11) Chlorosarin: O-Isopropyl methylphosphonochloridate	(1445–76–7)
(12) Chlorosoman: O-Pinacolyl methylphosphonochloridate	(7040–57–5)

Notes to Supplement No. 1:

Note 1: Note that the following Schedule 1 chemicals are controlled for export purposes under the Export Administration Regulations (see part 774 of the EAR, the Commerce Control List): 0–Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), Methylphosphonyl difluoride (C.A.S. #676–99–3), Saxitoxin (35523–89–8), Ricin (9009–86–3).

Note 2: All Schedule 1 chemicals not listed in Note 1 to this Supplement are controlled for export purposes by the Office of Defense Trade Control of the Department of State under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

PART 713—ACTIVITIES INVOLVING SCHEDULE 2 CHEMICALS

Sec.

713.1 Prohibition on imports of Schedule 2 chemicals from non-States Parties.
713.2 Declaration on past production of Schedule 2 chemicals for chemical weapons purposes.
713.3 Initial and annual declaration requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.
713.4 Initial and annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals.
713.5 Advance declaration requirements for additionally planned production, processing or consumption of Schedule 2 chemicals.
713.6 Frequency and timing of declarations and reports.
713.7 Amended declaration or report.

SUPPLEMENT NO. 1 TO PART 713—SCHEDULE 2 CHEMICALS

AUTHORITY: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938 (59 FR 59099; 3 CFR, 1994 Comp., p. 950), as amended by E.O. 13094 (63 FR 40803; 3 CFR, 1998 Comp., p. 200); E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73722, Dec. 30, 1999, unless otherwise noted.

§713.1 Prohibition on imports of Schedule 2 chemicals from non-States Parties.

(a) See §711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 2 chemicals. You may not import any Schedule 2 chemical (see Supplement No. 1 to this part) on or after April 29, 2000, from any destination other than a State Party to the Convention. See Supplement No. 1 to part 710 of this subchapter for a list of States that are party to the Convention.

NOTE TO PARAGRAPH (a). See §742.18 of the Export Administration Regulations (15 CFR part 742) for prohibitions that apply to exports of Schedule 2 chemicals on or after April 29, 2000 to non-States Parties and for End-Use Certificate requirements for exports of Schedule 2 chemicals prior to April 29, 2000 to such destinations.

(b) Paragraph (a) of this section does not apply to:

(1) The transfer or receipt of a Schedule 2 chemical from a non-State Party by a department, agency, or other entity of the United States, or by any person, including a member of the Armed Forces of the United States, who is authorized by law, or by an appropriate officer of the United States to transfer or receive the Schedule 2 chemical; or

(2) Mixtures containing Schedule 2 chemicals, if the concentration of each Schedule 2 chemical in the mixture is 10% or less by weight. Note, however, that such mixtures may be subject to regulatory requirements of other federal agencies.

§713.2 Declaration on past production of Schedule 2 chemicals for chemical weapons purposes.

You must complete the Certification Form and Forms 2–1, 2–2, 2–4, Form A, if you produced at your plant site any quantity of a Schedule 2 chemical at any time since January 1, 1946, for chemical weapons purposes. Form B is optional. You must declare the total quantity of such a chemical produced, rounded to the nearest kilogram. Note that you are not subject to routine inspection unless you are a declared facility pursuant to §713.3.

§713.3 Initial and annual declaration requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.

(a) *Declaration of production, processing or consumption of Schedule 2 chemicals for purposes not prohibited by the CWC*—(1) *Quantities of production, processing or consumption that trigger declaration requirements.* You must complete the forms specified in paragraph (b) of this section if you have been or will be involved in the following activities:

(i) *Initial declaration.* You produced, processed or consumed at one or more plants on your plant site during any of the calendar years 1994, 1995, or 1996, a Schedule 2 chemical in excess of the following declaration threshold quantities:

(A) 1 kilogram of chemical BZ: 3–Quinuclidinyl benzilate (see Schedule 2, paragraph A.3 included in Supplement No. 1 to this part);

(B) 100 kilograms of chemical PFIB: 1,1,3,3,3–Pentafluoro-2(trifluoromethyl)-1-propene or 100 kilograms of chemical Amiton: 0,0–Diethyl S-[2-(diethylamino) ethyl] phosphorothiolate and corresponding alkylated or protonated salts (see Schedule 2, paragraphs A.1 and A.2 included in Supplement No. 1 to this part); or

(C) 1 metric ton of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to this part).

NOTE TO PARAGRAPH (a)(1)(i). To determine whether you have an initial declaration requirement for Schedule 2 activities, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity at one or more plants on your plant site in calendar years 1994, 1995, or 1996. For example, if you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ in calendar year 1995, and no plants on your plant site produced, processed

or consumed any Schedule 2 chemical above the applicable threshold quantity in calendar years 1994 or 1996, you have an initial declaration requirement under this paragraph. You must submit three Forms 2–3—one for each of the calendar years 1994, 1995, and 1996—and complete question 2–3.1 on each of the forms to declare production data on BZ for calendar years 1994, 1995 and 1996. For calendar year 1995, you would declare the quantity of BZ actually produced. For calendar years 1994 and 1996, you would declare ''0'' production quantity. Since the plant site did not engage in any other declarable activity (i.e., consumption, processing), you would leave blank questions 2–3.2 and 2–3.3 on Form 2–3 for calendar years 1994, 1995, and 1996. Note that declaring a ''0'' quantity for production in 1994 and 1996, as opposed to leaving the question blank, permits BIS to distinguish the activity that triggered the initial declaration requirement for each year from activities that were not declarable during that period.

(ii) *Annual declaration on past activities.* You produced, processed or consumed at one or more plants on your plant site during any of the previous three calendar years, a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section.

NOTE TO PARAGRAPH (a)(1)(ii). To determine whether you have an annual declaration on past activities requirement for Schedule 2 chemicals, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity at one or more plants on your plant site in any one of the three previous calendar years. For example, for the 1997 declaration period, if you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the applicable threshold quantity in calendar years 1996 or 1997, you still have a declaration requirement under this paragraph for the previous calendar year (1997). However, you must only declare on Form 2–3 (question 2–3.1), production data for calendar year 1997. You would declare ''0'' production quantity because you did not produce BZ above the applicable threshold quantity in calendar year 1997. Since the plant site did not engage in any other declarable activity (i.e., consumption, processing) in the 1995–1997 declaration period, you would leave blank questions 2–3.2 and 2–3.3 on Form 2–3. Note that declaring a ''0'' production quantity for 1997, as opposed to leaving the question blank, permits BIS to distinguish the activity that triggered the declaration requirement from activities that were not declarable during that period.

(iii) *Annual declaration on anticipated activities.* You anticipate that you will produce, process or consume at one or more plants on your plant site during the next calendar year, starting with activities anticipated for calendar year 2001, a Schedule 2 chemical in excess of the applicable declaration threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section.

(2) *Mixtures containing a Schedule 2 chemical.* (i)The quantity of a Schedule 2 chemical contained in a mixture must be counted when determining the total quantity of a Schedule 2 chemical produced, processed, or consumed at your plant only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

(ii) *Counting the amount of the Schedule 2 chemical in a mixture.* If your mixture contains 30% or more concentration of a Schedule 2 chemical, you must count only the amount (weight) of the Schedule 2 chemical in the mixture, not the total weight of the mixture.

(iii) *Determining declaration requirements for production, processing and consumption.* You must include the amount (weight) of a Schedule 2 chemical in a mixture when determining the total production, total processing, or total consumption of that Schedule 2 chemical at a plant on your plant site. If the total amount of the produced, processed or consumed Schedule 2 chemical exceeds the applicable declaration threshold set forth in paragraphs (a)(1)(i)(A) through (C) of this section, you have a declaration requirement. For example, if during calendar year 1997, a plant on your plant site produced a mixture containing 300 kilograms of thiodiglycol in a concentration of 32% and also produced 800 kilograms of thiodiglycol, that plant produced 1100 kilograms and exceeded the declaration threshold of 1 metric ton for that Schedule 2 chemical. You must declare past production of thiodiglycol at that plant site for calendar year 1997. If, on the other hand, a plant on your plant site processed a mixture containing 300 kilograms of

thiodiglycol in a concentration of 25% and also processed 800 kilograms of thiodiglycol in other than mixture form, the total amount of thiodiglycol processed at that plant for CWCR purposes would be 800 kilograms and would not trigger a declaration requirement. This is because the concentration of thiodiglycol in the mixture is less than 30% and therefore did not have to be ''counted'' and added to the other 800 kilograms of processed thiodiglycol at that plant.

(b) *Types of declaration forms to be used*—(1) *Initial declaration.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, and Form A if you produced, processed or consumed at one or more plants on your plant site a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section during any of the three calendar years 1994, 1995, or 1996. Form B is optional. If you are subject to initial declaration requirements, you must include data for each of the calendar years 1994, 1995, and 1996.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, and Form A if one or more plants on your plant site produced, processed or consumed more than the applicable threshold quantity of a Schedule 2 chemical described in paragraphs (a)(1)(i)(A) through (C) of this section in any of the three previous calendar years. Form B is optional. If you are subject to annual declaration requirements, you must include data for the previous calendar year only.

(3) *Annual declaration on anticipated activities.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, 2–3C, and Form A if you plan to produce, process, or consume at any plant on your plant site a Schedule 2 chemical above the applicable threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section during the following calendar year, beginning with activities planned for calendar year 2001. Form B is optional.

(c) *Quantities to be declared*—(1) *Production, processing and consumption of a Schedule 2 chemical above the declaration threshold*—(i) *Initial declaration.* If you are required to complete forms pursuant to paragraph (a)(1)(i) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold quantity for that Schedule 2 chemical for each of the calendar years 1994, 1995, and 1996. Do not aggregate amounts of production, processing or consumption from plants on the plant site that did not individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable threshold levels. For those years in which you produced, processed or consumed the declared chemical below the declaration threshold, you declare ''0'' only for the declared activities.

(ii) *Annual declaration on past activities.* If you are required to complete forms pursuant to paragraph (a)(1)(ii) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold quantity for that Schedule 2 chemical. Do not aggregate amounts of production, processing or consumption from plants on the plant site that did not individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable threshold levels. If in the previous calendar year you produced, processed or consumed below the declaration threshold, but your declaration requirement is triggered because of activities occurring in an earlier year, you declare ''0'' only for the declared activities.

(2) *Rounding.* For the chemical BZ, report quantities to the nearest hundredth of a kilogram (10 grams). For PFIB and the Amiton family, report quantities to the nearest 1 kilogram. For all other Schedule 2 chemicals, report quantities to the nearest 10 kilograms.

(d) *''Declared'' Schedule 2 plant sites.* A plant site that comprises at least one plant that produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section during any of the previous three calendar years or is anticipated

to produce, process or consume a Schedule 2 chemical above the applicable threshold quantity in the next calendar year is a ''declared'' plant site. A plant site that submitted an initial declaration for activities that occurred in 1994, 1995, or 1996 is a ''declared'' Schedule 2 plant site for those years.

(e) *Declared Schedule 2 plant sites subject to routine inspections.* A ''declared'' Schedule 2 plant site is subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons if it produced, processed or consumed in any of the three previous calendar years, or is anticipated to produce, process or consume in the next calendar year, in excess of ten times the applicable declaration threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section (see part 716 of this subchapter). A plant site that submitted an initial declaration for calendar years 1994, 1995, and 1996, and exceeded the applicable inspection threshold is also subject to an initial inspection.

§ 713.4 Initial and annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals.

(a) *Declarations and reports of exports and imports of Schedule 2 chemicals*—(1) *Declarations.* A Schedule 2 plant site that is declared because it produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity, and also exported from or imported to the plant site that same Schedule 2 chemical above the applicable threshold quantity, must submit export and import information as part of its declaration.

NOTE TO PARAGRAPH (a)(1): A declared Schedule 2 plant site may need to declare exports or imports of Schedule 2 chemicals that it produced, processed or consumed above the applicable threshold quantity and also report exports or imports of different Schedule 2 chemicals that it did not produce, process or consume above the applicable threshold quantities.

(2) *Reports.* A declared plant site that does not meet the description of paragraph (a)(1) of this section, and an undeclared plant site or a trading company or any other person subject to the CWCR must submit a report if it exported or imported a Schedule 2 chemical above the applicable threshold quantity.

NOTE TO PARAGRAPH (a)(2): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 2 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to export and import information contained in declarations to establish the U.S. national aggregate declaration on exports and imports.

NOTE TO PARAGRAPHS (a)(1) AND (2): Declared and undeclared plant sites must count, for declaration or report purposes, all exports from and imports to the *entire* plant site, not only from or to individual plants on the plant site.

(b) *Quantities of exports or imports that trigger a declaration or report requirement.* (1) You have a declaration or report requirement and must complete the forms specified in paragraph (d) of this section if you exported or imported a Schedule 2 chemical in excess of the following threshold quantities:

(i) 1 kilogram of chemical BZ: 3–Quinuclidinyl benzilate (See Schedule 2, paragraph A.3 included in Supplement No. 1 to this part);

(ii) 100 kilograms of chemical PFIB: 1,1,3,3,3–Pentafluoro-2(trifluoromethyl)-1-propene or 100 kilograms of Amiton : O,O Diethyl S-[2(diethylamino)ethyl] phosphorothiolate *and* corresponding alkylated or protonated salts (see Schedule 2, paragraphs A.1 and A.2 included in Supplement No.1 to this part);

(iii) 1 metric ton of any chemical listed in Schedule 2, Part B (see Supplement No.1 to this part).

(2) *Mixtures containing a Schedule 2 chemical.* The quantity of a Schedule 2 chemical contained in a mixture must be counted for the declaration or reporting of an export or import only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

NOTE 1 TO PARAGRAPH (b)(2). See § 713.3(a)(2)(ii) for information on counting amounts of Schedule 2 chemicals contained in mixtures and determining declaration and report requirements.

NOTE 2 TO PARAGRAPH (b)(2). The ''30% and above'' mixtures rule applies only for declaration and report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from the Department of Commerce (see §§742.2, 742.18 and 745.2 of the Export Administration Regulations) or from the Department of State (see the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

(c) *Declaration and report requirements*—(1) *Initial declaration.* A plant site described in paragrpah (a)(1) of this section that has an initial declaration requirement for production, processing, or consumption of a Schedule 2 chemical must also declare the export or import of that same Schedule 2 chemical if the amount exported or imported in 1994, 1995 or 1996 exceeded the applicable threshold quantity set forth in paragraph (b)(1)(i) through (iii) of this section. For the initial declaration, the plant site must only declare the export or import information for any of the calendar years (1994, 1995 and/or 1996) in which the export or import exceeded the applicable threshold quantity.

(2) *Initial report on exports and imports.* Declared plant sites described in paragraph (a)(2) of this section, undeclared plant sites, trading companies or any other person subject to the CWCR that exported or imported a Schedule 2 chemical in 1996 in excess of the applicable threshold quantity set forth in paragraph (b) of this section, must submit an initial report on exports or imports for calendar year 1996.

(3) *Annual declaration on past activities.* A plant site described in paragraph (a)(1) that has an annual declaration requirement for production, processing, or consumption of a Schedule 2 chemical for the previous calendar year, beginning in 1997, must also declare the export and/or import of that same Schedule 2 chemical if the amount exceeded the applicable threshold quantity set forth in paragraph (b). The plant site must declare the export or import information for that same Schedule 2 chemical as part of its annual declaration of past activities.

(4) *Annual report on exports and imports.* Declared plant sites described in paragraph (a)(2), and undeclared plant sites, trading companies or any other person subject to the CWCR that exported or imported a Schedule 2 chemical in a previous calendar year, beginning in 1997, in excess of the applicable threshold quantity set forth in paragraphs (b)(1) (i) through (iii) must submit an annual report on exports or imports.

(d) *Types of declaration and report forms to be used*—(1) *Initial declaration.* If you are a declared Schedule 2 plant site as described in paragraph (a)(1), you must complete Form 2–3B in addition to the forms required by §713.3(b)(1). You must complete the forms for each declared Schedule 2 chemical and for each of the calendar years 1994, 1995, and 1996, in which the export or import exceeded the applicable threshold quantity.

(2) *Initial report on exports and imports.* (i) If you are a declared plant site as described in paragraph (a)(2), you may fulfill your reporting requirements by:

(A) Submitting, along with your initial declaration, a Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(B) Submitting, separately from your initial declaration, a Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared plant site or trading company, you must complete the Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(3) *Annual declaration on past activities.* If you are a declared Schedule 2 plant site as described in paragraph (a)(1), you must complete Form 2–3B, in addition to the forms required by §713.3(b)(2), for each declared Schedule 2 chemical exported or imported above the applicable threshold quantity in the previous calendar year.

(4) *Annual report on exports and imports.* (i) If you are a declared plant site as described in paragraph (a)(2), you

may fulfill your annual reporting requirements by:

(A) Submitting, along with your annual declaration on past activities, a Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(B) Submitting, separately from your annual declaration on past activities, a Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared plant site, trading company or any other person subject to the CWCR, you must complete the Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(e) *Quantities to be declared*—(1) *Calculations.* If you exported from or imported to your plant site, trading company, or other location more than the applicable threshold quantity of a Schedule 2 chemical, you must declare or report all exports and imports by destination, and indicate the total amount exported to or imported from each destination. Only indicate the total annual quantity exported to or imported from a specific destination if the total annual quantity to or from that destination is more than 1% of the applicable threshold (i.e., more than 10 grams of BZ, 1 kilogram of PFIB and Amiton and corresponding alkylated or protonated salts, or 10 kilograms of all other Schedule 2 chemicals). However, in determining whether your total exports and imports worldwide for the year in question trigger a declaration or report requirement, you must include all exports and imports, including exports and imports falling within the 1% exemption in your calculation.

(2) *Rounding.* For purposes of declaring or reporting exports and imports of a Schedule 2 chemical, you must total all exports and imports per calendar year per recipient or source destination and then round as follows: for the chemical BZ, the total quantity for each destination should be reported to the nearest hundredth of a kilogram (10 grams); for PFIB and Amiton and corresponding alkylated or protonated salts, the quantity for each destination should be reported to the nearest 1 kilogram; and for all other Schedule 2 chemicals, the total quantity for each destination should be reported to the nearest 10 kilograms.

§ 713.5 Advance declaration requirements for additionally planned production, processing, or consumption of Schedule 2 chemicals.

(a) *Declaration requirements for additionally planned activities.* (1) You must declare additionally planned production, processing, or consumption of Schedule 2 chemicals after the annual declaration on anticipated activities for the next calendar year has been delivered to BIS if:

(i) You plan that a previously undeclared plant on your plant site under § 713.3(a)(1)(iii) will produce, process, or consume a Schedule 2 chemical above the applicable declaration threshold;

(ii) You plan to produce, process, or consume at a plant declared under § 713.3(a)(1)(iii) an additional Schedule 2 chemical above the applicable declaration threshold;

(iii) You plan an additional activity (production, processing, or consumption) at your declared plant above the applicable declaration threshold for a chemical declared under § 713.3(a)(1)(iii);

(iv) You plan to increase the production, processing, or consumption of a Schedule 2 chemical by a plant declared under § 713.3(a)(1)(iii) from the amount exceeding the applicable declaration threshold to an amount exceeding the applicable inspection threshold (see § 716.1(b)(2));

(v) You plan to change the starting or ending date of anticipated production, processing, or consumption declared under § 713.3(a)(1)(iii) by more than three months; or

(vi) You plan to increase your production, processing, or consumption of a Schedule 2 chemical by a declared plant site by 20 percent or more above that declared under § 713.3(a)(1)(iii).

(2) If you must submit a declaration on additionally planned activities because you plan to engage in any of the activities listed in paragraphs (a)(1) (i) through (vi) of this section, you should also declare changes to your declaration relating to the following activities. You do not have to submit an additionally planned declaration if you are only changing the following nonquantitative activities:

(i) Changes to the plant's production capacity;

(ii) Changes or additions to the product group codes for the plant site or the plant(s);

(iii) Changes to the plant's activity status (i.e., dedicated, multipurpose, or other status);

(iv) Changes to the plant's multipurpose activities;

(v) Changes to the plant site's status relating to domestic transfer of the chemical;

(vi) Changes to the plant site's purposes for which the chemical will be produced, processed or consumed; or

(vii) Changes to plant site's status relating to exports of the chemical or the addition of new countries for export (not to exceed 10 countries).

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this part, you must complete the Certification Form and Forms 2–1, 2–2, 2–3, and 2–3C as appropriate. Such forms are due to BIS at least 15 days prior to beginning the additional activity.

§ 713.6 Frequency and timing of declarations and reports.

Declarations and reports required under this part must be postmarked by the appropriate date identified in Table 1 of this section. Required declarations and reports include:

(a) Declaration on past production of Schedule 2 chemicals for chemical weapons (CW) purposes since January 1, 1946;

(b) Initial declaration (production, processing, consumption, export, or import of Schedule 2 chemicals during calendar years 1994, 1995, and 1996);

(c) Initial report on exports and imports from trading companies, plant sites and other persons (during calendar year 1996);

(d) Annual declaration on past activities (production, processing, consumption, export or import of Schedule 2 chemicals during the previous calendar year, beginning with 1997);

(e) Annual report on exports and imports from trading companies, plant sites and other persons (during the previous calendar year, beginning with 1997); and

(f) Annual declaration on anticipated activities (production, processing or consumption during the next calendar year, beginning in calendar year 2000 for activities anticipated for calendar year 2001).

TABLE 1 TO § 713.6—DEADLINES FOR SUBMISSION OF SCHEDULE 2 DECLARATIONS

Declarations	Applicable forms	Due dates
Initial Declaration (for calendar years 1994, 1995, and 1996)—Declared plant site (production, processing, consumption, exports and imports).	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3B (if also exported or imported), A (as appropriate), B (optional).	March 30, 2000.
Initial Report on Exports and Imports (for calendar year 1996)—Plant site, trading company, other persons.	Certification, 2–1, 2–3B, A (as appropriate), B (optional).	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared plant site (production, processing, consumption, exports and imports).	Certification , 2–1, 2–2, 2–3 2–3A, 2–3B (if also exported or imported), A (as appropriate), B (optional).	For 1997, 1998, and 1999. Thereafter, February 28, March 30, 2000.
Annual Report on Exports and Imports (previous calendar year, starting with 1997)—Plant site, trading company, other persons.	Certification, 2–1, 2–3B, A (as appropriate), B (optional).	For 1997, 1998, and 1999. Thereafter, February 28, March 30, 2000.
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3C, A (as appropriate), B (optional).	September 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000.

TABLE 1 TO § 713.6—DEADLINES FOR SUBMISSION OF SCHEDULE 2 DECLARATIONS—Continued

Declarations	Applicable forms	Due dates
Declaration on Additionally Planned Activities—(production, processing and consumption).	Certification, 2–1, 2–3C, A (as appropriate), B (optional).	15 calendar days before the additionally planned activity begins.
Declaration on Past Production of Schedule 2 Chemicals for CW Purposes.	Certification, 2–1, 2–2, 2–4 A (as appropriate), B (optional).	March 30, 2000.

§ 713.7 Amended declaration or report.

(a) You must submit an amended declaration or report for changes to previously submitted information on chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared plant sites subject to inspection, changes that may affect verification activities, such as changes of owner or operator, company name, address, or inspection point of contact require an amended declaration.

(c) For declared plant sites not subject to inspection, undeclared plant sites, trading companies, and other persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, declaration point of contact, or non-substantive typographical errors, do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports.

(d) If you are required to submit an amended declaration or report pursuant to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities). Only complete that portion of each form that corrects the previously submitted information.

SUPPLEMENT NO. 1 TO PART 713—SCHEDULE 2 CHEMICALS

A. Toxic chemicals:	
(1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts	(78–53–5)
(2) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene	(382–21–8)
(3) BZ: 3-Quinuclidinyl benzilate	(6581–06–2)
B. Precursors:	
(4) Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms, e.g. Methylphosphonyl dichloride	(676–97–1)
Dimethyl methylphosphonate	(756–79–6)
Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphono-thiolothionate	(944–22–9)
(5) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides	
(6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates	
(7) Arsenic trichloride	(7784–34–1)
(8) 2,2-Diphenyl-2-hydroxyacetic acid	(76–93–7)
(9) Quinuclidine-3-ol	(1619–34–7)
(10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts	
(11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts	
Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts	(108–01–0)
N,N-Diethylaminoethanol and corresponding protonated salts	(100–37–8)
(12) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts	
(13) Thiodiglycol: Bis(2-hydroxyethyl) sulfide	(111–48–8)
(14) Pinacolyl alcohol: 3,3-Dimethylbutane-2-ol	(464–07–3)

PART 714—ACTIVITIES INVOLVING SCHEDULE 3 CHEMICALS

Sec.

714.1 Declaration on past production of Schedule 3 chemicals for chemical weapons purposes.
714.2 Initial and annual declaration requirements for plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.
714.3 Initial and annual reporting requirements for exports and imports of Schedule 3 chemicals.

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714.5 Frequency and timing of declarations.
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SUPPLEMENT NO. 1 TO PART 714—SCHEDULE 3 CHEMICALS

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73777, Dec. 30, 1999, unless otherwise noted.

§714.1 Declaration on past production of Schedule 3 chemicals for chemical weapons purposes.

(a) See §711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 3 chemicals.

(b) You must complete the Certification Form, Forms 3–1, 3–2, 3–4, Form A if you produced at one or more plants on your plant site any quantity of a Schedule 3 chemical at any time since January 1, 1946, for chemical weapons purposes. Form B is optional. You must declare the total quantity of such chemical produced, rounded to the nearest tenth of a metric ton (or 100 kilograms). You are not subject to routine inspection unless you are a declared facility pursuant to §714.2.

§714.2 Initial and annual declaration requirements for plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.

(a) *Declaration of production of Schedule 3 chemicals for purposes not prohibited by the CWC. (1) Production quantities that trigger the declaration requirement.* You must complete the appropriate forms specified in paragraph (b) of this section if you have produced or anticipate producing a Schedule 3 chemical as follows:

(i) *Initial declaration.* You produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during calendar year 1996.

(ii) *Annual declaration on past activities.* You produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year, beginning with 1997.

(iii) *Annual declaration on anticipated activities.* You anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(2) *Mixtures containing a Schedule 3 chemical.* (i) The quantity of a Schedule 3 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent.

(ii) *Counting the amount of the Schedule 3 chemical in a mixture.* If your mixture contains 80% or more concentration of a Schedule 3 chemical, you must count only the amount (weight) of the Schedule 3 chemical in the mixture, not the total weight of the mixture.

(b) *Types of declaration forms to be used*—(1) *Initial declaration.* You must complete the Certification Form and Forms 3–1, 3–2, 3–3, and Form A if you produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during calendar year 1996. Form B is optional.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Forms 3–1, 3–2, 3–3, and Form A if one or more plants on your plant site produced in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year, beginning with production during calendar year 1997. Form B is optional.

(3) *Annual declaration on anticipated activities.* You must complete the Certification Form, and Forms 3–1 and 3–3 if you anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(c) *Quantities to be declared.* (1) Production of a Schedule 3 chemical in excess of 30 metric tons. If your plant site is subject to the declaration requirements of paragraph (a) of this section, you must declare the range within which the production at your plant site falls (30 to 200 metric tons, 200 to 1,000 metric tons, etc.) as specified on Form 3–3. When specifying the range of production for your plant site, you must aggregate the production quantities of all plants on the plant site that produced the Schedule 3 chemical in

amounts greater than 30 metric tons. You must complete a separate Form 3–3 for each Schedule 3 chemical for which production at your plant site exceeds 30 metric tons.

(2) *Rounding.* To determine the production range into which your plant site falls, add all the production of the declared Schedule 3 chemical during the calendar year from all plants on your plant site that produced the Schedule 3 chemical in amounts exceeding 30 metric tons, and round to the nearest ten metric tons.

(d) *''Declared'' Schedule 3 plant sites.* A plant site that comprises at least one plant that produced in excess of 30 metric tons of a Schedule 3 chemical during the previous calendar year, or that you anticipate will produce more than 30 metric tons of a Schedule 3 chemical in the next calendar year, is a ''declared'' Schedule 3 plant site. A plant site that submitted an initial declaration for 1996 and/or annual declaration on past activities for 1997 or 1998 is a ''declared'' Schedule 3 plant site for the years declared.

(e) *Routine inspections of declared Schedule 3 plant sites.* A ''declared'' Schedule 3 plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (see part 716 of this subchapter) if the declared plants on your plant site produced during the previous calendar year or you anticipate they will produce during the next calendar year in excess of 200 metric tons aggregate of any Schedule 3 chemical. A plant site that submitted an initial declaration for 1996 and/or an annual declaration on past activities for 1997 or 1998, and exceeded the inspection threshold, is also subject to a routine inspection.

§ 714.3 Initial and annual report requirements for exports and imports of Schedule 3 chemicals.

(a) Any person subject to the CWCR that exported from or imported to the United States a Schedule 3 chemical in excess of 30 metric tons in any calendar year, beginning with calendar year 1996, has a reporting requirement under this section.

(1) *Initial report on exports and imports.* Declared plant sites, undeclared plant sites, trading companies, and any other person subject to the CWCR that exported from or imported to the United States in excess of 30 metric tons of a Schedule 3 chemical in calendar year 1996 must submit an initial report on exports and imports.

(2) *Annual report on exports and imports.* Declared plant sites, undeclared plant sites, trading companies, and any other person subject to the CWCR that exported from or imported to the United States in excess of 30 metric tons of a Schedule 3 chemical in a previous calendar year, beginning with calendar year 1997, must submit an annual report on exports and imports.

NOTE 1 TO PARAGRAPHS (a)(1) AND (a)(2). Declared and undeclared plant sites must count, for report purposes, all exports from and imports to the entire plant site, not only from or to individual plants on the plant site.

NOTE 2 TO PARAGRAPHS (a)(1) AND (a)(2): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 3 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to establish the U.S. national aggregate declaration on exports and imports.

(3) *Mixtures containing a Schedule 3 chemical.* The quantity of a Schedule 3 chemical contained in a mixture must be counted for reporting an export or import only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent. For reporting purposes, only count the weight of the Schedule 3 chemical in the mixture, not the entire weight of the mixture.

NOTE TO PARAGRAPH (a)(3). The ''80% and above'' mixtures rule applies only for report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from the Department of Commerce (see §§742.2, 742.18 and 745.2 of the Export Administration Regulations) or from the Department of State (see the International Traffic in Arms Regulations (22 C.F.R. 120 through 130)).

(b) *Types of forms to be used*—(1) *Declared Schedule 3 plant sites.* (i) If your plant site is declared for production of a Schedule 3 chemical (and has completed questions 3–3.1 and 3–3.2 on Form

3–3) and you also exported or imported that same Schedule 3 chemical in excess of 30 metric tons, you may report the export or import by:

(A) Completing question 3–3.3 on Form 3–3 on your declaration for that same Schedule 3 chemical to be reported; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3–1, and a Form 3–3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional.

(ii) If your plant site declared production of a Schedule 3 chemical and exported or imported a different Schedule 3 chemical in excess of 30 metric tons, you may report the export or import by:

(A) Submitting, along with your declaration, a Form 3–3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3–1 and a Form 3.3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional.

(2) If you are an undeclared plant site or trading company, or any other person subject to the CWCR, you must submit a Certification Form, Form 3–1, and a Form 3–3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional.

(c) *Quantities to be reported*—(1) *Calculations.* If you exported from or imported to your plant site or trading company more than 30 metric tons of a Schedule 3 chemical in the previous calendar year, you must report all exports and imports of that chemical by destination, and indicate the total amount exported to or imported from each destination. Only indicate the total annual quantity exported to or imported from a specific destination if the total annual quantity to or from that destination is more than 1% of the applicable threshold (i.e., more than 0.3 metric tons). However, in determining whether your total exports and imports worldwide for the year in question trigger a report requirement, you must include all exports and imports, including exports and imports falling within the 1% exemption in your calculation.

(2) *Rounding.* For purposes of reporting exports and imports of a Schedule 3 chemical, you must total all exports and imports per calendar year per recipient or source destination and then round to the nearest 0.1 metric tons.

NOTE TO §714.3: Under the Convention, the United States is obligated to provide the OPCW a national aggregate annual declaration of the quantities of each Schedule 3 chemical exported and imported. The U.S. Government will *not* submit your company-specific information relating to the export or import of a Schedule 3 chemical reported under this §714.3. The U.S. Government will add all export and import information submitted by various facilities under this section to produce a national aggregate annual declaration of destination-by-destination trade for each Schedule 3 chemical.

§714.4 Advance declaration requirements for additionally planned production of Schedule 3 chemicals.

(a) *Declaration requirements.* (1) You must declare additionally planned production of Schedule 3 chemicals after the annual declaration on anticipated activities for the next calendar year has been delivered to BIS if:

(i) You plan that a previously undeclared plant on your plant site under §714.2(a)(1)(iii) will produce a Schedule 3 chemical above the declaration threshold;

(ii) You plan to produce at a plant declared under §714.2(a)(1)(iii) an additional Schedule 3 chemical above the declaration threshold;

(iii) You plan to increase the production of a Schedule 3 chemical by declared plants on your plant site from the amount exceeding the applicable declaration threshold to an amount exceeding the applicable inspection threshold (see §716.1(b)(3)); or

(iv) You plan to increase the aggregate production of a Schedule 3 chemical at a declared plant site to an amount above the upper limit of the range previously declared under §714.2(a)(1)(iii).

(2) If you must submit a declaration on additionally planned activities because you plan to engage in any of the activities listed in paragraphs (a)(1)(i)

through (iv) of this section, you should also declare any changes to the anticipated purposes of production or product group codes. You do not have to submit a declaration on additionally planned activities if you are only changing your purposes of production or product group codes.

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this section, you must complete the Certification Form and Forms 3–1, 3–2, and 3–3 as appropriate. Such forms are due to BIS at least 15 days in advance of the beginning of the additional or new activity.

§ 714.5 Frequency and timing of declarations.

Declarations and reports required under this part must be postmarked by the appropriate date identified in Table 1 of this section. Required declarations and reports include:

(a) Declaration on past production of any amount of Schedule 3 chemicals for chemical weapons (CW) purposes since January 1, 1946;

(b) Initial declaration (production of Schedule 3 chemicals during calendar year 1996);

(c) Initial report on exports and imports from trading companies, plant sites and other persons (during calendar year 1996);

(d) Annual declaration on past activities (production of Schedule 3 chemicals during the previous calendar year, beginning with 1997);

(e) Annual report on exports and imports from trading companies, plant sites and other persons (during the previous calendar year, beginning with 1997); and

(f) Annual declaration on anticipated activities (production during the next calendar year, beginning in calendar year 2000 for activities anticipated for calendar year 2001).

TABLE 1 TO § 714.5—DEADLINES FOR SUBMISSION OF SCHEDULE 3 DECLARATIONS

Declarations	Applicable forms	Due dates
Initial Declaration (for calendar year 1996)—Declared plant site (production).	Certification, 3–1, 3–2, 3–3 (if also exported or imported), A (as appropriate), B (optional).	March 30, 2000.
Initial Report on Exports and Imports (for calendar year 1996)—Plant site, trading company, other persons.	Certification, 3–1, 3–3.3 and 3–3.4, A (as appropriate), B (optional).	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared plant site (production).	Certification, 3–1, 3–2, 3–3 (if also exported or imported), A (as appropriate), B (optional).	For 1997, 1998, and 1999, March 30, 2000. Thereafter, February 28.
Annual Report on Exports and Imports (previous calendar year, starting with 1997)—Plant site, trading company, other persons.	Certification, 3–1, 3–3.3 and 3–3.4, A (as appropriate), B (optional).	For 1997, 1998, and 1999, March 30, 2000. Thereafter, February 28.
Annual Declaration on Anticipated Activities (Production) (next calendar year).	Certification, 3–1, 3–3.1 and 3–3.2, A (as appropriate), B (optional).	September 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000.
Declaration on Additionally Planned Activities.	Certification, 3–1, 3–3.1 and 3–3.2, A (as appropriate), B (optional).	15 calendar days before the additionally planned activity begins.
Declaration on Past Production of Schedule 3 Chemicals for CW Purposes.	Certification, 3–1, 3–2, 3–4, A (as appropriate), B (optional).	March 30, 2000.

§ 714.6 Amended declaration or report.

(a) You must submit an amended declaration or report for changes to previously submitted information on chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared plant sites subject to inspection, changes that may affect verification activities, such as changes of owner or operator, company name, address, or inspection point of contact, require an amended declaration.

(c) For declared plant sites not subject to inspection, undeclared plant sites, trading companies, and other persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, declaration point of contact, or non-substantive typographical errors, do not require submission of an

amended declaration or report and may be corrected in subsequent declarations or reports.

(d) If you are required to submit an amended declaration or report pursuant to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities). Only complete that portion of each form that corrects the previously submitted information.

SUPPLEMENT NO. 1 TO PART 714—SCHEDULE 3 CHEMICALS

A. Toxic chemicals:	
(1) Phosgene: Carbonyl dichloride	(75–44–5)
(2) Cyanogen chloride	(506–77–4)
(3) Hydrogen cyanide	(74–90–8)
(4) Chloropicrin: Trichloronitromethane	(76–06–2)
B. Precursors:	
(5) Phosphorus oxychloride	(10025–87–3)
(6) Phosphorus trichloride	(7719–12–2)
(7) Phosphorus pentachloride	(10026–13–8)
(8) Trimethyl phosphite	(121–45–9)
(9) Triethyl phosphite	(122–52–1)
(10) Dimethyl phosphite	(868–85–9)
(11) Diethyl phosphite	(762–04–9)
(12) Sulfur monochloride	(10025–67–9)
(13) Sulfur dichloride	(10545–99–0)
(14) Thionyl chloride	(7719–09–7)
(15) Ethyldiethanolamine	(139–87–7)
(16) Methyldiethanolamine	(105–59–9)
(17) Triethanolamine	(102–71–6)

NOTE TO SUPPLEMENT NO. 1: Refer to Supplement No. 1 to part 774 of the Export Administration Regulations (the Commerce Control List), ECCN 1C355, Related Controls for chemicals controlled under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

PART 715—ACTIVITIES INVOLVING UNSCHEDULED DISCRETE ORGANIC CHEMICALS (UDOCs)

Sec.

715.1 Initial and annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).

715.2 Frequency and timing of declarations.

715.3 Amended declaration.

SUPPLEMENT NO. 1 TO PART 715—DEFINITION OF AN UNSCHEDULED DISCRETE ORGANIC CHEMICAL

SUPPLEMENT NO. 2 TO PART 715—EXAMPLES OF UNSCHEDULED DISCRETE ORGANIC CHEMICALS (UDOCS) AND UDOC PRODUCTION

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73780, Dec. 30, 1999, unless otherwise noted.

§715.1 Initial and annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).

(a) See §711.6 of this subchapter for information on obtaining the forms you will need to declare production of unscheduled discrete organic chemicals. *Declaration of production by synthesis of UDOCs for purposes not prohibited by the CWC*—(1) *Production quantities that trigger the declaration requirement.* You must complete the forms specified in paragraph (b) of this section if your plant site produced by synthesis:

(i) In excess of 200 metric tons aggregate of all UDOCs (including *all* UDOCs containing the elements phosphorus, sulfur or fluorine, referred to as ''PSF-chemicals'') in calendar year 1996 (for the initial declaration) or the previous calendar year beginning with 1997 (for an annual declaration); or

(ii) In excess of 30 metric tons of an individual PSF-chemical at one or

more plants in calendar year 1996 (for the initial declaration) or in the previous calendar year beginning with 1997 (for an annual declaration).

(2) *UDOCs subject to declaration requirements under this part.* (i) UDOCs subject to declaration requirements under this part are those produced by synthesis that have been isolated for:

(A) Use; or

(B) Sale as a specific end product.

(ii) *Exemptions.* (A) Polymers and oligomers consisting of two or more repeating units which are formed by the chemical reaction of monomeric or polymeric substances;

(B) Chemicals and chemical mixtures produced through a biological or biomediated process;

(C) Products from the refining of crude oil, including sulfur-containing crude oil;

(D) Metal carbides (i.e., chemicals consisting only of metal and carbon); and

(E) UDOCs produced by synthesis that are ingredients or by-products in foods designed for consumption by humans and/or animals.

NOTE TO PARAGRAPH (a)(2): See Supplement No. 2 to this part for examples of UDOCs subject to the declaration requirements of this part, and for examples of activities that are not considered production by synthesis.

(3) *Exemptions for UDOC plant sites.* UDOC plant sites that exclusively produced hydrocarbons or explosives are exempt from UDOC declaration requirements. For the purposes of this part, the following definitions apply for hydrocarbons and explosives:

(i) Hydrocarbon means any organic compound that contains only carbon and hydrogen; and

(ii) Explosive means a chemical (or a mixture of chemicals) that is included in Class 1 of the United Nations Organization hazard classification system.

(b) *Types of declaration forms to be used*—(1) *Initial declaration.* You must complete the Certification Form and Form UDOC (consisting of two pages). Attach Form A as appropriate; Form B is optional.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Form UDOC (consisting of two pages). Attach Form A as appropriate; Form B is optional.

(c) *''Declared'' UDOC plant sites.* A plant site that produced by synthesis in excess of 200 metric tons aggregate of all UDOCs (including all PSF-chemicals), or that comprises at least one plant that produced by synthesis in excess of 30 metric tons of an individual PSF-chemical during the previous year, is a ''declared'' UDOC plant site. A plant site that submitted an initial declaration for 1996 and/or annual declaration on past activities for 1997 or 1998 is a ''declared'' UDOC plant site for the years declared.

(d) *Routine inspections of declared UDOC plant sites.* A ''declared'' UDOC plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (see part 716 of this subchapter) if it produced by synthesis during the previous calendar year more than 200 metric tons aggregate of UDOCs. A plant site that submitted an initial declaration for 1996 and/or annual declaration on past activities for 1997 or 1998, and exceeded the inspection threshold, is also subject to a routine inspection.

§ 715.2 Frequency and timing of declarations.

Declarations required under this part must be postmarked by the appropriate dates identified in Table 1 of this section. Required declarations include:

(a) Initial declaration (production during calendar year 1996).

(b) Annual declaration on past activities (production during the previous calendar year, beginning with 1997).

TABLE 1 TO § 715.2—DEADLINES FOR SUBMISSION OF DECLARATIONS FOR UNSCHEDULED DISCRETE ORGANIC CHEMICAL (UDOC) FACILITIES

Declarations	Applicable forms	Due dates
Initial Declaration (calendar year 1996)—Declared plant site ...	Certification, UDOC, A (as appropriate), B (optional).	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared plant site.	Certification, UDOC, A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.

§ 715.3 Amended declaration.

(a) Amended declarations are required to correct certain inaccuracies in a previously submitted declaration. These amended declarations are necessary to change a production range above the amount originally declared, or the production of a PSF-chemical above 30 metric tons by a plant not previously counted as a PSF-plant.

(b) Changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, point of contact, or non-substantive typographical errors, do not require submission of an amended declaration and may be corrected in subsequent declarations.

(c) If you are required to submit an amended declaration pursuant to paragraph (a) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities). Only complete that portion of each form that amends the previously submitted information.

SUPPLEMENT NO. 1 TO PART 715—DEFINITION OF AN UNSCHEDULED DISCRETE ORGANIC CHEMICAL

Unscheduled discrete organic chemical means any chemical: (1) belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned; and (2) that is not contained in the Schedules of Chemicals (see Supplements No. 1 to parts 712 through 714 of this subchapter). Unscheduled discrete organic chemicals subject to declaration under this part are those produced by synthesis that are isolated for use or sale as a specific end-product.

NOTE: Carbon oxides consist of chemical compounds that contain only the elements carbon and oxygen and have the chemical formula C_xO_y, where x and y denote integers. The two most common carbon oxides are carbon monoxide (CO) and carbon dioxide (CO_2). Carbon sulfides consist of chemical compounds that contain only the elements carbon and sulfur, and have the chemical formula C_aS_b, where a and b denote integers. The most common carbon sulfide is carbon disulfide (CS_2). Metal carbonates consist of chemical compounds that contain a metal (i.e., the Group I Alkalis, Groups II Alkaline Earths, the Transition Metals, or the elements aluminum, gallium, indium, thallium, tin, lead, bismuth or polonium), and the elements carbon and oxygen. Metal carbonates have the chemical formula $M_d(CO_3)_e$, where d and e denote integers and M represents a metal. Common metal carbonates are sodium carbonate (Na_2CO_3) and calcium carbonate ($CaCO_3$). In addition, metal carbides or other compounds consisting of only a metal, as described above, and carbon (e.g., calcium carbide (CaC_2)), are exempt from declaration requirements (see § 715.1(a)(2)(ii)(D) of this part).

SUPPLEMENT NO. 2 TO PART 715—EXAMPLES OF UNSCHEDULED DISCRETE ORGANIC CHEMICALS (UDOCS) AND UDOC PRODUCTION

(1) Examples of UDOCs not subject to declaration include:

(i) UDOCs produced coincidentally as by-products that are not isolated for use or sale as a specific end product, and are routed to, or escape from, the waste stream of a stack, incinerator, or waste treatment system or any other waste stream;

(ii) UDOCs, contained in mixtures, which are produced coincidentally and not isolated for use or sale as a specific end-product;

(iii) UDOCs produced by recycling (i.e., involving one of the processes listed in paragraph (3) of this supplement) of previously declared UDOCs;

(iv) UDOCs produced by the mixing (i.e., the process of combining or blending into one mass) of previously declared UDOCs; and

(v) Intermediate UDOCs used in a single or multi-step process to produce another declared UDOC.

(2) Examples of UDOCs that you must declare under part 715 include, but are not limited to, the following, unless they are not isolated for use or sale as a specific end product:

(i) Acetophenone (CAS # 98–86–2);

(ii) 6–Chloro-2-methyl aniline (CAS # 87–63–8);

(iii) 2–Amino-3-hydroxybenzoic acid (CAS # 548–93–6); and

(iv) Acetone (CAS # 67–64–1).

(3) Examples of activities that are not considered production by synthesis under part 715 and, thus, the end products resulting from such activities would not be declared under part 715, are as follows:

(i) Fermentation;

(ii) Extraction;

(iii) Purification;

(iv) Distillation; and

(v) Filtration.

PART 716—INITIAL AND ROUTINE INSPECTIONS OF DECLARED FACILITIES

Sec.
716.1 General information on the conduct of initial and routine inspections.
716.2 Purposes and types of inspections of declared facilities.
716.3 Consent to inspections; warrants for inspections.
716.4 Scope and conduct of inspections.
716.5 Notification, duration and frequency of inspections.
716.6 Facility agreements.
716.7 Samples.
716.8 On-site monitoring of Schedule 1 facilities.
716.9 Report of inspection-related costs.
SUPPLEMENT NO. 1 TO PART 716—NOTIFICATION, DURATION, AND FREQUENCY OF INSPECTIONS
SUPPLEMENT NO. 2 TO PART 716—SCHEDULE 1 MODEL FACILITY AGREEMENT
SUPPLEMENT NO. 3 TO PART 716—SCHEDULE 2 MODEL FACILITY AGREEMENT

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73782, Dec. 30, 1999, unless otherwise noted.

§716.1 General information on the conduct of initial and routine inspections.

This part provides general information about the conduct of initial and routine inspections of declared facilities subject to inspection under CWC Verification Annex Part VI (E), Part VII(B), Part VIII(B) and Part IX(B). See part 717 of this subchapter for provisions concerning challenge inspections.

(a) *Overview.* Each State Party to the CWC, including the United States, has agreed to allow certain inspections of declared facilities by inspectors employed by the Organization for the Prohibition of Chemical Weapons (OPCW) to ensure that activities are consistent with obligations under the Convention. The Department of Commerce is responsible for leading, hosting and escorting inspections of all facilities subject to the provisions of this subchapter (see §710.2 of this subchapter).

(b) *Declared facilities subject to initial and routine inspections*—(1) *Schedule 1 facilities.* (i) Your declared facility is subject to inspection if it produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year or anticipates producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year.

(ii) If you are a new Schedule 1 production facility pursuant to §712.4 of this subchapter, your facility is subject to an initial inspection within 200 days of submitting an initial declaration.

(iii) If your declared facility submitted an annual declaration on past activities for calendar year 1997 or 1998, you are subject to an initial inspection.

NOTE TO PARAGRAPH (b)(1): All Schedule 1 facilities submitting a declaration are subject to inspection.

(2) *Schedule 2 plant sites.* (i) Your declared plant site is subject to inspection if at least one plant on your plant site produced, processed or consumed, in any of the three previous calendar years, or you anticipate that at least one plant on your plant site will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the following:

(A) 10 kg of chemical BZ: 3–Quinuclidinyl benzilate (see Schedule 2, Part A, paragraph 3 in Supplement No. 1 to part 713 of this subchapter);

(B) 1 metric ton of chemical PFIB: 1,1,3,3,3–Pentafluoro-2(trifluoromethyl)-1-propene or any chemical belonging to the Amiton family (see Schedule 2, Part A, paragraphs 1 and 2 in Supplement No. 1 to part 713 of this subchapter); or

(C) 10 metric tons of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to part 713 of this subchapter).

(ii) If your declared plant site submitted an initial declaration for calendar years 1994, 1995 and 1996, and at least one plant on your plant site produced a Schedule 2 chemical during any one of those three years in excess of the applicable inspection threshold quantity set forth in paragraphs (b)(2)(i)(A) through (C) of this section, you are subject to an initial inspection.

NOTE TO PARAGRAPH (b)(2): The applicable inspection threshold quantity for Schedule 2 plant sites is ten times higher than the applicable declaration threshold quantity. Only declared plant sites, comprising at

least one declared plant that exceeds the applicable inspection threshold quantity, are subject to inspection.

(3) *Schedule 3 plant sites.* (i) Your declared plant site is subject to inspection if the declared plants on your plant site produced during the previous calendar year, or you anticipate will produce in the next calendar year, in excess of 200 metric tons aggregate of any Schedule 3 chemical (see Supplement No. 1 to part 714 of this subchapter).

(ii) If your declared plant site submitted an initial declaration for calendar year 1996 and/or annual declaration on past activities for calendar year 1997 or 1998, and exceeded the inspection threshold set forth in paragraph (b)(3)(i) of this section, you are subject to a routine inspection.

NOTE TO PARAGRAPH (b)(3): The methodology for determining a declarable and inspectable plant site is different. A Schedule 3 plant site that submits a declaration is subject to inspection only if the aggregate production of a Schedule 3 chemical at all declared plants on the plant site exceeds 200 metric tons.

(4) *Unscheduled discrete organic chemical plant sites.* (i) Your declared plant site is subject to inspection if it produced by synthesis more than 200 metric tons aggregate of unscheduled discrete organic chemicals during the previous calendar year.

(ii) If your declared plant site submitted an initial declaration for calendar year 1996 and/or annual declaration on past activities for calendar year 1997 or 1998, and exceeded the inspection threshold set forth in paragraph (b)(4)(i) of this section, you are subject to a routine inspection.

NOTE 1 TO PARAGRAPH (b)(4): You must include amounts of unscheduled discrete organic chemicals containing phosphorus, sulfur or fluorine in the calculation of your plant site's aggregate production of unscheduled discrete organic chemicals.

NOTE 2 TO PARAGRAPH (b)(4): All UDOC plant sites that submit a declaration based on §715.1(a)(i) of this subchapter are subject to a routine inspection.

(c) *Responsibilities of the Department of Commerce.* As the host and escort for the international Inspection Team for all inspections of facilities subject to the provisions of this subchapter under this part, the Department of Commerce will: lead on-site inspections; provide Host Team notification to the facility of an impending inspection; take appropriate action to obtain an administrative warrant in the event the facility does not consent to the inspection; dispatch an advance team to the vicinity of the site to provide administrative and logistical support for the impending inspection and, upon request, to assist the facility with inspection preparation; escort the Inspection Team on-site throughout the inspection process; assist the Inspection Team with verification activities; negotiate the development of a site-specific facility agreement, if appropriate, during an initial inspection of a facility (see §716.6); and ensure that an inspection adheres to the Convention, the Act and any warrant issued thereunder, and a site-specific facility agreement, if concluded.

§716.2 Purposes and types of inspections of declared facilities.

(a) *Schedule 1 facilities*—(1) *Purposes of inspections.* The aim of inspections of Schedule 1 facilities is to verify that:

(i) The facility is not used to produce any Schedule 1 chemical, except for the declared Schedule 1 chemicals;

(ii) The quantities of Schedule 1 chemicals produced, processed or consumed are correctly declared and consistent with needs for the declared purpose; and

(iii) The Schedule 1 chemical is not diverted or used for purposes other than those declared.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 1 facilities, in addition to the verification activities listed in paragraph (a)(1) of this section, the Host Team and the Inspection Team will draft site-specific facility agreements (see §716.6) for the conduct of routine inspections.

(ii) *Routine inspections.* During routine inspections of declared Schedule 1 facilities, the verification activities listed in paragraph (a)(1) of this section will be carried out pursuant to site-specific facility agreements (§716.6) developed during the initial inspections and

concluded between the U.S. Government and the OPCW pursuant to the Convention.

(b) *Schedule 2 plant sites*—(1) *Purposes of inspections.* (i) The general aim of inspections of declared Schedule 2 plant sites is to verify that activities are in accordance with obligations under the Convention and consistent with the information provided in declarations. Particular aims of inspections of declared Schedule 2 plant sites are to verify:

(A) The absence of any Schedule 1 chemical, especially its production, except if in accordance with the provisions of the Convention;

(B) Consistency with declarations of levels of production, processing or consumption of Schedule 2 chemicals; and

(C) That Schedule 2 chemicals are not diverted to activities prohibited under the Convention.

(ii) During initial inspections, inspectors shall collect information to determine the frequency and intensity of subsequent inspections by assessing the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site and the nature of the activities carried out there. The inspectors will take the following criteria into account, inter alia:

(A) The toxicity of the scheduled chemicals and of the end-products produced with them, if any;

(B) The quantity of the scheduled chemicals typically stored at the inspected site;

(C) The quantity of feedstock chemicals for the scheduled chemicals typically stored at the inspected site;

(D) The production capacity of the Schedule 2 plants; and

(E) The capability and convertibility for initiating production, storage and filling of toxic chemicals at the inspected site.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 2 plant sites, in addition to the verification activities listed in paragraph (b)(1) of this section, the Host Team and the Inspection Team will generally draft site-specific facility agreements for the conduct of routine inspections (see § 716.6).

(ii) *Routine inspections.* During routine inspections of declared Schedule 2 plant sites, the verification activities listed in paragraph (b)(1) of this section will be carried out pursuant to any appropriate site-specific facility agreements developed during the initial inspections (see § 716.6), and concluded between the U.S. Government and the OPCW pursuant to the Convention and the Act.

(c) *Schedule 3 plant sites*—(1) *Purposes of inspections.* The general aim of inspections of declared Schedule 3 plant sites is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared Schedule 3 plant sites, in addition to the verification activities listed in paragraph (c)(1) of this section, the Host Team and the Inspection Team may draft site-specific facility agreements for the conduct of subsequent routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared Schedule 3 plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

(d) *Unscheduled Discrete Organic Chemicals plant sites.* Declared unscheduled discrete organic chemical (UDOC) plant sites will be subject to inspection beginning April 29, 2000.

(1) *Purposes of inspections.* The general aim of inspections of declared UDOC plant sites is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared UDOC plant

sites, in addition to the verification activities listed in paragraph (d)(1) of this section, the Host Team and the Inspection Team may develop draft site-specific facility agreements for the conduct of subsequent routine inspections (see §716.6). Although the Convention does not require facility agreements for declared UDOC plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

§716.3 Consent to inspections; warrants for inspections.

(a) The owner, operator, occupant or agent in charge of a facility may consent to an initial or routine inspection. The individual giving consent on behalf of the facility represents that he or she has the authority to make this decision for the facility.

(b) In instances where consent is not provided by the owner, operator, occupant or agent in charge for an initial or routine inspection, the Department of Commerce intends to seek administrative warrants as provided by the Act.

§716.4 Scope and conduct of inspections.

(a) *General.* Each inspection shall be limited to the purposes described in §716.2 and shall be conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(b) Scope. (1) Description of inspections. During inspections, inspectors will receive a pre-inspection briefing from facility representatives; visually inspect the facilities or plants producing scheduled chemicals or UDOCs, which may include storage areas, feed lines, reaction vessels and ancillary equipment, control equipment, associated laboratories, first aid or medical sections, and waste and effluent handling areas, as necessary to accomplish their inspection; examine relevant records; and may take samples as provided by the Convention, the Act and consistent with the requirements set forth by the Director of the United States National Authority (USNA) at 22 CFR part 103, and the facility agreement, if applicable.

(2) *Scope of consent.* When an owner, operator, occupant, or agent in charge of a facility consents to an initial or routine inspection, he or she is consenting to provide access to the Inspection Team and Host Team to any area of the facility, any item located on the facility, interviews with facility personnel, and any records necessary for the Inspection Team to complete its mission. When consent is granted for an inspection, the owner, operator, occupant, or agent in charge agrees to provide the same degree of access provided for under section 305 of the Act. The determination of whether the Inspection Team's request to inspect any area, building, item or record is reasonable is the responsibility of the Host Team Leader.

(c) *Pre-inspection briefing.* Upon arrival at the inspection site and before commencement of the inspection, facility representatives will provide to the Inspection Team and Host Team a pre-inspection briefing on the facility, the activities carried out there, safety measures, and administrative and logistical arrangements necessary for the inspection, which may be aided with the use of maps and other documentation as deemed appropriate by the facility. The time spent for the briefing will be limited to the minimum necessary and may not exceed three hours.

(1) The pre-inspection briefing will address:

(i) Plant site safety and alarms;

(ii) Activities, business and manufacturing operations;

(iii) Physical layout;

(iv) Delimitation of declared facility;

(v) Scheduled chemicals/chemistries (declared and undeclared);

(vi) Process flow;

(vii) Units specific to declared operations; and

(viii) Administrative and logistic information.

(2) The pre-inspection briefing may also address, inter alia:

(i) Introduction of key facility personnel;

(ii) Management, organization and history;

(iii) Confidential business information concerns;

(iv) Types and location of records/documents;

(v) Data declaration updates/revisions;

(vi) Draft facility agreement, if applicable; and

(vii) Proposed inspection plan.

(d) *Visual plant inspection.* The Inspection Team may visually inspect the declared plant or facility and other areas of the plant site or facility as agreed by the Host Team Leader after consulting with the facility representative.

(e) *Records review.* The facility must have available for the Inspection Team to review, on the inspection site, access to all supporting materials and documentation used by the facility to prepare declarations and to comply with the CWCR (see §§ 721.1 and 721.2 of this subchapter). Such access may be to paper copies or via electronic remote access by computer during the inspection period or as otherwise agreed upon by the Inspection Team and Host Team Leader.

(f) *Effect of facility agreements.* Routine inspections at facilities for which the United States has concluded a facility agreement with the OPCW will be conducted in accordance with the facility agreement. The existence of a facility agreement does not in any way limit the right of the owner, operator, occupant, or agent in charge of the facility to withhold consent to an inspection request.

(g) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(h) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety. Such health and safety regulations and requirements will be set forth in, but will not necessarily be limited to, the facility agreement, if applicable.

(i) *Preliminary factual findings.* Upon completion of an inspection, the Inspection Team will meet with the Host Team and facility personnel to review the written preliminary findings of the Inspection Team and to clarify ambiguities. The Host Team will discuss the preliminary findings with the facility, and the Host Team Leader will take into consideration the facility's input when providing official comment on the preliminary findings to the Inspection Team. This meeting will be completed not later than 24 hours after the completion of the inspection.

§ 716.5 Notification, duration and frequency of inspections.

(a) *Notification.* (1)(i) *Content of notice.* Inspections of facilities may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises to be inspected. The Department of Commerce will also provide a separate Host Team notification to the inspection point of contact identified in declarations submitted by the facility. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, the Department of Commerce, or if the Department of Commerce is unable, the Federal Bureau of Investigation, may post notice prominently at the facility to be inspected. The notice shall include all appropriate information provided by the OPCW to the USNA concerning:

(A) The type of inspection;

(B) The basis for the selection of the facility or location for the type of inspection sought;

(C) The time and date that the inspection will begin and the period covered by the inspection; and

(D) The names and titles of the inspectors.

(ii) In addition to appropriate information provided by the OPCW in its

notification to the USNA, the Department of Commerce's Host Team notification will request that the facility indicate whether it will consent to an inspection, and will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities. If a facility does not agree to provide consent to an inspection within four hours of receipt of the Host Team notification, BIS intends to seek an administrative warrant.

(iii) The following table sets forth the notification procedures for inspection:

TABLE TO § 716.5(a)(1)

Activity	Agency action	Facility action
(A) OPCW notification of inspection.	(*1*) U.S. National Authority transmits actual written notice and inspection authorization to the owner and operator, occupant, or agent in charge via facsimile within 6 hours.	(*i*)Acknowledge receipt of fax.
	(*2*) Upon notification from the U.S. National Authority, BIS immediately transmits Host Team notification via facsimile to the inspection point of contact to ascertain whether the facility (1) grants consent and (2) requests assistance in preparing for the inspection. In absence of consent within four hours of transmission, BIS intends to seek an administrative warrant.	(*i*) Indicates whether it grants consent. (*ii*) May request advance team support. No requirement for reimbursement of U.S. Government's services.
(B) Preparation for inspection ..	(*1*) BIS advance team arrives in the vicinity of the facility to be inspected 1–2 days after OPCW notification for logistical and administrative preparations.	(*i*) If advance team support is provided, facility works with the advance team on inspection-related issues.

(2) *Timing of notice.* (i) *Schedule 1 facilities.* For declared Schedule 1 facilities, the Technical Secretariat will notify the USNA of an initial inspection not less than 72 hours prior to arrival of the inspection team in the United States, and will notify the USNA of a routine inspection not less than 24 hours prior to arrival of the Inspection Team in the United States. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide Host Team notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the USNA of the inspection.

(ii) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 48 hours prior to arrival of the Inspection Team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide Host Team notice to the inspection point of contact at the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(iii) *Schedule 3 and unscheduled discrete organic chemical plant sites.* For declared Schedule 3 and unscheduled discrete organic chemical plant sites, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 120 hours prior to arrival of the Inspection Team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide Host Team notice to the inspection point of contact of the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(b) *Period of inspections*—(1) *Schedule 1 facilities.* For a declared Schedule 1 facility, the Convention does not specify

a maximum duration for an initial inspection. The estimated period of routine inspections will be as stated in the facility agreement, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected facility on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4 (c) and (i) for a description of these activities.

(2) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the maximum duration of initial and routine inspections shall be 96 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4 (c) and (i) for a description of these activities.

(3) *Schedule 3 and discrete organic chemical plant sites.* For declared Schedule 3 or unscheduled discrete organic chemical plant sites, the maximum duration of initial and routine inspections shall be 24 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4 (c) and (i) for a description of these activities.

(c) *Frequency of inspections.* The frequency of inspections is as follows:

(1) *Schedule 1 facilities.* As provided by the Convention, the frequency of inspections at declared Schedule 1 facilities is determined by the OPCW based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out at the facility. The frequency of inspections will be stated in the facility agreement.

(2) *Schedule 2 plant sites.* As provided by the Convention and the Act, the maximum number of inspections at declared Schedule 2 plant sites is 2 per calendar year per plant site. The OPCW will determine the frequency of routine inspections for each declared Schedule 2 plant site based on the inspectors' assessment of the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site, and the nature of the activities carried out there. The frequency of inspections will be stated in the facility agreement, if applicable.

(3) *Schedule 3 plant sites.* As provided by the Convention, no declared Schedule 3 plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and unscheduled discrete organic chemical plant sites in the United States may not exceed 20 per calendar year.

(4) *Unscheduled Discrete Organic Chemical plant sites.* As provided by the Convention, no declared UDOC plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and unscheduled discrete organic chemical plant sites in the United States may not exceed 20 per calendar year.

§ 716.6 Facility agreements.

(a) *Description and requirements.* A facility agreement is a site-specific agreement between the U.S. Government and the OPCW. Its purpose is to define procedures for inspections of a specific declared facility that is subject to inspection because of the type or amount of chemicals it produces, processes or consumes.

(1) *Schedule 1 facilities.* The Convention requires that facility agreements be concluded between the United States and the OPCW for all declared Schedule 1 facilities.

(2) *Schedule 2 plant sites.* The USNA will ensure that such facility agreements are concluded with the OPCW unless the owner, operator, occupant or agent in charge of the plant site and the OPCW Technical Secretariat agree

that such a facility agreement is not necessary.

(3) *Schedule 3 and unscheduled discrete organic chemical plant sites.* If the owner, operator, occupant or agent in charge of a declared Schedule 3 or unscheduled discrete organic chemical plant site requests a facility agreement, the USNA will ensure that a facility agreement for such a plant site is concluded with the OPCW.

(b) *Notification; negotiation of draft and final facility agreements; and conclusion of facility agreements.* Prior to the development of a facility agreement, the Department of Commerce shall notify the owner, operator, occupant, or agent in charge of the facility, and if the owner, operator, occupant or agent in charge so requests, the notified person may participate in preparations with Department of Commerce representatives for the negotiation of such an agreement. During the initial inspection of a declared facility, the Inspection Team and the Host Team will negotiate a draft facility agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or agent in charge of the facility may observe facility agreement negotiations between the U.S. Government and OPCW. As a general rule, BIS will consult with the affected facility on the contents of the agreements and take facility comments into consideration during negotiations. The Department of Commerce will participate in the negotiation of, and approve, all final facility agreements with the OPCW. Facilities will be notified of and have the right to observe final facility agreement negotiations between the United States and OPCW to the maximum extent practicable, consistent with the Convention. Prior to the conclusion of a final facility agreement, the affected facility will have an opportunity to comment on the facility agreement. BIS will give consideration to such comments prior to approving final facility agreements with the OPCW. The United States National Authority shall ensure that facility agreements for Schedule 1, Schedule 2, Schedule 3 and unscheduled discrete organic chemical facilities are concluded, as appropriate, with the OPCW in coordination with the Department of Commerce.

(c) *Format and content.* Schedule 1 and Schedule 2 model facility agreements are included in Supplement No. 2 and Supplement No. 3 to this part. These model facility agreements implement the general provisions of the Convention pertaining to inspections, including health and safety procedures, confidentiality of information, media and public relations, information about the facility, inspection equipment, pre-inspection activities, conduct of the inspection (including access to and inspection of areas, buildings and structures, access to and inspection of records and documentation, arrangements for interviews of facility personnel, photographs, sampling, and measurements), and logistical arrangements for the inspectors, such as communications and lodging. Attachments to the facility agreements will provide site-specific information such as working hours, special safety and health procedures, as well as site-specific agreements as to documents and records to be provided, specific areas of a facility to be inspected, site diagrams, sampling, photography, interview procedures, use of inspection equipment, procedures for protection of confidential business information, and administrative arrangements.

(d) *Further information.* For further information about facility agreements, please write or call: Inspection Management Team, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Room 6087B, Washington, D.C. 20230–0001, Telephone: (202) 482–6114.

§ 716.7 Samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103.

§ 716.8 On-site monitoring of Schedule 1 facilities.

Declared Schedule 1 facilities are subject to verification by monitoring with on-site instruments as provided

by the Convention. For facilities subject to the CWCR, however, such monitoring is not anticipated. The U.S. Government will ensure that any monitoring that may be requested by the OPCW is carried out pursuant to the Convention and U.S. law.

§ 716.9 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to this subchapter during a given calendar year must report to BIS within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in § 716.6(d), with the following notation: ''Attn: Report of inspection-related costs.''

SUPPLEMENT NO. 1 TO PART 716—NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS

	Schedule 1	Schedule 2	Schedule 3	Unscheduled discrete organic chemicals
Notice of initial or routine inspection to USNA.	24 hours prior to arrival at the point of entry.	48 hours prior to arrival at the plant site.	120 hours prior to arrival at the plant site.	120 hours prior to arrival at the plant site.
Duration of inspection ..	As specified in facility agreement.	96 hours	24 hours	24 hours.
Maximum number of inspections.	Determined by OPCW based on characteristics of facility and the nature of the activities carried out at the facility.	2 per calendar year per plant site.	2 per calendar year per plant site.	2 per calendar year per plant site.
Notification of challenge inspection to USNA*.	12 hours prior to arrival of inspection team at the point of entry.			
Duration of Challenge inspection*.	84 hours.			

*See part 717 of this subchapter.

SUPPLEMENT NO. 2 TO PART 716—SCHEDULE 1 MODEL FACILITY AGREEMENT

Draft Model Agreement specifying the general form and content for facility agreements to be concluded pursuant to Verification Annex, Part VI, paragraph 31 (other facilities).

Facility Agreement between the Organization for the Prohibition of Chemical Weapons and the Government of the United States of America Regarding On-site Inspections at the _____ Facility Located at the _____.

The Organization for the Prohibition of Chemical Weapons, hereinafter referred to as ''Organization'', and the Government of the United States of America, hereinafter referred to as ''inspected State Party'', both constituting the Parties to this Agreement, have agreed on the following arrangements in relation to the conduct of inspections pursuant to paragraph 3 of Article VI of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, hereinafter referred to as ''Convention'', at _____ (insert name of the facility, its precise location, including the address), declared under paragraphs 7 and 8 of Article VI, hereinafter referred to as ''facility''.

Section 1. General Provisions

1. The purpose of this Agreement is to facilitate the implementation of the provisions of the Convention in relation to inspections conducted at the facility pursuant to paragraph 3 of Article VI of the Convention and in accordance with the obligations of the inspected State Party and the Organization under the Convention.

2. Nothing in this Agreement shall be applied or interpreted in a way that is contradictory to the provisions of the Convention, including paragraph 1 of Article VII.[1] In case of inconsistency between this Agreement and the Convention, the Convention shall prevail.

3. The Parties have agreed to apply for planning purposes the general factors contained in Attachment 1.

4. The frequency and intensity of inspections at the facility are given in Part B of Attachment 1 and reflect the risk assessment of the Organization conducted pursuant to paragraphs 23 or 30 of Part VI of the Verification Annex, whichever applies.

5. The inspection team shall consist of no more than ___ persons.

6. The language for communication between the inspection team and the inspected State Party during inspections shall be English.

7. In case of any development due to circumstances brought about by unforeseen events or acts of nature, which could affect inspection activities at the facility, the inspected State Party shall notify the Organization and the inspection team as soon as practically possible.

8. In case of need for the urgent departure, emergency evacuation or urgent travel of inspector(s) from the territory of the inspected State Party, the inspection team leader shall inform the inspected State Party of such a need. The inspected State Party shall arrange without undue delay such departure, evacuation or travel. In all cases, the inspected State Party shall determine the means of transportation and routes to be taken. The costs of such departure, evacuation or travel of inspectors shall be borne by the Organization.

9. Inspectors shall wear identification badges at all times when on the premises of the facility.

Section 2. Health and Safety

1. Health and safety matters during inspections are governed by the Convention, the Organization's Health and Safety Policy and Regulations, and applicable national, local and facility safety and environmental regulations. The specific arrangements for implementing the relevant provisions of the Convention and the Organization's Health and Safety Policy in relation to inspections at the facility are contained in Attachment 2.

2. Pursuant to paragraph 1 of this section, all applicable health and safety regulations relevant to the conduct of the inspection at the facility are listed in Attachment 2 and shall be made available for use by the inspection team at the facility.

3. In case of the need to modify any health- and safety-related arrangements at the facility contained in Attachment 2 to this Agreement bearing on the conduct of inspections, the inspected State Party shall notify the Organization. Any such modification shall apply provisionally until the inspected State Party and the Organization have reached agreement on this issue. In case no agreement has been reached by the time of the completion of the inspection, the relevant information may be included in the preliminary factual findings. Any agreed modification shall be recorded in Attachment 2 to this Agreement in accordance with paragraph 2 of Section 13 of this Agreement.

4. In the course of the pre-inspection briefing the inspection team shall be briefed by the representatives of the facility on all health and safety matters which, in the view of those representatives, are relevant to the conduct of the inspection at the facility, including:

(a) The health and safety measures at the Schedule 1 facilities to be inspected and the likely risks that may be encountered during the inspection;

(b) Any additional health and safety measures or regulations that need to be observed at the facility;

(c) Procedures to be followed in case of an accident or in case of other emergencies, including a briefing on emergency signals, routes and exits, and the location of emergency meeting points and medical facilities; and

(d) Specific inspection activities which must be limited within particular areas at the facility, and in particular within those Schedule 1 facilities to be inspected under the inspection mandate, for reasons of health and safety.

Upon request, the inspection team shall certify receipt of any such information if it is provided in written form.

5. During the course of an inspection, the inspection team shall refrain from any action which by its nature could endanger the safety of the team, the facility, or its personnel or could cause harm to the environment. Should the inspected State Party refuse certain inspection activities, it may explain the circumstances and safety considerations involved, and shall provide alternative means for accomplishing the inspection activities.

6. In the case of emergency situations or accidents involving inspection team members while at the facility, the inspection team shall comply with the facility's emergency procedures and the inspected State Party shall to the extent possible provide medical and other assistance in a timely and effective manner with due regard to the rules

[1] Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention.

of medical ethics if medical assistance is requested. Information on medical services and facilities to be used for this purpose is contained in Part D of Attachment 2. If the Organization undertakes other measures for medical support in regard to inspection team members involved in emergency situations or accidents, the inspected State Party will render assistance to such measures to the extent possible. The Organization will be responsible for the consequences of such measures.

7. The inspected State party shall, to the extent possible, assist the Organization in carrying out any inquiry into an accident or incident involving a member of the inspection team.

8. If, for health and safety reasons given by the inspected State Party, health and safety equipment of the inspected State Party is required to be used by the inspection team, the cost so incurred shall be borne by the inspected State Party.

9. The inspection team may use its own approved health and safety equipment. If the inspected State Party determines it to be necessary, the inspected State Party shall conduct a fit test on masks brought with the inspection team. If the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any such piece of equipment involved in the inspection activities will be left at the facility at the end of the inspection. The inspection team reserves the right to destroy equipment left at the facility or witness its destruction by agreed procedures. The inspected State Party will reimburse the Organization for the loss of the inspection team's equipment.

10. In accordance with the Organization's Health and Safety Policy, the inspected State Party may provide available data based on detection and monitoring, to the agreed extent necessary to satisfy concerns that may exist regarding the health and safety of the inspection team.

Section 3. Confidentiality

1. Matters related to confidentiality are governed by the Convention, including its Confidentiality Annex and paragraph 1 of Article VII, and the Organization's Policy on Confidentiality. The specific arrangements for implementing the provisions of the Convention and the Organization's Policy on Confidentiality in relation to the protection of confidential information at the facility are contained in Attachment 3.

2. Upon request, the inspected State Party will procure a container to be placed under joint seal to maintain documents that the inspection team, inspected State Party, or the facility representative decides to keep as reference for future inspections. The inspected State Party shall be reimbursed by the Organization for the purchase of such container.

3. All documents, including photographs, provided to the inspection team will be controlled as follows:

(a) *Information to be taken off-site.* Information relevant to the finalization of the preliminary factual findings that the inspected State Party permits the inspection team to take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly state that the inspection team may take it off-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team.

(b) *Information restricted for use on-site.* Information that the inspected State Party permits the inspection team to use on-site during inspections but not take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. Upon conclusion of the inspection, the inspection team shall return the information to the inspected State Party, and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

(c) *Information restricted for use on-site and requiring direct supervision.* Information that the inspected State Party permits the inspection team to use on-site only under direct supervision of the inspected State Party or the representative of the inspected facility will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site under direct supervision and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. The inspection team shall return the information to the inspected State Party immediately upon completion of review and the facility representative shall acknowledge receipt in writing. If so requested by the inspection

team, the information can be placed in the joint sealed container for future reference.

Section 4. Media and Public Relations

1. Inspection team media and public relations are governed by the Organization's Media and Public Relations Policy. The specific arrangements for the inspection team's contacts with the media or the public, if any, in relation to inspections of the facility are contained in Attachment 4.

Section 5. Inspection Equipment

1. As agreed between the inspected State Party and the Organization, the approved equipment listed in Part A of Attachment 5 and with which the inspected State Party has been given the opportunity to familiarize itself will, at the discretion of the Organization and on a routine basis, be used specifically for the Schedule 1 inspection. The equipment will be used in accordance with the Convention, the relevant decisions taken by the Conference of States Parties, and any agreed procedures contained in Attachment 5.

2. The provisions of paragraph 1 above are without prejudice to paragraphs 27 to 29 of Part II of the Verification Annex.

3. The items of equipment available on-site, not belonging to the Organization, which the inspected State Party has volunteered to provide to the inspection team upon its request for use on-site during the conduct of inspections, together with any procedures for the use of such equipment, if required, any requested support which can be provided, and conditions for the provision of equipment are listed in Part B of Attachment 5. Prior to any use of such equipment, the inspection team may confirm that the performance characteristics of such equipment are consistent with those for similar Organization-approved equipment, or, with respect to items of equipment which are not on the list of Organization-approved equipment, are consistent with the intended purpose for using such equipment.[2]

4. Requests from the inspection team for the inspected State Party during the inspection to provide equipment mentioned in paragraph 3 above shall be made in writing by an authorized member of the inspection team using the form contained in Attachment 5. The same procedure will also apply to other requests of the inspection team in accordance with paragraph 30 of Part II of the Verification Annex.

5. Agreed procedures for the decontamination of any equipment are contained in Part C of Attachment 5.

6. For the purpose of verification, the list of agreed on-site monitoring instruments, if any, as well as agreed conditions, procedures for use, maintenance, repair, modification, replacement and provisions for the inspected State Party's support, if required, installation points, and security measures to prevent tampering with such on-site monitoring instruments are contained in Part D of Attachment 5.

Section 6. Pre-Inspection Activities

1. The inspection team shall be given a pre-inspection briefing by the representatives of the facility in accordance with paragraph 37 of Part II of the Verification Annex. The pre-inspection briefing shall include:

(a) Information on the facility as described in Attachment 6;

(b) Health and safety specifications described in Section 2 above and detailed in Attachment 2;

(c) Any changes to the above-mentioned information since the last inspection; and

(d) Information on administrative and logistical arrangements additional to those contained in Attachment 10, if any, that shall apply during the inspection, as contained in Section 10.

2. Any information about the facility that the inspected State Party has volunteered to provide to the inspection team during the pre-inspection briefing with indications as to which information may be transferred off-site is referenced in Part B of Attachment 6.

Section 7. Conduct of the Inspection

7.1 Standing Arrangements

1. The inspection period shall begin immediately upon completion of the pre-inspection briefing unless agreed otherwise. Upon completion of the pre-inspection briefing, the inspected State Party may, on a voluntary basis, provide a site tour at the request of the inspection team. Arrangements for the conduct of a site tour, if any, are contained in Attachment 7.

2. Upon conclusion of the pre-inspection briefing, the inspection team leader shall provide to the designated representative of the inspected State Party a preliminary inspection plan to facilitate the conduct of the inspection.

3. Before commencement of inspection activities, the inspection team leader shall inform the representative of the inspected State Party about the initial steps to be taken in implementing the inspection plan. The plan will be adjusted by the inspection team as circumstances warrant throughout the inspection process in consultation with the inspected State Party as to its

[2] i.e. The inspection team may confirm that the performance characteristics of such equipment meet the technical requirements necessary to support the inspection task intended to be accomplished.

implementability in regard to paragraph 40 of Part II of the Verification Annex.

4. The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party and disturbance to the facility inspected. The inspection team shall avoid unnecessarily hampering or delaying the operation of a facility and avoid affecting safety. In particular, the inspection team shall not operate the facility. If the inspection team considers that, to fulfil the mandate, particular operations should be carried out in the facility, it shall request the designated representative of the facility to have them performed.

5. At the beginning of the inspection, the inspection team shall have the right to confirm the precise location of the facility utilizing visual and map reconnaissance, a site diagram, or other suitable techniques.

6. The inspection team shall, upon request of the inspected State Party, communicate with the personnel of the facility only in the presence of or through a representative of the inspected State Party.

7. The inspected State Party shall, upon request, provide a securable work space for the inspection team, including adequate space for the storage of equipment. The inspection team shall have the right to seal its work space. For ease of inspection, the inspected State Party will work with the facility representative to provide work space at the facility, if possible.

7.2 Access to the Declared Facility

1. The object of the inspection shall be the declared Schedule 1 facility as referenced in Attachment 6.

2. Pursuant to paragraph 45 of Part II of the Verification Annex, the inspection team shall have unimpeded access to the declared facility in accordance with the relevant Articles and Annexes of the Convention and Attachments 6, 8, and 9.

7.3 Access to and Inspection of Documentation and Records

1. The agreed list of the documentation and records to be routinely made available for inspection purposes to the inspection team by the inspected State Party during an inspection, as well as arrangements with regard to access to such records for the purpose of protecting confidential information, are contained in Attachment 8. Such documentation and records will be provided to the inspection team upon request.

2. Only those records placed in the custody of the inspection team that are attached to the preliminary factual findings in accordance with Section 3 may leave the premises. Those records placed in the custody of the inspection team that are not attached to the preliminary factual findings must be retained in the inspection team's on-site container or returned to the inspected State Party.

7.4 Sampling and Analysis

1. Without prejudice to paragraphs 52 to 58 of Part II of the Verification Annex, procedures for sampling and analysis for verification purposes are contained in Attachment 9.

2. Sampling and analysis, for inspection purposes, may be carried out to fulfill the inspection mandate. Each such sample will be split into a minimum of four parts at the request of the inspection team in accordance with Part C of Attachment 9. One part shall be analyzed in a timely manner on-site. The second part of the split sample may be controlled by the inspection team for future reference and, if necessary, analysis off-site at laboratories designated by the Organization. That part of the sample may be destroyed at any time in the future upon the decision of the inspection team but in any case no later than 60 days after it was taken. The third part may be retained by the inspected State Party. The fourth part may be retained by the facility.

3. Pursuant to paragraph 52 of the Part II of the Verification Annex, representatives of the inspected State Party or facility shall take samples at the request of the inspection team in the presence of inspectors. The inspected State Party will inform the inspection team of the authorized facility representative's[3] determination of whether the sample shall be taken by representatives of the facility or the inspection team or other individuals present. If inspectors are granted the right to take samples themselves in accordance with paragraph 52 of Part II of the Verification Annex, the relevant advance agreement between the inspection team and the inspected State Party shall be in writing. The representatives of the inspected State Party or of the inspected facility shall have the right to be present during sampling. Agreed conditions and procedures for such sample collection are contained in Part B of Attachment 9 to this Agreement.

4. Facility sampling equipment shall as a rule be used for taking samples required for the purposes of the inspection. This is without prejudice to the right of the inspection team pursuant to paragraph 27 of Part II of the Verification Annex to use its own approved sampling equipment in accordance with paragraph 1 of Section 5 and Parts A and B of Attachment 5 to this Agreement.

5. Should the inspection team request that a sample be taken and the inspected State

[3] The authorized facility representative is the owner or the operator, occupant or agent in charge of the premises being inspected.

Party be unable to accede or agree to the request, the inspected State Party will make every reasonable effort to satisfy the inspection team's concerns by other means to enable the inspection team to fulfil its mandate. The inspected State Party will provide a written explanation for its inability to accede or agree to the request. Any such response shall be supported by relevant document(s). The explanation of the inspected State Party shall be included in the preliminary factual findings.

6. In accordance with paragraph 53 of Part II of the Verification Annex, where possible, the analysis of samples shall be performed on-site and the inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it for the splitting, preparation, handling, analysis, integrity and transport of samples. The assistance that will be provided by the inspected State Party and the analysis procedures to be followed are contained in Part D of Attachment 9 to this Agreement.

7. The inspection team may request the inspected State Party to perform the analysis in the inspection team's presence. The inspection team shall have the right to be present during any sampling and analysis conducted by the inspected State Party.

8. The results of such analysis shall be reported in writing as soon as possible after the sample is taken.

9. The inspection team shall have the right to request repeat analysis or clarification in connection with ambiguities.

10. If at any time, and for any reason, on-site analysis is not possible, the inspection team has the right to have sample(s) analyzed off-site at Organization-designated laboratories. In selecting such designated laboratories for the off-site analysis, the Organization will give due regard to requirements of the inspected State Party.

11. Transportation of samples will be in accordance with the procedures outlined in Part E of Attachment 9.

12. If at any time, the inspected State Party or facility representative determines that inspection team on-site analysis activities are not in accordance with the facility agreement or agreed analysis procedures, or otherwise pose a threat to safety or environmental regulations or laws, the inspected State Party, in consultation with the facility representative, will cease these on-site activities pending resolution. If both parties cannot agree to proceed with the analysis, the inspection team will document this in its preliminary factual findings.

13. Conditions and procedures for the disposal of hazardous materials generated during sampling and on-site analysis during the inspection are contained in Part F of Attachment 9 to this Agreement.

7.5 Arrangements for Interviews

1. The inspection team shall have the right, subject to applicable United States legal protections for individuals, to interview any facility personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts in accordance with paragraph 46 of Part II of the Verification Annex and inspected State Party's policy and procedures. Agreed procedures for conducting interviews are contained in Attachment 11.

2. The inspection team will submit to the inspected State Party names and/or positions of those desired for interviews. The requested individual(s) will be made available to the inspection team no later than 24 hours after submission of the formal request, unless agreed otherwise. The inspection team may also be requested to submit questions in writing prior to conducting interviews. The specific timing and location of interviews will be determined with the facility in coordination with the inspected State Party and consistent with adequate notification of the interviewees, and minimizing the operation impacts on the facility and individuals to be interviewed.

3. The inspected State Party may recommend to the inspection team that interviews be conducted in either ''panel'' or individual formats. At a minimum, interviews will be conducted with a member of the facility staff and an inspected State Party representative. Legal counsel may also be required to be present by the inspected State Party. The interview may be interrupted for consultation between the interviewee, the facility representative, the inspected State Party representative, and legal counsel.

4. The inspected State Party will have the right to restrict the content of interviews to information directly related to the mandate or purpose of the inspection.

5. Outside the interview process and in discharging their functions, inspectors shall communicate with personnel of the facility only through the representative(s) of the inspected State Party.

7.6 Communications

1. In accordance with paragraph 44 of Part II of the Verification Annex, the inspection team shall have the right to communicate with the headquarters of the Technical Secretariat. For this purpose they may use their own, duly certified approved equipment, in accordance with paragraph 1 of Section 5. The representative of the inspected facility retains the right to control the use of communications equipment in specific areas, buildings, or structures if such use would be incompatible with applicable safety or fire regulations.

2. In case the inspection team and the inspected State Party agree to use any of the

inspected State Party's communications equipment, the list of such equipment and the provisions for its use are contained in Part B of Attachment 5 to this Agreement.

3. The agreed means of communication between inspection team sub-teams in accordance with paragraph 44 of Part II of the Verification Annex are contained in Part E of Attachment 5.

7.7 Photographs

1. In accordance with the provisions of paragraph 48 of Part II of the Verification Annex, the Confidentiality Annex and inspected State Party's policy and procedures, the inspection team shall have the right to have photographs taken at their request by the representatives of the inspected State Party or the inspected facility. One camera of the instant development type furnished by the inspection team or the inspected State Party shall be used for taking identical photographs in sequence. Cameras furnished by the inspection team will remain either in their work space or equipment storage area except when carried by inspection team members for a specific inspection activity. Cameras will only be used for specified inspection purposes. Personal cameras are not allowed to be taken to the facility.

2. Pursuant to the Confidentiality Annex, the inspected State Party, in consultation with the facility representative, shall have the right to determine that contents of the photographs conform to the stated purpose of the photographs. The inspection team shall determine whether photographs conform to those requested and, if not, repeat photographs shall be taken. Photographs that do not meet the satisfaction of both sides will be destroyed by the inspected State Party in the presence of the inspection team. The inspection team, the inspected State Party and the facility, if so requested, shall each retain one copy of every photograph. The copies shall be signed, dated, and classified, in accordance with Section 3, and note the location and subject of the photograph and carry the same identification number. Agreed procedures for photography are contained in Attachment 12.

3. The representative of the inspected facility has the right to object to the use of photographic equipment in specific areas, buildings or structures if such use would be incompatible with safety or fire regulations given the characteristics of the chemicals stored in the area in question. Restrictions for use are contained in Parts A and/or B of Attachment 5 to this Agreement. If the objection is raised due to safety concerns, the inspected State Party will, if possible, furnish photographic equipment that meets the regulations. If the use of photographic equipment is not permissible at all in specific areas, buildings or structures for the reasons stated above, the inspected State Party shall provide a written explanation of its objection to the inspection team leader. The explanation, along with the inspection team leader's comments will be included in the inspection team's preliminary factual findings.

Section 8. Visits

1. This section applies to visits conducted pursuant to paragraphs 15 and 16 of Part III of the Verification Annex.

2. The size of a team on such a visit shall be kept to the minimum number of personnel necessary to perform the specific tasks for which the visit is being conducted and shall in any case not exceed the size of inspection team referenced in paragraph 5 of Section 1.

3. The duration of the visit pursuant to this Section shall be limited to the minimum time required to perform the specific tasks relating to monitoring systems for which the visit is being conducted and in any case shall not exceed the estimated period of inspection referenced in Part B of Attachment 1 of this Agreement.

4. Access provided to the monitoring systems during the visit shall be limited to that required to perform the specific tasks for which the visit is being conducted, unless otherwise agreed to with the inspected State Party.

5. General arrangements and notifications for a visit shall be the same as for the conduct of an inspection.

Section 9. Debriefing and Preliminary Findings

1. In accordance with paragraph 60 of Part II of the Verification Annex, upon completion of an inspection the inspection team shall meet with representatives of the inspected State Party and the personnel responsible for the inspection site to review the preliminary findings of the inspection team and to clarify any ambiguities. The inspection team shall provide to the representatives of the inspected State Party its preliminary findings in written form according to a standardized format, together with a list of any samples and copies of written information and data gathered and other material to be taken off-site. The document shall be signed by the head of the inspection team. In order to indicate that he has taken notice of the contents of the document, the representative of the inspected State Party shall countersign the document. The meeting shall be completed not later than 24 hours after the completion of the inspection.

2. The document on preliminary findings shall also include, inter alia, the list of results of analysis, if conducted on-site, records of seals, results of inventories, copies of photographs to be retained by the inspection team, and results of specified measurements. It will be prepared in accordance with the preliminary findings format referenced

in Annex 5. Any substantive changes to this format will be made only after consultation with the inspected State Party.

3. Before the conclusion of the debriefing, the inspected State Party may provide comments and clarifications to the inspection team on any issue related to the conduct of the inspection. The inspection team shall provide to the representative of the inspected State Party its preliminary findings in written form sufficiently prior to the conclusion of the debriefing to permit the inspected State Party to prepare any comments and clarifications. The inspected State Party's written comments and clarifications shall be attached to the document on preliminary findings.

4. The inspection team shall depart from the site upon the conclusion of the meeting on preliminary findings.

Section 10. Administrative Arrangements

1. The inspected State Party shall provide or arrange for the provision of the amenities listed in detail in Attachment 10 to the inspection team throughout the duration of the inspection. The inspected State Party shall be reimbursed by the Organization for such costs incurred by the inspection team, unless agreed otherwise.

2. Requests from the inspection team for the inspected State Party to provide or arrange amenities shall be made in writing by an authorized member of the inspection team[4] using the form contained in Attachment 10. Requests shall be made as soon as the need for amenities has been identified. The provision of such requested amenities shall be certified in writing by the authorized member of the inspection team. Copies of all such certified requests shall be kept by both parties.

3. The inspection team has the right to refuse extra amenities that in its view are not needed for the conduct of the inspection.

Section 11. Liabilities

1. Any claim by the inspected State Party against the Organization or by the Organization against the inspected State Party in respect of any alleged damage or injury resulting from inspections at the facility in accordance with this Agreement, without prejudice to paragraph 22 of the Confidentiality Annex, shall be settled in accordance with international law and, as appropriate, with the provisions of Article XIV of the Convention.

[4] The name of the authorized member(s) of the inspection team should be communicated to the inspected State Party no later than at the Point of Entry.

Section 12. Status of Attachments

1. The Attachments form an integral part of this Agreement. Any reference to the Agreement includes the Attachments. However, in case of any inconsistency between this Agreement and any Attachment, the sections of the Agreement shall prevail.

Section 13. Amendments, Modifications and Updates

1. Amendments to the sections of this Agreement may be proposed by either Party and shall be agreed to and enter into force under the same conditions as provided for under paragraph 1 of Section 15.

2. Modifications to the Attachments of this Agreement, other than Attachment 1 and Part B of Attachment 5, may be agreed upon at any time between the representative of the Organization and the representative of the inspected State Party, each being specifically authorized to do so. The Director-General shall inform the Executive Council about any such modifications. Each Party to this Agreement may revoke its consent to a modification not later than four weeks after it had been agreed upon. After this time period the modification shall take effect.

3. The inspected State Party will update Part A of Attachment 1 and Part B of Attachment 5 and Attachment 6 as necessary for the effective conduct of inspections. The Organization will update Part B of Attachment 1 and Annex 5, subject to paragraph 2 of Section 9, as necessary for the effective conduct of inspections.

Section 14. Settlement of Disputes

1. Any dispute between the Parties that may arise out of the application or interpretation of this Agreement shall be settled in accordance with Article XIV of the Convention.

Section 15. Entry Into Force

1. This Agreement shall enter into force after approval by the Executive Council and signature by the two Parties. If the inspected State Party has additional internal requirements, it shall so notify the Organization in writing by the date of signature. In such cases, this Agreement shall enter into force on the date that the inspected State Party gives the Organization written notification that its internal requirements for entry into force have been met.

Section 16. Duration and Termination

1. This Agreement shall cease to be in force when, as determined by the Executive Council, the provisions of paragraphs 3 and 8 of Article VI and Part VI of the Verification Annex no longer apply to this facility.

Done at ____ in ____ copies, in English, each being equally authentic.[5]

ATTACHMENTS

The following attachments shall be completed where applicable.

Attachment 1: General Factors for the Conduct of Inspections
Attachment 2: Health and Safety Requirements and Procedures
Attachment 3: Specific Arrangements in Relation to the Protection of Confidential Information at the Facility
Attachment 4: Arrangements for the Inspection Team's Contacts with the Media or the Public
Attachment 5: Inspection Equipment
Attachment 6: Information on the Facility Provided in Accordance with Section 6
Attachment 7: Arrangements for Site Tour
Attachment 8: Records Routinely Made Available to the Inspection Team at the Facility
Attachment 9: Sampling and Analysis for Verification Purposes
Attachment 10: Administrative Arrangements
Attachment 11: Agreed Procedures for Conducting Interviews
Attachment 12: Agreed Procedures for Photography

ATTACHMENT 1—GENERAL FACTORS FOR THE CONDUCT OF INSPECTIONS

Part A. To Be Provided and Updated by the inspected State Party:

1. Schedule 1 facility(s) working hours, if applicable:[6]____hrs to ____hrs (local time) (days)

2. Working days: _____

3. Holidays or other non-working days:

_____

_____

4. Inspection activities which could/could not[7] be supported during non-working hours with notation of times and activities:

_____

_____

5. Any other factors that could adversely affect the effective conduct of inspections:

(a) inspection requests:

Should the facility withhold consent to an inspection, the inspected State Party shall take all appropriate action under its law to obtain a search warrant from a United States magistrate judge. Upon receipt of a warrant, the inspected State Party will accede to the Organization's request to conduct an inspection. Such inspection will be carried out in accordance with the terms and conditions of the warrant.

(b) other:

_____

6. Other: notification procedures are contained in Annex 6.

Part B. To Be Provided and Updated by the Organization:

1. Inspection frequency: _____

2. Inspection intensity:

(a) maximum estimated period of inspection (for planning purposes): _____

(b) approximate inspection team size: ____

(c) estimated volume and weight of equipment to be brought on-site: _____

ATTACHMENT 2

Health and Safety Requirements and Procedures

Part A. Basic Principles:

1. Applicable health and safety regulations of the Organization, with agreed variations from strict implementation, if any:

_____

_____

2. Health and safety regulations applicable at the facility:

(a) federal regulations:

_____

_____

(b) state regulations:

_____

_____

(c) local regulations:

_____

_____

(d) facility regulations:

_____

_____

3. Health and safety requirements and regulations agreed between the inspected State Party and the Organization:

_____

_____

Part B. Detection and Monitoring:

1. Applicable specific safety standards for workplace chemical exposure limits and/or concentrations which should be observed during the inspection, if any:

_____

_____

2. Procedures for detection and monitoring in accordance with the Organization's Health and Safety Policy, including data to be collected by, or provided to, the inspection team:

_____

_____

Part C. Protection:

1. Protective equipment to be provided by the Organization and agreed procedures for equipment certification and use, if required:

_____

_____

[5] The language(s) to be chosen by the inspected State Party from the languages of the Convention shall be the same as the language(s) referred to in paragraph 6 of Section 1 of this Agreement.

[6] All references to time use a 24 hour clock.

[7] Choose one option.

2. Protective equipment to be provided by the inspected State Party, and agreed procedures, personnel training, and personnel qualification tests and certification required; and agreed procedures for use of the equipment:

Part D. Medical Requirements:

1. Applicable medical standards of the inspected State Party and, in particular, the inspected facility:

2. Medical screening procedures for members of the inspection team:

3. Agreed medical assistance to be provided by the inspected State Party:

4. Emergency medical evacuation procedures:

5. Agreed additional medical measures to be taken by the inspection team:

6. Procedures for emergency response to chemical casualties of the inspection team:

Part E. Modification of Inspection Activities:

1. Modification of inspection activities due to health and safety reasons, and agreed alternatives to accomplish the inspection goals:

ATTACHMENT 3—SPECIFIC ARRANGEMENTS IN RELATION TO THE PROTECTION OF CONFIDENTIAL INFORMATION AT THE FACILITY

Part A. Inspected State Party's Procedures for Designating and Classifying Documents Provided to the Inspection Team: See Annex 3 for the Organization's Policy on Confidentiality and Annex 7 for the inspected State Party's Procedures for Information Control.

Part B. Specific Procedures for Access by the Inspection Team to Confidential Areas or Materials:

Procedures in Relation to the Certification by the Inspection Team of the Receipt of Any Documents Provided by the Inspected Facility:

Part C. Storage of Confidential Documents at the Inspected Facility:

1. Procedures in relation to the storage of confidential documents or use of a dual control container on-site, if applicable: Information under restrictions provided for in the Confidentiality Annex and as such to be kept in the dual control container under joint seal shall be available to the inspection team leader and/or an inspector designated by him from the beginning of the pre-inspection briefing until the end of the debriefing upon completion of the inspection. If copies of information under dual control are permitted to be attached to the preliminary factual findings by the inspected State Party, they shall be made by the inspected State Party and retained under dual control until the debriefing. Should the medium on which such information is recorded become unusable, it shall be replaced without delay by the representative of the inspected State Party.

2. The dual control container will be placed

3. Information meeting the strict requirements for restriction pursuant to the Confidentiality Annex, and to be maintained in the dual control container located at the inspected facility between inspections is listed below:

Reference	Type of data	Recorded media	Volume	Reasons for restrictions/remarks

Part D. Procedures for the Removal Off-Site of Any Written Information, Data, and Other Material Gathered by the Inspection Team:

Part E. Procedures for Providing the Representatives of the inspected State Party with Copies of Written Information, Inspector's Notebooks, Data and Other Material Gathered by the Inspection Team:

Part F. Other Arrangements, If Any:

1. Unless specified otherwise, all facility information shall be returned to the inspected State Party at the completion of the inspection. No copies of facility information

shall be made in any manner by the inspection team or the Organization.

2. Facility information shall not be released to the public, other States Parties, or the media without the specific permission of the inspected State Party, after consultation with the facility.

3. Facility information shall not be transmitted, copied or retained electronically without the specific permission of the inspected State Party after consultation with the facility. All transmissions of information off-site shall be done in the presence of the inspected State Party.

4. Information not relevant to the purpose of the inspection will be purged from documents, photographs, etc. prior to release to the inspection team.

ATTACHMENT 4—ARRANGEMENTS FOR THE INSPECTION TEAM'S CONTACTS WITH THE MEDIA OR THE PUBLIC

ATTACHMENT 5—INSPECTION EQUIPMENT

Part A: List of Equipment:

Item of approved inspection equipment	Agreed procedures for use			
	Nature of restrictions(s) (location, time, periods, etc.), if any	Indication of reason(s) (safety, confidentiality, etc.)	Special handling or storage requirements	Alternative for meeting inspection requirement(s), if so required by the inspection team

Part B. Equipment which the inspected State Party Has Volunteered to Provide:

Item of equipment	Procedures for use	Support to be provided, if required	Conditions (timing, costs, if any)

Part C. Procedures for the Decontamination of Equipment:

Item of equipment	Procedures for use

Part D. Agreed On-Site Monitoring Instruments:

Part E. Means of Communication between Inspection Team Sub-Teams:

Request for and Certification of Equipment Available on Site To Be Provided in Accordance With Paragraph 3 of Section 5

Date:
Facility:
Inspection number:
Name of the authorized member of the inspection team:

Type and number of item(s) of equipment requested:

Approval of the request by inspected State Party:

Comments on the request by the inspected State Party:

Indication of the costs, if any, for the use of the equipment requested/volunteered:

Certification of the authorized member of the inspection team that the requested item(s) of equipment have been provided:

Comments, if any, by the authorized member of the inspection team in regard to the equipment provided:

Name and signature of the authorized member of the inspection team:

Name and signature of the representative of the inspected State Party:

ATTACHMENT 6—INFORMATION ON THE FACILITY PROVIDED IN ACCORDANCE WITH SECTION 6

Part A. Topics of Information for the Pre-Inspection Briefing:

1. Specification of the elements constituting the declared facility, including their

physical location(s) (i.e., detail the areas, equipment, and computers), with indications as to which information may be transferred off-site:

2. Procedures for unimpeded access within the declared facility:[8]

3. Other:

Part B. Any Information about the Facility that the inspected State Party Volunteers to Provide to the Inspection Team during the Pre-Inspection Briefing with Indications as to which May Be Transferred Off-Site:

ATTACHMENT 7—ARRANGEMENTS FOR SITE TOUR

The inspected State Party may provide a site tour at the request of the inspection team. The inspected State Party may provide explanations to the inspection team during the site tour.

ATTACHMENT 8—RECORDS ROUTINELY MADE AVAILABLE TO THE INSPECTION TEAM AT THE FACILITY (I.E., IDENTIFY RECORDS AND DATA)

ATTACHMENT 9—SAMPLING AND ANALYSIS FOR VERIFICATION PURPOSES

Part A. Agreed Sampling Points Chosen with Due Consideration to Existing Sampling Points Used by the Facility(s) Operator(s):

Part B. Procedures for Taking Samples:

Part C. Procedures for Sample Handling and Sample Splitting:

Part D. Procedures for On-Site Sample Analysis, If Any:

Part E. Procedures for Off-Site Analysis, If Any:

Part F. Procedures for Transporting Samples:

Part G. Arrangements in Regard to the Payment of Costs Associated with the Disposal or Removal by the inspected State Party of Hazardous Waste Generated during Sampling and On-Site Analysis during the Inspection:

ATTACHMENT 10—ADMINISTRATIVE ARRANGEMENTS

Part A. The Amenities Detailed Below Shall Be Provided to the Inspection Team by the inspected State Party, Subject to Payment as Indicated in Part B Below:

1. International and local official communication (telephone, fax), including calls/faxes between site and headquarters:

2. Vehicles:

3. Working room, including adequate space for the storage of equipment:

4. Lodging:

5. Meals:

6. Medical care:

7. Interpretation Services:

(a) number of interpreters:

(b) estimated interpretation time:

(c) languages:

8. Other:

Part B. Distribution of Costs for Provision of Amenities by the inspected State Party (check one option for each amenity provided as appropriate):

Paragraphs 1–8 in Part A above	To be paid directly by the Organization after the inspection	To be paid by the inspection team on behalf of the Organization during the in-country period	To be paid by the inspected State Party and subsequently reimbursed by the Organization	To be paid by the inspected State Party
1				
2				
3				
4				
5				
6				
7				

[8] List the areas, equipment, and computers, if any, that are not relevant to the inspection mandate or that contain confidential business information that does not need to be divulged in order to comply with the inspection mandate.

Paragraphs 1–8 in Part A above	To be paid directly by the Organization after the inspection	To be paid by the inspection team on behalf of the Organization during the in-country period	To be paid by the inspected State Party and subsequently reimbursed by the Organization	To be paid by the inspected State Party
8				

Part C. Other Arrangements. 1. Number of sub-teams (consisting of no less than two inspectors per sub-team) to be accommodated: _____

REQUEST FOR AND CERTIFICATION OF AMENITIES TO BE PROVIDED OR ARRANGED

Date: _____
Facility: _____
Inspection number: _____
Category of amenities requested: _____

Description of amenities requested: _____

Approval of the request by the inspected State Party:

Comments on the request by the inspected State Party:

Indication of the costs for the amenities requested:

Certification of the authorized member of the inspection team that the requested amenities have been provided:

Comments by the authorized member of the inspection team in regard to the quality of the amenities provided:

Name and signature of the authorized member of the inspection team:

Name and signature of the representative of the inspected State Party:

ATTACHMENT 11—AGREED PROCEDURES FOR CONDUCTING INTERVIEWS

ATTACHMENT 12—AGREED PROCEDURES FOR PHOTOGRAPHY

ANNEXES

NOTE: These annexes, inter alia, can be attached if requested by the inspected State Party.

Annex 1: Organization's Media and Public Relations Policy
Annex 2: Organization's Health and Safety Policy and Regulations
Annex 3: Organization's Policy on Confidentiality
Annex 4: Facility Declaration
Annex 5: Preliminary and Final Inspection Report Formats
Annex 6: Inspected State Party's Procedures for Inspection Notification
Annex 7: Inspected State Party's Procedures for Information Control

SUPPLEMENT NO. 3 TO PART 716—SCHEDULE 2 MODEL FACILITY AGREEMENT

DRAFT FACILITY AGREEMENT BETWEEN THE ORGANIZATION FOR THE PROHIBITION OF CHEMICAL WEAPONS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA REGARDING ON-SITE INSPECTIONS AT THE _____ SCHEDULE 2 PLANT SITE LOCATED AT _____

The Organization for the Prohibition of Chemical Weapons, hereinafter referred to as ''Organization,'' and the Government of the United States of America, hereinafter referred to as ''inspected State Party,'' both constituting the Parties to this Agreement, have agreed on the following arrangements in relation to the conduct of inspections pursuant to paragraph 4 of Article VI of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, hereinafter referred to as ''the Convention,'' at (insert name of the plant site, its precise location, including the address), declared under paragraphs 7 and 8 of Article VI, hereinafter referred to as ''plant site'':

Section 1. General Provisions

1. The purpose of this Agreement is to facilitate the implementation of the provisions of the Convention in relation to inspections conducted at the plant site pursuant to paragraph 4 of Article VI of the Convention, and in accordance with the obligations of the inspected State Party and the Organization under the Convention.

2. Nothing in this Agreement shall be applied or interpreted in a way that is contradictory to the provisions of the Convention, including paragraph 1 of Article VII.[1] In

[1] Each State Party shall, in accordance with its constitutional processes, adopt the

case of inconsistency between this Agreement and the Convention, the Convention shall prevail.

3. The Parties have agreed to apply for planning purposes the general factors contained in Attachment 1.

4. The frequency and intensity of inspections at the plant site are given in Part B of Attachment 1 and reflect the risk assessment of the Organization conducted pursuant to paragraphs 18, 20 and 24 of Part VII of the Verification Annex.

5. The inspection team shall consist of no more than ___ persons.

6. The language for communication between the inspection team and the inspected State Party during inspections shall be English.

7. The period of inspection shall not last more than ninety-six (96) hours, unless an extension has been agreed to by the inspected State Party and the inspection team.

8. In case of any development due to circumstances brought about by unforeseen events or acts of nature, which could affect inspection activities at the plant site, the inspected State Party shall notify the Organization and the inspection team as soon as practically possible.

9. In case of need for the urgent departure, emergency evacuation or urgent travel of inspector(s) from the territory of the inspected State Party, the inspection team leader shall inform the inspected State Party of such a need. The inspected State Party shall arrange without undue delay such departure, evacuation or travel. In all cases, the inspected State Party shall determine the means of transportation and routes to be taken. The costs of such departure, evacuation or travel of inspectors shall be borne by the Organization.

10. Inspectors shall wear identification badges at all times when on the premises of the plant site.

Section 2. Health and Safety

1. Health and safety matters during inspections are governed by the Convention, the Organization's Health and Safety Policy and Regulations, and applicable national, local and plant site safety and environmental regulations. The specific arrangements for implementing the relevant provisions of the Convention and the Organization's Health and Safety Policy in relation to inspections at the plant site are contained in Attachment 2.

2. Pursuant to paragraph 1 of this section, all applicable health and safety regulations relevant to the conduct of the inspection at the plant site are listed in Attachment 2 and shall be made available for use by the inspection team at the plant site.

3. In case of the need to modify any health- and safety-related arrangements at the plant site contained in Attachment 2 to this Agreement bearing on the conduct of inspections, the inspected State Party shall notify the Organization. Any such modification shall apply provisionally until the inspected State Party and the Organization have reached agreement on this issue. In case no agreement has been reached by the time of the completion of the inspection, the relevant information may be included in the preliminary factual findings. Any agreed modification shall be recorded in Attachment 2 to this Agreement in accordance with paragraph 2 of Section 12 of this Agreement.

4. In the course of the pre-inspection briefing the inspection team shall be briefed by the representatives of the plant site on all health and safety matters which, in the view of those representatives, are relevant to the conduct of the inspection at the plant site, including:

(a) the health and safety measures at the Schedule 2 plant(s) to be inspected and the likely risks that may be encountered during the inspection;

(b) any additional health and safety or regulations that need to be observed at the plant site;

(c) procedures to be followed in case of an accident or in case of other emergencies, including a briefing on emergency signals, routes and exits, and the location of emergency meeting points and medical facilities; and

(d) specific inspection activities which must be limited within particular areas at the plant site, and in particular within those Schedule 2 plant(s) to be inspected under the inspection mandate, for reasons of health and safety.

Upon request, the inspection team shall certify receipt of any such information if it is provided in written form.

5. During the course of an inspection, the inspection team shall refrain from any action which by its nature could endanger the safety of the team, the plant site, or its personnel or could cause harm to the environment. Should the inspected State Party refuse certain inspection activities, it may explain the circumstances and safety considerations involved, and shall provide alternative means for accomplishing the inspection activities.

6. In the case of emergency situations or accidents involving inspection team members while at the plant site, the inspection team shall comply with the plant site's emergency procedures and the inspected State Party shall to the extent possible provide medical and other assistance in a timely and effective manner with due regard to

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necessary measures to implement its obligations under this Convention.

the rules of medical ethics if medical assistance is requested. Information on medical services and facilities to be used for this purpose is contained in Part D of Attachment 2. If the Organization undertakes other measures for medical support in regard to inspection team members involved in emergency situations or accidents, the inspected State Party will render assistance to such measures to the extent possible. The Organization will be responsible for the consequences of such measures.

7. The inspected State party shall, to the extent possible, assist the Organization in carrying out any inquiry into an accident or incident involving a member of the inspection team.

8. If, for health and safety reasons given by the inspected State Party, health and safety equipment of the inspected State Party is required to be used by the inspection team, the cost so incurred shall be borne by the inspected State Party.

9. The inspection team may use its own approved health and safety equipment. If the inspected State Party determines it to be necessary, the inspected State Party shall conduct a fit test on masks brought with the inspection team. If the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any such piece of equipment involved in the inspection activities will be left at the plant site at the end of the inspection. The inspection team reserves the right to destroy equipment left at the plant site or witness its destruction by agreed procedures. The inspected State Party will reimburse the Organization for the loss of the inspection team's equipment.

10. In accordance with the Organization's Health and Safety Policy, the inspected State Party may provide available data based on detection and monitoring, to the agreed extent necessary to satisfy concerns that may exist regarding the health and safety of the inspection team.

Section 3. Confidentiality

1. Matters related to confidentiality are governed by the Convention, including its Confidentiality Annex and paragraph 1 of Article VII, and the Organization's Policy on Confidentiality. The specific arrangements for implementing the provisions of the Convention and the Organization's Policy on Confidentiality in relation to the protection of confidential information at the plant site are contained in Attachment 3.

2. Upon request, the inspected State Party will procure a container to be placed under joint seal to maintain documents that the inspection team, inspected State Party, or the plant site representative decides to keep as reference for future inspections. The inspected State Party shall be reimbursed by the Organization for the purchase of such container.

3. All documents, including photographs, provided to the inspection team will be controlled as follows:

(a) *Information to be taken off-site.* Information relevant to the finalization of the preliminary factual findings that the inspected State Party permits the inspection team to take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly state that the inspection team may take it off-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the plant site will acknowledge the release of such information in writing prior to disclosure to the inspection team.

(b) *Information restricted for use on-site.* Information that the inspected State Party permits the inspection team to use on-site during inspections but not take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the plant site will acknowledge the release of such information in writing prior to disclosure to the inspection team. Upon conclusion of the inspection, the inspection team shall return the information to the inspected State Party, and the plant site representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

(c) *Information restricted for use on-site and requiring direct supervision.* Information that the inspected State Party permits the inspection team to use on-site only under direct supervision of the inspected State Party or the representative of the inspected plant site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site under direct supervision and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the plant site will acknowledge the release of such information in writing prior to disclosure to the inspection team. The inspection team shall return the information to the inspected State Party immediately upon completion of review and the plant site representative shall acknowledge receipt in writing. If so requested by the inspection

team, the information can be placed in the joint sealed container for future reference.

Section 4. Media and Public Relations

1. Inspection team media and public relations are governed by the Organization's Media and Public Relations Policy. The specific arrangements for the inspection team's contacts with the media or the public, if any, in relation to inspections of the plant site are contained in Attachment 4.

Section 5. Inspection Equipment

1. As agreed between the inspected State Party and the Organization, the approved equipment listed in Part A of Attachment 5 and with which the inspected State Party has been given the opportunity to familiarize itself will, at the discretion of the Organization and on a routine basis, be used specifically for the Schedule 2 inspection. The equipment will be used in accordance with the Convention, the relevant decisions taken by the Conference of States Parties, and any agreed procedures contained in Attachment 5.

2. The provisions of paragraph 1 above are without prejudice to paragraphs 27 to 29 of Part II of the Verification Annex.

3. The items of equipment available on-site and not belonging to the Organization which the inspected State Party has volunteered to provide to the inspection team upon its request for use on-site during the conduct of inspections, together with any procedures for the use of such equipment, if required, any requested support which can be provided, and conditions for the provision of equipment are listed in Part B of Attachment 5. Prior to any use of such equipment, the inspection team may confirm that the performance characteristics of such equipment are consistent with those for similar Organization-approved equipment, or—with respect to items of equipment which are not on the list of Organization-approved equipment—are consistent with the intended purpose for using such equipment.[2]

4. Requests from the inspection team for the inspected State Party during the inspection to provide equipment mentioned in paragraph 3 above shall be made in writing by an authorized member of the inspection team using the form contained in Attachment 5. The same procedure will also apply to other requests of the inspection team in accordance with paragraph 30 of Part II of the Verification Annex.

[2] I.e., the inspection team may confirm that the performance characteristics of such equipment meet the technical requirements necessary to support the inspection task intended to be accomplished.

5. Agreed procedures for the decontamination of any equipment are contained in Part C of Attachment 5.

Section 6. Pre-Inspection Activities

1. The inspection team shall be given a pre-inspection briefing by the representatives of the plant site in accordance with paragraph 37 of Part II of the Verification Annex. The pre-inspection briefing shall include:

(a) information on the plant site as described in Attachment 6;

(b) health and safety specifications described in Section 2 above and detailed in Attachment 2;

(c) any changes to the above-mentioned information since the last inspection; and

(d) information on administrative and logistical arrangements additional to those contained in Attachment 11, if any, that shall apply during the inspection, as contained in Section 9.

2. Any information about the plant site that the inspected State Party has volunteered to provide to the inspection team during the pre-inspection briefing with indications as to which information may be transferred off-site is referenced in Part B of Attachment 6.

Section 7. Conduct of the Inspection

7.1 Standing Arrangements

1. The inspection period shall begin immediately upon completion of the pre-inspection briefing unless agreed otherwise.

2. Upon conclusion of the pre-inspection briefing, the inspection team leader shall provide to the designated representative of the inspected State Party a preliminary inspection plan to facilitate the conduct of the inspection.

3. Arrangements for the conduct of a site tour, if any, are contained in Attachment 7 to this Agreement.

4. Before commencement of inspection activities, the inspection team leader shall inform the representative of the inspected State Party about the initial steps to be taken in implementing the inspection plan. The plan will be adjusted by the inspection team as circumstances warrant throughout the inspection process in consultation with the inspected State Party as to its implementability in regard to paragraph 40 of Part II of the Verification Annex.[3]

[3] The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party and disturbance to the plant site inspected. The inspection team shall avoid unnecessarily hampering or delaying the operation of the plant site and

Continued

5. The inspection team leader shall inform the representative of the inspected State Party during the inspection in a timely manner about each subsequent step to be taken by the inspection team in implementing the inspection plan. Without prejudice to paragraph 40 of Part II of the Verification Annex, this shall be done in time to allow the inspected State Party to arrange for the necessary measures to be taken to provide access and support to the inspection team as appropriate without causing unnecessary delay in the conduct of inspection activities.

6. At the beginning of the inspection, the inspection team shall have the right to confirm the precise location of the plant site utilizing visual and map reconnaissance, a site diagram, or other suitable techniques.

7. The inspection team shall, upon request of the inspected State Party, communicate with the personnel of the plant site only in the presence of or through a representative of the inspected State Party.

8. The inspected State Party shall, upon request, provide a securable work space for the inspection team, including adequate space for the storage of equipment. The inspection team shall have the right to seal its work space. For ease of inspection, the inspected State Party will work with the plant site representative to provide work space at the plant site, if possible.

7.2 Access to and Inspection of Areas, Buildings and Structures

1. The focus of the inspection shall be the declared Schedule 2 plant(s) within the declared plant site as referenced in Attachment 8. If the inspection team requests access to other parts of the plant site, access to these areas shall be granted in accordance with the obligation to provide clarification pursuant to paragraph 51 of Part II and paragraph 25 of Part VII of the Verification Annex, and in accordance with Attachment 8.

2. Pursuant to paragraph 45 of Part II of the Verification Annex, the inspection team shall have unimpeded access to the declared Schedule 2 plant(s) in accordance with the relevant Articles and Annexes of the Convention and Attachments 8, 9, and 10. Areas of the declared plant(s) likely to be inspected are mentioned in paragraph 28 of Part VII of the Verification Annex. Pursuant to Section C of Part X of the Verification Annex, the inspection team shall have managed access to the other areas of the plant site. Procedures for access to these areas are contained in Attachment 8.

7.3 Access to and Inspection of Documentation and Records

1. The agreed list of the documentation and records to be routinely made available for inspection purposes, mentioned in paragraph 26 of Part VII of the Verification Annex, to the inspection team by the inspected State Party during an inspection, as well as arrangements with regard to access to such records for the purpose of protecting confidential information, are contained in Attachment 9. Such documentation and records will be provided upon request.

2. Only those records placed in the custody of the inspection team that are attached to the preliminary factual findings in accordance with Section 3 may leave the premises. Those records placed in the custody of the inspection team that are not attached to the preliminary factual findings must be retained in the on-site container or returned to the inspected State Party.

7.4 Sampling and Analysis

1. Without prejudice to paragraphs 52 to 58 of Part II of the Verification Annex, procedures for sampling and analysis for verification purposes as mentioned in paragraph 27 of Part VII of the Verification Annex are contained in Attachment 10 of this Agreement.

2. Sampling and analysis, for inspection purposes, may be carried out to check whether undeclared scheduled chemicals are detected. Each such sample will be split into a minimum of four parts at the request of the inspection team in accordance with Part C of Attachment 10. One part shall be analyzed in a timely manner on-site. The second part of the split sample may be controlled by the inspection team for future reference and, if necessary, analysis off-site at laboratories designated by the Organization. That part of the sample may be destroyed at any time in the future upon the decision of the inspection team but in any case no later than 60 days after it was taken. The third part may be retained by the inspected State Party. The fourth part may be retained by the plant site.

3. Pursuant to paragraph 52 of the Part II of the Verification Annex, representatives of the inspected State Party or plant site shall take samples at the request of the inspection team in the presence of inspectors. The inspected State Party will inform the inspection team of the authorized plant site representative's[4] determination of whether the

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avoid affecting its safety. In particular, the inspection team shall not operate the plant site. If the inspection team considers that, to fulfil the mandate, particular operations should be carried out at the plant site, it shall request the designated representative of the plant site to have them performed.

[4] The authorized plant site representative is the owner or the operator, occupant or agent in charge of the premises being inspected.

sample shall be taken by representatives of the plant site or the inspection team or other individuals present. If inspectors are granted the right to take samples themselves in accordance with paragraph 52 of Part II of the Verification Annex, the relevant advance agreement between the inspection team and the inspected State Party shall be in writing. The representatives of the inspected State Party and the inspected plant site shall have the right to be present during sampling. Agreed conditions and procedures for such sample collection are contained in Part B of Attachment 10 to this Agreement.

4. Plant site sampling equipment shall as a rule be used for taking samples required for the purposes of the inspection. This is without prejudice to the right of the inspection team pursuant to paragraph 27 of Part II of the Verification Annex to use its own approved sampling equipment in accordance with paragraph 1 of Section 5 and Parts A and B of Attachment 5 to this Agreement.

5. Should the inspection team request that a sample be taken and the inspected State Party be unable to accede or agree to the request, the inspected State Party will make every reasonable effort to satisfy the inspection team's concerns by other means to enable the inspection team to fulfil its mandate. The inspected State Party will provide a written explanation for its inability to accede or agree to the request. Any such response shall be supported by relevant document(s). The explanation of the inspected State Party shall be included in the preliminary factual findings.

6. In accordance with paragraph 53 of Part II of the Verification Annex, where possible, the analysis of samples shall be performed on-site and the inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it for the splitting, preparation, handling, analysis, integrity and transport of samples. The assistance that will be provided by the inspected State Party and the analysis procedures to be followed are contained in Part D of Attachment 10 to this Agreement.

7. The inspection team may request the inspected State Party to perform the analysis in the inspection team's presence. The inspection team shall have the right to be present during any sampling and analysis conducted by the inspected State Party.

8. The results of such analysis shall be reported in writing as soon as possible after the sample is taken.

9. The inspection team shall have the right to request repeat analysis or clarification in connection with ambiguities.

10. If at any time, and for any reason, on-site analysis is not possible, the inspection team has the right to have sample(s) analyzed off-site at Organization-designated laboratories. In selecting such designated laboratories for the off-site analysis, the Organization will give due regard to requirements of the inspected State Party.

11. Transportation of samples will be in accordance with the procedures outlined in Part E of Attachment 10.

12. If at any time, the inspected State Party or plant site representative determines that inspection team on-site analysis activities are not in accordance with the facility agreement or agreed analysis procedures, or otherwise pose a threat to safety or environmental regulations or laws, the inspected State Party, in consultation with the plant site representative, will cease these on-site analysis activities pending resolution. If both parties cannot agree to proceed with the analysis, the inspection team will document this in its preliminary factual findings.

13. Conditions and procedures for the disposal of hazardous materials generated during sampling and on-site analysis during the inspection are contained in Part F of Attachment 10 to this Agreement.

7.5 Arrangements for Interviews

1. The inspection team shall have the right, subject to applicable United States legal protections for individuals, to interview any plant site personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts in accordance with paragraph 46 of Part II of the Verification Annex and inspected State Party's policy and procedures. Agreed procedures for conducting interviews are contained in Attachment 12.

2. The inspection team will submit to the inspected State Party names and/or positions of those desired for interviews. The requested individual(s) will be made available to the inspection team no later than 24 hours after submission of the formal request, unless agreed otherwise. The inspection team may also be requested to submit questions in writing prior to conducting interviews. The specific timing and location of interviews will be determined with the plant site in coordination with the inspected State Party and consistent with adequate notification of the interviewees, and minimizing the operation impacts on the plant site and individuals to be interviewed.

3. The inspected State Party may recommend to the inspection team that interviews be conducted in either ''panel'' or individual formats. At a minimum, interviews will be conducted with a member of the plant site staff and an inspected State Party representative. Legal counsel may also be required to be present by the inspected State Party. The interview may be interrupted for consultation between the interviewee, the plant site representative, the inspected State Party representative, and legal counsel.

4. The inspected State Party will have the right to restrict the content of interviews to information directly related to the mandate or purpose of the inspection.

5. Outside the interview process and in discharging their functions, inspectors shall communicate with personnel of the plant site only through the representative(s) of the inspected State Party.

7.6 Communications

1. In accordance with paragraph 44 of Part II of the Verification Annex, the inspection team shall have the right to communicate with the headquarters of the Technical Secretariat. For this purpose they may use their own, duly certified approved equipment, in accordance with paragraph 1 of Section 5. The representative of the inspected plant site retains the right to control the use of communications equipment in specific areas, building or structures if such use would be incompatible with applicable safety or fire regulations.

2. In case the inspection team and the inspected State Party agree to use any of the inspected State Party's communications equipment, the list of such equipment and the provisions for its use are contained in Part B of Attachment 5 to this Agreement.

3. The agreed means of communication between inspection team sub-teams in accordance with paragraph 44 of Part II of the Verification Annex are contained in Part D of Attachment 5.

7.7 Photographs

1. In accordance with the provisions of paragraph 48 of Part II of the Verification Annex, the Confidentiality Annex and inspected State Party's policy and procedures, the inspection team shall have the right to have photographs taken at their request by the representatives of the inspected State Party or the inspected plant site. One camera of the instant development type furnished by the inspection team or the inspected State Party shall be used for taking identical photographs in sequence. Cameras furnished by the inspection team will remain either in their work space or equipment storage area except when carried by inspection team members for a specific inspection activity. Cameras will only be used for specified inspection purposes. Personal cameras are not allowed to be taken to the plant site.

2. Pursuant to the Confidentiality Annex, the inspected State Party, in consultation with the plant site representative, shall have the right to determine that contents of the photographs conform to the stated purpose of the photographs. The inspection team shall determine whether photographs conform to those requested and, if not, repeat photographs shall be taken. Photographs that do not meet the satisfaction of both sides will be destroyed by the inspected State Party in the presence of the inspection team. The inspection team, the inspected State Party and the plant site, if so requested, shall each retain one copy of every photograph. The copies shall be signed, dated, and classified, in accordance with Section 3, and note the location and subject of the photograph and carry the same identification number. Agreed procedures for photography are contained in Attachment 13.

3. The representative of the inspected plant site has the right to object to the use of photographic equipment in specific areas, buildings or structures if such use would be incompatible with safety or fire regulations given the characteristics of the chemicals stored in the area in question. Restrictions for use are contained in Parts A and/or B of Attachment 5 to this Agreement. If the objection is raised due to safety concerns, the inspected State Party will, if possible, furnish photographic equipment that meets the regulations. If the use of photographic equipment is not permissible at all in specific areas, buildings or structures for the reasons stated above, the inspected State Party shall provide a written explanation of its objection to the inspection team leader. The explanation, along with the inspection team leader's comments will be included in the inspection team's preliminary factual findings.

Section 8. Debriefing and Preliminary Findings

1. In accordance with paragraph 60 of Part II of the Verification Annex, upon completion of an inspection the inspection team shall meet with representatives of the inspected State Party and the personnel responsible for the inspection site to review the preliminary findings of the inspection team and to clarify any ambiguities. The inspection team shall provide to the representatives of the inspected State Party its preliminary findings in written form according to a standardized format, together with a list of any samples and copies of written information and data gathered and other material to be taken off-site. The document shall be signed by the head of the inspection team. In order to indicate that he has taken notice of the content of this document, the representative of the inspected State Party shall countersign the document. The meeting shall be completed not later than 24 hours after the completion of the inspection.

2. The document on preliminary findings shall also include, inter alia, the list of results of analysis, if conducted on-site, records of seals, and copies of photographs to be retained by the inspection team. It will be prepared in accordance with the preliminary findings format referenced in Annex 5. Any substantive changes to this format will be

made only after consultation with the inspected State Party.

3. Before the conclusion of the debriefing, the inspected State Party may provide comments and clarifications to the inspection team on any issue related to the conduct of the inspection. The inspection team shall provide to the representative of the inspected State Party its preliminary findings in written form sufficiently prior to the conclusion of the debriefing to permit the inspected State Party to prepare any comments and clarifications. The inspected State Party's written comments and clarifications shall be attached to the document on preliminary findings.

4. The inspection team shall depart from the site upon the conclusion of the meeting on preliminary findings.

Section 9. Administrative Arrangements

1. The inspected State Party shall provide or arrange for the provision of the amenities listed in detail in Attachment 11 to the inspection team in a timely manner throughout the duration of the inspection. The inspected State Party shall be reimbursed by the Organization for such costs incurred by the inspection team, unless agreed otherwise.

2. Requests from the inspection team for the inspected State Party to provide or arrange amenities shall be made in writing by an authorized member of the inspection team[5] using the form contained in Attachment 11. Requests shall be made as soon as the need for amenities has been identified. The provision of such requested amenities shall be certified in writing by the authorized member of the inspection team. Copies of all such certified requests shall be kept by both parties.

3. The inspection team has the right to refuse extra amenities that in its view are not needed for the conduct of the inspection.

Section 10. Liabilities

1. Any claim by the inspected State Party against the Organization or by the Organization against the inspected State Party in respect of any alleged damage or injury resulting from inspections at the plant site in accordance with this Agreement, without prejudice to paragraph 22 of the Confidentiality Annex, shall be settled in accordance with international law and, as appropriate, with the provisions of Article XIV of the Convention.

[5] The name of the authorized member(s) of the inspection team should be communicated to the inspected State Party no later than at the Point of Entry.

Section 11. Status of Attachments

1. The Attachments form an integral part of this Agreement. Any reference to the Agreement includes the Attachments. However, in case of any inconsistency between this Agreement and any Attachment, the sections of the Agreement shall prevail.

Section 12. Amendments, Modifications and Updates

1. Amendments to the sections of this Agreement may be proposed by either Party and shall be agreed to and enter into force under the same conditions as provided for under paragraph 1 of Section 14.

2. Modifications to the Attachments of this Agreement, other than Attachment 1 and Part B of Attachment 5, may be agreed upon at any time between the representative of the Organization and the representative of the inspected State Party, each being specifically authorized to do so. The Director-General shall inform the Executive Council about any such modifications. Each Party to this Agreement may revoke its consent to a modification not later than four weeks after it had been agreed upon. After this time period the modification shall take effect.

3. The inspected State Party will update Part A of Attachment 1 and Part B of Attachment 5, and Attachment 6 as necessary for the effective conduct of inspections. The Organization will update Part B of Attachment 1 and Annex 5, subject to paragraph 2 of Section 8, as necessary for the effective conduct of inspections.

Section 13. Settlement of Disputes

1. Any dispute between the Parties that may arise out of the application or interpretation of this Agreement shall be settled in accordance with Article XIV of the Convention.

Section 14. Entry into Force

1. This Agreement shall enter into force after approval by the Executive Council and signature by the two Parties. If the inspected State Party has additional internal requirements, it shall so notify the Organization in writing by the date of signature. In such cases, this Agreement shall enter into force on the date that the inspected State Party gives the Organization written notification that its internal requirements for entry into force have been met.

Section 15. Duration and Termination.

1. This Agreement shall cease to be in force when the provisions of paragraph 12 of Part VII of the Verification Annex no longer apply to this plant site, except if the continuation of the Agreement is agreed by mutual consent of the Parties.

Done at _____ in _____ copies, in English, each being equally authentic.[6]

ATTACHMENTS

The following attachments shall be completed where applicable.

Attachment 1: General Factors for the Conduct of Inspections
Attachment 2: Health and Safety Requirements and Procedures
Attachment 3: Specific Arrangements in Relation to the Protection of Confidential Information at the Plant Site
Attachment 4: Arrangements for the Inspection Team's Contacts with the Media or the Public
Attachment 5: Inspection Equipment
Attachment 6: Information on the Plant Site Provided in Accordance with Section 6
Attachment 7: Arrangements for Site Tour
Attachment 8: Access to the Plant Site in Accordance with Section 7.2.
Attachment 9: Records Routinely Made Available to the Inspection Team at the Plant Site
Attachment 10: Sampling and Analysis for Verification Purposes
Attachment 11: Administrative Arrangements
Attachment 12: Agreed Procedures for Conducting Interviews
Attachment 13: Agreed Procedures for Photography

ATTACHMENT 1—GENERAL FACTORS FOR THE CONDUCT OF INSPECTIONS

Part A. To Be Provided and Updated by the inspected State Party:

1. Plant site: _____

(a) working hours:[7] _____ hrs to _____ hrs (local time) (days)

(b) working days: _____

(c) holidays or other non-working days: ____

_____

2. Schedule 2 plant(s):

(a) working hours, if applicable: _____ hrs to _____ hrs (days)

(b) working days: _____

(c) holidays or other non-working days: ____

_____

3. Inspection activities which could/could not[8] be supported during non-working hours with notation of times and activities:

_____

4. Any other factors that could adversely affect the effective conduct of inspections:

(a) inspection requests:

Should the plant site withhold consent to an inspection, the inspected State Party shall take all appropriate action under its law to obtain a search warrant from a United States magistrate judge. Upon receipt of a warrant, the inspected State Party will accede to the Organization's request to conduct an inspection. Such inspection will be carried out in accordance with the terms and conditions of the warrant.

(b) other:

_____

_____

5. Other: Notification procedures are contained in Annex 6.

Part B. To Be Provided and Updated by the Organization:

1. Inspection frequency: _____

2. Inspection intensity:

(a) maximum estimated period of inspection (for planning purposes):[9] _____

(b) approximate inspection team size: _____

(c) estimated volume and weight of equipment to be brought on-site: _____

ATTACHMENT 2—HEALTH AND SAFETY REQUIREMENTS AND PROCEDURES

Part A. Basic Principles:

1. Applicable health and safety regulations of the Organization, with agreed variations from strict implementation, if any:

_____

2. Health and safety regulations applicable at the plant site:

(a) federal regulations:

_____

(b) state regulations:

_____

(c) local regulations:

_____

(d) plant site regulations:

_____

3. Health and safety requirements and regulations agreed between the inspected State Party and the Organization:

_____

Part B. Detection and Monitoring:

1. Applicable specific safety standards for workplace chemical exposure limits and/or concentrations which should be observed during the inspection, if any:

_____

2. Procedures, if any, for detection and monitoring in accordance with the Organization's Health and Safety Policy, including data to be collected by, or provided to, the inspection team:

_____

Part C. Protection:

1. Protective equipment to be provided by the Organization and agreed procedures for equipment certification and use, if required:

[6] The language(s) to be chosen by the inspected State Party from the languages of the Convention shall be the same as the language(s) referred to in paragraph 6 of Section 1 of this Agreement.

[7] All references to time use a 24 hour clock.

[8] Choose one option.

[9] Any figure indicated is without prejudice to paragraph 29 of Part VII of the Verification Annex.

2. Protective equipment to be provided by the inspected State Party, and agreed procedures, personnel training, and personnel qualification tests and certification required; and agreed procedures for use of the equipment:

Part D. Medical Requirements:

1. Applicable medical standards of the inspected State Party and, in particular, the inspected plant site:

2. Medical screening procedures for members of the inspection team:

3. Agreed medical assistance to be provided by the inspected State Party:

4. Emergency medical evacuation procedures:

5. Agreed additional medical measures to be taken by the inspection team:

6. Procedures for emergency response to chemical casualties of the inspection team:

Part E. Modification of Inspection Activities:

1. Modification of inspection activities due to health and safety reasons, and agreed alternatives to accomplish the inspection goals:

ATTACHMENT 3—SPECIFIC ARRANGEMENTS IN RELATION TO THE PROTECTION OF CONFIDENTIAL INFORMATION AT THE PLANT SITE

Part A. Inspected State Party's Procedures for Designating and Classifying Documents Provided to the Inspection Team:

See Annex 3 for the Organization's Policy on Confidentiality and Annex 7 for the inspected State Party's Procedures for Information Control.

Part B. Specific Procedures for Access by the Inspection Team to Confidential Areas or Materials:

Part C. Procedures in Relation to the Certification by the Inspection Team of the Receipt of Any Documents Provided by the Inspected Plant Site:

Part D. Storage of Confidential Documents at the Inspected Plant Site:

1. Procedures in relation to the storage of confidential documents or use of a dual control container on-site, if applicable:

Information under restrictions provided for in the Confidentiality Annex and as such to be kept in the dual control container under joint seal shall be available to the inspection team leader and/or an inspector designated by him from the beginning of the pre-inspection briefing until the end of the debriefing upon completion of the inspection in accordance with Section 3. If copies of information under dual control are permitted to be attached to the preliminary factual findings by the inspected State Party, they shall be made by the inspected State Party and retained under dual control until the debriefing. Should the medium on which such information is recorded become unusable, it shall be replaced without delay by the representative of the inspected State Party.

2. The dual control container will be placed

3. Information meeting the strict requirements for restriction pursuant to the Confidentiality Annex, and to be maintained in the dual control container located at the inspected plant site between inspections is listed below:

Reference	Type of data	Recorded media	Volume	Reasons for restrictions/remarks

Part E. Procedures for the Removal Off-Site of Any Written Information, Data, and Other Materials Gathered by the Inspection Team:

Part F. Procedures for Providing the Representatives of the inspected State Party with Copies of Written Information, Inspector's Notebooks, Data and Other Material Gathered by the Inspection Team:

Part G. Other Arrangements, If Any:

1. Unless specified otherwise, all plant site information shall be returned to the inspected State Party at the completion of the inspection. No copies of plant site information shall be made in any manner by the inspection team or the Organization.

2. Plant site information shall not be released to the public, other States Parties, or the media without the specific permission of the inspected State Party, after consultation with the plant site.

3. Plant site information shall not be transmitted, copied or retained electronically without the specific permission of the inspected State Party after consultation with the plant site. All transmissions of information off-site shall be done in the presence of the inspected State Party.

4. Information not relevant to the purpose of the inspection will be purged from documents, photographs, etc. prior to release to the inspection team.

ATTACHMENT 4—ARRANGEMENTS FOR THE INSPECTION TEAM'S CONTACTS WITH THE MEDIA OR THE PUBLIC

ATTACHMENT 5—INSPECTION EQUIPMENT

Part A: List of Equipment:

Item of approved inspection equipment	Agreed procedures for use	Indication of reason(s) (safety, confidentiality, etc.)	Special handling or storage requirements	Alternative for meeting inspection requirement(s), if so required by the inspection team
	Nature of restrictions(s) (location, time, periods, etc.), if any			

Part B. Equipment which the inspected State Party Has Volunteered to Provide:

Item of equipment	Procedures for use	Support to be provided, if required	Conditions (timing, costs, if any)

Part C. Procedures for the Decontamination of Equipment:

Item of equipment	Procedures for use

Part D. Means of Communication between Inspection Team Sub-Teams:

_____

REQUEST FOR AND CERTIFICATION OF EQUIPMENT AVAILABLE ON SITE TO BE PROVIDED IN ACCORDANCE WITH PARAGRAPH 3 OF SECTION 5

Date: _____

Plant Site: _____

Inspection number: _____

Name of the authorized member of the inspection team: _____

Type and number of item(s) of equipment requested: _____

Approval of the request by inspected State Party: _____

Comments on the request by the inspected State Party: _____

Indication of the costs, if any, for the use of the equipment requested/volunteered:

_____

Certification of the authorized member of the inspection team that the requested item(s) of equipment have been provided:

_____

Comments, if any, by the authorized member of the inspection team in regard to the equipment provided:

_____

Name and signature of the authorized member of the inspection team: _____

_____

Name and signature of the representative of the inspected State Party: _____

_____

ATTACHMENT 6—INFORMATION ON THE PLANT SITE PROVIDED IN ACCORDANCE WITH SECTION 6

Part A. Topics of Information for the Pre-Inspection Briefing:

_____

Part B. Any Information about the Plant Site that the inspected State Party Volunteers to Provide to the Inspection Team during the Pre-Inspection Briefing and which May Be Transferred Off-Site:

_____

ATTACHMENT 7—ARRANGEMENTS FOR SITE TOUR

The inspected State Party, in consultation with the plant site, may provide a site tour at the request of the inspection team. Such tour shall take no more than 2 hours. If a site tour is conducted, the inspected State Party may provide explanations to the inspection team during the site tour.

ATTACHMENT 8—ACCESS TO THE PLANT SITE IN ACCORDANCE WITH SECTION 7.2

Part A. Areas of the Declared Plant Site to which Inspectors Are Granted Access (i.e., detail the areas, equipment, and computers):

1. Declared Plant:[10, 11]
2. Declared Plant Site:[12]

Part B. Arrangements with Regard to the Scope of the Inspection Effort in Agreed Areas Referenced in Part A:[13]

ATTACHMENT 9—RECORDS ROUTINELY MADE AVAILABLE TO THE INSPECTION TEAM AT THE PLANT SITE:[14]

ATTACHMENT 10—SAMPLING AND ANALYSIS FOR VERIFICATION PURPOSES

Part A. Agreed Sampling Points Chosen with Due Consideration to Existing Sampling Points Used by the Plant(s) Operator(s):

Part B. Procedures for Taking Samples:

Part C. Procedures for Sample Handling and Sample Splitting:

[10] Plant means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

[11] Areas to be inspected may include:

(a) small administrative section;

(b) storage/handling areas for feedstock and products;

(c) effluent/waste handling/treatment area;

(d) control/analytical laboratory;

(e) first aid service/related medical section;

(f) records associated with the movement into, around and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

(a) areas where feed chemicals (reactants) are delivered or stored;

(b) areas where manipulative processes are performed upon the reactants prior to addition to the reaction vessels;

(c) feed lines as appropriate from the areas referred to in subparagraph (a) or subparagraph (b) to the reaction vessels together with any associated valves, flow meters, etc.;

(d) the external aspect of the reaction vessels and ancillary equipment;

(e) lines from the reaction vessels leading to long-or short-term storage or to equipment further processing the declared Schedule 2 chemicals;

(f) control equipment associated with any of the items under subparagraphs (a) to (e);

(g) equipment and areas for waste and effluent handling;

(h) equipment and areas for disposition of chemicals not up to specification.

[12] Plant Site means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as:

(a) administration and other offices;

(b) repair and maintenance shops;

(c) medical center;

(d) utilities;

(e) central analytical laboratory;

(f) research and development laboratories;

(g) central effluent and waste treatment area; and

(h) warehouse storage.

[13] List the areas, equipment, and computers, if any, that are not relevant to the inspection mandate or that contain confidential business information that does not need to be divulged in order to comply with the inspection mandate.

[14] Some illustrative examples of records and data to be detailed are given below. The actual list will be dependent on the specifics of the inspection site. Information about the format and language in which records are kept at the plant site should be mentioned. It is understood that confidential information not related to the implementation of the Convention, such as prices, will be excluded by the State Party from scrutiny.

(a) inventory and accountancy records in relation to the production, processing or consumption of the declared Schedule 2 chemicals and their storage or transportation on to or off the site;

(b) operational records for the unit(s) producing, processing or consuming Schedule 2 chemicals (units) (batch cards, log books);

(c) Schedule 2 plant(s) dispatch records within the plant site and off-site dispatches;

(d) Schedule 2 plant(s) maintenance schedule records;

(e) Schedule 2 plant(s) waste disposal records;

(f) Schedule 2 plant(s) (unit) calibration records;

(g) Schedule 2 plant(s) sales reports, as appropriate;

(h) sales or transfers, whether to another industry, trader, or other destination, and if possible, of final product types;

(i) data on direct exports/imports and to/from which States;

(j) other shipments, including specification of these other purposes; and (k) other.

Part D. Procedures for Sample Analysis:

_____

Part E. Procedures for Transporting Samples:

_____

Part F. Arrangements in Regard to the Payment of Costs Associated with the Disposal or Removal by the inspected State Party of Hazardous Waste Generated during Sampling and On-Site Analysis during the Inspection:

_____

ATTACHMENT 11—ADMINISTRATIVE ARRANGEMENTS

Part A. The Amenities Detailed Below Shall Be Provided to the Inspection Team by the inspected State Party, Subject to Payment as Indicated in Part B Below:

1. International and local official communication (telephone, fax), including calls/faxes between site and headquarters:

_____

2. Vehicles: _____
3. Working room, including adequate space for the storage of equipment:

_____

4. Lodging: _____
5. Meals: _____
6. Medical care: _____
7. Interpretation Services:
(a) number of interpreters: _____
(b) estimated interpretation time: _____
(c) languages: _____
8. Other:

_____

Part B. Distribution of Costs for Provision of Amenities by the inspected State Party (check one option for each amenity provided as appropriate):

Paragraphs 1–8 in Part A above	To be paid directly by the Organization after the inspection	To be paid by the inspection team on behalf of the Organization during the in-country period	To be paid by the inspected State Party and subsequently reimbursed by the Organization	To be paid by the inspected State Party
1 2 3 4 5 6 7 8				

Part C. Other Arrangements.

1. Number of sub-teams (consisting of no less than two inspectors per sub-team) to be accommodated: _____

REQUEST FOR AND CERTIFICATION OF AMENITIES TO BE PROVIDED OR ARRANGED

Date: _____
Plant site: _____
Inspection number: _____
Category of amenities requested: _____
Description of amenities requested: _____
Approval of the request by the inspected State Party: _____
Comments on the request by the inspected State Party:

_____

Indication of the costs for the amenities requested: _____
Certification of the authorized member of the inspection team that the requested amenities have been provided:

_____

Comments by the authorized member of the inspection team in regard to the quality of the amenities provided:

_____

Name and signature of the authorized member of the inspection team:

_____

Name and signature of the representative of the inspected State Party:

_____

ATTACHMENT 12—AGREED PROCEDURES FOR CONDUCTING INTERVIEWS

_____

_____

ATTACHMENT 13—AGREED PROCEDURES FOR PHOTOGRAPHY

ANNEXES

NOTE: These annexes, inter alia, can be attached if requested by the inspected State Party

Annex 1: Organization's Media and Public Relations Policy
Annex 2: Organization's Health and Safety Policy and Regulations
Annex 3: Organization's Policy on Confidentiality
Annex 4: Plant Site Declaration
Annex 5: Preliminary and Final Inspection Report Formats
Annex 6: Inspected State Party's Procedures for Inspection Notification
Annex 7: Inspected State Party's Procedures for Information Control

PART 717—CLARIFICATION OF POSSIBLE NON-COMPLIANCE WITH THE CONVENTION; CHALLENGE INSPECTION PROCEDURES

Sec.
717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.
717.2 Challenge inspections.
717.3 Samples.
717.4 Report of inspection-related costs.

AUTHORITY: 22 U.S.C. 6701 *et seq.*, 2681; E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73801, Dec. 30, 1999, unless otherwise noted.

§717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

(a) Article IX of the Convention sets forth procedures for clarification, between States Parties, of issues about compliance with the Convention. If States Parties are unable to resolve such issues through consultation between themselves or through the Organization for the Prohibition of Chemical Weapons (OPCW), a State Party may request the OPCW to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party. Such an on-site challenge inspection request shall be for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the Convention.

(b) Any person or facility subject to the CWCR (parts 710 through 722 of this subchapter) must, within five working days, provide information required by the Department of Commerce pursuant to an Article IX clarification request from another State Party, or the OPCW, concerning possible non-compliance with the reporting, declaration, notification, or inspection requirements set forth in parts 712 through 716 of this subchapter.

§717.2 Challenge inspections.

Any person or facility subject to the CWCR (see §710.2 of this subchapter), whether or not required to submit declarations or reports, may be subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements of the Convention. The Department of Commerce will host and escort the international Inspection Team for all challenge inspections of persons or facilities subject to the CWCR concerning possible non-compliance with the requirements set forth in parts 712 through 716 of this subchapter.

(a) *Warrants.* In instances where consent is not provided by the owner, operator, occupant or agent in charge of the facility or location, the Department of Commerce will assist the Department of Justice in seeking a criminal warrant as provided by the Act. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to a challenge inspection request.

(b) *Notification of challenge inspection.* Challenge inspections may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises. The Department of Commerce will provide Host Team notification to the inspection point of contact if such notification is deemed appropriate. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, the Department of Commerce, or if the Department of Commerce is unable, another appropriate agency, may post notice prominently at the plant, plant site or other facility or location to be inspected.

(1) *Timing.* The OPCW will notify the USNA of a challenge inspection not less than 12 hours before the planned arrival of the Inspection Team at the U.S. point of entry. Written notice will be provided to the owner and to the operator, occupant, or agent in charge of the premises at any appropriate time determined by the USNA after receipt of notification from the OPCW Technical Secretariat.

(2)(i) *Content of notice.* The notice shall include all appropriate information provided by the OPCW to the United States National Authority concerning:

(A) The type of inspection;

(B) The basis for the selection of the facility or locations for the type of inspection sought;

(C) The time and date that the inspection will begin and the period covered by the inspection;

(D) The names and titles of the inspectors; and

(E) All appropriate evidence or reasons provided by the requesting State Party for seeking the inspection.

(ii) In addition to appropriate information provided by the OPCW in its notification to the USNA, the Department of Commerce's Host Team notification to the facility or plant site will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities.

(c) *Period of inspection.* Challenge inspections will not exceed 84 hours, unless extended by agreement between the Inspection Team and the Host Team Leader.

(d) *Scope and conduct of inspections*—(1) *General.* Each inspection shall be limited to the purposes described in this section and conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(2) *Scope of inspections.* If an owner, operator, occupant, or agent in charge of a facility or location consents to a challenge inspection, the inspection will be conducted in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. If consent is not granted, the inspection will be conducted in accordance with a criminal warrant, as provided by the Act, and in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. A challenge inspection will also be conducted in accordance with a facility agreement, if a facility agreement has been concluded for the subject facility, to the extent the terms of the facility agreement are relevant to the challenge inspection request.

(3) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(4) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety.

§ 717.3 Samples.

The owner, operator, occupant or agent in charge of a facility or location must provide a sample, as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103.

§ 717.4 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to this subchapter during a given calendar year must report to BIS within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in § 716.6(d) of this subchapter, with the following notation:

''ATTN: Report of Inspection-related Costs.''

PART 718—CONFIDENTIAL BUSINESS INFORMATION

Sec.
718.1 Definition.
718.2 Identification of confidential business information.
718.3 Disclosure of confidential business information.
SUPPLEMENT NO. 1 TO PART 718—CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73802, Dec. 30, 1999, unless otherwise noted.

§718.1 Definition.

The Chemical Weapons Convention Implementation Act of 1998 (''the Act'') defines confidential business information as information included in categories specifically identified in sections 103(g)(1) and 304(e)(2) of the Act and other trade secrets as follows:

(a) Financial data;

(b) Sales and marketing data (other than shipment data);

(c) Pricing data;

(d) Personnel data;

(e) Research data;

(f) Patent data;

(g) Data maintained for compliance with environmental or occupational health and safety regulations;

(h) Data on personnel and vehicles entering and personnel passenger vehicles exiting the facility;

(i) Any chemical structure;

(j) Any plant design, process, technology or operating method;

(k) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced;

(l) Any commercial sale, shipment or use of a chemical; or

(m) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act), provided such trade secret is obtained from a U.S. person or through the U.S. Government.

§718.2 Identification of confidential business information.

(a) *General.* Certain confidential business information submitted to BIS in declarations and reports does not need to be specifically identified and marked by the submitter, as described in paragraph (b) of this section. Other confidential business information submitted to BIS in declarations and reports and confidential business information provided to the Host Team during inspections must be identified by the inspected facility so that the Host Team can arrange appropriate marking and handling.

(b) *Confidential business information contained in declarations and reports.* (1) BIS has identified those data fields on the declaration and report forms that request ''confidential business information'' as defined by the Act. These data fields are identified in the table provided in Supplement No. 1 to this part.

(2) You must specifically identify in a cover letter submitted with your declaration or report any additional information on a declaration or report form (i.e., information not provided in one of the data fields listed in the table included in Supplement No. 1 to this part), including information provided in attachments to Form A or Form B, that you believe is confidential business information, as defined by the Act, and must describe how disclosure would likely result in competitive harm.

NOTE TO PARAGRAPH (b): BIS has also determined that descriptions of Schedule 1 facilities submitted with Initial Declarations as attachments to Form A contain confidential business information, as defined by the Act.

(c) *Confidential business information contained in notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. You must identify information in your notifications of Schedule 1 imports that you consider to be privileged and confidential, and describe how disclosure would likely result in competitive harm. See §718.3(b) for provisions on disclosure to the public of such information by the U.S. Government.

(d) *Confidential business information related to inspections disclosed to, reported to, or otherwise acquired by, the U.S. Government.* (1) During inspections,

certain confidential business information, as defined by the Act, may be disclosed to the Host Team. Facilities being inspected are responsible for identifying confidential business information to the Host Team, so that if it is disclosed to the Inspection Team, appropriate marking and handling can be arranged, in accordance with the provisions of the Convention (see § 718.3(c)(1)(ii)). Confidential business information not related to the purpose of an inspection or not necessary for the accomplishment of an inspection, as determined by the Host Team, may be removed from sight, shrouded, or otherwise not disclosed.

(2) Before or after inspections, confidential business information related to an inspection that is contained in any documents or that is reported to, or otherwise acquired by, the U.S. Government, such as facility information for pre-inspection briefings, facility agreements, and inspection reports, must be identified by the facility so that it may be appropriately marked and handled. If the U.S. Government creates derivative documents from such documents or reported information, they will also be marked and handled as confidential business information.

§ 718.3 Disclosure of confidential business information.

(a) *General.* Confidentiality of information will be maintained by BIS consistent with the non-disclosure provisions of the Act, the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate.

(b) *Disclosure of confidential business information contained in notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. Disclosure of such information will be in accordance with the provisions of the relevant statutory and regulatory authorities as follows:

(1) *Exports of Schedule 1 chemicals.* Confidentiality of all information contained in these notifications will be maintained consistent with the non-disclosure provisions of the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate; and

(2) *Imports of Schedule 1 chemicals.* Confidentiality of information contained in these notifications will be maintained pursuant to applicable exemptions under the Freedom of Information Act.

(c) *Disclosure of confidential business information pursuant to § 404(b) of the Act*—(1) *Disclosure to the Organization for the Prohibition of Chemical Weapons (OPCW).* (i) As provided by Section 404(b)(1) of the Act, the U.S. Government will disclose or otherwise provide confidential business information to the Technical Secretariat of the OPCW or to other States Parties to the Convention, in accordance with provisions of the Convention, particularly with the provisions of the Annex on the Protection of Confidential Information (Confidentiality Annex).

(ii) *Convention provisions.* (A) The Convention provides that States Parties may designate information submitted to the Technical Secretariat as confidential, and requires the OPCW to limit access to, and prevent disclosure of, information so designated, except that the OPCW may disclose certain confidential information submitted in declarations to other States Parties if requested. The OPCW has developed a classification system whereby States Parties may designate the information they submit in their declarations as ''restricted,'' ''protected,'' or ''highly protected,'' depending on the sensitivity of the information. Other States Parties are obligated, under the Convention, to store and restrict access to information which they receive from the OPCW in accordance with the level of confidentiality established for that information.

(B) OPCW inspectors are prohibited, under the terms of their employment contracts and pursuant to the Confidentiality Annex of the Convention, from disclosing to any unauthorized

persons, for five years after termination of their employment, any confidential information coming to their knowledge or into their possession in the performance of their official duties.

(iii) *U.S. Government designation of information to the Technical Secretariat.* It is the policy of the U.S. Government to designate all facility information it provides to the Technical Secretariat in declarations, reports and Schedule 1 notifications as ''protected.'' It is the policy of the U.S. Government to designate confidential business information that it discloses to Inspection Teams during inspections as ''protected'' or ''highly protected,'' depending on the sensitivity of the information. The Technical Secretariat is responsible for storing and limiting access to any confidential business information contained in a document according to its established procedures.

(2) *Disclosure to Congress.* Section 404(b)(2) of the Act provides that the U.S. Government must disclose confidential business information to any committee or subcommittee of Congress with appropriate jurisdiction upon the written request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, and no member and no staff member of such committee or subcommittee, may disclose such information or material except as otherwise required or authorized by law.

(3) *Disclosure to other Federal agencies for law enforcement actions and disclosure in enforcement proceedings under the Act.* Section 404(b)(3) of the Act provides that the U.S. Government must disclose confidential business information to other Federal agencies for enforcement of the Act or any other law, and must disclose such information when relevant in any proceeding under the Act. Disclosure will be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding. Section 719.14(b) of this subchapter provides that all hearings will be closed, unless the Administrative Law Judge for good cause shown determines otherwise. Section 719.20 of this subchapter provides that parties may request that the administrative law judge segregate and restrict access to confidential business information contained in material in the record of an enforcement proceeding.

(4) *Disclosure to the public; national interest determination.* Section 404(c) of the Act provides that confidential business information, as defined by the Act, that is in the possession of the U.S. Government, is exempt from public disclosure in response to a Freedom of Information Act request, except when such disclosure is determined to be in the national interest.

(i) *National interest determination.* The United States National Authority (USNA), in coordination with the CWC interagency group, shall determine on a case-by-case basis if disclosure of confidential business information in response to a Freedom of Information Act request is in the national interest.

(ii) *Notification of intent to disclose pursuant to a national interest determination.* The Act provides for notification to the affected person of intent to disclose confidential business information based on the national interest, unless such notification of intent to disclose is contrary to national security or law enforcement needs. If, after coordination with the agencies that constitute the CWC interagency group, the USNA does not determine that such notification of intent to disclose is contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information and the person to whom the information pertains of the intent to disclose the information.

SUPPLEMENT NO. 1 TO PART 718—CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED

	Fields containing confidential business information
Schedule 1 Forms:	
Certification Form	None.
Form 1–1	None.
Form 1–2	All fields.
Form 1–2A	All fields.
Form 1–2B	All fields.
Form 1–3	All fields.
Form 1–4	All fields.
Schedule 2 Forms:	
Certification Form	None.
Form 2–1	None.
Form 2–2	Questions 2–2.8.
Form 2–3	All fields.
Form 2–3A	All fields.

	Fields containing confidential business information
Form 2–3B	All fields.
Form 2–3C	All fields.
Form 2–4	All fields.
Schedule 3 Forms:	
Certification Form	None.
Form 3–1	None.
Form 3–2	None.
Form 3–3	All fields.
Form 3–4	All fields.
Unscheduled Discrete Organic Chemicals Forms:	
Certification Form	None.
Form UDOC	None.
Forms A and B and attachments (all Schedules and UDOCs).	Case-by-case; must be identified by submitter.

*This table lists those data fields on the Declaration and Report Forms that request ''confidential business information'' (CBI) as defined by the Act (sections 103(g) and 304(e)(2)). As provided by section 404(a) of the Act, CBI is exempt from disclosure in response to a Freedom of Information Act (FOIA) request under sections 552(b)(3) and 552(b)(4) (5 U.S.C.A. 552(b)(3)–(4)), unless a determination is made, pursuant to section 404(c) of the Act, that such disclosure is in the national interest. Other FOIA exemptions to disclosure may also apply. You must identify CBI provided in Form A and/or Form B attachments, and provide the reasons supporting your claim of confidentiality, except that Schedule 1 facility technical descriptions submitted with initial declarations are always considered to include CBI. If you believe that information you are submitting in a data field marked ''none'' in the Table is CBI, as defined by the Act, you must identify the specific information and provide the reasons supporting your claim of confidentiality in a cover letter.

PART 719—ENFORCEMENT

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AUTHORITY: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73804, Dec. 30, 1999, unless otherwise noted.

§719.1 Scope and definitions.

(a) *Scope.* This part 719 describes the various sanctions that apply to violations of the Act and this subchapter. It also establishes detailed administrative procedures for certain violations of the Act. The three categories of violations are as follows:

(1) *Violations of the Act subject to administrative and criminal enforcement proceedings.* This CWCR sets forth in §719.2 violations for which the statutory basis is the Act. The Department of Commerce investigates these violations and, for administrative proceedings, prepares charges, provides legal representation to the U.S. Government, negotiates settlements, and makes recommendations to officials of the Department of State with respect to the initiation and resolution of proceedings. The administrative procedures applicable to these violations are found in §§719.5 through 719.22 of this part. The Department of State gives notice of initiation of administrative proceedings and issues orders imposing penalties pursuant to 22 CFR part 103, subpart C.

(2) *Violations of the International Emergency Economic Powers Act (IEEPA) subject to judicial enforcement proceedings.* Section 719.3 sets forth violations of the Chemical Weapons Convention for which the statutory basis is the IEEPA. The Department of Commerce refers these violations to the Department of Justice for civil or criminal judicial enforcement.

(3) *Violations and sanctions under the Act not subject to proceedings under this subchapter.* Section 719.4 sets forth violations and sanctions under the Act that are not violations of this subchapter and that are not subject to proceedings under this subchapter. This section is included solely for informational purposes. The Department of Commerce may assist in investigations of these violations, but has no authority to initiate any enforcement action under this subchapter.

NOTE TO PARAGRAPH (a): This part 719 does not apply to violations of the export requirements imposed pursuant to the Chemical Weapons Convention and set forth in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(b) *Definitions.* The following are definitions of terms as used only in parts 719 and 720. For definitions of terms applicable to parts 710 through 722 of this subchapter, see part 710 of this subchapter.

The Act. The Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701–6777).

Assistant Secretary for Export Enforcement. The Assistant Secretary for Export Enforcement, Bureau of Industry and Security, United States Department of Commerce.

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further administrative review, but which may be subject to collection proceedings or judicial review in an appropriate Federal court as authorized by law.

IEEPA. The International Emergency Economic Powers Act, as amended (50 U.S.C. 1701–1706).

Office of Chief Counsel. The Office of Chief Counsel for Industry and Security, United States Department of Commerce.

Report. For purposes of parts 719 and 720 of this subchapter, the term ''report'' means any declaration, report, or notification required under parts 712 through 715 of this subchapter.

Respondent. Any person named as the subject of a letter of intent to charge, or a Notice of Violation and Assessment (NOVA) and proposed order.

Under Secretary for Industry and Security. The Under Secretary for Industry and Security, U.S. Department of Commerce, who shall concurrently hold the title of Under Secretary for Export Administration.

[64 FR 73804, Dec.30, 1999, as amended at 67 FR 20631, Apr. 26, 2002; 67 FR 45633, July 10, 2002]

§719.2 Violations of the Act subject to administrative and criminal enforcement proceedings.

(a) *Violations*—(1) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the Act.

(2) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(i) To establish or maintain any record required by the Act or this subchapter; or

(ii) To submit any report, notice, or other information to the United States Government in accordance with the Act or this subchapter; or

(iii) To permit access to or copying of any record that is exempt from disclosure under the Act or this subchapter.

(b) *Civil penalties*—(1) *Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have disrupted, delayed or otherwise impeded an authorized inspection, as set forth in paragraph (a)(1) of this section, shall pay a civil penalty in an amount not to exceed $25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record or submit any report, notice, or other information required by the Act or this subchapter, or to permit access to or copying of any record exempt from disclosure under the Act or this subchapter as set forth in paragraph (a)(2) of this section, shall pay a civil penalty in an amount not to exceed $5,000 for each violation.

(c) *Criminal penalty.* Any person that knowingly violates the Act by willfully failing or refusing to permit entry or inspection authorized by the Act; or by willfully disrupting, delaying or otherwise impeding an inspection authorized by the Act; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information; or by willfully failing or refusing to permit access to or copying of any

record exempt from disclosure under the Act or CWCR, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, be imprisoned for not more than one year, or both.

(d) *Denial of export privileges.* Any person in the United States or any U.S. national may be subject to a denial of export privileges after notice and opportunity for hearing pursuant to part 720 of this subchapter if that person has been convicted under Title 18, section 229 of the United States Code.

§ 719.3 Violations of the IEEPA subject to judicial enforcement proceedings.

(a) *Violations*—(1) *Import restrictions involving Schedule 1 chemicals.* Except as otherwise provided in § 712.1 of this subchapter, no person may import any Schedule 1 chemical (See Supplement No. 1 to part 712 of this subchapter) *unless*:

(i) The import is from a State Party;

(ii) The import is for research, medical, pharmaceutical, or protective purposes;

(iii) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(iv) The importing person has notified the Department of Commerce 45 calendar days prior to the import pursuant to § 712.4 of this subchapter.

(2) *Import restrictions involving Schedule 2 chemicals.* Except as otherwise provided in § 713.1 of this subchapter, no person may, on or after April 29, 2000, import any Schedule 2 chemical (see Supplement No. 1 to part 713 of this subchapter) from any destination other than a State Party.

(b) *Civil penalty.* A civil penalty not to exceed $11,000 may be imposed in accordance with this part on any person for each violation of this section.[1]

(c) *Criminal penalty.* Whoever willfully violates paragraph (a)(1) or (2) of this section shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by like fine, imprisonment, or both.[2]

§ 719.4 Violations and sanctions under the Act not subject to proceedings under this subchapter.

(a) *Criminal penalties for development or use of a chemical weapon.* Any person who violates 18 U.S.C. 229 shall be fined, or imprisoned for any term of years, or both. Any person who violates 18 U.S.C. 299 and by whose action the death of another person is the result shall be punished by death or imprisoned for life.

(b) *Civil penalty for development or use of a chemical weapon.* The Attorney General may bring a civil action in the appropriate United States district court against any person who violates 18 U.S.C. 229 and, upon proof of such violation by a preponderance of the evidence, such person shall be subject to pay a civil penalty in an amount not to exceed $100,000 for each such violation.

(c) *Criminal forfeiture.* (1) Any person convicted under section 229A(a) of Title 18 of the United States Code shall forfeit to the United States irrespective of any provision of State law:

(i) Any property, real or personal, owned, possessed, or used by a person involved in the offense;

(ii) Any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such violation; and

(iii) Any of the property used in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) In lieu of a fine otherwise authorized by section 229A(a) of Title 18 of the United States Code, a defendant who derived profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

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[1] The maximum civil penalty allowed under the International Emergency Economic Powers Act is $11,000 for any violation committed on or after October 23, 1996 (15 CFR 6.4(a)(3)).

[2] Alternatively, sanctions may be imposed under 18 U.S.C. 3571, a criminal code provision that establishes a maximum criminal fine for a felony that is the greatest of: (1) the amount provided by the statute that was violated; (2) an amount not more than $250,000 for an individual, or not more than $500,000 for an organization; or (3) an amount based on gain or loss from the offense.

(d) *Injunction.* (1) The United States may, in a civil action, obtain an injunction against:

(i) The conduct prohibited under section 229 or 229C of Title 18 of the United States Code; or

(ii) The preparation or solicitation to engage in conduct prohibited under section 229 or 229D of Title 18 of the United States Code.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or 405 of the Act, or compel the taking of any action required by or under the Act or the Convention.

§719.5 Initiation of administrative proceedings.

(a) *Request for Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Industry and Security, may request that the Secretary of State initiate an administrative enforcement proceeding under this §719.5 and 22 CFR 103.7. If the request is in accordance with applicable law, the Secretary of State will initiate an administrative enforcement proceeding by issuing a NOVA. The Office of Chief Counsel shall serve the NOVA as directed by the Secretary of State.

(b) *Letter of intent to charge.* The Director of the Office of Export Enforcement, Bureau of Industry and Security, may notify a respondent by letter of the intent to charge. This letter of intent to charge will advise a respondent that the Department of Commerce has conducted an investigation and intends to recommend that the Secretary of State issue a NOVA. The letter of intent to charge will be accompanied by a draft NOVA and proposed order, and will give the respondent a specified period of time to contact BIS to discuss settlement of the allegations set forth in the draft NOVA. An administrative enforcement proceeding is not initiated by a letter of intent to charge. If the respondent does not contact BIS within the specified time, or if the respondent requests it, BIS will make its request for initiation of an administrative enforcement proceeding to the Secretary of State in accordance with paragraph (a) of this section.

(c) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to §719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and unappealable on signature of the Secretary of State, and provide payment instructions. A copy of the regulations that govern the administrative proceedings will accompany the NOVA.

(d) *Proposed order.* A proposed order shall accompany every NOVA, letter of intent to charge, and draft NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(e) *Notice.* Notice of the intent to charge or of the initiation of formal proceedings shall be given to the respondent (or respondent's agent for service of process, or attorney) by sending relevant documents, via first class mail, facsimile, or by personal delivery.

§719.6 Request for hearing and answer.

(a) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary of State, the respondent must request a hearing in writing within 15 days from the date of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 days from the date of the request for hearing. The request for hearing and answer must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA and proposed order, and served on the Office of Chief Counsel, and any other address(es) specified in the NOVA, in accordance with §719.8.

(b) *Content of answer.* The respondent's answer must be responsive to the NOVA and proposed order, and must

fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(c) *English required.* The request for hearing, answer, and all other papers and documentary evidence must be submitted in English.

(d) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA and proposed order. If no hearing is requested and no answer is provided, the proposed order will be signed and become final and unappealable.

§ 719.7 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee, and a partnership by a partner. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides, if not the United States. The U.S. Government will be represented by the Office of Chief Counsel. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the ALJ, or, in cases where settlement negotiations occur before any filing with the ALJ, with the Office of Chief Counsel.

§ 719.8 Filing and service of papers other than the NOVA.

(a) *Filing.* All papers to be filed with the ALJ shall be addressed to ''CWC Administrative Enforcement Proceedings'' at the address set forth in the NOVA, or such other place as the ALJ may designate. Filing by United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand delivery, is acceptable. Filing from a foreign country shall be by airmail or via facsimile. A copy of each paper filed shall be simultaneously served on all parties.

(b) *Service.* Service shall be made by United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand delivery of one copy of each paper to each party in the proceeding. The Department of State is a party to cases under this subchapter, but will be represented by the Office of Chief Counsel. Therefore, service on the government party in all proceedings shall be addressed to Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–3839, Washington, D.C. 20230, or faxed to (202) 482–0085. Service on a respondent shall be to the address to which the NOVA and proposed order was sent, or to such other address as the respondent may provide. When a party has appeared by counsel or other representative, service on counsel or other representative shall constitute service on that party.

(c) *Date.* The date of filing or service is the day when the papers are deposited in the mail or are delivered in person, by delivery service, or by facsimile. Refusal by the person to be served, or by the person's agent or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal.

(d) *Certificate of service.* A certificate of service signed by the party making service, stating the date and manner of service, shall accompany every paper, other than the NOVA and proposed order, filed and served on the parties.

(e) *Computation of time.* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is 7 days or less.

[64 FR 73804, Dec. 30, 1999, as amended at 67 FR 45633, July 10, 2002]

§ 719.9 Summary decision.

The ALJ may render a summary decision disposing of all or part of a proceeding on the motion of any party to the proceeding, provided that there is no genuine issue as to any material fact and the party is entitled to summary decision as a matter of law.

§ 719.10 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery apply to the extent consistent with this part and except as otherwise provided by the ALJ or by waiver or agreement of the parties. The ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information, including Confidential Business Information (CBI) as defined by the Act.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve on any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may apply to the ALJ for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 20 days before the scheduled date of the hearing unless the ALJ specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties and a copy of the certificate of service shall be filed with the ALJ. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such additional time as the ALJ may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the ALJ may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The ALJ may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the ALJ may make a determination or enter any order in the proceeding as the ALJ deems reasonable and appropriate. The ALJ may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In addition, enforcement by any district court of the United States in which venue is proper may be sought as appropriate.

§ 719.11 Subpoenas.

(a) *Issuance.* Upon the application of any party, supported by a satisfactory showing that there is substantial reason to believe that the evidence would not otherwise be available, the ALJ may issue subpoenas to any person requiring the attendance and testimony of witnesses and the production of such books, records or other documentary or physical evidence for the purpose of the hearing, as the ALJ deems relevant and material to the proceedings, and reasonable in scope. Witnesses shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt, challenge or refusal to obey a subpoena served upon any person pursuant to this paragraph, any district court of the United States, in which venue is proper, has jurisdiction to issue an order requiring any such person to comply with such subpoena. Any failure to obey such order of the court is punishable by the court as a contempt thereof.

(b) *Service.* Subpoenas issued by the ALJ may be served by any of the methods set forth in § 719.8(b).

(c) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition, unless the ALJ determines, for good cause shown, that extraordinary circumstances warrant a shorter time.

§ 719.12 Matters protected against disclosure.

(a) *Protective measures.* The ALJ may limit discovery or introduction of evidence or issue such protective or other orders as in the ALJ's judgment may be needed to prevent undue disclosure of classified or sensitive documents or information, including Confidential Business Information as defined by the Act. Where the ALJ determines that documents containing classified or sensitive matter must be made available to a party in order to avoid prejudice, the ALJ may direct the other party to prepare an unclassified and nonsensitive summary or extract of the documents. The ALJ may compare the extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain undisclosed. The summary or extract may be admitted as evidence in the record.

(b) *Arrangements for access.* If the ALJ determines that the summary procedure outlined in paragraph (a) of this section is unsatisfactory, and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the ALJ may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive information. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§ 719.13 Prehearing conference.

(a) On the ALJ's own motion, or on request of a party, the ALJ may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

(1) Simplification of issues;

(2) The necessity or desirability of amendments to pleadings;

(3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or (4) Such other matters as may expedite the disposition of the proceedings.

(b) The ALJ may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the ALJ.

(c) If a prehearing conference is impracticable, the ALJ may direct the parties to correspond with the ALJ to achieve the purposes of such a conference.

(d) The ALJ will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

§ 719.14 Hearings.

(a) *Scheduling.* Upon receipt of a written and dated request for a hearing, the ALJ shall, by agreement with all the parties or upon notice to all parties of at least 30 days, schedule a hearing. All hearings will be held in Washington, D.C., unless the ALJ determines, for

good cause shown, that another location would better serve the interest of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the ALJ. All hearings will be closed, unless the ALJ for good cause shown determines otherwise. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the ALJ to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight, except that any evidence of settlement which would be excluded under Rule 408 of the Federal Rules of Evidence is not admissible. Witnesses will testify under oath or affirmation, and shall be subject to cross-examination.

(c) *Testimony and record.* (1) A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, and filed with the ALJ. If any party wishes to obtain a written copy of the transcript, that party shall pay the costs of transcription. The parties may share the costs if both wish a transcript.

(2) Upon such terms as the ALJ deems just, the ALJ may direct that the testimony of any person be taken by deposition and may admit an affidavit or declaration as evidence, provided that any affidavits or declarations have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed. The party's failure to appear will not affect the validity of the hearing or any proceeding or action taken thereafter.

§719.15 Procedural stipulations.

Unless otherwise ordered and subject to §719.16, a written stipulation agreed to by all parties and filed with the ALJ will modify the procedures established by this part.

§719.16 Extension of time.

The parties may extend any applicable time limitation by stipulation filed with the ALJ before the time limitation expires, or the ALJ may, on the ALJ's own initiative or upon application by any party, either before or after the expiration of any applicable time limitation, extend the time, except that the requirement that a hearing be demanded within 15 days, and the requirement that a final agency decision be made within 30 days, may not be modified.

§719.17 Post-hearing submissions.

All parties shall have the opportunity to file post-hearing submissions that may include findings of fact and conclusions of law, supporting evidence and legal arguments, exceptions to the ALJ's rulings or to the admissibility of evidence, and proposed orders and settlements.

§719.18 Decisions.

(a) *Initial decision.* After considering the entire record in the case, the ALJ will issue an initial decision based on a preponderance of the evidence. The decision will include findings of fact, conclusions of law, and a decision based thereon as to whether the respondent has violated the Act If the ALJ finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more allegations, the ALJ shall order dismissal of the allegation(s) in whole or in part, as appropriate. If the ALJ finds that one or more violations have been committed, the ALJ shall issue an order imposing administrative sanctions.

(b) *Factors considered in assessing penalties.* In determining the amount of a civil penalty, the ALJ shall take into account the nature, circumstances, extent and gravity of the violation(s), and, with respect to the respondent, the respondent's ability to pay the penalty, the effect of a civil penalty on the respondent's ability to continue to do business, the respondent's history of prior violations, the respondent's degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(c) *Certification of initial decision.* The ALJ shall immediately certify the initial decision and order to the Executive Director of the Office of Legal Adviser, U.S. Department of State, 2201 C Street, N.W., Room 5519, Washington, D.C. 20520, to the Office of Chief Counsel at the address in § 719.8, and to the respondent, by personal delivery or overnight mail.

(d) *Review of initial decision.* The initial decision shall become the final agency decision and order unless, within 30 days, the Secretary of State modifies or vacates it, with or without conditions, in accordance with 22 CFR 103.8.

§ 719.19 Settlement.

(a) *Settlements before issuance of a NOVA.* When the parties have agreed to a settlement of the case, the Director of the Office of Export Enforcement will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(a), the Secretary of State will sign if the recommended settlement is in accordance with applicable law.

(b) *Settlements following issuance of a NOVA.* The parties may enter into settlement negotiations at any time during the time a case is pending before the ALJ. If necessary, the parties may extend applicable time limitations or otherwise request that the ALJ stay the proceedings while settlement negotiations continue. When the parties have agreed to a settlement of the case, the Office of Chief Counsel will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(b), the Assistant Secretary will sign if the recommended settlement is in accordance with applicable law.

(c) *Settlement scope.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this part. This reflects the fact that the government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(d) *Finality.* Cases that are settled may not be reopened or appealed.

§ 719.20 Record for decision.

(a) *The record.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings, and, for purposes of any appeal under § 719.18 or under 22 CFR 103.8, the decision of the ALJ and such submissions as are provided for under § 719.18 or 22 CFR 103.8 will constitute the record and the exclusive basis for decision. When a case is settled, the record will consist of any and all of the foregoing, as well as the NOVA or draft NOVA, settlement agreement, and order.

(b) *Restricted access.* On the ALJ's own motion, or on the motion of any party, the ALJ may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible, prior to the close of the proceeding, for submitting a version of the document(s) proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The ALJ may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents*—(1) *Scope.* All NOVAs and draft NOVAs, answers, settlement agreements, decisions and orders disposing of a case will be made available for public inspection in the BIS Freedom of Information Records Inspection Facility, U.S. Department of Commerce, Room H–6624, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request.

(2) *Timing.* The record for decision will be available only after the final administrative disposition of a case. Parties may seek to restrict access to any portion of the record under paragraph (b) of this section.

§719.21 Payment of final assessment.

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the date upon which the final order becomes effective, or within the time specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The government party may, through the Attorney General, file suit in an appropriate district court if necessary to enforce compliance with a final order issued under these CWCR (this subchapter). This suit will include a claim for interest at current prevailing rates from the date payment was due or ordered.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

§719.22 Reporting a violation.

If a person learns that a violation of the Convention, the Act, or this subchapter has occurred or may occur, that person may notify: Office of Export Enforcement, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–4520, Washington, D.C. 20230; Tel: (202) 482–1208; Facsimile: (202) 482–0964.

PART 720—DENIAL OF EXPORT PRIVILEGES

Sec.

720.1 Denial of export privileges for convictions under 18 U.S.C. 229.
720.2 Initiation of administrative action denying export privileges.
720.3 Final decision on administrative action denying export privileges.
720.4 Effect of denial.

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73809, Dec. 30, 1999, unless otherwise noted.

§720.1 Denial of export privileges for convictions under 18 U.S.C. 229.

Any person in the United States or any U.S. national may be denied export privileges after notice and opportunity for hearing if that person has been convicted under Title 18, Section 229 of the United States Code of knowingly:

(a) Developing, producing, otherwise acquiring, transferring directly or indirectly, receiving, stockpiling, retaining, owning, possessing, or using, or threatening to use, a chemical weapon; or

(b) Assisting or inducing, in any way, any person to violate paragraph (a) of this section, or attempting or conspiring to violate paragraph (a) of this section.

§720.2 Initiation of administrative action denying export privileges.

(a) *Notice.* BIS will notify any person convicted of Section 229, Title 18, United States Code, of BIS's intent to deny that person's export privileges. The notification letter shall reference the person's conviction, specify the number of years for which BIS intends to deny export privileges, set forth the statutory and regulatory authority for the action, state whether the denial order will be standard or non-standard pursuant to Supplement No. 1 to Part 764 of the Export Administration Regulations (15 CFR parts 730 through 799), and provide that the person may request a hearing before the Administrative Law Judge within 30 days from the date of the notification letter.

(b) *Waiver.* The failure of the notified person to file a request for a hearing within the time provided constitutes a waiver of the person's right to contest the denial of export privileges that BIS intends to impose.

(c) *order of Assistant Secretary.* If no hearing is requested, the Assistant Secretary for Export Enforcement will order that export privileges be denied as indicated in the notification letter.

§720.3 Final decision on administrative action denying export privileges.

(a) *Hearing.* Any hearing that is granted by the ALJ shall be conducted in accordance with the procedures set forth in §719.14 of this subchapter.

(b) *Initial decision and order.* After considering the entire record in the proceeding, the ALJ will issue an initial decision and order, based on a preponderance of the evidence. The ALJ may consider factors such as the seriousness of the criminal offense that is the basis for conviction, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures. The ALJ may dismiss the proceeding if the evidence is insufficient to sustain a denial of export privileges, or may issue an order imposing a denial of export privileges for the length of time the ALJ deems appropriate. An order denying export privileges may be standard or non-standard, as provided in Supplement No. 1 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799). The initial decision and order will be served on each party, and will be published in the FEDERAL REGISTER as the final decision of the Department of Commerce 30 days after service, unless an appeal is filed in accordance with paragraph (c) of this section.

(c) *Grounds for appeal.* (1) A party may, within 30 days of the ALJ's initial decision and order, petition the Under Secretary for Export Administration for review of the initial decision and order. A petition for review must be filed with the Office of Under Secretary for Export Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, and shall be served on the Office of Chief Counsel for Industry and Security or on the respondent. Petitions for review may be filed only on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law;

(iii) That prejudicial procedural error occurred; or

(iv) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(2) The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal was taken.

(d) *Appeal procedure.* The Under Secretary for Export Administration normally will not hold hearings or entertain oral arguments on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The Under Secretary's decision will be in writing and will be accompanied by an order signed by the Under Secretary for Export Administration giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the ALJ, or may refer the case back to the ALJ for further proceedings. Any order that imposes a denial of export privileges will be published in the FEDERAL REGISTER.

[64 FR 73809, Dec. 30, 1999, as amended at 67 FR 45633, July 10, 2002]

§ 720.4 Effect of denial.

Any person denied export privileges pursuant to this part shall be considered a ''person denied export privileges'' for purposes of the Export Administration Regulations (15 CFR parts 730 through 799). The name and address of the denied person will be published on the Denied Persons List found in Supplement 2 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799).

PART 721—INSPECTION OF RECORDS AND RECORDKEEPING

Sec.
721.1 Inspection of records.
721.2 Recordkeeping.
721.3 Destruction or disposal of records.

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

SOURCE: 64 FR 73810, Dec. 30, 1999, unless otherwise noted.

§ 721.1 Inspection of records.

Upon request by the Department of Commerce or any other agency of competent jurisdiction, you must permit

access to and copying of any record relating to compliance with the requirements of this subchapter. This requires that you make available the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record.

§721.2 Recordkeeping.

(a) *General.* Each facility required to submit a declaration, report or notification under parts 712 through 715 of this subchapter must retain all supporting materials and documentation used by a unit, plant, facility and plant site to prepare such declaration, report or notification to determine production, processing, consumption, export or import of chemicals.

(b) *Five year retention period.* All supporting materials and documentation required to be kept under paragraph (a) of this section must be retained for five years from the due date of the applicable declaration, report, or notification, or for five years from the date of submission of the applicable declaration, report or notification, whichever is later. Due dates for declarations, reports and notifications are provided in parts 712 through 715 of this subchapter.

(c) *Location of records.* If a facility is subject to inspection under part 716 of this subchapter, records retained under this section must be maintained at the facility or must be accessible electronically at the facility for purposes of inspection of the facility by Inspection Teams. If a facility is *not* subject to inspection under part 716 of this subchapter, records retained under this section may be maintained either at the facility subject to a declaration, report, or notification requirement, or at a remote location, but all records must be accessible to any authorized agent, official or employee of the U.S. Government under §721.1.

(d) *Reproduction of original records.* (1) You may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(2) If you must maintain records under this part, you may use any photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(i) The system must be capable of reproducing all records on paper.

(ii) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides (unless blank) of paper documents in legible form.

(iii) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.

(iv) The system must preserve the initial image (including both obverse and reverse sides, unless blank, of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(v) You must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(vi) You must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(3) *Requirements applicable to a system based on digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. The system must be able to locate and reproduce all records according to the same criteria that would have been used to organize the records had they been maintained in original form.

(4) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the records must be maintained according to an index of all records in the system following the same criteria that would have been used to organize the records had they been maintained in original form.

§ 721.3 Destruction or disposal of records.

If the Department of Commerce or other authorized U.S. government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the requesting entity.

PART 722—INTERPRETATIONS [RESERVED]

NOTE: This part is reserved for interpretations of parts 710 through 721 and also for applicability of decisions by the Organization for the Prohibition of Chemical Weapons (OPCW).

PARTS 723–729 [RESERVED]

SUBCHAPTER C—EXPORT ADMINISTRATION REGULATIONS

PART 730—GENERAL INFORMATION

Sec.
730.1 What these regulations cover.
730.2 Statutory authority.
730.3 Dual use exports.
730.4 Other control agencies and departments.
730.5 Coverage of more than exports.
730.6 Control purposes.
730.7 License requirements and exceptions.
730.8 How to proceed and where to get help.
730.9 Organization of the Bureau of Industry and Security.
730.10 Advisory information.

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

SUPPLEMENT NO. 2 TO PART 730—TECHNICAL ADVISORY COMMITTEES

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

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. 2151 note, Pub. L. 108–175; 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; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; 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. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; 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; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004); Notice of November 4, 2004, 69 FR 64637 (November 8, 2004).

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 Industry and Security (BIS) 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 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 certain destinations without authorization from BIS.

(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 BIS 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 BIS.

§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 BIS 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 BIS 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 recordkeeping 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. BIS 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 reexporters more dependent upon interpretations and rulings by BIS 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 practices 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 BIS, is available from the Office of Exporter Services at the following locations:

Outreach and Educational Services Division, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room H1099D, Washington, DC 20230, Tel: (202) 482–4811, Fax: (202) 482–2927, and

Western Regional Office, U.S. Department of Commerce, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660, Tel: (949) 660–0144, Fax: (949) 660–9347, and

U.S. Export Assistance Center, Bureau of Industry and Security, 152 N. Third Street, Suite 550, San Jose, California 95112–5591, Tel: (408) 998–7402, Fax: (408) 998–7470.

[61 FR 12734, Mar. 25, 1996, as amended at 69 FR 5687, Feb. 6, 2004; 70 FR 14386, Mar. 22, 2005; 70 FR 22249, Apr. 29, 2005]

§ 730.9 Organization of the Bureau of Industry and Security.

The head of the Bureau of Industry and Security is the Under Secretary for Industry and Security. The Under Secretary is assisted by a Deputy Under Secretary for Industry and Security, the Assistant Secretary for Export Administration, the Assistant Secretary for Export Enforcement, the Director

of Administration, the Director of the Office of Congressional and Public Affairs, the Chief Information Officer, and the Director of the Office of International Programs. The functions and authorities of the Under Secretary are described in the Department's Organizational Order 10–16. The Department's organizational and administrative orders are available via Office of Management and Organization's Web page on the Department's Web site at *http://www.osec.doc.gov/omo/DMPHome.htm*. The principal functions of the Bureau that directly affect the public are carried out by two units: Export Administration and Export Enforcement.

(a) Export Administration is headed by the Assistant Secretary for Export Administration, who is assisted by a Deputy Assistant Secretary. Its substantive work is carried out by five sub-units: the Office of Nonproliferation and Treaty Compliance, the Office of National Security and Technology Transfer Controls, the Office of Exporter Services, the Operating Committee, and the Office of Strategic Industries and Economic Security. The functions of the Operating Committee are described in §750.4(f)(1) of the EAR. The roles of the other units are described on BIS's Web site at *http://www.bis.doc.gov/about/programoffices.htm*.

(b) Export Enforcement is headed by the Assistant Secretary for Export Enforcement who is assisted by a Deputy Assistant Secretary. Its substantive work is carried out by three sub-units: the Office of Export Enforcement, the Office of Enforcement Analysis and the Office of Antiboycott Compliance. The roles of these units are described on BIS's Web site at *http://www.bis.doc.gov/about/programoffices.htm*.

(c) BIS is also assisted in its work by six technical advisory committees. The procedures and criteria for establishing and operating the technical advisory committees is at supplement No. 2 to this part. Information about the specific roles of each committee, meeting schedules, and membership selection is available on BIS's Web site at *http://tac.bis.doc.gov/*.

[70 FR 8248, Feb. 18, 2005]

§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 BIS, 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 Industry and Security 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.

Collection number	Title	Reference in the EAR
0694–0004	Foreign Availability Procedures and Criteria.	part 768.
0694–0009	Approval of Triangular Transactions Involving Commodities Covered by a U.S. Import Certificate.	§748.10(e).
0694–0012	Report of Requests for Restrictive Trade Practice or Boycott—Single or Multiple Transactions.	part 760 and §762.2(b).
0694–0013	Computers and Related Equipment EAR Supplement 2 to Part 748.	part 774.
0694–0016	Delivery Verification Certificate.	§§748.13 and 762.2(b).
0694–0017	International Import Certificate.	§748.10
0694–0021	Statement by Ultimate Consignee and Purchaser.	§§748.11 and 762.2(b).

Collection number	Title	Reference in the EAR
0694–0023	Written Assurance Requirement of License Exception TSR (Technology and Software Under Restriction).	§§ 740.3(d) and 740.4(c).
0694–0025	Short Supply Regulations—Unprocessed Western Red Cedar.	§§ 754.4 and 762.2(b).
0694–0026	Short Supply Regulations—Petroleum Products.	§ 754.3.
0694–0027	Short Supply Regulations Petroleum (Crude Oil).	§ 754.2.
0694–0029	License Exception TMP: Special Requirements.	§ 740.9(a)(2)(viii)(B).
0694–0033	License Exception, Humanitarian Donations.	§§ 740.12(b)(7), 762.2(b), Supp. No. 2 to part 740.
0694–0047	Technology Letter of Explanation.	Supplement No. 2 to part 748, paragraph (o)(2).
0694–0058	Procedure for Voluntary Self-Disclosure of Violations.	§§ 762.2(b) and 764.5.
0694–0073	Export Controls of High Performance Computers.	§ 742.12, Supplement No. 3 to part 742, and § 762.2(b).
0694–0086	Report of Sample Shipments of Chemical Weapon Precursors.	Supplement No. 1 to part 774.
0694–0088	Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application.	parts 746, 748, and 752; § 762.2(b).
0694–0089	Special Comprehensive License Procedure.	part 752 and § 762.2(b).
0694–0093	Import Certificates And End-User Certificates.	§§ 748.9, 748.10, 762.5(d), 762.6 764.2(g)(2).
0694–0096	Five Year Records Retention Period.	part 760, § 762.6(a).
0694–0100	Requests for Appointment of Technical Advisory Committee.	Supplement No. 1 to part 730.
0694–0101	One-Time Report For Foreign Software or Technology Eligible For De Minimis Exclusion.	§ 734.4.
0694–0102	Registration of U.S. Agricultural Commodities For Exemption From Short Supply Limitations on Export'', and ''Petitions For The Imposition of Monitoring Or Controls On Recyclable Metallic matrials; Public Hearings.	§§ 754.6 and 754.7.
0694–0104	Review, Reporting, and Notification of Commercial Encryption Items.	§§ 740.9(c), 740.13(e), 740.17 and 742.15(b).
0694–0106	Reporting and Recordkeeping Requirements under the Wassenaar Arrangement.	§ 743.1.
0694–0107	National Defense Authorization Act (NDAA).	§§ 740.7, 742.12.
0694–0117	Chemical Weapons Convention Provisions of the Export Administration Regulations (Schedule 1 Advance Notifications and Reports and Schedule 3 End-use Certificates).	Part 745.
0694–0122	Licensing Responsibilities and Enforcement.	Part 758, and § 748.4.
0694–0123	Prior Notification of Exports under License Exception AGR.	§ 740.18.
0694–0125	BIS Seminar Evaluation.	N/A
0694–0126	Export License Services—Transfer of License Ownership, Requests for a Duplicate License.	§ 750.9.
0694–0129	Export and Reexport Controls For Iraq.	§ 732.3, 738, 744.18, 746.3(b)(1), 747, 750, 758, 762, 772, 774.
0607–0152	Shipper's Export Declaration (SED)/Automated Export System (AES) Program FORMS: 7525–V AES.	§§ 740.1(d) 740.3(a)(3), 752.7(b), §§ 752.15(a). §§ 754.2(h) and 754.4(c), 758.1, §§ 758.2, and 758.3 of the EAR.

[61 FR 12734, Mar. 25, 1996, as amended at 70 FR 14386, Mar. 22, 2005]

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, BIS 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 BIS 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 approved 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 Industry and Security, 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 procedures 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 CONTROL 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, Directorate 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.
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 Technologies and Services Which Contribute to the Production of Special Nuclear Material (Snm). Technologies Covered Include Nuclear Reactors, Enrichment, Reprocessing, Fuel Fabrication, and Heavy Water Production.

Department of Energy Office of Export Control Policy & Cooperation (NA–24) Tel. (202) 586–2331, Fax (202) 586–1348.
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; 69 FR 5687, Feb. 6, 2004]

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.
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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—BIS'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. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

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 reexport 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 744 and 764 of the EAR for a reference to the list of persons you may not deal with.

(4) *What will they do with it?* The *ultimate end-use* of your item cannot be a bad end-use. See General Prohibition Five (End-Use End-User) in § 736.2(b)(5) and part 744 of the EAR for general end-use and end-user restrictions.

(5) *What else do they do? Conduct* such as contracting, financing, and freight forwarding in support of a proliferation project (as described in § 744.6 of the EAR) may prevent you from dealing with someone.

(c) *Are your items and activities subject to the EAR?* You should first determine whether your commodity, software, or technology is subject to the EAR (see part 734 of the EAR concerning scope), and Steps 1 through 6 help you do that. For exports from the United States, only Steps 1 and 2 are relevant. If you already know that your item or activity is subject to the EAR, you should go on to consider the ten general prohibitions in part 736 of the EAR. If your item or activity is not subject to the EAR, you have no obligations under the EAR and may skip the remaining steps.

(d) *Does your item or activity require a license under one or more of the ten general prohibitions?*—(1) *Brief summary of the ten general prohibitions.* The general prohibitions are found in part 736 of the EAR and referred to in these steps. They consist, very briefly, of the following:

(i) General Prohibition One (Exports and Reexports): Export and reexport of controlled items to listed countries.

(ii) General Prohibition Two (Parts and Components Reexports): Reexport and export from abroad of foreign-made items incorporating more than a *de minimis* amount of controlled U.S. content.

(iii) General Prohibition Three (Foreign-produced Direct Product Reexports): Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software.

(iv) General Prohibition Four (Denial Orders): Engaging in actions prohibited by a denial order.

(v) General Prohibition Five (End-Use End-User): Export or reexport to prohibited end-user or end-users.

(vi) General Prohibition Six (Embargo): Export or reexport to embargoed destinations.

(vii) General Prohibition Seven (U.S. Person Proliferation Activity): Support of proliferation activities.

(viii) General Prohibition Eight (In-Transit): In-transit shipments and items to be unladen from vessels and aircraft.

(ix) General Prohibition Nine (Orders, Terms and Conditions): Violation of any orders, terms, or conditions.

(x) General Prohibition Ten (Knowledge Violation to Occur): Proceeding with transactions with knowledge that a violation has occurred or is about to occur.

(2) *Controls on items on the Commerce Control List (CCL).* If your item or activity is subject to the EAR, you should determine whether any one or more of the ten general prohibitions require a license for your export, reexport, or activity. Steps 7 through 11 refer to classification of your item on the Commerce Control List (CCL) (part 774 of the EAR) and how to use the Country Chart (Supplement No. 1 to part 738 of the EAR) to determine whether a license is required based upon the classification of your item. These steps refer to General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports) for all countries except: Cuba and Iran. For these countries, you may skip Steps 7 through 11 and go directly to Step 12.

(3) *Controls on activities.* Steps 12 through 18 refer to General Prohibitions Four through Ten. Those general prohibitions apply to all items subject to the EAR, not merely those items listed on the CCL in part 774 of the EAR. For example, they refer to the general prohibitions for persons denied export privileges, prohibited end-uses and end-users, countries subject to a comprehensive embargoed (e.g., Cuba and Iran), prohibited activities of U.S. persons in support of proliferation of weapons of mass destruction, prohibited unlading of shipments, compliance with orders, terms and conditions, and

activities when a violation has occurred or is about to occur.

(4) *General prohibitions.* If none of the ten general prohibitions applies, you should skip the steps concerning License Exceptions and for exports from the United States, review Steps 27 through 29 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents, and recordkeeping requirements.

(e) *Is a License Exception available to overcome the license requirement?* If you decide by reviewing the CCL in combination with the Country Chart that a license is required for your destination, you should determine whether a License Exception will except you from that requirement. Steps 20 through 24 help you determine whether a License Exception is available. Note that generally License Exceptions are not available to overcome General Prohibitions Four through Ten. However, selected License Exceptions for embargoed destinations are specified in part 746 of the EAR and License Exceptions for short supply controls are specified in part 754 of the EAR. If a License Exception is available and the export is from the United States, you should review Steps 26 through 28 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents and recordkeeping requirements. If a License Exception is not available, go on to Steps 25 through 29.

(f) *How do you apply for a license?* If you must file a license application, you should review the requirements of part 748 of the EAR as suggested by Step 26. Then you should review Steps 27 through 29 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents, and recordkeeping requirements.

[61 FR 12740, Mar. 25, 1996, as amended at 62 FR 25453, May 9, 1997; 65 FR 38150, June 19, 2000; 69 FR 23628, Apr. 29, 2004; 69 FR 46074, July 30, 2004]

§ 732.2 Steps regarding scope of the EAR.

Steps 1 though 6 are designed to aid you in determining the scope of the EAR. A flow chart describing these steps is contained in Supplement No. 2 to part 732.

(a) *Step 1: Items subject to the exclusive jurisdiction of another Federal agency.* This step is relevant for both exports and reexports. Determine whether your item is subject to the exclusive jurisdiction of another Federal Agency as provided in § 734.3 of the EAR.

(1) If your item is subject to the exclusive jurisdiction of another Federal agency, comply with the regulations of that agency. You need not comply with the EAR and may skip the remaining steps.

(2) If your item is not subject to the exclusive jurisdiction of another federal agency, then proceed to Step 2 in paragraph (b) of this section.

(b) *Step 2: Publicly available technology and software.* This step is relevant for both exports and reexports. Determine if your technology or software is publicly available as defined and explained at part 734 of the EAR. Supplement No. 1 to part 734 of the EAR contains several practical examples describing publicly available technology and software that is outside the scope of the EAR. The examples are illustrative, not comprehensive. Note that encryption software controlled for EI reasons under ECCN 5D002 on the Commerce Control List (refer to Supplement No.1 to part 774 of the EAR) shall be subject to the EAR even if publicly available. Accordingly, the provisions of the EAR concerning the public availability of items are not applicable to encryption items controlled for ''EI'' reasons under ECCN 5D002.

(1) If your technology or software is publicly available, and therefore outside the scope of the EAR, you may proceed with the export or reexport if you are not a U.S. person subject to General Prohibition Seven. If you are a U.S. person, go to Step 15 at § 732.3(j) of this part. If you are a U.S. person and General Prohibition Seven concerning proliferation activity of U.S. persons does not apply, then you may proceed with the export or reexport of your

publicly available technology or software. Note that all U.S. persons are subject to the provisions of General Prohibition Seven.

(2) If your technology or software is not publicly available and you are exporting from the United States, skip to Step 7 in § 732.3(b) of this part concerning the general prohibitions.

(3) If you are exporting items from a foreign country, you should then proceed to Step 3 in paragraph (c) of this section and the other steps concerning the scope of the EAR.

(c) *Step 3: Reexport of U.S.-origin items.* This step is appropriate only for reexporters. For an item in a foreign country, you should determine whether the item is of U.S. origin. If it is of U.S.-origin, skip to Step 7 in § 732.3(b) of this part. If it is not of U.S. origin, then proceed to Step 4 in paragraph (d) of this section.

(d) *Step 4: Foreign-made items incorporating less than the de minimis level of U.S. parts, components, and materials.* This step is appropriate only for items that are made outside the United States and not currently in the United States. Special requirements and restrictions apply to items that incorporate U.S. origin encryption items (see § 734.4(a)(2) and (b) of the EAR).

(1) For an item made in a foreign country, you should determine whether controlled U.S.-origin parts, components, or materials are incorporated as provided in § 734.4 of the EAR. Also, determine the value of the U.S.-origin controlled content as provided in Supplement No. 2 to part 734 of the EAR.

(2) To determine the value of the U.S.-origin controlled content, you should classify the U.S.-origin content on the CCL, determine those items that would require a license from BIS for reexport to the ultimate destination of the foreign-made product if such parts, components, or materials were reexported to that destination in the form received, and divide the total value of the controlled U.S. parts, components, and materials incorporated into the foreign-made item by the sale price of the foreign-made item.

(3) If no U.S. parts, components, or materials are incorporated or if the incorporated U.S. parts, components, and materials are below the *de minimis* level described in § 734.4 of the EAR, then the foreign-made item is not subject to the EAR by reason of the parts and components rule, the classification of a foreign-made item is irrelevant in determining the scope of the EAR, and you should skip Step 4 and go on to consider Step 6 regarding the foreign-produced direct product rule.

(4) If controlled parts, components, or materials are incorporated and are above the *de minimis* level, then you should go on to Step 5.

(e) *Step 5: Foreign-made items incorporating more than the de minimis level of U.S. parts, components, or materials.* This step is appropriate only for foreign-made items incorporating certain U.S. parts. If the incorporated U.S. parts exceed the relevant *de minimis* level, then your export from abroad is subject to the EAR. You then should skip to Step 7 at § 732.3 of this part and consider the steps regarding all other general prohibitions, License Exceptions, and other requirements.

(f) *Step 6: Foreign-made items produced with certain U.S. technology for export to specified destinations.* This step is appropriate for foreign-made items in foreign countries.

(1) If your foreign-produced item is described in an entry on the CCL and the Country Chart requires a license to your export or reexport destination for national security reasons, you should determine whether your item is subject to General Prohibition Three (Foreign-Produced Direct Product Reexports) (§ 736.2(b)(3) of the EAR). Your item is subject to the EAR if it is captured by General Prohibition Three (Foreign-Produced Direct Product Reexports), and that prohibition applies if your transaction meets each of the following conditions:

(i) *Country scope of prohibition.* Your export or reexport destination for the direct product is Cuba or a destination in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) (reexports of foreign-produced direct products exported to other destinations are not subject to General Prohibition Three);

(ii) *Scope of technology or software used to create direct products subject to the prohibition.* Technology or software

that was used to create the foreign-produced direct product, and such technology or software that was subject to the EAR and required 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 (reexports of foreign-produced direct products created with other technology and software are not subject to General Prohibition Three); and

(iii) *Scope of direct products subject to the prohibition.* The foreign-produced direct products are subject to national security controls as designated on the proper ECCN of the Commerce Control List in part 774 of the EAR (reexports of foreign-produced direct products not subject to national security controls are not subject to General Prohibition Three).

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

(3) *Subject to the EAR.* If your item is captured by the foreign-produced direct product control at General Prohibition Three, then your export from abroad is subject to the EAR. You should next consider the steps regarding all other general prohibitions, License Exceptions, and other requirements. If your item is not captured by General Prohibition Three, then your export from abroad is not subject to the EAR. You have completed the steps necessary to determine whether your transaction is subject to the EAR, and you may skip the remaining steps. Note that in summary, items in foreign countries are subject to the EAR when they are:

(i) U.S.-origin commodities, software and technology unless controlled for export exclusively by another Federal agency or unless publicly available;

(ii) Foreign-origin commodities, software, and technology that are within the scope of General Prohibition Two (Parts and Components Reexports), or General Prohibition Three (Foreign-Produced Direct Product Reexports). (However, such foreign-made items are also outside the scope of the EAR if they are controlled for export exclusively by another Federal agency or publicly available.)

[61 FR 12740, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 61 FR 68577, Dec. 30, 1996; 62 FR 25453, May 9, 1997; 63 FR 50520, Sept. 22, 1998; 65 FR 38150, June 19, 2000; 65 FR 62604, Oct. 19, 2000; 67 FR 38860, June 6, 2002; 69 FR 23628, Apr. 29, 2004; 69 FR 71359, Dec. 9, 2004]

§ 732.3 Steps regarding the ten general prohibitions.

(a) *Introduction.* If your item or activity is subject to the scope of the EAR, you should then consider each of the ten general prohibitions listed in part 736 of the EAR. General Prohibitions One ((Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports) (§ 736.2(b) (1), (2), and (3) of the EAR) are product controls that are shaped and limited by parameters specified on the CCL and Country Chart. General Prohibitions Four through Ten are prohibitions on certain activities that are not allowed without authorization from BIS, and these prohibitions apply to all items subject to the EAR unless otherwise specified (§ 736.2(b) (4) through (10) of the EAR).

(b) *Step 7: Classification.* (1) You should classify your items in the relevant entry on the CCL, and you may do so on your own without the assistance of BIS. You are responsible for doing so correctly, and your failure to correctly classify your items does not relieve you of the obligation to obtain a license when one is required by the EAR.

(2) You have a right to request the applicable classification of your item from BIS, and BIS has a duty to provide that classification to you. For further information on how to obtain classification assistance from BIS, see part 748 of the EAR.

(3) For items subject to the EAR but not listed on the CCL, the proper classification is EAR99. This number is a ''basket'' for items not specified under any CCL entry and appears at the end of each Category on the CCL.

(c) *Step 8: Country of ultimate destination.* You should determine the country of ultimate destination. The country of

destination determines the applicability of several general prohibitions, License Exceptions, and other requirements. Note that part 754 of the EAR concerning short supply controls is self-contained and is the only location in the EAR that contains both the prohibitions and exceptions applicable to short supply controls.

(d) *Step 9: Reason for control and the Country Chart*—(1) *Reason for control and column identifier within the Export Control Classification Number (ECCN).* Once you have determined that your item is controlled by a specific ECCN, you must use information contained in the ''License Requirements'' section of that ECCN in combination with the Country Chart to decide whether a license is required under General Prohibitions One, Two, or Three to a particular destination. The CCL and the Country Chart are taken together to define these license requirements. The applicable ECCN will indicate the reason or reasons for control for items within that ECCN. For example, ECCN 6A007 is controlled for national security, missile technology, and anti-terrorism reasons.

(2) *Reason for control within the Country Chart.* With each of the applicable Country Chart column identifiers noted in the correct ECCN, turn to the Country Chart. Locate the correct Country Chart column identifier on the horizontal axis, and determine whether an ''X'' is marked in the cell next to the destination in question. Consult § 738.4 of the EAR for comprehensive instructions on using the Country Chart and a detailed example.

(i) An ''X'' in the cell or cells for the relevant country and reason(s) for control column indicates that a license is required for General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports). (See § 736.2 (b)(1), (b)(2), and (b)(3) of the EAR).

(ii) If one or more cells have an ''X'' in the relevant column, a license is required unless you qualify for a License Exception described in part 740 of the EAR. If a cell does not contain an ''X'' for your destination in one or more relevant columns, a license is not required under the CCL and the Country Chart.

(iii) Additional controls may apply to your export. You must go on to steps 12 through 18 described in paragraphs (g) to (m) of this section to determine whether additional limits described in General Prohibition Two (Parts and Components Reexports) and General Prohibition Three (Foreign-Produced Direct Product Reexports) apply to your proposed transaction. If you are exporting an item from the United States, you should skip Step 10 and Step 11. Proceed directly to Step 12 in paragraph (g) of this section.

(3) *License requirements not on the Country Chart.* There are two instances where the Country Chart cannot be used to determine if a license is required. Items controlled for short supply reasons are not governed by the Country Chart. Part 754 of the EAR contains license requirements and License Exceptions for items subject to short supply controls. A limited number of ECCNs contained on the CCL do not identify a Country Chart column identifier. In these instances, the ECCN states whether a license is required and for which destinations. See § 738.3(a) of the EAR for a list of the ECCNs for which you do not need to consult the Country Chart to determine licensing requirements.

(4) *Destinations subject to embargo provisions.* The Country Chart does not apply to Cuba and Iran; and for those countries you should review the embargo provisions at part 746 of the EAR and may skip this step concerning the Country Chart. For Iraq and Rwanda, the Country Chart provides for certain license requirements, and part 746 of the EAR provides additional requirements.

(5) *Items subject to the EAR but not on the CCL.* Items subject to the EAR that are not on the CCL are properly classified EAR99. For such items, you may skip this step and proceed directly with Step 12 in paragraph (g) of this section.

(e) *Step 10: Foreign-made items incorporating U.S.-origin items and the de minimis rule*—(1) *Parts and components rule.* The following considerations are appropriate for items abroad and are the same steps necessary to determine

whether a foreign-made item incorporating U.S. parts, components, or materials is subject to the EAR. If your foreign-made item is described in an entry on the CCL and the Country Chart requires a license to your export or reexport destination, you should determine whether the controlled U.S.-origin commodities, software, or technology incorporated into the foreign-made item exceeds the *de minimis* level applicable to the ultimate destination of the foreign-made item, as follows:

(i) A 10% *de minimis* level to embargoed and terrorist-supporting countries; or

(ii) A 25% *de minimis* level to all other countries.

(2) *Guidance for calculations.* For guidance on how to calculate the U.S.-controlled content, refer to Supplement No. 2 to part 734 of the EAR. Note that under certain rules issued by the Office of Foreign Assets Control, certain exports from abroad by U.S.-owned or controlled entities may be prohibited notwithstanding the *de minimis* provisions of the EAR. In addition, the *de minimis* exclusions from the parts and components rule do not relieve U.S. persons of the obligation to refrain from supporting the proliferation of weapons of mass-destruction and missiles as provided in General Prohibition Seven (U.S. Person Proliferation Activity) described in §736.2(b)(7) of the EAR. Note that foreign-made items that incorporate U.S.-origin items controlled for ''EI'' reasons under ECCN 5A002, 5D002 or 5E002 on the Commerce Control List (Supplement No.1 to Part 774 of the EAR) are subject to the EAR even if they incorporate less than the *de minimis* level of U.S. content. However, exporters may, as part of a review request, ask that certain 5A002 and 5D002 parts, components and software also be made eligible for *de minimis* treatment (see §734.4(b) of the EAR).

(f) *Step 11: Foreign-produced direct product.* The following considerations are appropriate for items abroad and are the same considerations necessary to determine whether a foreign-produced direct product is subject to the EAR under Step 6 in §732.2(f) of this part.

(1) If your foreign-produced item is described in an entry on the CCL and the Country Chart requires a license to your export or reexport destination for national security reasons, you must determine whether your item is subject to General Prohibition Three (Foreign-Produced Direct Product Reexports) (§736.2(b)(3) of the EAR). Your item is subject to this general prohibition if your transaction meets each of the following conditions:

(i) *Country scope of prohibition.* Your export or reexport destination for the direct product is Cuba or a destination in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) (reexports of foreign-produced direct products exported to other destinations are not subject to General Prohibition Three described in §736.2(b)(3) of the EAR);

(ii) *Scope of technology or software used to create direct products subject to the prohibition.* Technology or software that was used to create the foreign-produced direct product, and such technology or software that was subject to the EAR and required 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 (reexports of foreign-produced direct products created with other technology and software are not subject to General Prohibition Three); and

(iii) *Scope of direct products subject to the prohibition.* The foreign-produced direct products are controlled for national security reasons indicated in an ECCN on the CCL (reexports of foreign-produced direct products not subject to national security controls are not subject to General Prohibition Three).

(2) *License Exceptions.* Each License Exception described in part 740 of the EAR overcomes General Prohibition Three (Foreign-Produced Direct Product Reexports) if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(g) *Step 12: Persons denied export privileges.* (1) Determine whether your transferee, ultimate end-user, any intermediate consignee, or any other party to a transaction is a person denied export privileges (see part 764 of the EAR). It is a violation of the EAR to engage in any activity that violates the terms or conditions of a denial order. General Prohibition Four (Denial Orders) applies to all items subject

to the EAR, *i.e.*, both items on the CCL and within EAR99.

(2) There are no License Exceptions to General Prohibition Four (Denial Orders). The prohibition concerning persons denied export privileges may be overcome only by a specific authorization from BIS, something that is rarely granted.

(h) *STEP 13: Prohibited end-uses and end-users.* (1) Review the end-uses and end-users prohibited under General Prohibition Five (End-Use and End-User) (§ 736.2(b)(5) of the EAR) described in part 744 of the EAR. Part 744 of the EAR contains all the end-use and end-user license requirements, and those are in addition to the license requirements under General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-produced Direct Product Reexports). Unless otherwise indicated, the license requirements of General Prohibition Five (End-Use and End-User) described in part 744 of the EAR apply to all items subject to the EAR, i.e. both items on the CCL and within EAR99. Moreover, the requirements of General Prohibition Five (End-Use and End-User) are in addition to various end-use and end-user limitations placed on certain License Exceptions.

(2) Under License Exception TSU (§ 740.13 of the EAR), operation technology and software, sales technology, and software updates overcome General Prohibition Five (End-Use and End-User) (§ 736.2(b)(5) of the EAR) if all terms and conditions of these provisions are met by the exporter or reexporter.

(i) *Step 14: Embargoed countries and special destinations.* If your destination for any item is Cuba, Iran, Iraq, or Rwanda you must consider the requirements of parts 742 and 746 of the EAR. Unless otherwise indicated, General Prohibition Six (Embargo) applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99. You may not make an export or reexport contrary to the provisions of part 746 of the EAR without a license unless:

(1) You are exporting or reexporting only publicly available technology or software or other items outside the scope of the EAR, or

(2) You qualify for a License Exception referenced in part 746 of the EAR concerning embargoed destinations. You may not use a License Exception described in part 740 of the EAR to overcome General Prohibition Six (Embargo) (§ 736.2(b)(6) of the EAR) unless it is specifically authorized in part 746 of the EAR. Note that part 754 of the EAR concerning short supply controls is self-contained and is the only location in the EAR for both the prohibitions and exceptions applicable to short supply controls.

(j) *Step 15: Proliferation activity of U.S. persons unrelated to exports and reexports.* (1) Review the scope of activity prohibited by General Prohibition Seven (U.S. Person Proliferation Activity) (§ 736.2(b)(7) of the EAR) as that activity is described in § 744.6 of the EAR. Keep in mind that such activity is not limited to exports and reexports and is not limited to items subject to General Prohibition One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports). Moreover, such activity extends to services and dealing in wholly foreign-origin items in support of the specified proliferation activity and is not limited to items listed on the CCL or included in EAR99.

(2) Review the definition of U.S. Person in part 744 of the EAR.

(k) *Step 16: In-transit.* Shippers and operators of vessels or aircraft should review General Prohibition Eight (In-Transit) to determine the countries in which you may not unladen or ship certain items in-transit. General Prohibition Eight applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99.

(l) *Step 17: Review orders, terms, and conditions.* Review the orders, terms, and conditions applicable to your transaction. General Prohibition Nine (Orders, Terms, and Conditions) prohibits the violation of any orders, terms, and conditions imposed under the EAR. Terms and conditions are frequently contained in licenses. In addition, the ten general prohibitions (part 736 of the EAR) and the License Exceptions (part 740 of the EAR) impose terms and conditions or limitations on your proposed transactions and use of License Exceptions. A given license or

License Exception may not be used unless each relevant term or condition is met.

(m) *Step 18: Review the ''Know Your Customer'' Guidance and General Prohibition Ten (Knowledge Violation to Occur).* License requirements under the EAR are determined solely by the classification, end-use, end-user, ultimate destination, and conduct of U.S. persons. Supplement No. 1 to part 732 of the EAR is intended to provide helpful guidance regarding the process for the evaluation of information about customers, end-uses, and end-users. General Prohibition Ten (Knowledge Violation to Occur) prohibits anyone from proceeding with a transaction with knowledge that a violation of the EAR has occurred or is about to occur. It also prohibits related shipping, financing, and other services. General Prohibition Ten applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99.

(n) *Step 19: Complete the review of the general prohibitions.* After completion of Steps described in this section and review of all ten general prohibitions in part 736 of the EAR, including cross-referenced regulations in the EAR, you will know which, if any, of the ten general prohibitions of the EAR apply to you and your contemplated transaction or activity.

(1) If none of the ten general prohibitions is applicable to your export from the United States, no license from BIS is required, you do not need to qualify for a License Exception under part 740 of the EAR. You should skip the Steps in § 732.4 of this part regarding License Exceptions and proceed directly to the Steps in § 732.5 of this part regarding recordkeeping, clearing the Bureau of Customs and Border Protection with the appropriate Shipper's Export Declaration or Automated Export System record, and using the required Destination Control Statement.

(2) If none of the ten general prohibitions is applicable to your reexport or export from abroad, no license is required and you should skip all remaining Steps.

(3) If one or more of the ten general prohibitions are applicable, continue with the remaining steps.

[61 FR 12740, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 61 FR 68577, Dec. 30, 1996; 62 FR 25453, May 9, 1997; 63 FR 50520, Sept. 22, 1998; 65 FR 38150, June 19, 2000; 65 FR 62604, Oct. 19, 2000; 67 FR 38860, June 6, 2002; 67 FR 54952, Aug. 27, 2002; 67 FR 70546, Nov. 25, 2002; 68 FR 50472, Aug. 21, 2003; 69 FR 3005, Jan. 22, 2004; 69 FR 5687, Feb. 6, 2004; 69 FR 23628, Apr. 29, 2004; 69 FR 46074, July 30, 2004]

§ 732.4 Steps regarding License Exceptions.

(a) *Introduction to Steps for License Exceptions.* If your export or reexport is subject to the EAR and is subject to General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), or Three (Foreign-Produced Direct Product Reexports), consider the steps listed in paragraph (b) of this section. If your export or reexport is subject to General Prohibitions Four (Denial Orders), Seven (U.S. Person Proliferation Activity), Eight (In-Transit), Nine (Orders, Terms, and Conditions), or Ten (Knowledge Violation to Occur), there are no License Exceptions available for your export or reexport. If your export is subject to General Prohibition Five (End-Use End-User), consult part 744 of the EAR. If your export or reexport is subject to General Prohibition Six (Embargo), consult part 746 of the EAR for applicable License Exceptions.

(b) *Steps for License Exceptions*—(1) *Step 20: Applicability of General Prohibitions.* Determine whether any one or more of the general prohibitions described in § 736.2(b) of the EAR apply to your export or reexport. If no general prohibition applies to your export or reexport, then you may proceed with your export or reexport and need not review part 740 of the EAR regarding License Exceptions. You are reminded of your recordkeeping obligations related to the clearance of the U.S. Customs Service provided in parts 762 and 758 of the EAR.

(2) *Step 21: Applicability of restrictions on all License Exceptions.* Determine whether any one or more of the restrictions in § 740.2 of the EAR applies to your export or reexport. If any one or more of these restrictions apply, there are no License Exceptions available to

you, and you must either obtain a license or refrain from the export or reexport.

(3) *Step 22: Terms and conditions of the License Exceptions.* (i) If none of the restrictions in §740.2 of the EAR applies, then review each of the License Exceptions to determine whether any one of them authorizes your export or reexport. Eligibility for License Exceptions is based on the item, the country of ultimate destination, the end-use, and the end-user, along with any special conditions imposed within a specific License Exception.

(ii) You may meet the conditions for more than one License Exception. Moreover, although you may not qualify for some License Exceptions you may qualify for others. Review the broadest License Exceptions first, and use any License Exception available to you. You are not required to use the most restrictive applicable License Exception. If you fail to qualify for the License Exception that you first consider, you may consider any other License Exception until you have determined that no License Exception is available.

(iii) License Exceptions TMP, RPL, BAG, AVS, GOV, and TSU authorize exports notwithstanding the provisions of the CCL. List-based License Exceptions (LVS, GBS, CIV, TSR, and CTP) are available only to the extent specified on the CCL. Part 740 of the EAR provides authorization for reexports only to the extent each License Exception expressly authorizes reexports. License Exception APR authorizes reexports only.

(iv) If you are exporting under License Exceptions GBS, CIV, LVS, CTP, TSR, or GOV, you should review §743.1 of the EAR to determine the applicability of certain reporting requirements.

(4) *Step 23: Scope of License Exceptions.* Some License Exceptions are limited by country or by type of item.

(i) Countries are arranged in country groups for ease of reference. For a listing of country groups, please refer to Supplement No. 1 to part 740 of the EAR. Unless otherwise indicated in a License Exception, License Exceptions do not apply to any exports or reexports to embargoed destinations. If your export or reexport is subject to General Prohibition Six (Embargo) for embargoed destinations, License Exceptions are only available to the extent specifically provided in part 746 of the EAR concerning embargoed destinations.

(ii) Special commodity controls apply to short supply items. No License Exceptions described in part 740 of the EAR may be used for items listed on the CCL as controlled for Short Supply reasons. License Exceptions for short supply items are found in part 754 of the EAR.

(5) *Step 24: Compliance with all terms and conditions.* If a License Exception is available, you may proceed with your export or reexport. However, you must meet all the terms and conditions required by the License Exception that you determined authorized your export or reexport. You must also consult part 758 and 762 of the EAR to determine your recordkeeping and documentation requirements.

(6) *Step 25: License requirements.* If no License Exception is available, then you must either obtain a license before proceeding with your export or reexport or you must refrain from the proposed export or reexport.

(7) *Step 26: License applications.* If you are going to file a license application with BIS, you should first review the requirements at part 748 of the EAR. Exporters, reexporters, and exporters from abroad should review the instructions concerning applications and required support documents prior to submitting an application for a license.

[61 FR 12740, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 63 FR 2456, Jan. 15, 1998]

§732.5 Steps regarding Shipper's Export Declaration or Automated Export System record, Destination Control Statements, and recordkeeping.

(a) *Step 27: Shipper's Export Declaration (SED) or Automated Export System (AES) record.* Exporters or agents authorized to complete the Shipper's Export Declaration (SED), or to file SED information electronically using the Automated Export System (AES), should review §758.1 of the EAR to determine when an SED is required and

what export control information should be entered on the SED or AES record. More detailed information about how to complete an SED or file the SED information electronically using AES may be found in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) at 15 CFR part 30. Reexporters and firms exporting from abroad may skip Steps 27 through 29 and proceed directly to § 732.6.

(1) *Entering license authority.* You must enter the correct license authority for your export on the SED or AES record (License number, License Exception symbol, or No License Required designator ''NLR'') as appropriate. See § 758.1(g) of the EAR and 15 CFR 30.7(m) of the FTSR.

(i) *License number and expiration date.* If you are exporting under the authority of a license, you must enter the license number on the SED or AES record. The expiration date must be entered on paper versions of the SED only.

(ii) *License Exception.* If you are exporting under the authority of a License Exception, you must enter the correct License Exception symbol (*e.g.*, LVS, GBS, CIV) on the SED or AES record. See § 740.1 and § 740.2 of the EAR.

(iii) *NLR.* If you are exporting items for which no license is required, you must enter the designator NLR. You should use the NLR designator in two circumstances: first, when the items to be exported are subject to the EAR but not listed on the Commerce Control List (CCL) (*i.e.*, items that are classified as EAR99), and second, when the items to be exported are listed on the CCL but do not require a license. Use of the NLR designator is also a representation that no license is required under any of the General Prohibitions set forth in part 736 of the EAR.

(2) *Item description.* You must enter an item description identical to the item description on the license when a license is required, or enter an item description sufficient in detail to permit review by the U.S. Government and verification of the Schedule B Number (or Harmonized Tariff Schedule number) for License Exception shipments or shipments for which No License is Required (NLR). See § 758.1(g) of the EAR; and 15 CFR 30.7(l) of the FTSR.

(3) *Entering the ECCN.* You must enter the correct Export Control Classification Number (ECCN) on the SED or AES record for all licensed and License Exception shipments, and ''No License Required'' (NLR) shipments of items having a reason for control other than anti-terrorism (AT). The only exception to this requirement would be the return of unwanted foreign origin items, meeting the provisions of License Exception TMP, under § 740.9(b)(3). See § 758.1(g) of the EAR.

(b) *Step 28: Destination Control Statement.* The Destination Control Statement (DCS) must be entered on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad. The person responsible for preparation of those documents is responsible for entry of the DCS. The DCS is required for all exports from the United States of items on the Commerce Control List and is not required for items classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR). Reexporters should review § 752.15 of the EAR for DCS requirements when using a Special Comprehensive License; otherwise, DCS requirements do not apply to reexports. See § 758.6 of the EAR.

(c) *Step 29: Recordkeeping.* Records of transactions subject to the EAR must be maintained for five years in accordance with the recordkeeping provisions of part 762 of the EAR.

[65 FR 42568, July 10, 2000]

§ 732.6 Steps for other requirements.

Sections 732.1 through 732.4 of this part are useful in determining the license requirements that apply to you. Other portions of the EAR impose other obligations and requirements. Some of them are:

(a) Requirements relating to the use of a license in § 758.4 of the EAR.

(b) Obligations of carriers, forwarders, exporters and others to take specific steps and prepare and deliver certain documents to assure that items subject to the EAR are delivered to the

destination to which they are licensed or authorized by a License Exception or some other provision of the regulations in §758.1 through §758.6 of the EAR.

(c) Duty of carriers to return or unload shipments at the direction of U.S. Government officials (see §758.8 of the EAR).

(d) Specific obligations imposed on parties to Special Comprehensive licenses in part 752 of the EAR.

(e) Recordkeeping requirements imposed in part 762 of the EAR.

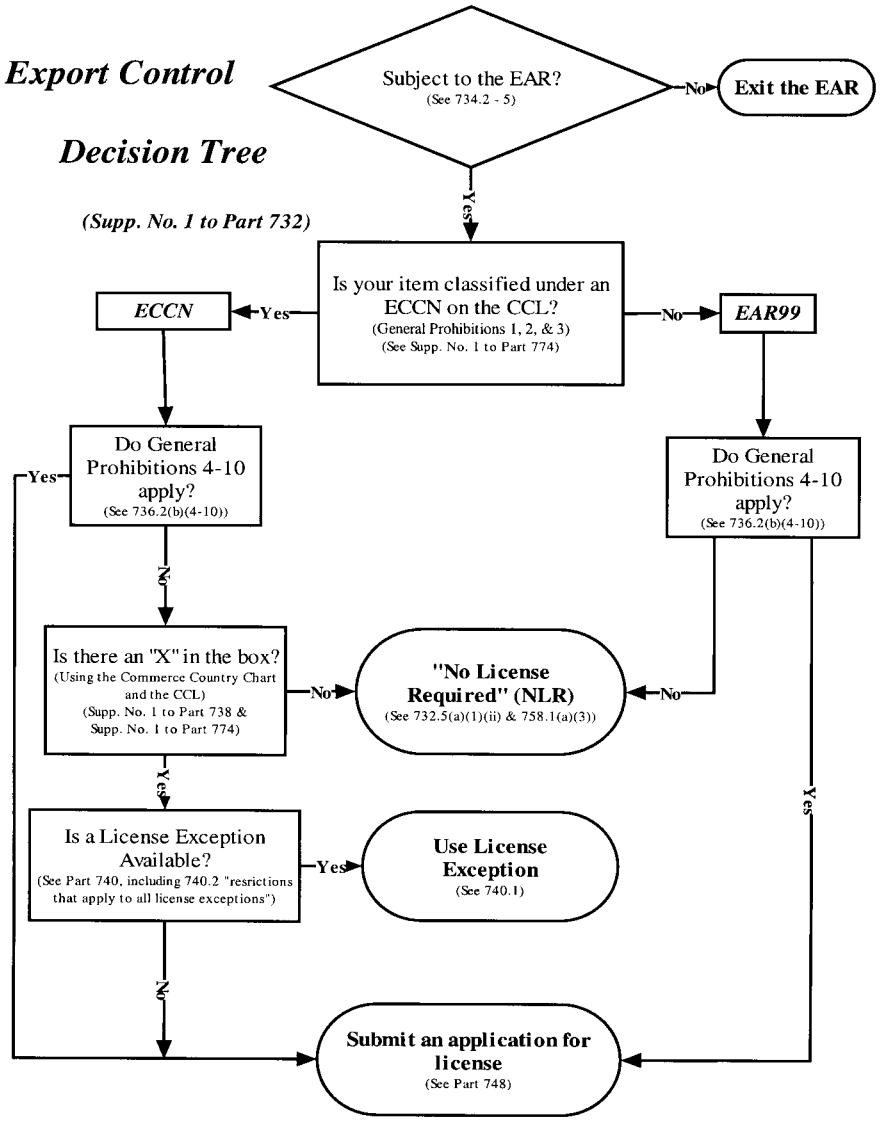
(f) Requirements of part 764 of the EAR to disclose facts that may come to your attention after you file a license application or make other statements to the government concerning a transaction or proposed transaction that is subject to the EAR.

(g) Certain obligations imposed by part 760 of the EAR on parties who receive requests to take actions related to foreign boycotts and prohibits certain actions relating to those boycotts.

[61 FR 12740, Mar. 25, 1996, as amended at 65 FR 42568, July 10, 2000]

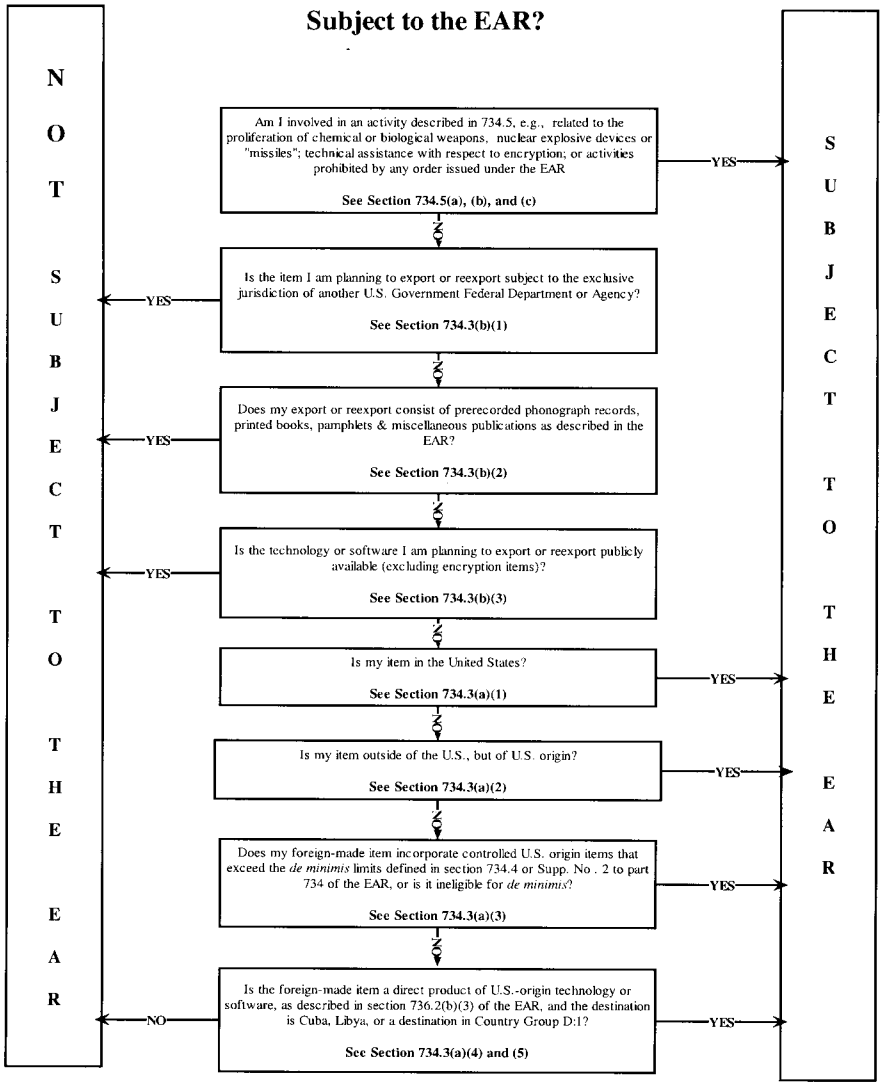
SUPPLEMENT 1 TO PART 732

SUPPLEMENT NO. 1 TO PART 732 - EXPORT CONTROL DECISION TREE



[69 FR 5687, Feb. 6, 2004]

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



[69 FR 5687, Feb. 6, 2004]

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

''Know Your Customer'' Guidance

Various requirements of the EAR are dependent upon a person's knowledge of the end-use, end-user, ultimate destination, or other facts relating to a transaction or activity. These provisions include the nonproliferation-related ''catch-all'' sections and the prohibition against proceeding with a transaction with knowledge that a violation of the EAR has occurred or is about to occur.

(a) BIS provides the following guidance on how individuals and firms should act under this knowledge standard. This guidance does not change or interpret the EAR.

(1) *Decide whether there are ''red flags''.* Take into account any abnormal circumstances in a transaction that indicate that the export may be destined for an inappropriate end-use, end-user, or destination. Such circumstances are referred to as ''red flags''. Included among examples of red flags are orders for items that are inconsistent with the needs of the purchaser, a customer declining installation and testing when included in the sales price or when normally requested, or requests for equipment configurations that are incompatible with the stated destination (e.g., 120 volts in a country with 220 volts). Commerce has developed lists of such red flags that are not all-inclusive but are intended to illustrate the types of circumstances that should cause reasonable suspicion that a transaction will violate the EAR.

(2) *If there are ''red flags'', inquire.* If there are no ''red flags'' in the information that comes to your firm, you should be able to proceed with a transaction in reliance on information you have received. That is, absent ''red flags'' (or an express requirement in the EAR), there is no affirmative duty upon exporters to inquire, verify, or otherwise ''go behind'' the customer's representations. However, when ''red flags'' are raised in information that comes to your firm, you have a duty to check out the suspicious circumstances and inquire about the end-use, end-user, or ultimate country of destination. The duty to check out ''red flags'' is not confined to the use of License Exceptions affected by the ''know'' or ''reason to know'' language in the EAR. Applicants for licenses are required by part 748 of the EAR to obtain documentary evidence concerning the transaction, and misrepresentation or concealment of material facts is prohibited, both in the licensing process and in all export control documents. You can rely upon representations from your customer and repeat them in the documents you file unless red flags oblige you to take verification steps.

(3) *Do not self-blind.* Do not cut off the flow of information that comes to your firm in the normal course of business. For example, do not instruct the sales force to tell potential customers to refrain from discussing the actual end-use, end-user, and ultimate country of destination for the product your firm is seeking to sell. Do not put on blinders that prevent the learning of relevant information. An affirmative policy of steps to avoid ''bad'' information would not insulate a company from liability, and it would usually be considered an aggravating factor in an enforcement proceeding.

(4) *Employees need to know how to handle ''red flags''.* Knowledge possessed by an employee of a company can be imputed to a firm so as to make it liable for a violation. This makes it important for firms to establish clear policies and effective compliance procedures to ensure that such knowledge about transactions can be evaluated by responsible senior officials. Failure to do so could be regarded as a form of self-blinding.

(5) *Reevaluate all the information after the inquiry.* The purpose of this inquiry and reevaluation is to determine whether the ''red flags'' can be explained or justified. If they can, you may proceed with the transaction. If the ''red flags'' cannot be explained or justified and you proceed, you run the risk of having had ''knowledge'' that would make your action a violation of the EAR.

(6) *Refrain from the transaction or advise BIS and wait.* If you continue to have reasons for concern after your inquiry, then you should either refrain from the transaction or submit all the relevant information to BIS in the form of an application for a license or in such other form as BIS may specify.

(b) Industry has an important role to play in preventing exports and reexports contrary to the national security and foreign policy interests of the United States. BIS will continue to work in partnership with industry to make this front line of defense effective, while minimizing the regulatory burden on exporters. If you have any question about whether you have encountered a ''red flag'', you may contact the Office of Export Enforcement at 1–800–424–2980 or the Office of Exporter Services at (202) 482–4532.

RED FLAGS

Possible indicators that an unlawful diversion might be planned by your customer include the following:

1. The customer or purchasing agent is reluctant to offer information about the end-use of a product.

2. The product's capabilities do not fit the buyer's line of business; for example, a small bakery places an order for several sophisticated lasers.

3. The product ordered is incompatible with the technical level of the country to

which the product is being shipped. For example, semiconductor manufacturing equipment would be of little use in a country without an electronics industry.

4. The customer has little or no business background.

5. The customer is willing to pay cash for a very expensive item when the terms of the sale call for financing.

6. The customer is unfamiliar with the product's performance characteristics but still wants the product.

7. Routine installation, training or maintenance services are declined by the customer.

8. Delivery dates are vague, or deliveries are planned for out-of-the-way destinations.

9. A freight forwarding firm is listed as the product's final destination.

10. The shipping route is abnormal for the product and destination.

11. Packaging is inconsistent with the stated method of shipment or destination.

12. When questioned, the buyer is evasive or unclear about whether the purchased product is for domestic use, export or reexport.

[61 FR 12740, Mar. 25, 1996. Redesignated and amended at 62 FR 25453, 25456, May 9, 1997]

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

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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, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004); Notice of November 4, 2004, 69 FR 64637 (November 8, 2004).

SOURCE: 61 FR 12746, Mar. 25, 1996, unless otherwise noted.

§734.1 Introduction.

(a) In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C. This part describes the scope of the Export Administration Regulations (EAR) and explains certain key terms and principles used in the EAR. This part provides the rules you need to use to determine whether items and activities are subject to the EAR. This part is the first step in determining your obligations under the EAR. If neither your item nor your activity is subject to the EAR, then you do not have any obligations under the EAR and you do not need to review other parts of the EAR. If you already know that your item or activity is subject to the EAR, you do not need to review this part and you can go on to review other parts of the EAR to determine your obligations. This part also describes certain key terms and principles used in the EAR. Specifically, it includes the following terms: ''subject to the EAR,'' ''items subject to the EAR,'' ''export,'' and ''reexport.'' These and other terms are also included in part 772 of the EAR, Definitions of Terms, and you should consult part 772 of the EAR for the meaning of terms used in the EAR. Finally, this part makes clear that compliance with the EAR does not relieve any obligations imposed under foreign laws.

(b) This part does not address any of the provisions set forth in part 760 of the EAR, Restrictive Trade Practices or Boycotts.

(c) This part does not define the scope of legal authority to regulate exports, including reexports, or activities found in the Export Administration Act and other statutes. What this part does do is set forth the extent to which such legal authority has been exercised through the EAR.

[61 FR 12746, Mar. 25, 1996, as amended at 69 FR 5690, Feb. 6, 2004]

§734.2 Important EAR terms and principles.

(a) *Subject to the EAR—Definition.* (1) ''Subject to the EAR'' is a term used in the EAR to describe those items and

activities over which BIS exercises regulatory jurisdiction under the EAR. Conversely, items and activities that are not subject to the EAR are outside the regulatory jurisdiction of the EAR and are not affected by these regulations. The items and activities subject to the EAR are described in § 734.2 through § 734.5 of this part. You should review the Commerce Control List (CCL) and any applicable parts of the EAR to determine whether an item or activity is subject to the EAR. However, if you need help in determining whether an item or activity is subject to the EAR, see § 734.6 of this part. Publicly available technology and software not subject to the EAR are described in § 734.7 through § 734.11 and Supplement No. 1 to this part.

(2) Items and activities subject to the EAR may also be controlled under export-related programs administered by other agencies. Items and activities subject to the EAR are not necessarily exempted from the control programs of other agencies. Although BIS and other agencies that maintain controls for national security and foreign policy reasons try to minimize overlapping jurisdiction, you should be aware that in some instances you may have to comply with more than one regulatory program.

(3) The term ''subject to the EAR'' should not be confused with licensing or other requirements imposed in other parts of the EAR. Just because an item or activity is subject to the EAR does not mean that a license or other requirement automatically applies. A license or other requirement applies only in those cases where other parts of the EAR impose a licensing or other requirement on such items or activities.

(b) *Export and reexport*—(1) *Definition of export.* ''Export'' means an actual shipment or transmission of items subject to the EAR out of the United States, or release of technology or software subject to the EAR to a foreign national in the United States, as described in paragraph (b)(2)(ii) of this section. See paragraph (b)(9) of this section for the definition that applies to exports of encryption source code and object code software subject to the EAR.

(2) *Export of technology or software.* (See paragraph (b)(9) for provisions that apply to encryption source code and object code software.) ''Export'' of technology or software, excluding encryption software subject to ''EI'' controls, includes:

(i) Any release of technology or software subject to the EAR in a foreign country; or

(ii) Any release of technology or source code subject to the EAR to a foreign national. Such release is deemed to be an export to the home country or countries of the foreign national. This deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Note that the release of any item to any party with knowledge a violation is about to occur is prohibited by § 736.2(b)(10) of the EAR.

(3) *Definition of ''release'' of technology or software.* Technology or software is ''released'' for export through:

(i) Visual inspection by foreign nationals of U.S.-origin equipment and facilities;

(ii) Oral exchanges of information in the United States or abroad; or

(iii) The application to situations abroad of personal knowledge or technical experience acquired in the United States.

(4) *Definition of reexport.* ''Reexport'' means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country; or release of technology or software subject to the EAR to a foreign national outside the United States, as described in paragraph (b)(5) of this section.

(5) *Reexport of technology or software.* Any release of technology or source code subject to the EAR to a foreign national of another country is a deemed reexport to the home country or countries of the foreign national. However, this deemed reexport definition does not apply to persons lawfully admitted for permanent residence. The term ''release'' is defined in paragraph (b)(3) of this section. Note that the release of any item to any party with

knowledge or reason to know a violation is about to occur is prohibited by § 736.2(b)(10) of the EAR.

(6) For purposes of the EAR, the export or reexport of items subject to the EAR that will transit through a country or countries or be transshipped in a country or countries to a new country or are intended for reexport to the new country, are deemed to be exports to the new country.

(7) If a territory, possession, or department of a foreign country is not listed on the Country Chart in Supplement No. 1 to part 738 of the EAR, the export or reexport of items subject to the EAR to such destination is deemed under the EAR to be an export to the foreign country. For example, a shipment to the Cayman Islands, a dependent territory of the United Kingdom, is deemed to be a shipment to the United Kingdom.

(8) Export or reexport of items subject to the EAR does not include shipments among any of the states of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands or any territory, dependency, or possession of the United States. These destinations are listed in Schedules C & E, Classification of Country and Territory Designations for U.S. Export Statistics, issued by the Bureau of the Census.

(9) *Export of encryption source code and object code software.* (i) For purposes of the EAR, the export of encryption source code and object code software means:

(A) An actual shipment, transfer, or transmission out of the United States (see also paragraph (b)(9)(ii) of this section); or

(B) A transfer of such software in the United States to an embassy or affiliate of a foreign country.

(ii) The export of encryption source code and object code software controlled for ''EI'' reasons under ECCN 5D002 on the Commerce Control List (see Supplement No. 1 to part 774 of the EAR) includes downloading, or causing the downloading of, such software to locations (including electronic bulletin boards, Internet file transfer protocol, and World Wide Web sites) outside the U.S., or making such software available for transfer outside the United States, over wire, cable, radio, electromagnetic, photo optical, photoelectric or other comparable communications facilities accessible to persons outside the United States, including transfers from electronic bulletin boards, Internet file transfer protocol and World Wide Web sites, unless the person making the software available takes precautions adequate to prevent unauthorized transfer of such code. See §740.13(e) of the EAR for notification requirements for exports or reexports of encryption source code and object code software considered to be publicly available consistent with the provisions of § 734.3(b)(3) of the EAR.

(iii) Subject to the General Prohibitions described in part 736 of the EAR, such precautions for Internet transfers of products eligible for export under § 740.17 (b)(2) of the EAR (encryption software products, certain encryption source code and general purpose encryption toolkits) shall include such measures as:

(A) The access control system, either through automated means or human intervention, checks the address of every system outside of the U.S. or Canada requesting or receiving a transfer and verifies such systems do not have a domain name or Internet address of a foreign government end-user (*e.g.*, ''.gov,'' ''.gouv,'' ''.mil'' or similar addresses);

(B) The access control system provides every requesting or receiving party with notice that the transfer includes or would include cryptographic software subject to export controls under the Export Administration Regulations, and anyone receiving such a transfer cannot export the software without a license or other authorization; and

(C) Every party requesting or receiving a transfer of such software must acknowledge affirmatively that the software is not intended for use by a government end-user, as defined in part 772, and he or she understands the cryptographic software is subject to export controls under the Export Administration Regulations and anyone receiving the transfer cannot export the software without a license or other authorization. BIS will consider acknowledgments in electronic form provided they

are adequate to assure legal undertakings similar to written acknowledgments.

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 68578, Dec. 30, 1996; 63 FR 50520, Sept. 22, 1998; 64 FR 13339, Mar. 18, 1999; 65 FR 2496, Jan. 14, 2000; 67 FR 38860, June 6, 2002]

§ 734.3 Items subject to the EAR.

(a) Except for items excluded in paragraph (b) of this section, the following items are subject to the EAR:

(1) All items in the United States, including in a U.S. Foreign Trade Zone or moving intransit through the United States from one foreign country to another;

(2) All U.S. origin items wherever located;

(3) U.S. origin parts, components, materials or other commodities integrated abroad into foreign-made products, U.S. origin software commingled with foreign software, and U.S. origin technology commingled with foreign technology:

(i) In any quantity, as described in section 734.4(a) of this part; or

(ii) In quantities exceeding de minimis levels as described in section 734.4(c) and Supplement No. 2 of this part;

(4) Certain foreign-made direct products of U.S. origin technology or software, as described in § 736.2(b)(3) of the EAR. The term ''direct product'' means the immediate product (including processes and services) produced directly by the use of technology or software; and

(5) Certain commodities produced by any plant or major component of a plant located outside the United States that is a direct product of U.S.-origin technology or software, as described in § 736.2(b)(3) of the EAR.

(b) The following items are not subject to the EAR:

(1) Items that are exclusively controlled for export or reexport by the following departments and agencies of the U.S. Government which regulate exports or reexports for national security or foreign policy purposes:

(i) *Department of State.* The International Traffic in Arms Regulations (22 CFR part 121) administered by the Directorate of Defense Trade Controls relate to defense articles and defense services on the U.S. Munitions List. Section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(ii) *Treasury Department, Office of Foreign Assets Control (OFAC).* Regulations administered by OFAC implement broad controls and embargo transactions with certain foreign countries. These regulations include controls on exports and reexports to certain countries (31 CFR chapter V). Trading with the Enemy Act (50 U.S.C. app. section 1 *et seq.*), and International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*)

(iii) *U.S. Nuclear Regulatory Commission (NRC).* Regulations administered by NRC control the export and reexport of commodities related to nuclear reactor vessels (10 CFR part 110). Atomic Energy Act of 1954, as amended (42 U.S.C. part 2011 *et seq.*).

(iv) *Department of Energy (DOE).* Regulations administered by DOE control the export and reexport of technology related to the production of special nuclear materials (10 CFR part 810). Atomic Energy Act of 1954, as amended (42 U.S.C. section 2011 *et seq.*).

(v) *Patent and Trademark Office (PTO).* Regulations administered by PTO provide for the export to a foreign country of unclassified technology in the form of a patent application or an amendment, modification, or supplement thereto or division thereof (37 CFR part 5). BIS has delegated authority under the Export Administration Act to the PTO to approve exports and reexports of such technology which is subject to the EAR. Exports and reexports of such technology not approved under PTO regulations must comply with the EAR.

(2) Prerecorded phonograph records reproducing in whole or in part, the content of printed books, pamphlets, and miscellaneous publications, including newspapers and periodicals; printed books, pamphlets, and miscellaneous publications including bound newspapers and periodicals; children's picture and painting books; newspaper and periodicals, unbound, excluding waste; music books; sheet music; calendars and calendar blocks, paper; maps, hydrographical charts, atlases, gazetteers, globe covers, and globes (terrestrial and celestial); exposed and developed microfilm reproducing, in

whole or in part, the content of any of the above; exposed and developed motion picture film and soundtrack; and advertising printed matter exclusively related thereto.

(3) Publicly available technology and software, except software controlled for ''EI'' reasons under ECCN 5D002 on the Commerce Control List and mass market encryption software with symmetric key length exceeding 64-bits controlled under ECCN 5D992, that:

(i) Are already published or will be published as described in §734.7 of this part;

(ii) Arise during, or result from, fundamental research, as described in §734.8 of this part;

(iii) Are educational, as described in §734.9 of this part;

(iv) Are included in certain patent applications, as described in §734.10 of this part.

NOTE TO PARAGRAPHS (b)(2) AND (b)(3) OF THIS SECTION: A printed book or other printed material setting forth encryption source code is not itself subject to the EAR (see §734.3(b)(2)). However, notwithstanding §734.3(b)(2), encryption source code in electronic form or media (e.g., computer diskette or CD ROM) remains subject to the EAR (see §734.3(b)(3)).

(4) Foreign made items that have less than the *de minimis* percentage of controlled U.S. content based on the principles described in §734.4 of this part.

(c) ''Items subject to the EAR'' consist of the items listed on the Commerce Control List (CCL) in part 774 of the EAR and all other items which meet the definition of that term. For ease of reference and classification purposes, items subject to the EAR which are *not* listed on the CCL are designated as ''EAR99.''

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 65464, Dec. 13, 1996; 61 FR 68578, Dec. 30, 1996; 62 FR 25456, May 9, 1997; 67 FR 38860, June 6, 2002; 69 FR 5690, Feb. 6, 2004; 69 FR 5929, Feb. 9, 2004]

§734.4 *De minimis* U.S. content.

(a) *Items for which there is no de minimis level.* (1) There is no de minimis level for the export from a foreign country of a foreign-made computer exceeding 190,000 MTOPS containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 to Computer Tier 3; or exceeding 28,000 MTOPS containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 or high speed interconnect devices (ECCN 4A994.j) to Computer Tier 4 countries described in §742.12 of the EAR.

(2) Foreign produced encryption technology that incorporates U.S. origin encryption technology controlled by ECCN 5E002 is subject to the EAR regardless of the amount of U.S. origin content.

(3) There is no de minimis level for foreign-made:

(i) Commercial Standby Instrument Systems (CSIS) of the type described in ECCN 7A994 on the Commerce Control List (Supplement No. 1 to part 774 the EAR) when the CSISs integrate QRS11–00100–100/101 Micromachined Angular Rate Sensors; and

(ii) Aircraft of the type described in ECCN 9A991 when such aircraft incorporate a CSIS integrating a QRS11–00100–100/101 sensor.

NOTE TO PARAGRAPH (a)(3): QRS11 Micromachined Angular Rate Sensors are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls, except when the QRS11–00100–100/101 version of the sensor is integrated into and included as an integral part of a CSIS of the type described in ECCN 7A994 or aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or is exported solely for integration into such a system.

(b) *Special requirements for certain encryption items.* Foreign made items that incorporate U.S. origin items that are listed in this paragraph are subject to the EAR unless they meet the *de minimis* level and destination requirements of paragraph (c) or (d) of this section and the requirements of this paragraph.

(1) The U.S. origin commodities or software, if controlled under ECCNs 5A002.a.1, .a.2, .a.5, or .a.6, or 5D002, must have been:

(i) Authorized for license exception TSU because of having met the notification requirements of §740.13(e) of the EAR (ECCN 5D002 only);

(ii) Authorized for License Exception ENC by BIS after a review pursuant to §740.17(b)(3) of the EAR; or

(iii) Authorized for License Exception ENC by BIS after a review pursuant to § 740.17(b)(2), and the foreign made product will not be sent to any destination in Country Group E:1 in Supplement No. 1 to part 740 of the EAR.

(2) The U.S. origin encryption items, if controlled under ECCNs 5A992, 5D992, or 5E992 must:

(i) Have met the notification requirements of § 742.15(b)(1) of the EAR; or

(ii) Have been determined by BIS to be ''mass market'' commodities or software after a review in accordance with § 742.15(b)(2) of the EAR (ECCNs 5A992 and 5D992 only); or

(iii) Be an item described in § 742.15(b)(3)(ii) or § 742.15(b)(3)(iii) of the EAR.

NOTE TO PARAGRAPH (b): See supplement No. 2 to this part for *de minimis* calculation procedures and reporting requirements.

(c) Except as provided in paragraphs(a) and (b)(1)(iii) and subject to the provisions of paragraphs (b)(1)(i), (b)(1)(ii) and (b)(2) of this section, the following reexports are not subject to the EAR when made to a terrorist-supporting country listed in Country Group E:1 (see Supplement No. 1 to part 740 of the EAR).

(1) Reexports of a foreign-made commodity incorporating controlled U.S.-origin commodities valued at 10% or less of the total value of the foreign-made commodity;

(2) Reexports of foreign-made software incorporating controlled U.S.-origin software valued at 10% or less of the total value of the foreign-made software; or

(3) Reexports of foreign technology commingled with or drawn from controlled U.S.-origin technology valued at 10% or less of the total value of the foreign technology.

(d) Except as provided in paragraph (a) of this section and subject to the provisions of paragraph (b) of this section, the following reexports are not subject to the EAR when made to countries other than those described in paragraph (c) of this section.

(1) Reexports of a foreign-made commodity incorporating controlled U.S.-origin commodities valued at 25% or less of the total value of the foreign-made commodity;

(2) Reexports of foreign-made software incorporating controlled U.S.-origin software valued at 25% or less of the total value of the foreign-made software; or

(3) Reexports of foreign technology commingled with or drawn from controlled U.S.-origin technology valued at 25% or less of the total value of the foreign technology.

(e) For purposes of determining *de minimis* levels, technology and source code used to design or produce foreign-made commodities or software are not considered to be incorporated into such foreign-made commodities or software. Commodities subject only to short supply controls are not included in calculating U.S. content.

(f) You are responsible for making the necessary calculations to determine whether the *de minimis* provisions apply to your situation. See Supplement No. 2 to part 734 for guidance regarding calculation of U.S. controlled content.

(g) See § 770.3 of the EAR for principles that apply to commingled U.S.-origin technology and software.

(h) Notwithstanding the provisions of paragraphs (c) and (d) of this section, U.S.-origin technology controlled by ECCN 9E003a.1 through a.12, and .f, and related controls, and encryption software controlled for ''EI'' reasons under ECCN 5D002 or encryption technology controlled for ''EI'' reasons under ECCN 5E002 do not lose their U.S.-origin when redrawn, used, consulted, or otherwise commingled abroad in any respect with other software or technology of any other origin. Therefore, any subsequent or similar software or technology prepared or engineered abroad for the design, construction, operation, or maintenance of any plant or equipment, or part thereof, which is based on or uses any such U.S.-origin

software or technology is subject to the EAR.

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 54543, Oct. 21, 1996; 61 FR 65464, Dec. 13, 1996; 61 FR 68578, Dec. 30, 1996; 62 FR 25456, May 9, 1997; 63 FR 50520, Sept. 22, 1998; 64 FR 13339, Mar. 18, 1999; 64 FR 42011, Aug. 3, 1999; 65 FR 2496, Jan. 14, 2000; 65 FR 60854, Oct. 13, 2000; 65 FR 62604, Oct. 19, 2000; 66 FR 42109, Aug. 10, 2001; 67 FR 10610, 10613, Mar. 8, 2002; 67 FR 38860, June 6, 2002; 68 FR 35784, June 17, 2003; 69 FR 5690, Feb. 6, 2004; 69 FR 5929, Feb. 9, 2004; 69 FR 71359, Dec. 9, 2004]

§734.5 Activities of U.S. and foreign persons subject to the EAR.

The following kinds of activities are subject to the EAR:

(a) Certain activities of U.S. persons related to the proliferation of nuclear explosive devices, chemical or biological weapons, missile technology as described in §744.6 of the EAR, and the proliferation of chemical weapons as described in part 745 of the EAR.

(b) Activities of U.S. or foreign persons prohibited by any order issued under the EAR, including a Denial Order issued pursuant to part 766 of the EAR.

(c) Technical assistance by U.S. persons with respect to encryption commodities or software as described in §744.9 of the EAR.

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 68578, Dec. 30, 1996; 64 FR 27141, May 18, 1999; 64 FR 47105, Aug. 30, 1999]

§734.6 Assistance available from BIS for determining licensing and other requirements.

(a) If you are not sure whether a commodity, software, technology, or activity is subject to the EAR, or is subject to licensing or other requirements under the EAR, you may ask BIS for an advisory opinion, classification, or a determination whether a particular item or activity is subject to the EAR. In many instances, including those where the item is specially designed, developed, configured, adapted, or modified for military application, the item may fall under the licensing jurisdiction of the Department of State and may be subject to the controls of the International Traffic in Arms Regulations (22 CFR parts 120 through 130) (ITAR). In order to determine if the Department of State has licensing jurisdiction over an item, you should submit a request for a commodity jurisdiction determination to the Department of State, Directorate of Defense Trade Controls. Exporters should note that in a very limited number of cases, the categories of items may be subject to both the ITAR and the EAR. The relevant departments are working to eliminate any unnecessary overlaps that may exist.

(b) As the agency responsible for administering the EAR, BIS is the only agency that has the responsibility for determining whether an item or activity is subject to the EAR and, if so, what licensing or other requirements apply under the EAR. Such a determination only affects EAR requirements, and does not affect the applicability of any other regulatory programs.

(c) If you need help in determining BIS licensing or other requirements you may ask BIS for help by following the procedures described in §748.3 of the EAR.

§734.7 Published information and software.

(a) Information is ‘‘published’’ when it becomes generally accessible to the interested public in any form, including:

(1) Publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution (See Supplement No. 1 to this part, Questions A(1) through A(6));

(2) Ready availability at libraries open to the public or at university libraries (See Supplement No. 1 to this part, Question A(6));

(3) Patents and open (published) patent applications available at any patent office; and

(4) Release at an open conference, meeting, seminar, trade show, or other open gathering.

(i) A conference or gathering is ‘‘open’’ if all technically qualified members of the public are eligible to attend and attendees are permitted to

take notes or otherwise make a personal record (not necessarily a recording) of the proceedings and presentations.

(ii) All technically qualified members of the public may be considered eligible to attend a conference or other gathering notwithstanding a registration fee reasonably related to cost and reflecting an intention that all interested and technically qualified persons be able to attend, or a limitation on actual attendance, as long as attendees either are the first who have applied or are selected on the basis of relevant scientific or technical competence, experience, or responsibility (See Supplement No. 1 to this part, Questions B(1) through B(6)).

(iii) ''Publication'' includes submission of papers to domestic or foreign editors or reviewers of journals, or to organizers of open conferences or other open gatherings, with the understanding that the papers will be made publicly available if favorably received. (See Supplement No. 1 to this part, Questions A(1) and A(3)).

(b) Software and information is published when it is available for general distribution either for free or at a price that does not exceed the cost of reproduction and distribution. See Supplement No. 1 to this part, Questions G(1) through G(3).

(c) Notwithstanding paragraphs (a) and (b) of this section, note that encryption software controlled under ECCN 5D002 for ''EI'' reasons on the Commerce Control List and mass market encryption software with symmetric key length exceeding 64-bits controlled under ECCN 5D992 remain subject to the EAR. *See* § 740.13(e) of the EAR for certain exports and reexports under license exception.

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 65464, Dec. 13, 1996; 61 FR 68578, Dec. 30, 1996; 65 FR 2496, Jan. 14, 2000; 67 FR 38861, June 6, 2002]

§ 734.8 Information resulting from fundamental research.

(a) *Fundamental research.* Paragraphs (b) through (d) of this section and § 734.11 of this part provide specific rules that will be used to determine whether research in particular institutional contexts qualifies as ''fundamental research''. The intent behind these rules is to identify as ''fundamental research'' basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons as defined in § 734.11(b) of this part. (See Supplement No. 1 to this part, Question D(8)). Note that the provisions of this section do not apply to encryption software controlled under ECCN 5D002 for ''EI'' reasons on the Commerce Control List (Supplement No. 1 to Part 774 of the EAR) or to mass market encryption software with symmetric key length exceeding 64-bits controlled under ECCN 5D992. *See* § 740.13(e) of the EAR for certain exports and reexports under license exception.

(b) *University based research.* (1) Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research, as described in paragraphs (b)(2) through (6) of this section. (''University'' means any accredited institution of higher education located in the United States.)

(2) Prepublication review by a sponsor of university research solely to insure that the publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers does not change the status of the research as fundamental research. However, release of information from a corporate sponsor to university researchers where the research results are subject to prepublication review, is subject to the EAR. (See Supplement No. 1 to this part, Questions D(7), D(9), and D(10).)

(3) Prepublication review by a sponsor of university research solely to ensure that publication would not compromise patent rights does not change the status of fundamental research, so long as the review causes no more than a temporary delay in publication of the research results.

(4) The initial transfer of information from an industry sponsor to university researchers is subject to the EAR where the parties have agreed that the sponsor may withhold from publication some or all of the information so provided. (See Supplement No. 1 to this part, Question D(2).)

(5) University based research is not considered ''fundamental research'' if the university or its researchers accept (at the request, for example, of an industrial sponsor) other restrictions on publication of scientific and technical information resulting from the project or activity. Scientific and technical information resulting from the research will nonetheless qualify as fundamental research once all such restrictions have expired or have been removed. (See Supplement No. 1 to this part, Question D(7) and D(9).)

(6) The provisions of §734.11 of this part will apply if a university or its researchers accept specific national security controls (as defined in §734.11 of this part) on a research project or activity sponsored by the U.S. Government. (See Supplement No. 1 to this part, Questions E(1) and E(2).)

(c) *Research based at Federal agencies or FFRDCs.* Research conducted by scientists or engineers working for a Federal agency or a Federally Funded Research and Development Center (FFRDC) may be designated as ''fundamental research'' within any appropriate system devised by the agency or the FFRDC to control the release of information by such scientists and engineers. (See Supplement No. 1 to this part, Questions D(8) and D(11).)

(d) *Corporate research.* (1) Research conducted by scientists or engineers working for a business entity will be considered ''fundamental research'' at such time and to the extent that the researchers are free to make scientific and technical information resulting from the research publicly available without restriction or delay based on proprietary concerns or specific national security controls as defined in §734.11(b) of this part.

(2) Prepublication review by the company solely to ensure that the publication would compromise no proprietary information provided by the company to the researchers is not considered to be a proprietary restriction under paragraph (d)(1) of this section. However, paragraph (d)(1) of this section does not authorize the release of information to university researchers where the research results are subject to prepublication review. (See Supplement No. 1 to this part, Questions D(8), D(9), and D(10).)

(3) Prepublication review by the company solely to ensure that prepublication would compromise no patent rights will not be considered a proprietary restriction for this purpose, so long as the review causes no more than a temporary delay in publication of the research results.

(4) However, the initial transfer of information from a business entity to researchers is not authorized under the ''fundamental research'' provision where the parties have agreed that the business entity may withhold from publication some or all of the information so provided.

(e) *Research based elsewhere.* Research conducted by scientists or engineers who are not working for any of the institutions described in paragraphs (b) through (d) of this section will be treated as corporate research, as described in paragraph (d) of this section. (See Supplement No. 1 to this part, Question D(8).)

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 68579, Dec. 30, 1996; 62 FR 25456, May 9, 1997; 65 FR 2496, Jan. 14, 2000; 67 FR 38861, June 6, 2002]

§734.9 Educational information.

''Educational information'' referred to in §734.3(b)(3)(iii) of this part is not subject to the EAR if it is released by instruction in catalog courses and associated teaching laboratories of academic institutions. Dissertation research is discussed in §734.8(b) of this part. (Refer to Supplement No. 1 to this part, Question C(1) through C(6)). Note that the provisions of this section do not apply to encryption software controlled under ECCN 5D002 for ''EI'' reasons on the Commerce Control List or to mass market encryption software with symmetric key length exceeding 64-bits controlled under ECCN 5D992.

See § 740.13(e) of the EAR for certain exports and reexports under license exception.

[67 FR 38861, June 6, 2002]

§ 734.10 Patent applications.

The information referred to in § 734.3(b)(3)(iv) of this part is:

(a) Information contained in a patent application prepared wholly from foreign-origin technical data where the application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office;

(b) Information contained in a patent application, or an amendment, modification, supplement or division of an application, and authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR part 5;[1] or

(c) Information contained in a patent application when sent to a foreign country before or within six months after the filing of a United States patent application for the purpose of obtaining the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.

§ 734.11 Government-sponsored research covered by contract controls.

(a) If research is funded by the U.S. Government, and specific national security controls are agreed on to protect information resulting from the research, § 734.3(b)(3) of this part will not apply to any export or reexport of such information in violation of such controls. However, any export or reexport of information resulting from the research that is consistent with the specific controls may nonetheless be made under this provision.

(b) Examples of ''specific national security controls'' include requirements for prepublication review by the Government, with right to withhold permission for publication; restrictions on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research. A general reference to one or more export control laws or regulations or a general reminder that the Government retains the right to classify is not a ''specific national security control''. (See Supplement No. 1 to this part, Questions E(1) and E(2).)

§ 734.12 Effect on foreign laws and regulations.

Any person who complies with any of the license or other requirements of the EAR is not relieved of the responsibility of complying with applicable foreign laws and regulations. Conversely, any person who complies with the license or other requirements of a foreign law or regulation is not relieved of the responsibility of complying with U.S. laws and regulations, including the EAR.

SUPPLEMENT NO. 1 TO PART 734—QUESTIONS AND ANSWERS—TECHNOLOGY AND SOFTWARE SUBJECT TO THE EAR

This Supplement No. 1 contains explanatory questions and answers relating to technology and software that is subject to the EAR. It is intended to give the public guidance in understanding how BIS interprets this part, but is only illustrative, not comprehensive. In addition, facts or circumstances that differ in any material way from those set forth in the questions or answers will be considered under the applicable provisions of the EAR. Exporters should note that the provisions of this supplement do not apply to encryption software (including source code) transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. See § 742.15 of the EAR. This supplement is divided into nine sections according to topic as follows:

Section A: Publication of technology and exports and reexports of technology that has been or will be published.

Section B: Release of technology at conferences.

Section C: Educational instruction.

Section D: Research, correspondence, and informal scientific exchanges.

[1] Regulations issued by the Patent and Trademark Office in 37 CFR part 5 provide for the export to a foreign country of unclassified technical data in the form of a patent application or an amendment, modification, or supplement thereto or division thereof.

Section E: Federal contract controls.
Section F: Commercial consulting.
Section G: Software.
Section H: Availability in a public library.
Section I: Miscellaneous.

Section A: Publication

Question A(1): I plan to publish in a foreign journal a scientific paper describing the results of my research, which is in an area listed in the EAR as requiring a license to all countries except Canada. Do I need a license to send a copy to my publisher abroad?

Answer: No. This export transaction is not subject to the EAR. The EAR do not cover technology that is already publicly available, as well as technology that is made public by the transaction in question (§§ 734.3 and 734.7 of this part). Your research results would be made public by the planned publication. You would not need a license.

Question A(2): Would the answer differ depending on where I work or where I performed the research?

Answer: No. Of course, the result would be different if your employer or another sponsor of your research imposed restrictions on its publication (§ 734.8 of this part).

Question (A)3: Would I need a license to send the paper to the editors of a foreign journal for review to determine whether it will be accepted for publication?

Answer: No. This export transaction is not subject to the EAR because you are submitting the paper to the editors with the intention that the paper will be published if favorably received (§ 734.7(a)(4)(iii) of this part).

Question A(4): The research on which I will be reporting in my paper is supported by a grant from the Department of Energy (DOE). The grant requires prepublication clearance by DOE. Does that make any difference under the Export Administration Regulations?

Answer: No, the transaction is not subject to the EAR. But if you published in violation of any Department of Energy controls you have accepted in the grant, you may be subject to appropriate administrative, civil, or criminal sanctions under other laws.

Question A(5): We provide consulting services on the design, layout, and construction of integrated circuit plants and production lines. A major part of our business is the publication for sale to clients of detailed handbooks and reference manuals on key aspects on the design and manufacturing processes. A typical cost of publishing such a handbook and manual might be $500; the typical sales price is about $15,000. Is the publication and sale of such handbooks or manuals subject to the EAR?

Answer: Yes. The price is above the cost of reproduction and distribution (§ 734.7(a)(1) of this part). Thus, you would need to obtain a license or qualify for a License Exception before you could export or reexport any of these handbooks or manuals.

Question A(6): My Ph.D. thesis is on technology, listed in the EAR as requiring a license to all destinations except Canada, which has never been published for general distribution. However, the thesis is available at the institution from which I took the degree. Do I need a license to send another copy to a colleague overseas?

Answer: That may depend on where in the institution it is available. If it is not readily available in the university library (e.g., by filing in open stacks with a reference in the catalog), it is not ''publicly available'' and the export or reexport would be subject to the EAR on that ground. The export or reexport would not be subject to the EAR if your Ph.D. research qualified as ''fundamental research'' under § 734.8 of this part. If not, however, you will need to obtain a license or qualify for a License Exception before you can send a copy out of the country.

Question A(7): We sell electronically recorded information, including software and databases, at wholesale and retail. Our products are available by mail order to any member of the public, though intended for specialists in various fields. They are priced to maximize sales to persons in those fields. Do we need a license to sell our products to foreign customers?

Answer: You would not need a license for otherwise controlled technology or software if the technology and software are made publicly available at a price that does not exceed the cost of production and distribution to the technical community. Even if priced at a higher level, the export or reexport of the technology or software source code in a library accessible to the public is not subject to the EAR (§ 734.7(a) of this part).

Section B: Conferences

Question B(1): I have been invited to give a paper at a prestigious international scientific conference on a subject listed as requiring a license under the EAR to all countries, except Canada. Scientists in the field are given an opportunity to submit applications to attend. Invitations are given to those judged to be the leading researchers in the field, and attendance is by invitation only. Attendees will be free to take notes, but not make electronic or verbatim recordings of the presentations or discussions. Some of the attendees will be foreigners. Do I need a license to give my paper?

Answer: No. Release of information at an open conference and information that has been released at an open conference is not subject to the EAR. The conference you describe fits the definition of an open conference (§ 734.7(a) of this part).

Question B(2): Would it make any difference if there were a prohibition on making any notes or other personal record of what transpires at the conference?

Answer: Yes. To qualify as an ''open'' conference, attendees must be permitted to take notes or otherwise make a personal record (although not necessarily a recording). If note taking or the making of personal records is altogether prohibited, the conference would not be considered ''open''.

Question B(3): Would it make any difference if there were also a registration fee?

Answer: That would depend on whether the fee is reasonably related to costs and reflects an intention that all interested and technically qualified persons should be able to attend (§734.7(a)(4)(ii) of this part).

Question B(4): Would it make any difference if the conference were to take place in another country?

Answer: No.

Question B(5): Must I have a license to send the paper I propose to present at such a foreign conference to the conference organizer for review?

Answer: No. A license is not required under the EAR to submit papers to foreign organizers of open conferences or other open gatherings with the intention that the papers will be delivered at the conference, and so made publicly available, if favorably received. The submission of the papers is not subject to the EAR (§734.7(a)(4)(iii) of this part).

Question B(6): Would the answers to any of the foregoing questions be different if my work were supported by the Federal Government?

Answer: No. You may export and reexport the papers, even if the release of the paper violates any agreements you have made with your government sponsor. However, nothing in the EAR relieves you of responsibility for conforming to any controls you have agreed to in your Federal grant or contract.

Section C: Educational Instruction

Question C(1): I teach a university graduate course on design and manufacture of very high-speed integrated circuitry. Many of the students are foreigners. Do I need a license to teach this course?

Answer: No. Release of information by instruction in catalog courses and associated teaching laboratories of academic institutions is not subject to the EAR (§734.9 of this part).

Question C(2): Would it make any difference if some of the students were from countries to which export licenses are required?

Answer: No.

Question C(3): Would it make any difference if I talk about recent and as yet unpublished results from my laboratory research?

Answer: No.

Question C(4): Even if that research is funded by the Government?

Answer: Even then, but you would not be released from any separate obligations you have accepted in your grant or contract.

Question C(5): Would it make any difference if I were teaching at a foreign university?

Answer: No.

Question C(6): We teach proprietary courses on design and manufacture of high-performance machine tools. Is the instruction in our classes subject to the EAR?

Answer: Yes. That instruction would not qualify as ''release of educational information'' under §734.9 of this part because your proprietary business does not qualify as an ''academic institution'' within the meaning of §734.9 of this part. Conceivably, however, the instruction might qualify as ''release at an open * * * seminar, * * * or other open gathering'' under §734.7(a) of this part. The conditions for qualification of such a seminar or gathering as ''open'', including a fee ''reasonably related to costs (of the conference, not of producing the data) and reflecting an intention that all interested and technically qualified persons be able to attend,'' would have to be satisfied.

Section D: Research, Correspondence, and Informal Scientific Exchanges

Question D(1): Do I need a license in order for a foreign graduate student to work in my laboratory?

Answer: Not if the research on which the foreign student is working qualifies as ''fundamental research'' under §734.8 of this part. In that case, the research is not subject to the EAR.

Question D(2): Our company has entered into a cooperative research arrangement with a research group at a university. One of the researchers in that group is a PRC national. We would like to share some of our proprietary information with the university research group. We have no way of guaranteeing that this information will not get into the hands of the PRC scientist. Do we need to obtain a license to protect against that possibility?

Answer: No. The EAR do not cover the disclosure of information to any scientists, engineers, or students at a U.S. university in the course of industry-university research collaboration under specific arrangements between the firm and the university, provided these arrangements do not permit the sponsor to withhold from publication any of the information that he provides to the researchers. However, if your company and the researchers have agreed to a prohibition on publication, then you must obtain a license or qualify for a License Exception before

transferring the information to the university. It is important that you as the corporate sponsor and the university get together to discuss whether foreign nationals will have access to the information, so that you may obtain any necessary authorization prior to transferring the information to the research team.

Question D(3): My university will host a prominent scientist from the PRC who is an expert on research in engineered ceramics and composite materials. Do I require a license before telling our visitor about my latest, as yet unpublished, research results in those fields?

Answer: Probably not. If you performed your research at the university, and you were subject to no contract controls on release of the research, your research would qualify as ''fundamental research'' (§734.8(a) of this part). Information arising during or resulting from such research is not subject to the EAR (§734.3(b)(3) of this part).

You should probably assume, however, that your visitor will be debriefed later about anything of potential military value he learns from you. If you are concerned that giving such information to him, even though permitted, could jeopardize U.S. security interests, the Commerce Department can put you in touch with appropriate Government scientists who can advise you. Write to Department of Commerce, Bureau of Industry and Security, P.O. Box 273, Washington, DC 20044.

Question D(4): Would it make any difference if I were proposing to talk with a PRC expert in China?

Answer: No, if the information in question arose during or resulted from the same ''fundamental research.''

Question D(5): Could I properly do some work with him in his research laboratory inside China?

Answer: Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience, and such an export may be subject to the EAR. If any of the knowledge or experience you export in this way requires a license under the EAR, you must obtain such a license or qualify for a License Exception.

Question D(6): I would like to correspond and share research results with an Iranian expert in my field, which deals with technology that requires a license to all destinations except Canada. Do I need a license to do so?

Answer: Not as long as we are still talking about information that arose during or resulted from research that qualifies as ''fundamental'' under the rules spelled out in §734.8(a) of this part.

Question D(7): Suppose the research in question were funded by a corporate sponsor and I had agreed to prepublication review of any paper arising from the research?

Answer: Whether your research would still qualify as ''fundamental'' would depend on the nature and purpose of the prepublication review. If the review is intended solely to ensure that your publications will neither compromise patent rights nor inadvertently divulge proprietary information that the sponsor has furnished to you, the research could still qualify as ''fundamental.'' But if the sponsor will consider as part of its prepublication review whether it wants to hold your new research results as trade secrets or otherwise proprietary information (even if your voluntary cooperation would be needed for it to do so), your research would no longer qualify as ''fundamental.'' As used in these regulations it is the actual and intended openness of research results that primarily determines whether the research counts as ''fundamental'' and so is not subject to the EAR.

Question D(8): In determining whether research is thus open and therefore counts as ''fundamental,'' does it matter where or in what sort of institution the research is performed?

Answer: In principle, no. ''Fundamental research'' is performed in industry, Federal laboratories, or other types of institutions, as well as in universities. The regulations introduce some operational presumptions and procedures that can be used both by those subject to the regulations and by those who administer them to determine with some precision whether a particular research activity is covered. Recognizing that common and predictable norms operate in different types of institutions, the regulations use the institutional locus of the research as a starting point for these presumptions and procedures. Nonetheless, it remains the type of research, and particularly the intent and freedom to publish, that identifies ''fundamental research,'' not the institutional locus (§734.8(a) of this part).

Question D(9): I am doing research on high-powered lasers in the central basic-research laboratory of an industrial corporation. I am required to submit the results of my research for prepublication review before I can publish them or otherwise make them public. I would like to compare research results with a scientific colleague from Vietnam and discuss the results of the research with her when she visits the United States. Do I need a license to do so?

Answer: You probably do need a license (§734.8(d) of this part). However, if the only restriction on your publishing any of that information is a prepublication review solely to ensure that publication would compromise no patent rights or proprietary information provided by the company to the researcher your research may be considered ''fundamental research,'' in which case you

may be able to share information because it is not subject to the EAR. Note that the information will be subject to the EAR if the prepublication review is intended to withhold the results of the research from publication.

Question D(10): Suppose I have already cleared my company's review process and am free to publish all the information I intend to share with my colleague, though I have not yet published?

Answer: If the clearance from your company means that you are free to make all the information publicly available without restriction or delay, the information is not subject to the EAR. (§734.8(d) of this part)

Question D(11): I work as a researcher at a Government-owned, contractor-operated research center. May I share the results of my unpublished research with foreign nationals without concern for export controls under the EAR?

Answer: That is up to the sponsoring agency and the center's management. If your research is designated ''fundamental research'' within any appropriate system devised by them to control release of information by scientists and engineers at the center, it will be treated as such by the Commerce Department, and the research will not be subject to the EAR. Otherwise, you would need to obtain a license or qualify for a License Exception, except to publish or otherwise make the information public (§734.8(c) of this part).

Section E: Federal Contract Controls

Question E(1): In a contract for performance of research entered into with the Department of Defense (DOD), we have agreed to certain national security controls. DOD is to have ninety days to review any papers we proposed before they are published and must approve assignment of any foreign nationals to the project. The work in question would otherwise qualify as ''fundamental research'' section under §734.8 of this part. Is the information arising during or resulting from this sponsored research subject to the EAR?

Answer: Under §734.11 of this part, any export or reexport of information resulting from government-sponsored research that is inconsistent with contract controls you have agreed to will not qualify as ''fundamental research'' and any such export or reexport would be subject to the EAR. Any such export or reexport that is consistent with the controls will continue to be eligible for export and reexport under the ''fundamental research'' rule set forth in §734.8(a) of this part. Thus, if you abide by the specific controls you have agreed to, you need not be concerned about violating the EAR. If you violate those controls and export or reexport information as ''fundamental research'' under §734.8(a) of this part, you may subject yourself to the sanctions provided for under the EAR, including criminal sanctions, in addition to administrative and civil penalties for breach of contract under other law.

Question E(2): Do the Export Administration Regulations restrict my ability to publish the results of my research?

Answer: The Export Administration Regulations are not the means for enforcing the national security controls you have agreed to. If such a publication violates the contract, you would be subject to administrative, civil, and possible criminal penalties under other law.

Section F: Commercial Consulting

Question F(1): I am a professor at a U.S. university, with expertise in design and creation of submicron devices. I have been asked to be a consultant for a ''third-world'' company that wishes to manufacture such devices. Do I need a license to do so?

Answer: Quite possibly you do. Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience that is subject to the Export Administration Regulations. If any part of the knowledge or experience your export or reexport deals with technology that requires a license under the EAR, you will need to obtain a license or qualify for a License Exception.

Section G: Software[2]

Question G(1): Is the export or reexport of software in machine readable code subject to the EAR when the source code for such software is publicly available?

Answer: If the source code of a software program is publicly available, then the machine readable code compiled from the source code is software that is publicly available and therefore not subject to the EAR.

Question G(2): Is the export or reexport of software sold at a price that does not exceed the cost of reproduction and distribution subject to the EAR?

Answer: Software in machine readable code is publicly available if it is available to a community at a price that does not exceed the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or acquisition. In this case, the provider of the software does not receive a fee for the inherent value of the software.

[2] Exporters should note that these provisions do not apply to software controlled under the International Traffic in Arms Regulations (e.g., certain encryption software).

Question G(3): Is the export or reexport of software subject to the EAR if it is sold at a price BIS concludes in a classification letter to be sufficiently low so as not to subject it to the EAR?

Answer: In response to classification requests, BIS may choose to classify certain software as not subject to the EAR even though it is sold at a price above the costs of reproduction and distribution as long as the price is nonetheless sufficiently low to qualify for such a classification in the judgment of BIS.

Section H: Available in a Public Library

Question H(1): Is the export or reexport of information subject to the EAR if it is available in a library and sold through an electronic or print service?

Answer: Electronic and print services for the distribution of information may be relatively expensive in the marketplace because of the value vendors add in retrieving and organizing information in a useful way. If such information is also available in a library—itself accessible to the public—or has been published in any way, that information is ''publicly available'' for those reasons, and the information itself continues not to be subject to the EAR even though you access the information through an electronic or print service for which you or your employer pay a substantial fee.

Question H(2): Is the export or reexport of information subject to the EAR if the information is available in an electronic form in a library at no charge to the library patron?

Answer: Information available in an electronic form at no charge to the library patron in a library accessible to the public is information publicly available even though the library pays a substantial subscription fee for the electronic retrieval service.

Question H(3): Is the export or reexport of information subject to the EAR if the information is available in a library and sold for more than the cost of reproduction and distribution?

Answer: Information from books, magazines, dissertations, papers, electronic data bases, and other information available in a library that is accessible to the public is not subject to the EAR. This is true even if you purchase such a book at more than the cost of reproduction and distribution. In other words, such information is ''publicly available'' even though the author makes a profit on your particular purchase for the inherent value of the information.

Section I: Miscellaneous

Question I(1): The manufacturing plant that I work at is planning to begin admitting groups of the general public to tour the plant facilities. We are concerned that a license might be required if the tour groups include foreign nationals. Would such a tour constitute an export? If so, is the export subject to the EAR?

Answer: The EAR define exports and reexports of technology to include release through visual inspection by foreign nationals of U.S.-origin equipment and facilities. Such an export or reexport qualifies under the ''publicly available'' provision and would not be subject to the EAR so long as the tour is truly open to all members of the public, including your competitors, and you do not charge a fee that is not reasonably related to the cost of conducting the tours. Otherwise, you will have to obtain a license, or qualify for a License Exception, prior to permitting foreign nationals to tour your facilities (§734.7 of this part).

Question I(2): Is the export or reexport of information subject to the EAR if the information is not in a library or published, but sold at a price that does not exceed the cost of reproduction and distribution?

Answer: Information that is not in a library accessible to the public and that has not been published in any way, may nonetheless become ''publicly available'' if you make it both available to a community of persons and if you sell it at no more than the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed cost allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or acquisition costs of the technology or software. The reason for this conclusion is that the provider of the information receives nothing for the inherent value of the information.

Question I(3): Is the export or reexport of information contributed to an electronic bulletin board subject to the EAR?

Answer: Assume each of the following:

1. Information is uploaded to an electronic bulletin board by a person that is the owner or originator of the information;

2. That person does not charge a fee to the bulletin board administrator or the subscribers of the bulletin board; and

3. The bulletin board is available for subscription to any subscriber in a given community regardless of the cost of subscription.

Such information is ''publicly available'' and therefore not subject to the EAR even if it is not elsewhere published and is not in a library. The reason for this conclusion is that the bulletin board subscription charges or line charges are for distribution exclusively, and the provider of the information receives nothing for the inherent value of the information.

Question I(4): Is the export or reexport of patented information fully disclosed on the public record subject to the EAR?

Answer: Information to the extent it is disclosed on the patent record open to the public is not subject to the EAR even though you may use such information only after paying a fee in excess of the costs of reproduction and distribution. In this case the seller does receive a fee for the inherent value of the technical data; however, the export or reexport of the information is nonetheless not subject to the EAR because any person can obtain the technology from the public record and further disclose or publish the information. For that reason, it is impossible to impose export controls that deny access to the information.

[61 FR 12746, Mar. 25, 1996, as amended at 61 FR 68579, Dec. 30, 1996; 62 FR 25456, May 9, 1997]

SUPPLEMENT NO. 2 TO PART 734—CALCULATION OF VALUES FOR DE MINIMIS RULES

(a) Use the following guidelines in determining values for establishing exemptions or for submission of a request for authorization:

(1) U.S. content value.

(i) U.S. content value is the delivered cost to the foreign manufacturer of the U.S. origin parts, components, or materials. (When affiliated firms have special arrangements that result in lower than normal pricing, the cost should reflect ''fair market'' prices that would normally be charged to similar, unaffiliated customers.)

(ii) In calculating the U.S. content value, do not include parts, components, or materials that could be exported from the United States to the new country of destination without a license (designated as ''NLR'') or under License Exception GBS (see part 740 of the EAR) or under NLR for items classified as EAR99.

(2) The foreign-made product value is the normal selling price f.o.b. factory (excluding value added taxes or excise taxes).

(3) To determine the value of the U.S.-origin controlled content, you should classify the U.S.-origin content on the Commerce Control List, determine those items that would require a license from BIS for reexport to the ultimate destination of the foreign-made product if such parts, components, or materials were reexported to that destination in the form received, and divide the total value of the controlled U.S. parts, components, and materials incorporated into the foreign-made item by the sale price of the foreign-made item.

(4) If no U.S. parts, components or materials are incorporated or if the incorporated U.S. parts, components, and materials are below the *de minimis* level, then the foreign-made item is not subject to the EAR by reason of §734.4 of this part, the classification of a foreign-made item is irrelevant in determining the scope of the EAR, and you should skip Step 4 in §732.2(d) and go on to consider Step 6 in §732.2(f) of the EAR regarding the foreign-produced direct product rule.

NOTE TO PARAGRAPH (a)— U.S. origin peripheral or accessory devices that are merely rack mounted with or cable connected into foreign equipment are not deemed to be incorporated components even though intended for use with products made abroad. Rather, such items are treated as U.S. items that retain their identity and remain subject to the EAR.

(b) One-time report prior to reliance upon the *de minimis* exclusion. *Report requirement.* Before you may rely upon the *de minimis* exclusion for foreign software and technology commingled with U.S. software or technology, you must file a one-time report for the foreign software or technology. The report must include the percentage of U.S.-content by value and a description of your calculations including relevant values, assumptions, and the basis or methodologies for making the percentage calculation. The three criteria important to BIS in its review of your report will be the export price of the U.S.-content, the assumption regarding future sales of software, and the choice of the scope of foreign technology. Your methodologies must be based upon the accounting standards used in the operation of your business, and you must specify that standard in your report. Regardless of the accounting systems, standard, or conventions you use in the operation of your business, you may not depreciate the fair market values reported or otherwise reduce the fair market values by other accounting conventions such as depreciation. You may rely 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 BIS concerning your report within thirty days after filing the report with BIS, 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 BIS. BIS may contact you concerning your report to inquire of you further or to indicate that BIS does not accept the assumptions or rationale for your calculations. If you receive such a contact or communication from BIS, you may not rely upon the *de minimis* exclusions for software and technology in §734.4 of this part until BIS 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 BIS 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.*; 22 U.S.C. 2151 (note), Pub. L. 108–175; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of November 4, 2004, 69 FR 64637, 3 CFR, 2004 Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

SOURCE: 61 FR 12754, Mar. 25, 1996, unless otherwise noted.

§736.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. A person may undertake transactions subject to the EAR without a license or other authorization, unless the regulations affirmatively state such a requirement. As such, if an export, reexport, or activity is subject to the EAR, the general prohibitions contained in this part and the License Exceptions specified in part 740 of the EAR must be reviewed to determine if a license is necessary. In the case of all exports from the United States, you must document your export as described in part 762 of the EAR regarding recordkeeping and clear your export through the U.S. Customs Service as described in part 758 of the EAR regarding export clearance requirements. Also note that for short supply

controls all prohibitions and License Exceptions are in part 754 of the EAR.

(a) In this part we tell you:

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

(2) The ten general prohibitions.

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

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

§ 736.2 General prohibitions and determination of applicability.

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

(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 Supplement No. 1 to part 764 of the EAR for references to persons with whom your transaction may not be permitted; see General Prohibition Five (Paragraph (b)(5) of this section) and part 744 for references to end-users for whom you may need an export or reexport license).

(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 Industry and Security (BIS) or qualify under part 740 of the EAR for a License Exception from each applicable general prohibition in this paragraph. The License Exceptions at part 740 of the EAR apply only to General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports); however, selected License Exceptions are specifically referenced and authorized in part 746 of the EAR concerning embargo destinations and in § 744.2(c) of the EAR regarding nuclear end-uses.

(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

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

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, without a license or License Exception, reexport or export from abroad items subject to the scope of this General Prohibition Three to Cuba 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 actions in addition to direct exports by the person denied export privileges, including some transfers within a single country, either in the United States or abroad, by other persons. You are responsible for ensuring that any of your transactions in which a person who is denied export privileges is involved do

not violate the terms of the order. Orders denying export privileges are published in the FEDERAL REGISTER when they are issued and are the legally controlling documents in accordance with their terms. BIS also maintains compilations of persons denied export privileges on its Web site at *http://www.bis.doc.gov*. BIS may, on an exceptional basis, authorize activity otherwise prohibited by a denial order. See § 764.3(a)(2) of the EAR.

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

(5) *General Prohibition Five—Export 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 BIS, 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, ECCN 1C355, or ECCN 1C395.

(8) *General Prohibition Eight—In transit shipments and items to be unladen from vessels or aircraft (Intransit).* (i) *Unlading and shipping in transit.* You may not export or reexport an item through or transit through a country listed in paragraph (b)(8)(ii) of this section unless a License Exception or license authorizes such an export or reexport directly to 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, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

(9) *General Prohibition Nine—Violation of any order, terms, and conditions (Orders, Terms, and Conditions).* You may not violate terms or conditions of a license or of a License Exception issued under or made a part of the EAR, and you may not violate any order issued under or made a part of the EAR. There are no License Exceptions to this General Prohibition Nine in part 740 of the EAR. Supplements Nos. 1 and 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, reexport, 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; 67 FR 37981, May 31, 2002; 67 FR 54953, Aug. 27, 2002; 69 FR 5690, Feb. 6, 2004; 69 FR 23628, Apr. 29, 2004; 70 FR 8719, Feb. 23, 2005; 70 FR 67348, Nov. 7, 2005]

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

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

General Order No. 2 of May 14, 2004; sections 5(a)(1) and 5(a)(2)(A) of the Syria Accountability and Lebanese Sovereignty Act of 2003 (Public Law 108–175, codified as a note to 22 U.S.C. 2151) (the SAA), require (1) a prohibition on the export to Syria of all items on the Commerce Control List (in 15 CFR part 774)(CCL) and (2) a prohibition on the export to Syria of products of the United States, other than food and medicine. The President has also exercised national security waiver authority pursuant to Section 5(b) of the SAA for certain transactions. This Order is issued consistent with Executive Order 13338 of May 11, 2004, which implements the SAA.

(a) *License requirements.* Effective May 14, 2004, a license is required for export or reexport to Syria of all items subject to the EAR, except food and medicine classified as EAR99 (medicine is defined in part 772 of the EAR). A license is required for the ''deemed export'' and ''deemed reexport,'' as described in §734.2(b) of the EAR, of any technology or source code on the Commerce Control List (CCL) to a Syrian foreign national. ''Deemed exports'' and ''deemed reexports'' involving technology or source code subject to the EAR but not listed on the CCL do not require a license to Syrian foreign nationals.

(b) *Revocation of Authority to Export under Existing Licenses.* Effective May 14, 2004, the authority to export or reexport to Syria under existing licenses is hereby revoked (see savings clause in paragraph (e) of this General Order). License conditions requiring written U.S. Government authorization for the reexport, transfer, or resale of items already exported or reexported remain in effect, and requests for BIS authorization to reexport, transfer, or sell such items will require interagency approval.

(c) *License Exceptions.* Effective May 14, 2004, no License Exceptions to the license requirements set forth in paragraph (a) of this General Order are available for exports or reexports to Syria, except the following:

(1) TMP for items for use by the news media as set forth in §740.9(a)(2)(viii) of the EAR,

(2) GOV for items for personal or official use by personnel and agencies of the U.S.

Government as set forth in §740.11(b)(2)(i) and (ii) of the EAR,

(3) TSU for operation technology and software, sales technology and software updates pursuant to the terms of §740.13(a), (b), or (c) of the EAR,

(4) BAG for exports of items by individuals leaving the United States as personal baggage pursuant to the terms of §740.14 (a) through (d) only of the EAR, and

(5) AVS for the temporary sojourn of civil aircraft reexported to Syria pursuant to the terms of §740.15(a)(4) of the EAR.

(d) *Licensing policy.* All license applications for export or reexport to Syria are subject to a general policy of denial. License applications for ''deemed exports'' and ''deemed reexports'' of technology and source code will be reviewed on a case-by-case basis. BIS may consider, on a case-by-case basis, license applications for exports and reexports of items necessary to carry out the President's constitutional authority to conduct U.S. foreign affairs and as Commander-in-Chief, including those exports and reexports of items necessary for the performance of official functions by the United States Government personnel abroad. BIS may also consider the following license applications on a case-by-case basis: items in support of activities, diplomatic or otherwise, of the United States Government (to the extent that regulation of such exportation or reexportation would not fall within the President's constitutional authority to conduct the nation's foreign affairs); medicine (on the CCL) and medical devices (both as defined in part 772 of the EAR); parts and components intended to ensure the safety of civil aviation and the safe operation of commercial passenger aircraft; aircraft chartered by the Syrian Government for the transport of Syrian Government officials on official Syrian Government business; telecommunications equipment and associated computers, software and technology; and items in support of United Nations operations in Syria. The total dollar value of each approved license for aircraft parts for flight safety normally will be limited to no more than $2 million over the 24-month standard license term, except in the case of complete overhauls. In addition, consistent with part 734 of the EAR, the following are not subject to this General Order: informational materials in the form of books and other media; publicly available software and technology; and technology exported in the form of a patent application or an amendment, modification, or supplement thereto or a division thereof (see 15 CFR 734.3(b)(1)(v), (b)(2) and (b)(3)).

(e) *Savings Clause.* Items that are on dock for loading, on lighter, laden aboard an exporting carrier or en route aboard a carrier to a port of export on May 14, 2004, shall be subject to the licensing rules applicable to such items as of May 13, 2004. Any such items not actually exported or reexported before midnight May 28, 2004, may be exported or reexported only if authorized pursuant to this General Order.

[63 FR 49426, Sept. 16, 1998, as amended at 65 FR 76562, Dec. 7, 2000; 69 FR 26768, May 14, 2004; 69 FR 42333, July 15, 2004; 69 FR 76843, Dec. 23, 2004]

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

(1) *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 BIS on behalf of another, in connection with any export control matter, or both, as provided in part 764 of the EAR.

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

(i) Inducing or attempting to induce by gifts, promises, bribes, or otherwise, any officer or employee of BIS 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;

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

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

(iv) 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

(v) 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.

(3) *Definition.* As used in this Administration Order, the terms ''practice before BIS'' and ''appear before BIS'' include:

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

(ii) Conferences or other communications on behalf of another with officers or employees of BIS for the purpose of soliciting or expediting approval by BIS 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 BIS;

(iii) Participating on behalf of another in any proceeding pending before BIS; and

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

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

(b) *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.

[61 FR 12754, Mar. 25. 1996, as amended at 70 FR 54628, Sept. 16, 2005; 70 FR 62238, Oct. 31, 2005]

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. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

SOURCE: 61 FR 12756, Mar. 25, 1996, unless otherwise noted.

§738.1 Introduction.

(a) *Commerce Control List scope.* (1) In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL) within the Export Administration Regulations (EAR), which includes items (i.e., commodities, software, and technology) subject to the export licensing authority of BIS. The CCL does not include those items exclusively controlled for export or reexport by another department or agency of the U.S. Government. In instances where agencies other than the Department of Commerce administer controls over related items, entries in the CCL contain a reference to these controls.

(2) The CCL is contained in Supplement No. 1 to part 774 of the EAR. Supplement No. 2 to part 774 of the EAR contains the General Technology and Software Notes relevant to entries contained in the CCL.

(b) *Commerce Country Chart scope.* BIS also maintains the Commerce Country Chart. The Commerce Country Chart, located in Supplement No. 1 to part 738, contains licensing requirements based on destination and Reason for Control. In combination with the CCL, the Commerce Country Chart allows you to determine whether a license is required for items on the CCL to any country in the world.

§738.2 Commerce Control List (CCL) structure.

(a) *Categories.* The CCL is divided into 10 categories, numbered as follows:

0—Nuclear Materials, Facilities and Equipment and Miscellaneous
1—Materials, Chemicals, ''Microorganisms,'' and Toxins
2—Materials Processing
3—Electronics
4—Computers
5—Telecommunications and Information Security
6—Lasers and Sensors
7—Navigation and Avionics
8—Marine
9—Propulsion Systems, Space Vehicles and Related Equipment

(b) *Groups.* Within each category, items are arranged by group. Each category contains the same five groups. Each Group is identified by the letters A through E, as follows:

A—Equipment, Assemblies and Components
B—Test, Inspection and Production Equipment
C—Materials
D—Software
E—Technology

(c) *Order of review.* In order to classify your item against the CCL, you should begin with a review of the general characteristics of your item. This will usually guide you to the appropriate category on the CCL. Once the appropriate category is identified, you should match the particular characteristics and functions of your item to a specific ECCN. If the ECCN contains a list under the ''*Items*'' heading, you should review the list to determine within which subparagraph(s) your items are identified.

(d) *Entries*—(1) *Composition of an entry.* Within each group, individual items are identified by an Export Control Classification Number (ECCN). Each number consists of a set of digits and a letter. The first digit identifies the general category within which the entry falls (e.g., 3*A*001). The letter immediately following this first digit identifies under which of the five groups the item is listed (e.g., *3* A001). The second digit differentiates individual entries by identifying the type of controls associated with the items contained in the entry (e.g., 3A*0*01). Listed below are the Reasons for Control associated with this second digit.

0: National Security reasons (including Dual Use and International Munitions List) and Items on the NSG Dual Use Annex and Trigger List
1: Missile Technology reasons
2: Nuclear Nonproliferation reasons
3: Chemical & Biological Weapons reasons
9: Anti-terrorism, Crime Control, Regional Stability, Short Supply, UN Sanctions, etc.

(i) Since Reasons for Control are not mutually exclusive, numbers are assigned in order of precedence. As an example, if an item is controlled for both National Security and Missile Technology reasons, the entry's third digit will be a ''0''. If the item is controlled only for Missile Technology the third digit will be ''1''.

(ii) The numbers in either the second or third digit (e.g., 3A*00*1) serve to differentiate between multilateral and unilateral entries. An entry with the number ''9'' as the second digit, identifies the entire entry as controlled for a unilateral concern (e.g., 2B991 for anti-terrorism reasons). If the number ''9'' appears as the third digit, the item is controlled for unilateral purposes based on a proliferation concern (e.g., 2A292 is controlled for unilateral purposes based on nuclear nonproliferation concerns).

(iii) The last digit within each entry (e.g., 3A001) is used for the sequential numbering of ECCNs to differentiate between entries on the CCL.

(2) *Reading an ECCN.* A brief description is provided next to each ECCN. Following this description is the actual entry containing ''License Requirements,'' ''License Exceptions,'' and ''List of Items Controlled'' sections. A brief description of each section and its use follows:

(i) *License Requirements.* This section contains a separate line identifying all possible Reasons for Control in order of precedence, and two columns entitled ''Control(s)'' and ''Country Chart''.

(A) The ''Controls'' header identifies all applicable Reasons for Control, in order of restrictiveness, and to what extent each applies (e.g., to the entire entry or only to certain subparagraphs). Those requiring licenses for a larger number of countries and/or items are listed first. As you read down the list the number of countries and/or items requiring a license declines. Since Reasons for Control are not mutually exclusive, items controlled within a particular ECCN may be controlled

for more than one reason. The following is a list of all possible Reasons for Control:

AT Anti-Terrorism
CB Chemical & Biological Weapons
CC Crime Control
CW Chemical Weapons Convention
EI Encryption Items
FC Firearms Convention
MT Missile Technology
NS National Security
NP Nuclear Nonproliferation
RS Regional Stability
SS Short Supply
UN United Nations Embargo
XP Computers
SI Significant Items

(B) The ''Country Chart'' header identifies, for each applicable Reason for Control, a column name and number (e.g., CB Column 1). These column identifiers are used to direct you from the CCL to the appropriate column identifying the countries requiring a license. Consult part 742 of the EAR for an indepth discussion of the licensing requirements and policies applicable to each Country Chart column.

(ii) *License Exceptions.* This section provides a brief eligibility statement for each ECCN-driven License Exception that may be applicable to your transaction, and should be consulted only AFTER you have determined a license is required based on an analysis of the entry and the Country Chart. The brief eligibility statement in this section is provided to assist you in deciding which ECCN-driven License Exception related to your particular item and destination you should explore prior to submitting an application. The term ''Yes'' (followed in some instances by the scope of Yes) appears next to each available ECCN-driven License Exception. The term ''N/A'' will be noted for License Exceptions that are not available within a particular entry. If one or more License Exceptions appear to apply to your transaction, you must consult part 740 of the EAR to review the conditions and restrictions applicable to each available License Exception. The list of License Exceptions contained within each ECCN is not an all-exclusive list. Other License Exceptions, not based on particular ECCNs, may be available. Consult part 740 of the EAR to determine eligibility for non-ECCN-driven License Exceptions.

(iii) *List of Items Controlled*—(A) *Units.* The unit of measure applicable to each entry is identified in the ''Units'' header. Most measurements used in the CCL are expressed in metric units with an inch-pound conversion where appropriate. Note that in some ECCNs the inch-pound unit will be listed first. In instances where other units are in general usage or specified by law, these will be used instead of metric. Generally, when there is a difference between the metric and inch-pound figures, the metric standard will be used for classification and licensing purposes.

(B) *Related definitions.* This header identifies, where appropriate, definitions or parameters that apply to all items controlled by the entry. The information provided in this section is unique to the entry, and hence not listed in the definitions contained in part 772 of the EAR.

(C) *Related controls.* If another U.S. government agency or department has export licensing authority over items related to those controlled by an entry, a statement is included identifying the agency or department along with the applicable regulatory cite. An additional cross-reference may be included in instances where the scope of controls differs between a CCL entry and its corresponding entry on list maintained by the European Union. This information is provided to assist readers who use both lists.

(D) *Items.* This header contains a positive list of all items controlled by a particular entry and must be reviewed to determine whether your item is controlled by that entry. In some entries, the list is contained within the entry heading. In these entries a note is included to direct you to the entry heading.

[61 FR 112756, Mar. 25, 1996, as amended at 61 FR 68579, Dec. 30, 1996; 62 FR 25456, May 9, 1997; 64 FR 17970, Apr. 13, 1999; 27141, May 18, 1999; 70 FR 54628, Sept. 16, 2005]

§738.3 Commerce Country Chart structure.

(a) *Scope.* The Commerce Country Chart allows you to determine the Commerce Control List (CCL) export

and reexport license requirements for most items listed on the CCL. Such license requirements are based on the Reasons for Control listed in the Export Control Classification Number (ECCN) that applies to the item. Some ECCNs, however, impose license requirements either without reference to a reason for control code that is listed on the Commerce Country Chart, or in addition to such a reference. Those ECCNs may state their license requirements in full in their ''Reasons for Control'' sections or they may refer the reader to another provision of the EAR for license requirement information. In addition, some ECCNs do not impose license requirements, but refer the reader to the regulations of another government agency that may impose license requirements on the items described in that ECCN.

(b) *Countries.* The first column of the Country Chart lists all countries in alphabetical order. There are a number of destinations that are not listed in the Country Chart contained in Supplement No. 1 to part 738. If your destination is not listed on the Country Chart and such destination is a territory, possession, or department of a country included on the Country Chart, the EAR accords your destination the same licensing treatment as the country of which it is a territory, possession, or department. For example, if your destination is the Cayman Islands, a dependent territory of the United Kingdom, consult the United Kingdom on the Country Chart for licensing requirements.

(c) *Columns.* Stretching out to the right are horizontal headers identifying the various Reasons for Control. Under each Reason for Control header are diagonal column identifiers capping individual columns. Each column identifier consists of the two letter Reason for Control and a column number. (e.g., CB Column 1). The column identifiers correspond to those listed in the ''Country Chart'' header within the ''License Requirements'' section of each ECCN.

(d) *Cells.* The symbol ''X'' is used to denote licensing requirements on the Country Chart. If an ''X'' appears in a particular cell, transactions subject to that particular Reason for Control/Destination combination require a license. There is a direct correlation between the number of ''X''s applicable to your transaction and the number of licensing reviews your application will undergo.

[61 FR 12756, Mar. 25, 1996, as amended at 63 FR 42228, Aug. 7, 1998; 65 FR 55178, Sept. 13, 2000; 70 FR 8249, Feb. 18, 2005]

§ 738.4 Determining whether a license is required.

(a) *Using the CCL and the Country Chart*—(1) *Overview.* Once you have determined that your item is controlled by a specific ECCN, you must use information contained in the ''License Requirements'' section of that ECCN in combination with the Country Chart to decide whether a license is required.

(2) *License decision making process.* The following decision making process must be followed in order to determine whether a license is required to export or reexport a particular item to a specific destination:

(i) *Examine the appropriate ECCN in the CCL.* Is the item you intend to export or reexport controlled for a single Reason for Control?

(A) If yes, identify the single Reason for Control and the relevant Country Chart column identifier (e.g., CB Column 1).

(B) If no, identify the Country Chart column identifier for each applicable Reason for Control (e.g., NS Column 1, NP Column 1, etc.).

(ii) *Review the Country Chart.* With each of the applicable Country Chart Column identifiers noted, turn to the Country Chart (Supplement No. 1 to part 738). Locate the correct Country Chart column identifier on the diagonal headings, and determine whether an ''X'' is marked in the cell next to the country in question for each Country Chart column identified in the applicable ECCN. If your item is subject to more than one reason for control, repeat this step using each unique Country Chart column identifier.

(A) If yes, a license application must be submitted based on the particular reason for control and destination, unless a License Exception applies. If ''Yes'' is noted next to any of the listed License Exceptions, you should consult part 740 of the EAR to determine

whether you can use any of the available ECCN-drvien License Exceptions to effect your shipment, rather than applying for a license. Each affirmative license requirement must be overcome by a License Exception. If you are unable to qualify for a License Exception based on each license requirement noted on the Country Chart, you must apply for a license. Note that other License Exceptions, not related to the CCL, may also apply to your transaction (See part 740 of the EAR).

(B) If no, a license is not required based on the particular Reason for Control and destination. Provided that General Prohibitions Four through Ten do not apply to your proposed transaction and that any applicable notification or review requirements described in § 742.15(b)(1) and (b)(2) of the EAR have been met for certain encryption items controlled under ECCNs 5A992, 5D992 and 5E992, you may effect your shipment using the symbol ''NLR''. Proceed to parts 758 and 762 of the EAR for information on export clearance procedures and recordkeeping requirements. Note that although you may stop after determining a license is required based on the first Reason for Control, it is best to work through each applicable Reason for Control. A full analysis of every possible licensing requirement based on each applicable Reason for Control is required to determine the most advantageous License Exception available for your particular transaction and, if a license is required, ascertain the scope of review conducted by BIS on your license application.

(b) *Sample analysis using the CCL and Country Chart*—(1) *Scope.* The following sample entry and related analysis is provided to illustrate the type of thought process you must complete in order to determine whether a license is required to export or reexport a particular item to a specific destination using the CCL in combination with the Country Chart.

(2) *Sample CCL entry.*

2A000: Entry heading.

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	Country Chart
NS applies to entire entry	NS Column 2
NP applies to 2A000.b	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5,000
GBS: Yes
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Definition: N/A
Related Controls: N/A
Items:

a. Having x.
b. Having z.

(3) *Sample analysis.* After consulting the CCL, I determine my item, valued at $10,000, is classified under ECCN 2A000.a. I read that the entire entry is controlled for national security, and anti-terrorism reasons. Since my item is classified under paragraph .a, and not .b, I understand that though nuclear nonproliferation controls apply to a portion of the entry, they do not apply to my item. I note that the appropriate Country Chart column identifiers are NS Column 2 and AT Column 1. Turning to the Country Chart, I locate my specific destination, India, and see that an ''X'' appears in the NS Column 2 cell for India, but not in the AT Column 1 cell. I understand that a license is required, unless my transaction qualifies for a License Exception or Special Comprehensive License. From the License Exception LVS value listed in the entry, I know immediately that my proposed transaction exceeds the value limitation associated with LVS. Noting that License Exception GBS is ''Yes'' for this entry, I turn to part 740 of the EAR to review the provisions related to use of GBS.

[61 FR 12756, Mar. 25, 1996, as amended at 67 FR 38861, June 6, 2002; 70 FR 54628, Sept. 16, 2005]

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical and biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Fire-arms con-vention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Afghanistan	X	X	X	X		X	X	X	X	X		X		X		
Albania	X	X		X		X	X	X	X	X		X	X			
Algeria	X	X		X		X	X	X	X	X		X		X		
Andorra	X	X		X		X	X	X	X	X		X		X		
Angola	X	X		X		X	X	X	X	X		X		X		
Antigua and Barbuda	X	X		X		X	X	X	X	X	X	X		X		
Argentina	X					X	X	X	X	X	X	X		X		
Armenia	X	X	X	X		X	X	X	X	X		X	X			
Aruba	X	X		X		X	X	X	X	X		X		X		
Australia	X					X		X	X							
Austria	X					X		X	X	X		X		X		
Azerbaijan	X	X	X	X		X	X	X	X	X		X	X			
Bahamas, The	X	X		X		X	X	X	X	X	X	X		X		
Bahrain	X	X	X	X		X	X	X	X	X		X		X		
Bangladesh	X	X		X		X	X	X	X	X		X		X		
Barbados	X	X		X		X	X	X	X	X	X	X		X		
Belarus	X	X	X			X	X	X	X	X		X	X			
Belgium	X					X		X	X							
Belize	X	X		X		X	X	X	X	X	X	X		X		
Benin	X	X		X		X	X	X	X	X		X		X		
Bhutan	X	X		X		X	X	X	X	X		X		X		
Bolivia	X	X		X		X	X	X	X	X	X	X		X		
Bosnia and Herzegovina	X	X		X		X	X	X	X	X		X		X		
Botswana	X	X		X		X	X	X	X	X		X		X		
Brazil	X	X				X	X	X	X	X	X	X		X		
Brunei	X	X		X		X	X	X	X	X		X		X		
Bulgaria	X					X		X	X							
Burkina Faso	X	X		X		X	X	X	X	X		X		X		
Burma	X	X	X	X		X	X	X	X	X		X		X		
Burundi	X	X		X		X	X	X	X	X		X		X		
Cambodia	X	X		X		X	X	X	X	X		X	X			
Cameroon	X	X		X		X	X	X	X	X		X		X		
Canada	X										X					
Cape Verde	X	X		X		X	X	X	X	X		X		X		
Central African Republic	X	X		X		X	X	X	X	X		X		X		
Chad	X	X		X		X	X	X	X	X		X		X		
Chile	X	X		X		X	X	X	X	X	X	X		X		
China	X	X	X	X		X	X	X	X	X		X		X		
Colombia	X	X		X		X	X	X	X	X	X	X		X		
Comoros	X	X		X		X	X	X	X	X		X		X		

Congo (Democratic Republic of the)	X	X		X		X	X	X	X	X		X		X
Congo (Republic of the)	X	X		X		X	X	X	X	X		X		X
Costa Rica	X	X		X		X	X	X	X	X	X	X		X
Cote d'Ivoire	X	X		X		X	X	X	X	X		X		X
Croatia	X	X		X		X	X	X	X	X		X		X
Cuba	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.													
Cyprus	X					X	X	X	X	X		X		X
Czech Republic	X					X		X	X					
Denmark	X					X		X	X					
Djibouti	X	X		X		X	X	X	X	X		X		X
Dominica	X	X		X		X	X	X	X	X	X	X		X
Dominican Republic	X	X		X		X	X	X	X	X	X	X		X
East Timor	X	X		X		X	X	X	X	X		X		X
Ecuador	X	X		X		X	X	X	X	X	X	X		X
Egypt	X	X	X	X		X	X	X	X	X		X		X
El Salvador	X	X		X		X	X	X	X	X	X	X		X
Equatorial Guinea	X	X		X		X	X	X	X	X		X		X
Eritrea	X	X		X		X	X	X	X	X		X		X
Estonia	X			X		X		X	X					
Ethiopia	X	X		X		X	X	X	X	X		X		X
Fiji	X	X		X		X	X	X	X	X		X	X	X
Finland	X					X		X	X	X		X		X
France	X					X		X	X					
Gabon	X	X		X		X	X	X	X	X		X		X
Gambia, The	X	X		X		X	X	X	X	X		X		X
Georgia	X	X	X	X		X	X	X	X	X		X	X	
Germany	X					X		X	X					
Ghana	X	X		X		X	X	X	X	X		X		X
Greece	X					X		X	X					
Grenada	X	X		X		X	X	X	X	X	X	X		X
Guatemala	X	X		X		X	X	X	X	X	X	X		X
Guinea	X	X		X		X	X	X	X	X		X		X
Guinea-Bissau	X	X		X		X	X	X	X	X		X		X
Guyana	X	X		X		X	X	X	X	X	X	X		X
Haiti	X	X		X		X	X	X	X	X	X	X		X
Honduras	X	X		X		X	X	X	X	X	X	X		X
Hong Kong	X	X		X		X		X	X	X		X		X
Hungary	X					X		X	X					
Iceland	X			X		X		X	X					
India	X	X	X	X		X	X	X	X	X		X		X
Indonesia	X	X		X		X	X	X	X	X		X		X
Iran	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.													
Iraq[1]	X	X	X	X	X	X	X	X	X	X		X	X	
Ireland	X					X		X	X	X		X		X
Israel	X	X	X	X	X	X	X	X	X	X		X		X
Italy	X					X		X	X					
Jamaica	X	X		X		X	X	X	X	X	X	X		X
Japan	X					X		X	X					
Jordan	X	X	X	X		X	X	X	X	X		X		X

[Reason for control]

Countries	Chemical and biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Fire-arms con-vention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Kazakhstan	X	X	X			X	X	X	X	X		X	X			
Kenya	X	X		X		X	X	X	X	X		X		X		
Kiribati	X	X		X		X	X	X	X	X		X		X		
Korea, North	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X
Korea, South	X					X		X	X	X		X		X		
Kuwait	X	X	X	X		X	X	X	X	X		X		X		
Kyrgyzstan	X	X	X	X		X	X	X	X	X		X	X			
Laos	X	X		X		X	X	X	X	X		X	X			
Latvia	X					X		X	X							
Lebanon	X	X	X	X		X	X	X	X	X		X		X		
Lesotho	X	X		X		X	X	X	X	X		X		X		
Liberia	X	X		X		X	X	X	X	X		X		X		
Libya	X	X	X	X	X	X	X	X	X	X		X		X	X	
Liechtenstein	X	X		X		X	X	X	X	X		X		X		
Lithuania	X			X		X		X	X							
Luxembourg	X					X		X	X							
Macau	X	X	X	X		X	X	X	X	X		X		X		
Macedonia (The Former Yugoslav Republic of)	X	X		X		X	X	X	X	X		X		X		
Madagascar	X	X		X		X	X	X	X	X		X		X		
Malawi	X	X		X		X	X	X	X	X		X		X		
Malaysia	X	X		X		X	X	X	X	X		X		X		
Maldives	X	X		X		X	X	X	X	X		X		X		
Mali	X	X		X		X	X	X	X	X		X		X		
Malta	X			X		X	X	X	X	X		X		X		
Marshall Islands	X	X		X		X	X	X	X	X		X		X		
Mauritania	X	X		X		X	X	X	X	X		X		X		
Mauritius	X	X		X		X	X	X	X	X		X		X		
Mexico	X	X		X		X	X	X	X	X	X	X		X		
Micronesia (Federated State of)	X	X		X		X	X	X	X	X		X		X		
Moldova	X	X	X	X		X	X	X	X	X		X	X			
Monaco	X	X		X		X	X	X	X	X		X		X		
Mongolia	X	X	X	X		X	X	X	X	X		X	X			
Morocco	X	X		X		X	X	X	X	X		X		X		
Mozambique	X	X		X		X	X	X	X	X		X		X		
Namibia	X	X		X		X	X	X	X	X		X		X		
Nauru	X	X		X		X	X	X	X	X		X		X		
Nepal	X	X		X		X	X	X	X	X		X		X		
Netherlands Antilles	X	X		X		X	X	X	X	X		X		X		
Netherlands	X					X		X	X							
New Zealand	X					X		X	X							

Nicaragua	X	X		X		X	X	X	X	X	X	X		X		
Niger	X	X		X		X	X	X	X	X		X		X		
Nigeria	X	X		X		X	X	X	X	X		X		X		
Norway	X					X		X	X							
Oman	X	X	X	X		X	X	X	X	X		X		X		
Pakistan	X	X	X	X	X	X	X	X	X	X		X		X		
Palau	X	X		X		X	X	X	X	X		X		X		
Panama	X	X		X		X	X	X	X	X	X	X		X		
Papua New Guinea	X	X		X		X	X	X	X	X		X		X		
Paraguay	X	X		X		X	X	X	X	X	X	X		X		
Peru	X	X		X		X	X	X	X	X	X	X		X		
Philippines	X	X		X		X	X	X	X	X		X		X		
Poland	X					X		X	X							
Portugal	X					X		X	X							
Qatar	X	X	X	X		X	X	X	X	X		X		X		
Romania	X					X		X	X							
Russia	X	X	X			X	X	X	X	X		X	X			
Rwanda [1]	X	X		X		X	X	X	X	X		X	X	X		
St. Kitts and Nevis	X	X	X	X		X	X	X	X	X	X	X		X		
St. Lucia	X	X		X		X	X	X	X	X	X	X		X		
St. Vincent and the Grenadines	X	X		X		X	X	X	X	X	X	X		X		
Samoa	X	X		X		X	X	X	X	X		X		X		
San Marino	X	X		X		X	X	X	X	X		X		X		
Sao Tome and Principe	X	X		X		X	X	X	X	X		X		X		
Saudi Arabia	X	X	X	X		X	X	X	X	X		X		X		
Senegal	X	X		X		X	X	X	X	X		X		X		
Serbia and Montenegro	X	X		X		X	X	X	X	X		X	X	X		
Seycheles	X	X		X		X	X	X	X	X		X		X		
Sierra Leone	X	X		X		X	X	X	X	X		X		X		
Singapore	X	X		X		X	X	X	X	X		X		X		
Slovakia	X					X		X	X							
Slovenia	X					X		X	X							
Solomon Islands	X	X		X		X	X	X	X	X		X		X		
Somalia	X	X		X		X	X	X	X	X		X		X		
South Africa	X	X				X	X	X	X	X		X		X		
Spain	X					X		X	X							
Sri Lanka	X	X		X		X	X	X	X	X		X		X		
Sudan	X	X		X		X	X	X	X	X		X		X	X	X
Suriname	X	X		X		X	X	X	X	X	X	X		X		
Swaziland	X	X		X		X	X	X	X	X		X		X		
Sweden	X					X		X	X	X		X		X		
Switzerland	X					X		X	X	X		X		X		
Syria	X	X	X	X		X	X	X	X	X		X		X	X	
Taiwan	X	X	X	X		X	X	X	X	X		X		X		
Tajikistan	X	X	X	X		X	X	X	X	X		X	X			
Tanzania	X	X		X		X	X	X	X	X		X		X		
Thailand	X	X		X		X	X	X	X	X		X		X		
Togo	X	X		X		X	X	X	X	X		X		X		
Tonga	X	X		X		X	X	X	X	X		X				

[Reason for control]

Countries	Chemical and biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Fire-arms con-vention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Trinidad and Tobago	X	X		X		X	X	X	X	X	X	X		X		
Tunisia	X	X		X		X	X	X	X	X		X		X		
Turkey	X					X		X	X							
Turkmenistan	X	X	X	X		X	X	X	X	X		X	X			
Tuvalu	X	X		X		X	X	X	X	X		X		X		
Uganda	X	X		X		X	X	X	X	X		X		X		
Ukraine	X					X	X	X	X	X		X	X			
United Arab Emirates	X	X	X	X		X	X	X	X	X		X		X		
United Kingdom	X					X		X	X							
Uruguay	X	X		X		X	X	X	X	X	X	X		X		
Uzbekistan	X	X	X	X		X	X	X	X	X		X	X			
Vanuatu	X	X		X		X	X	X	X	X		X		X		
Vatican City	X	X		X		X	X	X	X	X		X		X		
Venezuela	X	X		X		X	X	X	X	X	X	X		X		
Vietnam	X	X	X	X		X	X	X	X	X		X	X			
Western Sahara	X	X		X		X	X	X	X	X		X		X		
Yemen	X	X	X	X		X	X	X	X	X		X		X		
Zambia	X	X		X		X	X	X	X	X		X		X		
Zimbabwe	X	X		X		X	X	X	X	X		X		X		

[1] This country is subject to United Nations Sanctions. See part 746 of the EAR for additional OFAC licensing requirements that may apply to your proposed transaction.

[64 FR 17970, Apr. 13, 1999, as amended at 64 FR 28908, May 28, 1999; 64 FR 42011, Aug. 3, 1999; 64 FR 60340, Nov. 5, 1999; 65 FR 38150, June 19, 2000; 65 FR 60854, Oct. 13, 2000; 66 FR 12846, Mar. 1, 2001; 66 FR 18402, Apr. 9, 2001; 66 FR 49523, Sept. 28, 2001; 67 FR 10613, Mar. 8, 2002; 67 FR 11897, Mar. 18, 2002; 67 FR 37981, May 31, 2002; 67 FR 55596, Aug. 29, 2002; 67 FR 70546, Nov. 25, 2002; 68 FR 60289, Oct. 22, 2003; 69 FR 3005, Jan. 22, 2004; 69 FR 21056, Apr. 20, 2004; 69 FR 23628, Apr. 29, 2004; 69 FR 36010, June 28, 2004; 69 FR 41879, July 12, 2004; 69 FR 46074, July 30, 2004; 69 FR 77892, Dec. 29, 2004; 70 FR 14389, Mar. 22, 2005; 70 FR 45278, Aug. 5, 2005; 70 FR 51252, Aug. 30, 2005; 70 FR 67348, Nov. 7, 2005]

PART 740—LICENSE EXCEPTIONS

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AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

SOURCE: 61 FR 12768, Mar. 25, 1996, unless otherwise noted.

§740.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Scope.* A ''License Exception'' is an authorization contained in this part that allows you to export or reexport under stated conditions, items subject to the Export Administration Regulations (EAR) that would otherwise require a license under General Prohibition One, Two, Three, or Eight, as indicated under one or more of the Export Control Classification Numbers (ECCNs) in the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR and items subject to the EAR that would require a license based on the embargo policies described in part 746 of the EAR. If your export or reexport is subject to General Prohibition Six for embargoed destinations, refer to part 746 of the EAR to determine the availability of any License Exceptions. Special commodity controls apply to short supply items. License Exceptions for items listed on the CCL as controlled for Short Supply reasons are found in part 754 of the EAR. If your export or reexport is subject to General Prohibition Five, consult part 744 of the EAR. If your export or reexport is subject to General Prohibitions Four, Seven, Nine, or Ten, then no License Exceptions apply.

(b) *Certification.* By using any of the License Exceptions you are certifying that the terms, provisions, and conditions for the use of the License Exception described in the EAR have been met. Please refer to part 758 of the EAR for clearance of shipments and documenting the use of License Exceptions.

(c) *License Exception symbols.* Each License Exception bears a three letter symbol that will be used for export clearance purposes (see paragraph (d) of this section).

(d) *Shipper's Export Declaration or Automated Export System (AES) record.* You must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the correct License Exception symbol (*e.g.*, LVS, GBS, CIV) and the correct Export Control Classification Number (ECCN) (*e.g.*, 4A003, 5A002) for all shipments of items exported under a License Exception. Items temporarily in the United States meeting the provisions of License Exception TMP, under §740.9(b)(3), are excepted from this requirement. *See* §758.1 of the EAR for Shipper's Export Declaration or Automated Export System (AES) requirements.

(e) *Destination Control Statement.* You may be required to enter an appropriate Destination Control Statement on commercial documents in accordance with Destination Control Statement requirements of § 758.6 of the EAR.

(f) *Recordkeeping.* Records of transactions involving exports under any of the License Exceptions must be maintained in accordance with the recordkeeping requirements of part 762 of the EAR.

[61 FR 12768, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 62 FR 25457, May 9, 1997; 65 FR 42568, July 10, 2000; 66 FR 36680, July 12, 2001; 66 FR 42109, Aug. 10, 2001; 68 FR 50472, Aug. 21, 2003]

§ 740.2 Restrictions on all License Exceptions.

(a) You may not use *any* License Exception if *any* one or more of the following apply:

(1) Your authorization to use a License Exception has been suspended or revoked, or your intended export does not qualify for a License Exception.

(2) The export or reexport is subject to one of the ten General Prohibitions, is not eligible for a License Exception, and has not been authorized by BIS.

(3) The item is for surreptitious interception of wire or oral communications, controlled under ECCN 5A980, unless you are a U.S. Government agency (see § 740.11(b)(2)(ii) of this part, Governments (GOV)).

(4) The commodity you are shipping is a specially designed crime control and detection instrument or equipment described in § 742.7 of the EAR and you are not shipping to Australia, Japan, New Zealand, or a NATO member state (*see* definition of NATO in § 772.1 of the EAR), unless the shipment is authorized under License Exception BAG, § 740.14(e) of this part (shotguns and shotgun shells).

(5) The item is controlled for missile technology (MT) reasons, except that the items described in ECCNs 6A008, 7A001, 7A002, 7A004, 7A101, 7A102, 7A103, 7A104, 7B001, 7D001, 7D002, 7D003, 7D101, 7D102, 7E003, or 7E101, may be exported as part of a manned aircraft, land vehicle or marine vehicle or in quantities appropriate for replacement parts for such applications under § 740.9(a)(2)(ii) (License Exception TMP for kits consisting of replacement parts), § 740.10 (License Exception RPL), § 740.13 (License Exception TSU), or § 740.15(c) (License Exception AVS for equipment and spare parts for permanent use on a vessel or aircraft).

(6) The export or reexport is to a comprehensively embargoed destination (Cuba and Iran), unless a license exception or portion thereof is specifically listed in the license exceptions paragraph pertaining to a particular embargoed country in part 746 of the EAR.

(7) *''Space qualified'' items.* Commodities defined in ECCNs 3A001.b.8 (Traveling Wave Tube Amplifiers (TWTAs) exceeding 18 GHz), 6A002.e, 6A008.j.1, or 6A998.b; ''software'' for commodities defined in ECCNs 3A001.b.8 (Traveling Wave Tube Amplifiers (TWTAs) exceeding 18 GHz), 6A002.e, 6A008.j.1, or 6A998.b and controlled under ECCNs 3D001 (Traveling Wave Tube Amplifiers (TWTAs) exceeding 18 GHz), 6D001, 6D002, 6D104, 6D991; and ''technology'' for commodities defined in ECCNs 3A001.b.8 (Traveling Wave Tube Amplifiers (TWTAs) exceeding 18 GHz), 6A002.e, 6A008.j.1, or 6A998.b and controlled under ECCNs 3E001, 6E001, 6E002, 6E101, 6E102, 6E991.

(8) The item is controlled under ECCNs 2A983, 2D983 or 2E983 and the License Exception is other than:

(i) RPL, under the provisions of § 740.10, including § 740.10(a)(3)(v), which prohibits exports and reexports of replacement parts to countries in Country Group E:1 (see Supplement 1 to part 740));

(ii) GOV, restricted to eligibility under the provisions of § 740.11(b)(2)(ii) or (v); or

(iii) TSU, under the provisions of § 740.13(a) and (c).

(9) The item is a QRS11–00100–100/101 Micromachined Angular Rate Sensor controlled for RS reasons under ECCN 7A994.

(b) All License Exceptions are subject to revision, suspension, or revocation, in whole or in part, without notice. It may be necessary for BIS to stop a shipment or an export transaction at any stage of its progress, e.g.,

in order to prevent an unauthorized export or reexport. If a shipment is already en route, it may be further necessary to order the return or unloading of the shipment at any port of call.

(c) BIS may by informing the exporter, suspend or revoke any License Exception in order to comply with U.S. Wassenaar obligations. In addition, BIS may inform an exporter, that before using any License Exception, a notice be submitted with BIS concerning the proposed export.

(d) See §746.3 for restrictions on certain transfers within Iraq of items exported or reexported to Iraq pursuant to a License Exception.

[61 FR 12768, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 62 FR 25457, May 9, 1997; 63 FR 2456, Jan. 15, 1998; 64 FR 13339, Mar. 18, 1999; 66 FR 36680, July 12, 2001; 67 FR 59725, Sept. 23, 2002; 68 FR 16211, Apr. 3, 2003; 69 FR 5930, Feb. 9, 2004; 69 FR 23628, Apr. 29, 2004; 69 FR 46074, July 30, 2004; 70 FR 67348, Nov. 7, 2005]

§740.3 Shipments of limited value (LVS).

(a) *Scope.* License Exception LVS authorizes the export and reexport in a single shipment of eligible commodities as identified by ''LVS - $(value limit)'' on the CCL.

(b) *Eligible Destinations.* This License Exception is available for all destinations in Country Group B (see Supplement No. 1 to part 740), provided that the net value of the commodities included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified in the LVS paragraph for that entry.

(c) *Definitions*—(1) *order.* The term *order* as used in this §740.3 means a communication from a person in a foreign country, or that person's representative, expressing an intent to import commodities from the exporter. Although all of the details of the order need not be finally determined at the time of export, terms relating to the kinds and quantities of the commodities to be exported, as well as the selling prices of these commodities, must be finalized before the goods can be exported under License Exception LVS.

(2) *Net value: for LVS shipments.* The actual selling price of the commodities that are included in the same order and are controlled under the same entry on the CCL, less shipping charges, or the current market price of the commodities to the same type of purchaser in the United States, whichever is the larger. In determining the actual selling price or the current market price of the commodity, the value of containers in which the commodity is being exported may be excluded. The value for LVS purposes is that of the controlled commodity that is being exported, and may not be reduced by subtracting the value of any content that would not, if shipped separately, be subject to licensing. Where the total value of the containers and their contents must be shown on Shipper's Export Declarations under one Schedule B Number, the exporter, in effecting a shipment under this License Exception, must indicate the ''net value'' of the contained commodity immediately below the description of the commodity.

(3) *Single shipment.* All commodities moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even though these commodities will be forwarded to one or more ultimate consignees. Commodities being transported in this manner will be treated as a single shipment even if the commodities represent more than one order or are in separate containers.

(d) *Additional eligibility requirements and restrictions*—(1) *Eligible orders.* To be eligible for this License Exception, orders must meet the following criteria:

(i) *orders must not exceed the applicable ''LVS'' dollar value limits.* An order is eligible for shipment under LVS when the ''net value'' of the commodities controlled under the same entry on the CCL does not exceed the amount specified in the ''LVS'' paragraph for that entry. An LVS shipment may include more than one eligible order.

(ii) *orders may not be split to meet the applicable LVS dollar limits.* An order that exceeds the applicable LVS dollar value limit may not be misrepresented as two or more orders, or split among two or more shipments, to give the appearance of meeting the applicable LVS dollar value limit. However an order that meets all the LVS eligibility requirements, including the applicable LVS dollar value limit, may be split among two or more shipments.

(iii) *orders must be legitimate.* Exporters and consignees may not, either collectively or individually, structure or adjust orders to meet the applicable LVS dollar value limits.

(2) *Restriction on annual value of LVS orders.* The total value of exports per calendar year to the same ultimate or intermediate consignee of commodities classified under a single ECCN may not exceed 12 times the LVS value limit for that ECCN; however, there is no restriction on the number of shipments provided that value is not exceeded. This annual value limit applies to shipments to the same ultimate consignee even though the shipments are made through more than one intermediate consignee. There is no restriction on the number of orders that may be included in a shipment, except that the annual value limit per ECCN must not be exceeded.

(3) *orders where two or more LVS dollar value limits apply.* An order may include commodities that are controlled under more than one entry on the CCL. In this case, the net value of the entire order may exceed the LVS dollar value for any single entry on the CCL. However, the net value of the commodities controlled under each ECCN entry shall not exceed the LVS dollar value limit specified for that entry.

Example to paragraph (d)(3): An order includes commodities valued at $8,000. The order consists of commodities controlled under two ECCN entries, each having an LVS value limit of $5000. Commodities in the order controlled under one ECCN are valued at $3,500 while those controlled under the other ECCN are valued at $4,500. Since the net value of the commodities controlled under each entry falls within the LVS dollar value limits applicable to that entry, the order may be shipped under this License Exception.

(4) *Prohibition against evasion of license requirements.* Any activity involving the use of this License Exception to evade license requirements is prohibited. Such devices include, but are not limited to, the splitting or structuring of orders to meet applicable LVS dollar value limits, as prohibited by paragraphs (d)(1) (ii) and (iii) of this section.

(5) *Exports of encryption items.* For components or spare parts controlled for ''EI'' reasons under ECCN 5A002, exports under this License Exception must be destined to support an item previously authorized for export.

(e) *Reexports.* Commodities may be reexported under this License Exception, provided that they could be exported from the United States to the new country of destination under LVS.

(f) *Reporting requirements. See* § 743.1 of the EAR for reporting requirements for exports of certain commodities under License Exception LVS.

[61 FR 64274, Dec. 4, 1996, as amended at 63 FR 2456, Jan. 15, 1998; 63 FR 50520, Sept. 22, 1998]

§ 740.4 Shipments to Country Group B countries (GBS).

License Exception GBS authorizes exports and reexports to Country Group B (see Supplement No. 1 to part 740) of those commodities where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination for national security reasons only and identified by ''GBS—Yes'' on the CCL. See § 743.1 of the EAR for reporting requirements for exports of certain commodities under License Exception GBS.

[63 FR 2456, Jan. 15, 1998, as amended at 69 FR 5690, Feb. 6, 2004]

§ 740.5 Civil End-users (CIV).

(a) *Scope.* License Exception CIV authorizes exports and reexports of items on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) that have a license requirement to the ultimate destination pursuant to the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) for NS reasons only; and identified by ''CIV—Yes'' in the License Exception section of the Export Control Classification Number (ECCN), provided the items are destined to civil end-users for civil end-uses in Country Group D:1, except North Korea (Supplement No. 1 to part 740 of this part).

(b) *Restrictions.* (1) Restricted end-users and end-uses. You may not use CIV if you ''know'' the item will be or is intended to be exported, reexported, or transferred within country to military uses or military end-users. Such exports, reexports, and transfers will

continue to require a license. In addition to conventional military activities, military uses include any proliferation activities described and prohibited by part 744 of the EAR.

(2) *Visa Status.* Deemed exports under License Exception CIV are not authorized to foreign nationals in an expired visa status. It is the responsibility of the exporter to ensure that, in the case of deemed exports, the foreign national maintains a valid U.S. visa, if required to hold a visa from the United States.

(c) *Reporting Requirement.* See §743.1 of the EAR for reporting requirements for exports of certain items under this License Exception.

(d) *Foreign National Review (FNR) requirement for deemed exports.* (1) Submission requirement. Prior to disclosing eligible technology to a foreign national under this License Exception, you must submit a Foreign National Review (FNR) request to BIS, as required under §748.8(s) of the EAR. Your FNR request must include information about the foreign national required under §748.8(t) of the EAR and set forth in Supplement No. 2 of part 748 of the EAR.

(2) *Confirmation of eligibility.* You may not use License Exception CIV until you have obtained confirmation of eligibility by calling the System for Tracking Export License Applications (STELA), see §750.5 for how to use STELA, or electronically from the Simplified Network Application Procedure (SNAP), see *http://www.bis.doc.gov/SNAP/index.htm* for more information about SNAP.

(3) *Action by BIS.* Within nine business days of the registration of the FNR request, BIS will refer the FNR request electronically, along with all necessary documentation for interagency review, or if necessary return the FNR request without action (*e.g.*, if the information provided is incomplete). Processing time starts at the point at which the notification is registered into BIS's electronic system.

(4) *Review by other departments or agencies.* The Departments of Defense, State, Energy, and other agencies, as appropriate, may review the FNR request. Within 30 calendar days of receipt of the BIS referral, the reviewing agency will provide BIS with a recommendation either to approve or deny the FNR request. A reviewing agency that fails to provide a recommendation within 30 days shall be deemed to have no objection to the final decision of BIS.

(5) *Action on the FNR Request.* After the interagency review period, BIS will promptly notify the applicant regarding the FNR request, *i.e.*, whether the FNR request is approved, denied, or more time is needed to consider the request.

[69 FR 64493, Nov. 5, 2004]

§740.6 Technology and software under restriction (TSR).

(a) *Scope.* License Exception TSR permits exports and reexports of technology and software where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination for national security reasons only and identified by ''TSR—Yes'' in entries on the CCL, provided the software or technology is destined to Country Group B. (See Supplement No. 1 to part 740.) A written assurance is required from the consignee before exporting or reexporting under this License Exception.

(1) *Required assurance for export of technology.* You may not export or reexport technology under this License Exception until you have received from the importer a written assurance that, without a BIS license or License Exception, the importer will not:

(i) Reexport or release the technology to a national of a country in Country Groups D:1 or E:2; or

(ii) Export to Country Groups D:1 or E:2 the direct product of the technology, if such foreign produced direct product is subject to national security controls as identified on the CCL (See General Prohibition Three, §736.2(b)(3) of the EAR); or

(iii) If the direct product of the technology is a complete plant or any major component of a plant, export to Country Groups D:1 or E:2 the direct product of the plant or major component thereof, if such foreign produced direct product is subject to national security controls as identified on the CCL or is subject to State Department

controls under the U.S. Munitions List (22 CFR part 121).

(2) *Required assurance for export of software.* You may not export or reexport software under this License Exception until you have received from the importer a written assurance that, without a BIS license or License Exception, the importer will neither:

(i) Reexport or release the software or the source code for the software to a national of a country in Country Groups D:1 or E:2; nor

(ii) Export to Country Groups D:1 or E:2 the direct product of the software, if such foreign produced direct product is subject to national security controls as identified on the CCL. (See General Prohibition Three, §736.2(b)(3) of the EAR).

(3) *Form of written assurance.* The required assurance may be made in the form of a letter or any other written communication from the importer, including communications via facsimile, or the assurance may be incorporated into a licensing agreement that specifically includes the assurances. An assurance included in a licensing agreement is acceptable only if the agreement specifies that the assurance will be honored even after the expiration date of the licensing agreement. If such a written assurance is not received, License Exception TSR is not applicable and a license is required. The license application must include a statement explaining why assurances could not be obtained.

(4) *Other License Exceptions.* The requirements in this License Exception do not apply to the export of technology or software under other License Exceptions, or to the export of technology or software included in an application for the foreign filing of a patent, provided the filing is in accordance with the regulations of the U.S. Patent Office.

(b) *Reporting requirements.* See §743.1 of the EAR for reporting requirements for exports of certain items under License Exception TSR. Note that reports are not required for release of technology or source code subject to the EAR to foreign nationals in the U.S. under the provisions of License Exception TSR.

[61 FR 64275, Dec. 4, 1996, as amended at 63 FR 50520, Sept. 22, 1998; 63 FR 55019, Oct. 14, 1998; 69 FR 5690, Feb. 6, 2004]

§ 740.7 Computers (CTP).

(a) *Scope*—(1) *Commodities.* License Exception CTP authorizes exports and reexports of computers, including ''electronic assemblies'' and specially designed components therefor controlled by ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. When evaluating your computer to determine License Exception CTP eligibility, use the CTP parameter to the exclusion of other technical parameters in ECCN 4A003. Computers controlled for missile technology (MT) reasons are not eligible for License Exception CTP.

(2) *Technology and software.* License Exception CTP authorizes exports of technology and software controlled by ECCNs 4D001 and 4E001 specially designed or modified for the ''development'', ''production'', or ''use'' of computers, including ''electronic assemblies'' and specially designed components therefor classified in ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), to Computer Tier countries as provided by this section. Technology and software for computers controlled for missile technology (MT) reasons are not eligible for License Exception CTP.

(b) *Restrictions.* (1) Related equipment controlled under ECCN 4A003.g may not be exported or reexported under this License Exception when exported or reexported separately from eligible computers authorized under this License Exception.

(2) *Access and release restrictions.* (i) *Computers and software.* Computers and software eligible for License Exception CTP may not be accessed either physically or computationally by nationals of Cuba, Iran, Libya, North Korea,

Sudan, or Syria, except that commercial consignees described in Supplement No. 3 to part 742 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(ii) *Technology and source code.* Technology and source code eligible for License Exception CTP may not be released to nationals of Cuba, Iran, Libya, North Korea, Sudan, or Syria.

(3) Computers and software eligible for License Exception CTP may not be reexported or transferred (in country) without prior authorization from BIS, *i.e.*, a license, a permissive reexport, another License Exception, or ''No License Required''. This restriction must be conveyed to the consignee, via the Destination Control Statement, see § 758.6 of the EAR. Additionally, the end-use and end-user restrictions in paragraph (b)(5) of this section must be conveyed to any consignee in Computer Tier 3.

(4) You may not use this License Exception to export or reexport items that you know will be used to enhance the CTP beyond the eligibility limit allowed to your country of destination.

(5) License Exception CTP does not authorize exports and reexports for nuclear, chemical, biological, or missile end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, and § 744.5 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Reexports and transfers (in country) to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(6) Foreign nationals in an expired visa status are not eligible to receive deemed exports of technology or source code under this License Exception. It is the responsibility of the exporter to ensure that, in the case of deemed exports, the foreign national maintains a valid U.S. visa, if required to hold a visa from the United States.

(c) *Computer Tier 1 destinations*—(1) *Eligible destinations.* The destinations that are eligible to receive exports and reexports under paragraph (c) of this section include: Antigua and Barbuda, Argentina, Aruba, Australia, Austria, Bahamas (The), Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo (Democratic Republic of the), Congo (Republic of the), Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, East Timor, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia (The), Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Korea (Republic of), Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands, Netherlands Antilles, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, Sao Tome & Principe, Samoa, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Surinam, Swaziland, Sweden, Switzerland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Turkey, Tuvalu, Uganda, United Kingdom, Uruguay, Vatican City, Venezuela, Western Sahara, Zambia, and Zimbabwe.

(2) *Eligible commodities.* All computers, including electronic assemblies and specially designed components therefor are eligible for export or reexport under License Exception CTP to Tier 1 destinations, subject to the restrictions in paragraph (b) of this section.

(3) *Eligible technology and software.* (i) Technology and software described in paragraph (a)(2) of this section for computers of unlimited CTP are eligible for export or reexport under License Exception CTP to: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland,

Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, or the United Kingdom; and

(ii) Technology and source code described in paragraph (a)(2) of this section for computers with a CTP less than or equal to 190,000 MTOPS are eligible for deemed exports under License Exception CTP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(d) *Computer Tier 3 destinations*—(1) *Eligible destinations.* Eligible destinations under paragraph (d) of this section are: Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Serbia and Montenegro, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.

(2) *Eligible commodities.* None.

(3) *Eligible technology and source code.* Technology and source code described in paragraph (a)(2) of this section for computers with a CTP less than or equal to 190,000 MTOPS are eligible for deemed exports under License Exception CTP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the restrictions in paragraph (b) and the provisions of paragraph (d)(4) of this section.

(4) *Foreign National Review (FNR) requirement for deemed exports.* (i) *Submission requirement.* Prior to disclosing eligible technology or source code to a foreign national of a Computer Tier 3 country that is not also a country listed in Country Group B in Supplement No. 1 to part 740 of the EAR under this License Exception, you must submit a Foreign National Review (FNR) request to BIS, as required under § 748.8(s) of the EAR. Your FNR request must include information about the foreign national required under § 748.8(t) of the EAR and set forth in Supplement No. 2 of part 748 of the EAR.

(ii) *Confirmation of eligibility.* You may not use License Exception CTP, until you have obtained confirmation of eligibility by calling the System for Tracking Export License Applications (STELA), see § 750.5 for how to use STELA, or electronically from the Simplified Network Application Procedure (SNAP), see *http://www.bis.doc.gov/SNAP/index.htm* for more information about SNAP.

(iii) *Action by BIS.* Within nine business days of the registration of the FNR request, BIS will electronically refer the FNR request for interagency review, or if necessary return the FNR request without action (*e.g.*, if the information provided is incomplete). Processing time starts at the point at which the notification is registered into BIS's electronic system.

(iv) *Review by other departments or agencies.* The Departments of Defense, State, Energy, and other agencies, as appropriate, may review the FNR request. Within 30 calendar days of receipt of the BIS referral, the reviewing agency will provide BIS with a recommendation either to approve or deny the FNR request. A reviewing agency that fails to provide a recommendation within 30 days shall be deemed to have no objection to the final decision of BIS.

(v) *Action on the FNR Request.* After the interagency review period, BIS will promptly notify the applicant regarding the FNR request, *i.e.*, whether the FNR request is approved, denied, or more time is needed to consider the request.

(e) *Reporting requirements.* See § 743.1 of the EAR for reporting requirements of certain items under License Exception CTP.

[69 FR 64487, Nov. 5, 2004, as amended at 70 FR 41101, July 15, 2005]

§ 740.8 Key management infrastructure (KMI).

(a) *Scope.* License Exception KMI authorizes the export and reexport of certain encryption software and equipment.

(b) *Eligible commodities and software.* (1) Recovery encryption commodities and software of any key length controlled under ECCNs 5A002 and 5D002 that have been classified after a technical review through a classification request. Key escrow and key recovery commodities and software must meet the criteria identified in Supplement No. 4 to part 742 of the EAR.

(2) For such classification requests, indicate ''License Exception KMI'' in block 9 on Form BIS-748P. Submit the original request to BIS in accordance with §748.3 of the EAR and send a copy of the request to:

Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6940, Fort Meade, MD 20755–6000.

(c) *Eligible destinations.* License Exception KMI is available for all destinations, except destinations in Country Group E:1 (see Supplement No. 1 to this part).

(d) *Reporting requirements.* (1) You must provide semiannual reports to BIS identifying:

(i) Ultimate consignee; specific end-user name and address, if available; and country of ultimate destination; and

(ii) Quantities of each encryption item shipped.

(2) You must submit reports no later than February 1 and no later than August 1 of any given year.

[61 FR 68579, Dec. 30, 1996, as amended at 63 FR 50520, Sept. 22, 1998; 63 FR 72159, Dec. 31, 1998; 65 FR 2496, Jan. 14, 2000; 66 FR 42109, Aug. 10, 2001; 70 FR 22249, Apr. 29, 2005]

§740.9 Temporary imports, exports, and reexports (TMP).

This License Exception authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software.

(a) *Temporary exports and reexports*—(1) *Scope.* You may export and reexport commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exclusions described in paragraph (a)(4) of this section. Commodities and software shipped as temporary exports or reexports under the provisions of this paragraph (a) must be returned to the country from which they were exported as soon as practicable but, except in circumstances described in this section, no later than one year from the date of export. This requirement does not apply if the commodities and software are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the EAR or in writing by BIS.

(2) *Eligible commodities and software.* The following commodities and software are eligible to be shipped under this paragraph (a):

(i) *Tools of trade.* Usual and reasonable kinds and quantities of tools of trade (commodities and software) for use in a lawful enterprise or undertaking of the exporter. The transaction must meet the requirements of paragraph (a)(2)(i)(A) or paragraph (a)(2)(i)(B) of this section. Exports of items controlled under ECCN 5D992 are permitted pursuant to this section. For other exports under this License Exception of laptops, handheld devices and other computers and equipment loaded with encryption commodities or software, including items controlled for NS and EI reasons, refer to note 2 to Category 5, Part 2 of Supplement No. 1 to Part 774.

(A) *Destinations other than Country Group E:2 or Sudan.* Exports and reexports of tools of trade for use by the exporter or employees of the exporter may be made to destinations other than Country Group E:2 or Sudan. The tools of trade must remain under the ''effective control'' (*see* §772.1 of the EAR) of the exporter or the exporter's employee. Eligible tools of trade may include, but are not limited to, equipment and software as is necessary to commission or service goods, provided that the equipment or software is appropriate for this purpose and that all goods to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been legally exported or reexported. Tools of trade may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the

United States, or at any time after departure.

(B) *Sudan.* Exports, but not reexports, of tools of trade may be made to Sudan by: A non-governmental organization engaged in activities to relieve human suffering in Sudan and registered by the Department of the Treasury, Office of Foreign Assets Control (OFAC) pursuant to 31 CFR 538.521; or by an organization authorized by OFAC to take actions, for humanitarian purposes, that otherwise would be prohibited by the Sudanese Sanctions Regulations (31 CFR part 538); or by staff or employees of either such type of organization. The tools of trade must remain under the ''effective control'' (*see* § 772.1 of the EAR) of the exporter or its employee or staff. The tools of trade must be used in activities to relieve human suffering and, when exported, must accompany (either hand carried or as checked baggage) a member of the staff or an employee of such an organization to Sudan. In this paragraph (a)(2)(i)(B), the term ''staff'' means a person traveling to Sudan, at the direction of, or with the knowledge of an organization registered pursuant to 31 CFR 538.521 or an organization authorized by OFAC to take actions, for humanitarian purposes, that otherwise would be prohibited by the Sudanese Sanctions Regulations (31 CFR part 538), to assist in the work of such organization in Sudan even if such person is not an employee of such organization. The only tools of trade that may be exported to Sudan under this paragraph (a)(2)(i) are:

(*1*) Personal computers (including laptops) controlled under ECCN 4A994 that do not exceed a composite theoretical performance of 6,500 millions of theoretical operations per second and ''software'' controlled under ECCNs 4D994 or 5D992 that is for the ''use'' of such computers and that was loaded onto such computers prior to export and remains loaded on such computers while in Sudan;

(*2*) Telecommunications equipment controlled under ECCN 5A991 and ''software'' controlled under ECCN 5D992 that is for the ''use'' of such equipment and that was loaded onto that equipment prior to export and that remains loaded on such equipment while in Sudan;

(*3*) Global positioning system (GPS) or similar satellite receivers controlled under ECCN 7A994; and

(*4*) Parts and components that are controlled under ECCN 5A992, that are installed with, or contained in, computers or telecommunications equipment listed in paragraphs (a)(2)(i)(B)(*1*) and (*2*) of this section and that remain installed with or contained in such computers or equipment while in Sudan.

(ii) *Kits consisting of replacement parts.* Kits consisting of replacement parts may be exported or reexported to all destinations, except Country Group E:2 (see Supplement No. 1 to part 740), provided that:

(A) The parts would qualify for shipment under paragraph (a)(2)(ii)(C) of this section if exported as one-for-one replacements;

(B) The kits remain under effective control of the exporter or an employee of the exporter; and

(C) All parts in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception RPL and the defective parts returned (see ''parts'', § 740.10(a) of this part).

(iii) *Exhibition and demonstration.* You may export or reexport under this provision commodities and software for exhibition or demonstration in all countries except countries listed in Country Group E:1 (see Supplement No. 1 to this part) provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains ''effective control'' over the commodities and software while they are abroad (see part 772 of the EAR for a definition of ''effective control''). The commodities and software may not be used for their intended purpose while abroad, except to the minimum extent required for effective demonstration. The commodities and software may not be exhibited or demonstrated at any one site more than 120 days after installation and debugging, unless authorized by BIS. However, before or after an exhibition or demonstration,

pending movement to another site, return to the United States or the foreign reexporter, or BIS approval for other disposition, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains effective control over their disposition. The export documentation for this type of transaction must show the exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(iv) *Inspection and calibration.* Commodities to be inspected, tested, calibrated or repaired abroad may be exported or reexported to all destinations under this section, except Country Group E:2, Sudan or Syria.

(v) *Containers.* Containers for which another License Exception is not available and that are necessary for export of commodities. However, this ''containers'' provision does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export under either a License Exception or a license.

(vi) *Broadcast material.* (A) Video tape containing program material recorded in the country of export to be publicly broadcast in another country.

(B) Blank video tape (raw stock) for use in recording program material abroad.

(vii) *Assembly in Mexico.* Commodities to be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquiladora), provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(viii) *News media.* (A) Commodities necessary for news-gathering purposes (and software necessary to use such commodities) may accompany ''accredited'' news media personnel (i.e., persons with credentials from a news gathering or reporting firm) to Country Groups D:1 or E:2, or Sudan (see Supplement No. 1 to part 740) if the commodities:

(*1*) Are retained under ''effective control'' of the exporting news gathering firm;

(*2*) Remain in the physical possession of the news media personnel. The term physical possession for purposes of this paragraph (a)(2)(viii), news media, is defined as maintaining effective measures to prevent unauthorized access (e.g., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(*3*) Are removed with the news media personnel at the end of the trip.

(B) When exporting under this paragraph (a)(2)(viii) from the United States, the exporter must send a copy of the packing list or similar identification of the exported commodities, to: U.S. Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, Room H4616, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, or any of its field offices, specifying the destination and estimated dates of departure and return. The Office of Export Enforcement (OEE) may spot check returns to assure that the temporary exports and reexports provisions of this License Exception are being used properly.

(C) Commodities or software necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported or reexported under paragraph (a)(2)(i), tools of trade, of this section if owned by the news gathering firm, or if they are personal property of the individual news media personnel. Note that paragraphs (a)(2)(i), tools of trade and (a)(2)(viii), news media, of this section do not preclude independent ''accredited'' contract personnel, who are under control of news gathering firms while on assignment, from utilizing these provisions, provided that the news gathering firm designate an employee of the contract firm to be responsible for the equipment.)

(ix) *Temporary exports to a U.S. subsidiary, affiliate or facility in Country Group B.* (A) Components, parts, tools or test equipment exported by a U.S. person to its subsidiary, affiliate or facility in a country listed in Country Group B (see Supplement No. 1 to this part) that is owned or controlled by the U.S. person, if the components, part,

tool or test equipment is to be used for manufacture, assembly, testing, production or modification, provided that no components, parts, tools or test equipment or the direct product of such components, parts, tools or test equipment are transferred or reexported to a country other than the United States from such subsidiary, affiliate or facility without prior authorization by BIS.

(B) For purposes of this paragraph (a)(2)(ix), U.S. person is defined as follows: an individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2) or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). U.S. person also means any juridical person organized under the laws of the United States, or any jurisdiction within the United States (e.g., corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States).

(3) *Special restrictions.* (i) *Destinations.* (A) No commodity or software may be exported or reexported under paragraph (a) of this section to Country Group E:2 (see Supplement No. 1 to this part) except as permitted by paragraph (a)(2)(viii) of this section (news media). These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under the ownership, control, lease, or charter by any country in Country Group E:2, or any national thereof.

(B) No commodity or software may be exported to Country Group D:1 (see Supplement No. 1 to part 740) except:

(*1*) Commodities and software exported under paragraph (a)(2)(viii), news media, of this section;

(*2*) Commodities and software exported under paragraph (a)(2)(i), *tools of trade*, of this section;

(*3*) Commodities exported or reexported as *kits consisting of replacement parts*, consistent with the requirements of paragraph (a)(2)(ii) of this section; and

(*4*) Commodities and software exported or reexported for exhibition and demonstration in accordance with the requirements of paragraph (a)(2)(iii) of this section.

(C) These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country in Country Group D:1 or E:2, or any national thereof. (See Supplement No. 1 to part 740.)

(ii) *Ineligible commodities or software.* Commodities or software that will be used outside of Country Group A:1 (see Supplement No. 1 to part 740), Iceland, or New Zealand, either directly or indirectly in any sensitive nuclear activity as described in § 744.2 of the EAR may not be exported or reexported to any destination under the temporary exports and reexports provisions of this License Exception.

(iii) *Use or disposition.* No commodity or software may be exported or reexported under this paragraph (a) if:

(A) An order to acquire the commodity or software has been received before shipment;

(B) The exporter has prior knowledge that the commodity or software will stay abroad beyond the terms described in this paragraph (a); or

(C) The commodity or software is for lease or rental abroad.

(4) *Return or disposal of commodities and software.* All commodities and software exported or reexported under these provisions must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, to the United States or other country from which the commodities and software were so exported, or shall be disposed of or retained in one of the following ways:

(i) *Permanent export or reexport.* If the exporter or the reexporter wishes to sell or otherwise dispose of the commodities or software abroad, except as permitted by this or other applicable License Exception, the exporter must request authorization by submitting a license application to BIS at the address listed in part 748 of the EAR. (See part 748 of the EAR for more information on license applications.) The request should comply with all applicable provisions of the EAR covering export directly from the United States to the proposed destination. The request

must also be supported by any documents that would be required in support of an application for export license for shipment of the same commodities or software directly from the United States to the proposed destination. BIS will advise the exporter of its decision.

(ii) *Use of a license.* An outstanding license may also be used to dispose of commodities or software covered by the provisions of this paragraph (a), provided that the outstanding license authorizes direct shipment of the same commodity or software to the same new ultimate consignee in the new country of destination.

(iii) *Authorization to retain abroad beyond one year.* If the exporter wishes to retain a commodity or software abroad beyond the 12 months authorized by paragraph (a) of this section, the exporter must request authorization by submitting Form BIS-748P, Multipurpose Application, 90 days prior to the expiration of the 12 month period. The request must be sent to BIS at the address listed in part 748 of the EAR and should include the name and address of the exporter, the date the commodities or software were exported, a brief product description, and the justification for the extension. If BIS approves the extension request, the exporter will receive authorization for a one-time extension not to exceed six months. BIS normally will not allow an extension for commodities or software that have been abroad more than 12 months, nor will a second six month extension be authorized. Any request for retaining the commodities or software abroad for a period exceeding 18 months must be made in accordance with the requirements of paragraph (a)(4)(i) of this section.

(5) *Reexports.* Commodities and software legally exported from the United States may be reexported to a new country(ies) of destination other than Sudan or Country Group E:2 under provisions of this paragraph (a) provided its terms and conditions are met and the commodities and software are returned to the country from which the reexport occurred.

(b) *Exports of items temporarily in the United States: Scope.* The provisions of this paragraph (b) describe the conditions for exporting foreign-origin items temporarily in the United States. The provisions include the export of items moving in transit through the United States, imported for display at a U.S. exhibition or trade fair, returned because unwanted, or returned because refused entry.

NOTE 1 TO PARAGRAPH (b) OF THIS SECTION: A commodity withdrawn from a bonded warehouse in the United States under a ''withdrawal for export'' customs entry is considered as ''moving in transit''. It is not considered as ''moving in transit'' if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.

NOTE 2 TO PARAGRAPH (b) OF THIS SECTION: Items shipped on board a vessel or aircraft and passing through the United States from one foreign country to another may be exported without a license provided that (a) while passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, and (b) they are not originally manifested to the United States.)

(1) *Items moving in transit through the United States.* Subject to the following conditions, the provisions of paragraph (b)(1) of this section authorize export of items moving in transit through the United States under a Transportation and Exportation (T.& E.) customs entry or an Immediate Exportation (I.E.) customs entry made at a U.S. Customs Office.

(i) Items controlled for national security, nuclear proliferation, missile technology, or chemical and biological weapons reasons may not be exported to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740), respectively, under this paragraph (b)(1).

(ii) Items may not be exported to Country Group E:2 or Sudan under this section.

(iii) The following may not be exported in transit from the United States under this paragraph (b)(1):

(A) Commodities shipped to the United States under an International Import Certificate, Form BIS–645P;

(B) Chemicals controlled under ECCN 1C350; or

(C) Horses for export by sea (refer to short supply controls in part 754 of the EAR).

(iv) The provisions of paragraph (b)(1) apply to all shipments from Canada moving in transit through the United States to any foreign destination, regardless of the nature of the commodities or software or their origin. For such shipments the customs office at the U.S. port of export will require a copy of Form B–13, Canadian Customs Entry, certified or stamped by Canadian customs authorities, except where the shipment is valued at less than $50.00. (In transit shipments originating in Canada that are exempt from U.S. licensing, or made under a U.S. license or other applicable U.S. License Exception do not require this form.) The commodity or software description, quantity, ultimate consignee, country of ultimate destination, and all other pertinent details of the shipment must be the same on a required Form B–13, as on Commerce Form 7513, or when Form 7513 is not required, must be the same as on Customs Form 7512. When there is a material difference, a corrected Form B–13 authorizing the shipment is required.

(2) *Items imported for display at U.S. exhibitions or trade fairs.* Subject to the following conditions, the provisions of this paragraph (b)(2) authorize the export of items that were imported into the United States for display at an exhibition or trade fair and were either entered under bond or permitted temporary free import under bond providing for their export and are being exported in accordance with the terms of that bond.

(i) Items may be exported to the country from which imported into the United States. However, items originally imported from Cuba may not be exported unless the U.S. Government had licensed the import from that country.

(ii) Items may be exported to any destination other than the country from which imported except:

(A) Items imported into the United States under an International Import Certificate;

(B) Exports to Country Group E:2 or Sudan (see Supplement No. 1 to part 740); or

(C) Exports to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740) of items controlled for national security, missile technology, chemical and biological weapons reasons, or nuclear proliferation, respectively.

(3) *Return of unwanted shipments.* A foreign-origin item may be returned to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States. No foreign-origin items may be returned to Cuba.

(4) *Return of shipments refused entry.* Shipments of items refused entry by the U.S. Customs Service, the Food and Drug Administration, or other U.S. Government agency may be returned to the country of origin, except to:

(i) A destination in Cuba; or

(ii) A destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department, unless such return is licensed or otherwise authorized by the Treasury Department, Office of Foreign Assets Control (31 CFR part 500).

(c) *Exports of beta test software*—(1) *Scope.* The provisions of this paragraph (c) authorize exports and reexports to eligible countries of beta test software intended for distribution to the general public.

(2) Eligible countries. Encryption software controlled under ECCN 5D002 is not eligible for export or reexport to a country in Country Group E:1 under the provisions of this paragraph (c). All other beta test software is eligible for export or reexport to all destinations, except Cuba, Iran, and Sudan under the provisions of this paragraph (c).

(3) *Eligible software.* All software that is controlled by the Commerce Control List (Supplement No.1 to part 774 of the EAR), and under Commerce licensing jurisdiction, is eligible for export and reexport, subject to the restrictions of this paragraph (c). Encryption software controlled for ''EI'' reasons under ECCN 5D002 is eligible for export and reexport under this paragraph (c), provided that the exporter has submitted the information described in paragraph (c)(8) of this section by the time of export. Final encryption products produced by the testing consignee are subject to any applicable provisions in § 742.15(b)(2) of the EAR (for mass market encryption commodities and software with symmetric key length

exceeding 64-bits) or § 740.17 of the EAR (License Exception ENC), including review and reporting requirements.

(4) *Conditions for use.* Exports or reexports of beta test software programs under the provisions of this paragraph (c) must meet all of the following conditions:

(i) The software producer intends to market the software to the general public after completion of the beta testing, as described in the General Software Note (see Supplement 2 to part 774 of the EAR) or the Cryptography Note in Category 5, Part 2 (''Information Security'') of the Commerce Control List (see Supplement No.1 to part 774 of the EAR);

(ii) The software producer provides the software to the testing consignee free-of-charge or at a price that does not exceed the cost of reproduction and distribution; and

(iii) The software is designed for installation by the end-user without further substantial support from the supplier.

(5) *Importer Statement.* Prior to exporting or reexporting any eligible software under this paragraph (c), the exporter or reexporter must obtain the following statement from the testing consignee, which may be included in a contract, non-disclosure agreement, or other document that identifies the importer, the software to be exported, the country of destination, and the testing consignee.

''We certify that this beta test software will only be used for beta testing purposes, and will not be rented, leased, sold, sublicensed, assigned, or otherwise transferred. Further, we certify that we will not transfer or export any product, process, or service that is the direct product of the beta test software.''

(6) *Use limitations.* Only testing consignees that provide the importer statement required by paragraph (c)(5) of this section may execute any beta test software that was exported or reexported to them under the provisions of this paragraph (c).

(7) *Return or disposal of software.* All beta test software exported must be destroyed abroad or returned to the exporter within 30 days of the end of the beta test period as defined by the software producer or, if the software producer does not define a test period, within 30 days of completion of the consignee's role in the test. Among other methods, this requirement may be satisfied by a software module that will destroy the software and all its copies at or before the end of the beta test period.

(8) *Notification of beta test encryption software.* For beta test encryption software eligible under this license exception you must, by the time of export or reexport, submit the information described in paragraphs (a) through (e) of Supplement No. 6 to part 742 of the EAR by e-mail to BIS at *crypt@bis.doc.gov* and to the ENC Encryption Request Coordinator at *enc@nsa.gov*.

[61 FR 64277, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, as amended at 61 FR 68580, Dec. 30, 1996; 62 FR 25457, May 9, 1997; 63 FR 50521, Sept. 22, 1998; 65 FR 38150, June 19, 2000; 65 FR 42568, July 10, 2000; 65 FR 62604, Oct. 19, 2000; 66 FR 42109, Aug. 10, 2001; 67 FR 38861, June 6, 2002; 68 FR 35784, June 17, 2003; 69 FR 5690, Feb. 6, 2004; 69 FR 23628, Apr. 29, 2004; 69 FR 46075, July 30, 2004; 69 FR 71359, Dec. 9, 2004; 70 FR 8249, 8252, Feb. 18, 2005; 70 FR 9703, Feb. 28, 2005; 70 FR 14390, Mar. 22, 2005]

§ 740.10 Servicing and replacement of parts and equipment (RPL).

This License Exception authorizes exports and reexports associated with one-for-one replacement of parts or servicing and replacement of equipment.

(a) *Parts*—(1) *Scope.* The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts for previously exported equipment.

(2) *One-for-one replacement of parts.* (i) The term *replacement parts* as used in this section means parts needed for the immediate repair of equipment, including replacement of defective or worn parts. (It includes subassemblies but does not include test instruments or operating supplies). (The term *subassembly* means a number of components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as those

composed of a number of subassemblies.) Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment upon which they are installed, are not deemed to be replacement parts. For kits consisting of replacement parts, consult § 740.9(a)(2)(ii) of this part.

(ii) Parts may be exported only to replace, on a one-for-one basis, parts contained in commodities that were: legally exported from the United States; legally reexported; or made in a foreign country incorporating authorized U.S.-origin parts. (For exports or reexports to the installed base in Libya see § 764.7 of the EAR). The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has confirmed the appropriate authority for the original transaction.

(iii) The parts to be replaced must either be destroyed abroad or returned promptly to the person who supplied the replacement parts, or to a foreign firm that is under the effective control of that person.

(3) *Exclusions.* (i) No replacement parts may be exported to repair a commodity exported under a license if that license included a condition that any subsequent replacement parts must be exported only under a license.

(ii) No parts may be exported to be held abroad as spare parts or equipment for future use. Replacement parts may be exported to replace spare parts that were authorized to accompany the export of equipment, as those spare parts are utilized in the repair of the equipment. This will allow maintenance of the stock of spares at a consistent level as parts are used.

(iii) No parts may be exported to any destination, except the countries listed in Supplement No. 3 to Part 744 of the EAR (Countries Not Subject to Certain Nuclear End-Use Restrictions in § 744.2(a)) if the item is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing related to activities described in § 744.2(a) of the EAR, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 744.2(a) of the EAR.

(iv) No replacement parts may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an ''aircraft'' (as defined in part 772 of the EAR) or national security controlled commodity.

(v) No replacement parts may be exported to countries in Country Group E:1 if the commodity to be repaired is explosives detection equipment controlled under ECCN 2A983 or related software controlled under ECCN 2D983.

(vi) The conditions described in this paragraph (a)(3) relating to replacement of parts do not apply to reexports to a foreign country of parts as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the exceptions in § 734.4 of the EAR.

(4) *Reexports.* Parts exported from the United States may be reexported to a new country of destination, provided that the restrictions described in paragraphs (a)(2) and (3) of this section are met. A party reexporting U.S.-origin one-for-one replacement parts shall ensure that the commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be legally used, and that either before or promptly after reexport of the replacement parts, the replaced parts are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to part 740) that shipped the replacement parts.

(b) *Servicing and replacement*—(1) *Scope.* The provisions of this paragraph (b) authorize the export and reexport of items that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(2) Commodities and software sent to a United States or foreign party for servicing.

(i) *Definition. Servicing* as used in this section means inspection, testing, calibration or repair, including overhaul and reconditioning. The servicing shall not have improved or changed the basic characteristics, e.g., as to accuracy, capability, performance, or productivity of the commodity or software as originally authorized for export or reexport.

(ii) *Return of serviced commodities and software.* When the serviced commodity or software is returned, it may include any replacement or rebuilt parts necessary to its repair and may be accompanied by any spare part, tool, accessory, or other item that was sent with it for servicing.

(iii) *Commodities and software imported from Country Group D:1 except the PRC and North Korea.* Commodities and software legally exported or reexported to a consignee in Country Group D:1 (except the People's Republic of China (PRC) and North Korea) (see Supplement No. 1 to part 740) that are sent to the United States or a foreign party for servicing may be returned to the country from which it was sent, provided that both of the following conditions are met:

(A) The exporter making the shipment is the same person or firm to whom the original license was issued; and

(B) The end-use and the end-user of the serviced commodities or software and other particulars of the transaction, as set forth in the application and supporting documentation that formed the basis for issuance of the license have not changed.

(iv) *Terrorist supporting countries.* No repaired commodity or software may be exported or reexported to countries in Country Group E:1 (see Supplement No. 1 to this part).

(3) *Replacements for defective or unacceptable U.S.-origin equipment.* (i) Subject to the following conditions, commodities or software may be exported or reexported to replace defective or otherwise unusable (e.g., erroneously supplied) items.

(A) The commodity or software to be replaced must have been previously exported or reexported in its present form under a license or authorization granted by BIS.

(B) No commodity or software may be exported or reexported to replace equipment that is worn out from normal use, nor may any commodity or software be exported to be held in stock abroad as spare equipment for future use.

(C) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the equipment as originally approved for export or reexport under a license issued by BIS.

(D) No shipment may be made to countries in Country Group E:1 (see Supplement No. 1 to this part), or to any other destination to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any of those countries.

(ii) *Special conditions applicable to exports to Country Group B and Country Group D:1.* (See Supplement No. 1 to part 740.) In addition to the general conditions in paragraph (b)(3)(i) of this section, the following conditions apply to exports or reexports of replacements for defective or unacceptable U.S.-origin commodities or software to a destination in Country Group B or Country Group D:1:

(A) By making such an export or reexport, the exporter represents that all the requirements of this paragraph (b) have been met and undertakes to destroy or return the replaced parts as provided in paragraph (b)(3)(ii)(C) of this section.

(B) The defective or otherwise unusable equipment must be replaced free of charge, except for transportation and labor charges. If exporting to the countries listed in Country Group D:1 (except the PRC), the exporter shall replace the commodity or software within the warranty period or within 12 months of its shipment to the ultimate consignee in the country of destination, whichever is shorter.

(C) The commodity or software to be replaced must either be destroyed abroad or returned to the United States, or to a foreign firm in Country Group B that is under the effective

control of the exporter, or to the foreign firm that is providing the replacement part or equipment. The destruction or return must be effected before, or promptly after, the replacement item is exported from the United States.

(D) A party reexporting replacements for defective or unacceptable U.S.-origin equipment must ensure that the commodities or software being replaced were shipped to their present location in accordance with U.S. law and continue to be legally used. See § 764.7 of the EAR for exports or reexports to the installed base in Libya.

(c) *Special recordkeeping requirements: ECCNs 2A983 and 2D983.* (1) In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair or service previously legally exported or reexported items controlled under ECCNs 2A983 and 2D983. The following information must be specially maintained for each such export or reexport transaction:

(i) A description of the equipment replaced, repaired or serviced;

(ii) The type of repair or service;

(iii) Certification of the destruction or return of equipment replaced;

(iv) Location of the equipment replaced, repaired or serviced;

(v) The name and address of who received the items for replacement, repair or service;

(vi) Quantity of items shipped; and

(vii) Country of ultimate destination.

(2) Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR.

[61 FR 64279, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, and amended at 63 FR 50522, Sept. 22, 1998; 65 FR 38150, June 19, 2000; 65 FR 42568, July 10, 2000; 66 FR 42110, Aug. 10, 2001; 67 FR 55598, Aug. 29, 2002; 68 FR 16211, Apr. 3, 2003; 70 FR 14390, Mar. 22, 2005]

§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

This License Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel, and agencies of cooperating governments; and international inspections under the Chemical Weapons Convention.

(a) *International safeguards*—(1) *Scope.* You may export and reexport commodities or software to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (Euratom), and reexports by IAEA and Euratom for official international safeguard use, as follows:

(i) Commodities or software consigned to the IAEA at its headquarters in Vienna, Austria, or field offices in Toronto, Ontario, Canada or Tokyo, Japan for official international safeguards use. The IAEA is an international organization that establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

(ii) Commodities or software consigned to the Euratom Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use. Euratom is an international organization of European countries with headquarters in Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

(iii) Commodities consigned to IAEA or Euratom may be reexported to any country for IAEA or Euratom international safeguards use provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities and returns the commodities to the locations described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section when they become obsolete, are no longer required, or are replaced.

(iv) Commodity or software shipments may be made by commercial companies under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(v) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited safeguarded nuclear activities described in § 744.2(a)(3) of the EAR.

(vi) When commodities or software originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may only be disposed of in accordance with the regulations in the EAR.

(2) The following items controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) identified on the Commerce Control List may not be exported or reexported under this License Exception to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom: 1C001, 5A001.b.5, 6A001.a.1.b.1 object detection and location systems having a sound pressure level exceeding 210 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

(i) ''Composite'' structures or laminates controlled by 1A002.a, having an organic ''matrix'' and made from materials listed under 1C010.c or 1C010.d; and

(ii)–(iii) [Reserved]

(iv) Processing equipment controlled by 6A001.a.2.c and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Processing equipment, specially designed for real time application bottom or bay cable systems controlled; by 6A001.a.2.f; and

(vi) ''Software'', as follows:

(A) [Reserved]

(B) Controlled by 5D001.a, specially designed for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.b.5; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed or modified for the ''development'' of ''technology'' controlled by 9E003.a.1 or 9E003.a.3.a.

(3) No encryption items controlled for EI reasons under ECCNs 5A002, 5D002, or 5E002 may be exported under the provisions of this paragraph (a).

(4) *Restrictions.* Nationals of countries in Country Group E:1 may not physically or computationally access computers that have been enhanced by ''electronic assemblies'', which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of ''computing elements'' so that the CTP of the aggregation exceeds the CTP parameter set forth in ECCN 4A003.b. of the Commerce Control List in Supplement No. 1 to part 774 of the EAR, without prior authorization from the Bureau of Industry and Security.

(b) *Governments*—(1) *Scope.* The provisions of paragraph (b) authorize exports and reexports of the items listed in paragraph (b)(2) of this section to personnel and agencies of the U.S. Government or agencies of cooperating governments.

(2) *Eligibility*—(i) *Items for personal use by personnel and agencies of the U.S. Government.* This provision is available for items in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to public international organizations), and their immediate families and servants. Items for personal use include household effects, food, beverages, and other daily necessities.

(ii) *Items for official use by personnel and agencies of the U.S. Government.* This provision is available for items consigned to and for the official use of any agency of the U.S. Government.

(iii) (A) *Items for official use within national territory by agencies of cooperating governments.* This License Exception is available for all items consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, except items described in paragraph (a) to Supplement No. 1 of this section:

(B) *Reporting requirements. See* § 743.1 of the EAR for reporting requirements for exports of certain items under this paragraph (b)(2)(iii).

(iv) (A) *Diplomatic and consular missions of a cooperating government.* This License Exception is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to part 740), except items described in paragraph (b) of Supplement No. 1 of this section.

(B) *Reporting requirements. See* § 743.1 of the EAR for reporting requirements for exports of certain items under this paragraph (b)(2)(iv).

(3) *Definitions.* (i) *Agency of the U.S. Government* includes all civilian and military departments, branches, missions, government-owned corporations, and other agencies of the U.S. Government, but does not include such national agencies as the American Red Cross or international organizations in which the United States participates such as the Organization of American States. Therefore, shipments may not be made to these non-government national or international agencies, except as provided in paragraph (b)(2)(i) of this section for U.S. representatives to these organizations.

(ii) *Agency of a cooperating government* includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. Cooperating governments are the national governments of countries listed in Country Group A:1 (see Supplement No. 1 to part 740) and the national governments of Argentina, Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Singapore, Sweden, Switzerland, and Taiwan.

(c) *International inspections under the Chemical Weapons Convention (CWC or Convention).* (1) The provisions of this paragraph (c) authorize exports and reexports to the Organization for the Prohibition of Chemical Weapons (OPCW) and exports and reexports by the OPCW for official international inspection and verification use under the terms of the Convention. The OPCW is an international organization that establishes and administers an inspection and verification regime under the Convention designed to ensure that certain chemicals and related facilities are not diverted from peaceful purposes to nonpeaceful purposes. These provisions authorize exports and reexports for official OPCW use of the following:

(i) Commodities and software consigned to the OPCW at its headquarters in The Hague for official international OPCW use for the monitoring and inspection functions set forth in the Convention, and technology relating to the maintenance, repair, and operation of such commodities and software. The OPCW must maintain effective control of such commodities, software and technology.

(ii) Controlled technology relating to the training of the OPCW inspectorate.

(iii) Controlled technology relating to a CWC inspection site, including technology released as a result of:

(A) Visual inspection of U.S.-origin equipment or facilities by foreign nationals of the inspection team;

(B) Oral communication of controlled technology to foreign nationals of the inspection team in the U.S. or abroad; and

(C) The application to situations abroad of personal knowledge or technical experience acquired in the U.S.

(2) *Exclusions.* The following items may not be exported or reexported under the provisions of this paragraph (c):

(i) [Reserved]

(ii) Inspection samples collected in the U.S. pursuant to the Convention; and

(iii) Commodities and software that are no longer in OPCW official use. Such items must be disposed of in accordance with the EAR.

(3) *Confidentiality.* The application of the provisions of this paragraph (c) is subject to the condition that the confidentiality of business information is strictly protected in accordance with applicable provisions of the EAR and other U.S. laws regarding the use and retransfer of U.S. goods and services.

(4) *Restrictions.* Nationals of countries in Country Group E:1 may not physically or computationally access computers that have been enhanced by ''electronic assemblies'', which have

been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of ''computing elements'' so that the CTP of the aggregation exceeds the CTP parameter set forth in ECCN 4A003.b. of the Commerce Control List in Supplement No. 1 to part 774 of the EAR, without prior authorization from the Bureau of Industry and Security.

SUPPLEMENT NO. 1 TO § 740.11—ADDITIONAL RESTRICTIONS ON USE OF LICENSE EXCEPTION GOV

(a) *Items for official use within national territory by agencies of a Cooperating Government.* License Exception GOV is available for all items consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, except:

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 6A001.a.1.b.1 object detection and location systems having a sound pressure level exceeding 210 dB (reference 1 µPa at 1 m) for equipment with an operating frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.1.3, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

(i) ''Composite'' structures or laminates controlled by 1A002.a, having an organic ''matrix'' and made from materials listed under 1C010.c or 1C010.d; and

(ii)–(iii) [Reserved]

(iv) Processing equipment controlled by 6A001.a.2.c and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f; and

(vi) ''Software'', as follows:

(A) [Reserved]

(B) Controlled by 5D001.a, specially designed for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.b.5; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed or modified for the ''development'' of ''technology'' controlled by 9E003.a.1 or 9E003.a.3.a.

(vii) ''Technology'', as follows:

(A) Controlled by 1E001 for items controlled by 1A002.a as described by paragraph (a)(1)(i) of this Supplement, or 1C001; and

(B) [Reserved]

(C) Controlled by 5E001.a for the ''development'' or ''production'' of digitally controlled radio receivers controlled by 5A001.b.5; or 5D001.a for ''software'' specially designed for the ''development'' or ''production'' of digitally controlled radio receivers controlled by 5A001.b.5; and

(D) Controlled by 6E001 for the ''development'' of equipment or ''software'' in 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 6E002 for the ''production'' of equipment controlled by 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(F) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(G) Controlled by 9E001 for items controlled by 9D001; and

(H) [Reserved]

(I) Controlled by 9E003.a.1; and

(J) Controlled by 9E003.a.3.a;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002.a.1.c, 6E001 technology according to the General Technology Note for the ''development'' of equipment in 6A002.a.1.c, and 6E002 technology according to the General Technology Note for the ''production'' of equipment in 6A002.a.1.c; or

(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

(b) *Diplomatic and consular missions of a cooperating government.* License Exception GOV is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to part 740), except:

(1) Items identified on the Commerce Control List as controlled for national security

(NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 6A001.a.1.b.1 object detection and location systems having a sound pressure level exceeding 210 dB (reference 1 µPa at 1 m) for equipment with an operating frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.1.3, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

(i) ''Composite'' structures or laminates controlled by 1A002.a, having an organic ''matrix'' and made from materials listed under 1C010.c or 1C010.d; and

(ii)–(iii) [Reserved]

(iv) Processing equipment controlled by 6A001.a.2.c and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f; and

(vi) ''Software'', as follows:

(A) [Reserved]

(B) Controlled by 5D001.a, specially designed for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.b.5; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed or modified for the ''development'' of ''technology'' controlled by 9E003.a.1 or 9E003.a.3.a.

(vii) ''Technology'', as follows:

(A) Controlled by 1E001 for items controlled by 1A002.a as described by paragraph (a)(1)(i) of this Supplement, or 1C001; and

(B) [Reserved]

(C) Controlled by 5E001.a for the ''development'' or ''production'' of digitally controlled radio receivers controlled by 5A001.b.5; or 5D001.a for ''software'' specially designed for the ''development'' or ''production'' of digitally controlled radio receivers controlled by 5A001.b.5; and

(D) Controlled by 6E001 for the ''development'' of equipment or ''software'' in 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.1.3, or 6B008, as described in paragraph (a)(1) of this supplement; and

(E) Controlled by 6E002 for the ''production'' of equipment controlled by 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(F) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(G) Controlled by 9E001 for items controlled by 9D001; and

(H) [Reserved]

(I) Controlled by 9E003.a.1; and

(J) Controlled by 9E003.a.3.a;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002.a.1.c, 6E001 technology according to the General Technology Note for the ''development'' of equipment in 6A002.a.1.c, and 6E002 technology according to the General Technology Note for the ''production'' of equipment in 6A002.a.1.c; or

(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

[61 FR 64281, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, as amended at 61 FR 68580, Dec. 30, 1996; 62 FR 25457, May 9, 1997; 63 FR 2456, Jan. 15, 1998; 63 FR 42228, Aug. 7, 1998; 63 FR 50522, Sept. 22, 1998; 63 FR 55019, Oct. 14, 1998; 64 FR 27141, May 18, 1999; 64 FR 40108, July 23, 1999; 64 FR 42012, Aug. 3, 1999; 65 FR 43132, July 12, 2000; 65 FR 60855, Oct. 13, 2000; 67 FR 10614, 10610, Mar. 8, 2002; 68 FR 10589, 10590, Mar. 5, 2003; 68 FR 68979, Dec. 10, 2003; 69 FR 46075, July 30, 2004; 70 FR 41101, 41102, July 15, 2005]

§ 740.12 Gift parcels and humanitarian donations (GFT).

(a) *Gift parcels*—(1) *Scope.* The provisions of paragraph (a) authorize exports and reexports of gift parcels by an individual (donor) addressed to an individual, or a religious, charitable or educational organization (donee) located in any destination for the use of the donee or the donee's immediate family (and not for resale). The gift parcel must be provided free of charge to the donee. However, payment by the donee of any handling charges or of any fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the donee for purposes of this definition of ''gift parcel.''

NOTE TO PARAGRAPH (a) OF THIS SECTION: A gift parcel, within the context of this paragraph (a), does not include multiple parcels exported in a single shipment for delivery to individuals residing in a foreign country. Such multiple gift parcels, if subject to the General Prohibitions described in § 734.2(b) of the EAR, must be licensed by BIS. (See Supplement No. 2 to part 748 of the EAR for licensing of multiple gift parcels).

(2) *Commodity, value and other limitations*—(i) *Commodity limitations.*

(A) *Prohibited commodities.*

(*1*) For Cuba, no commodity listed on the Commerce Control List may be included in a gift parcel.

(*2*) For all other destinations, no commodity controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), or nuclear proliferation (NP) reasons on the Commerce Control List (Supplement no. 1 to part 774 of the EAR) may be included in a gift parcel.

(B) *Eligible commodities.* The commodity must be of a type and in quantities normally given as gifts between individuals. In addition, eligible commodities are as follows:

(*1*) For Cuba, the only eligible commodities are food (including vitamins), medicines, medical supplies and devices (including hospital supplies and equipment and equipment for the handicapped), receive-only radio equipment for reception of commercial/civil AM/FM and short wave publicly available frequency bands, and batteries for such equipment.

(*2*) For all other destinations, eligible commodities include all items described in paragraph (a)(2)(i)(B)(*1*) of this section, clothing, personal hygiene items, seeds, veterinary medicines and supplies, fishing equipment and supplies, and soap-making equipment; as well as all other items normally sent as gifts. Gold bullion, gold taels, and gold bars are prohibited as are items intended for resale or reexport.

Example to paragraphs (a)(2)(i)(B)(*1*) and (*2*) of this section. A watch or piece of jewelry is normally sent as a gift. However, multiple watches, either in one package or in subsequent shipments, would not qualify for such gift parcels because the quantity exceeds that normally given between individuals. Similarly, a sewing machine or bicycle, within the dollar limits of this License Exception, may be an appropriate gift. However, subsequent shipments of the same item to the same donee would not be a gift normally given between individuals.

(*3*) For purposes of paragraph (a)(2)(i)(B)(*2*) of this section, clothing is appropriate, except that export of military wearing apparel to Country Groups D:1 or E:2 under this License Exception is specifically prohibited, regardless of whether all distinctive U.S. military insignia, buttons, and other markings are removed.

(ii) *Import requirements.* The commodities must be acceptable in type and quantity by the recipient country for import as gifts. Commodities exceeding the import limits may not be included in gift parcels.

(iii) *Frequency.* (A) Cuba. Except for gift parcels of food, not more than one gift parcel may be sent from the same donor to the same household in any one calendar month. For purposes of paragraph (a) of this section, the term household is defined as all individuals living in common at a unique address. There is no frequency limit on gift parcels of food to Cuba.

(B) For all destinations other than Cuba, not more than one gift parcel may be sent from the same donor to the same donee in any one calendar month.

(C) Parties seeking authorization to exceed these frequency limits due to compelling humanitarian concerns (*e.g.*, for certain gifts of medicine) should submit a license application (BIS-748P) with complete justification.

(iv) *Value.* The combined total domestic retail value of all commodities included in a gift parcel may not exceed $400, except for gift parcels to Cuba where the value of non-food items may not exceed $200. There is no dollar value limit on food contained in a gift parcel to Cuba.

(v) *Additional restrictions on Cuba.* (A) Limits on gift parcel recipients. A gift parcel may be sent only to a grandparent, grandchild, parent, sibling, spouse, or child of the donor. (B) Government and Communist Party officials to whom gift parcels may not be sent under this license exception.

(*1*) No gift parcel may be sent to any of the following officials of the Cuban

Government: Ministers and vice-ministers; members of the Council of State; members of the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; or members and employees of the Supreme Court (Tribuno Supremo Nacional).

(*2*) No gift parcel may be sent to any of the following officials or Members of the Cuban Communist Party: members of the Politburo; the Central Committee; Department Heads of the Central Committee; employees of the Central Committee; and the secretaries and first secretaries of provincial Party central committees.

(3) *How to export gift parcels.* (i) A gift parcel must be sent directly to the donee by the individual donor, or for such donor by a commercial or other gift-forwarding service or organization. Each gift parcel must show, on the outside wrapper, the name and address of the donor, as well as the name and address of the donee, regardless of whether sent by the donor or by a forwarding service.

(ii) Each parcel must have the notation ''GIFT—Export License Not Required'' written on the addressee side of the package and the symbol ''GFT'' written on any required customs declaration.

(b) *Humanitarian donations*—(1) *Scope.* The provisions of paragraph (b) authorize exports or reexports by groups or organizations of donations to meet basic human needs when those groups or organizations have experience in maintaining a verifiable system of distribution that ensures delivery to the intended beneficiaries.

(2) *Basic human needs.* Basic human needs are defined as those requirements essential to individual well-being: health, food, clothing, shelter, and education. These needs are considered to extend beyond those of an emergency nature and those that meet direct needs for mere subsistence.

(3) *Eligible donors.* Eligible donors are U.S. charitable organizations that have an established record of involvement in donative programs and experience in maintaining and verifying a system of distribution to ensure delivery of commodities and software to the intended beneficiaries. Eligible distribution arrangements may consist of any one or more of the following:

(i) A permanent staff maintained in the recipient country to monitor the receipt and distribution of the donations to the intended beneficiaries;

(ii) Periodic spot-checks in the recipient country by members of the exporter's staff; or

(iii) An agreement to utilize the services of a charitable organization that has a monitoring system in place.

(4) *Donations.* To qualify for export under the provisions of this paragraph (b), the items must be provided free of charge to the beneficiary. The payment by the beneficiary, however, of normal handling charges or fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the beneficiary for purposes of this paragraph (b).

(5) *Ineligible commodities and software.* The following commodities and software are not eligible:

(i) Commodities and software controlled for national security, chemical or biological weapons, and nuclear nonproliferation, missile technology or crime control reasons (see Supplement No. 1 to part 774 of the EAR);

(ii) Exports for large-scale projects of the kind associated with comprehensive economic growth, such as dams and hydroelectric plants; or

(iii) Exports to Cuba of medical items excluded by § 746.2(b)(1) of the EAR.

(6) *Eligible items.* Eligible commodities and software are those listed in Supplement No. 2 to part 740.

(7) *Additional recordkeeping requirements.* In addition to the recordkeeping requirements in part 762 of the EAR, donors must keep records containing the following information:

(i) The donor organization's identity and past experience as an exporter of goods to meet basic human needs;

(ii) Past and current countries to which the donative programs have been and are being directed, with particular reference to donative programs in embargoed destinations;

(iii) Types of projects and commodities involved in the donative programs;

(iv) Specific class(es) of beneficiaries of particular donated goods intended to be exported under this License Exception; and

(v) Information concerning the source of funding for the donative programs and the projected annual value of exports of humanitarian donations.

[61 FR 64282, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996; 62 FR 25458, May 9, 1997; 69 FR 5690, Feb. 6, 2004; 69 FR 34566, June 22, 2004]

§ 740.13 Technology and software—unrestricted (TSU).

This license exception authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); ''mass market'' software subject to the General Software Note; and encryption source code (and corresponding object code) that would be considered publicly available under § 734.3(b)(3) of the EAR. Note that encryption software subject to the EAR is not subject to the General Software Note (see paragraph (d)(2) of this section).

(a) *Operation technology and software*—(1) *Scope.* The provisions of paragraph (a) permit exports and reexports of operation technology and software. ''Operation technology'' is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those commodities or software that are lawfully exported or reexported under a license, a License Exception, or NLR. The ''minimum necessary'' operation technology does not include technology for development or production and includes use technology only to the extent required to ensure safe and efficient use of the commodity or software. Individual entries in the software and technology subcategories of the CCL may further restrict the export or reexport of operation technology.

(2) *Provisions and destinations*—(i) *Provisions.* Operation software may be exported or reexported provided that both of the following conditions are met:

(A) The operation software is the minimum necessary to operate equipment authorized for export or reexport; and

(B) The operation software is in object code.

(ii) *Destinations.* Operation software and technology may be exported or reexported to any destination to which the equipment for which it is required has been or is being legally exported or reexported.

(b) *Sales technology*—(1) *Scope.* The provisions of paragraph (b) authorize exports and reexports of sales technology. ''Sales technology'' is data supporting a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any item.

(2) *Provisions and destinations*—(i) *Provisions.* Sales technology may be exported or reexported provided that:

(A) The technology is a type customarily transmitted with a prospective or actual quotation, bid, or offer in accordance with established business practice; and

(B) Neither the export nor the reexport will disclose the detailed design, production, or manufacture technology, or the means of reconstruction, of either the quoted item or its product. The purpose of this limitation is to prevent disclosure of technology so detailed that the consignee could reduce the technology to production.

(ii) *Destinations.* Sales technology may be exported or reexported to any destination.

NOTE: Neither this section nor its use means that the U.S. Government intends, or is committed, to approve a license application for any commodity, plant, software, or technology that may be the subject of the transaction to which such quotation, bid, or offer relates. Exporters are advised to include in any quotations, bids, or offers, and in any contracts entered into pursuant to such quotations, bids, or offers, a provision relieving themselves of liability in the event that a license (when required) is not approved by the Bureau of Industry and Security.

(c) *Software updates.* The provisions of paragraph (c) authorize exports and reexports of software updates that are intended for and are limited to correction of errors (''fixes'' to ''bugs'') in software lawfully exported or reexported (original software). Such software updates may be exported or reexported only to the same consignee to whom the original software was exported or reexported, and such software updates may not enhance the functional capacities of the original software. Such software updates may be exported or reexported to any destination to which the software for which they are required has been legally exported or reexported.

(d) *General Software Note: ''mass market'' software*—(1) *Scope.* The provisions of paragraph (d) authorize exports and reexports of ''mass market'' software subject to the General Software Note (see Supplement No. 2 to part 774 of the EAR; also referenced in this section).[1]

(2) *Exclusions.* The provisions of this paragraph (d) are not available for encryption software controlled for ''EI'' reasons under ECCN 5D002 or for encryption software with symmetric key length exceeding 64-bits that qualifies as mass market encryption software under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2, of the Commerce Control List (Supplement No. 1 to Part 774 of the EAR). (Once such mass market encryption software has been reviewed by BIS and released from ''EI'' and ''NS'' controls pursuant to § 742.15(b)(2) of the EAR, it is controlled under ECCN 5D992 and is thus outside the scope of License Exception TSU.) *See* § 742.15(b)(2) of the EAR for exports and reexports of mass market encryption products controlled under ECCN 5D992.

(3) *Provisions and destinations*—

(i) *Destinations.* ''Mass market'' software is available to all destinations except destinations in Country Group E:1 (see Supplement No. 1 to this part).

(ii) *Provisions.* ''Mass market'' treatment is available for software that is generally available to the public by being:

(A) Sold from stock at retail selling points, without restriction, by means of:

(*1*) Over the counter transactions;

(*2*) Mail order transactions; or

(*3*) Telephone call transactions; and

(B) Designed for installation by the user without further substantial support by the supplier.

(e) *Encryption source code (and corresponding object code)*—(1) *Scope and eligibility.* This paragraph (e) authorizes exports and reexports, without review, of encryption source code controlled by ECCN 5D002 that, if not controlled by ECCN 5D002, would be considered publicly available under § 734.3(b)(3) of the EAR. Such source code is eligible for License Exception TSU under this paragraph (e) even if it is subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code. This paragraph also authorizes the export and reexport of the corresponding object code (*i.e.*, that which is compiled from source code that is authorized for export and reexport under this paragraph) if both the object code and the source code from which it is compiled would be considered publicly available under § 734.3(b)(3) of the EAR, if they were not controlled under ECCN 5D002.

(2) *Restrictions.* This paragraph (e) does not authorize:

(i) Export or reexport of any encryption software controlled under ECCN 5D002 that does not meet the requirements of paragraph (e)(1), even if the software incorporates or is specially designed to use other encryption software that meets the requirements of paragraph (e)(1) of this section; or

(ii) Any knowing export or reexport to a country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR.

(3) *Notification requirement.* You must notify BIS and the ENC Encryption Request Coordinator via e-mail of the Internet location (*e.g.*, URL or Internet address) of the source code or provide each of them a copy of the source code at or before the time you take action to make the software publicly available as that term is described in

[1] ''Mass market'' software may fall under the classification of ''general use'' software for export clearance purposes. Exporters should consult the Census Bureau FTSR for possible SED or AES requirements.

§ 734.3(b)(3) of the EAR. If you elect to meet this requirement by providing copies of the source code to BIS and the ENC Encryption Request Coordinator, you must provide additional copies to each of them each time the cryptographic functionality of the software is updated or modified. If you elect to provide the Internet location of the source code, you must notify BIS and the ENC Encryption Request Coordinator each time the Internet location is changed, but you are not required to notify them of updates or modifications made to the encryption software at the previously notified location. In all instances, submit the notification or copy to *crypt@bis.doc.gov* and to *enc@nsa.gov*.

NOTE TO PARAGRAPH (e). Posting encryption source code and corresponding object code on the Internet (*e.g.*, FTP or World Wide Web site) where it may be downloaded by anyone neither establishes ''knowledge'' of a prohibited export or reexport for purposes of this paragraph, nor triggers any ''red flags'' necessitating the affirmative duty to inquire under the ''Know Your Customer'' guidance provided in Supplement No. 3 to part 732 of the EAR.

(f) *Special recordkeeping requirements: ECCNs 2D983 and 2E983.* In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this paragraph, when exporting operation software or technology controlled under ECCNs 2D983 and 2E983, respectively, under License Exception TSU. Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. The following information must be specially maintained for each export or reexport transaction, under License Exception TSU, of operation software and technology controlled by ECCNs 2D983 and 2E983:

(1) A description of the software or technology exported or reexported, including the ECCN, as identified on the CCL;

(2) A description of the equipment for which the software or technology is intended to be used, including the ECCN, as indentified on the CCL;

(3) The intended end-use of the software or technology;

(4) The name and address of the end-user;

(5) The quantity of software shipped; and

(6) The location of the equipment for which the software or technology is intended to be used, including the country of destination.

[61 FR 64283, Dec. 4, 1996, as amended at 61 FR 65464, Dec. 13, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, as amended at 61 FR 68580, Dec. 30, 1996; 62 FR 25458, May 9, 1997; 65 FR 2496, Jan. 14, 2000; 65 FR 62604, Oct. 19, 2000; 66 FR 42110, Aug. 10, 2001; 67 FR 38862, June 6, 2002; 68 FR 16211, Apr. 3, 2003; 68 FR 50472, Aug. 21, 2003; 69 FR 5690, Feb. 6, 2004; 69 FR 46075, July 30, 2004; 69 FR 71359, Dec. 9, 2004]

§ 740.14 Baggage (BAG).

(a) *Scope.* This License Exception authorizes individuals leaving the United States either temporarily (i.e., traveling) or longer-term (i.e., moving) and crew members of exporting or reexporting carriers to take to any destination, as personal baggage, the classes of commodities and software described in this section.

(b) *Eligibility.* Individuals leaving the United States may export or reexport any of the following commodities or software for personal use of the individuals or members of their immediate families traveling with them to any destination or series of destinations. Individuals leaving the United States temporarily (i.e., traveling) must bring back items exported and reexported under this License Exception unless they consume the items abroad or are otherwise authorized to dispose of them under the EAR. Crew members may export or reexport only commodities and software described in paragraphs (b)(1) and (b)(2) of this section to any destination.

(1) *Personal effects.* Usual and reasonable kinds and quantities for personal use of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects, and their containers.

(2) *Household effects.* Usual and reasonable kinds and quantities for personal use of furniture, household effects, household furnishings, and their containers.

(3) *Vehicles.* Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, trailers, motorcycles, bicycles, tricycles, perambulators, and their containers.

(4) *Tools of trade.* Usual and reasonable kinds and quantities of tools, instruments, or equipment and their containers for use in the trade, occupation, employment, vocation, or hobby of the traveler or members of the household being moved. For special provisions regarding encryption commodities and software subject to EI controls, see paragraph (f) of this section.

(c) *Limits on eligibility.* The export of any commodity or software is limited or prohibited, if the kind or quantity is in excess of the limits described in this section. In addition, the commodities or software must be:

(1) Owned by the individuals (or by members of their immediate families) or by crew members of exporting carriers on the dates they depart from the United States;

(2) Intended for and necessary and appropriate for the use of the individuals or members of their immediate families traveling with them, or by the crew members of exporting carriers;

(3) Not intended for sale or other disposal; and

(4) Not exported under a bill of lading as cargo if exported by crew members.

(d) *Special provision: unaccompanied baggage.* Individuals departing the United States may ship unaccompanied baggage, which is baggage sent from the United States on a carrier other than that on which an individual departs. Crew members of exporting carriers may not ship unaccompanied baggage. Unaccompanied shipments under this License Exception shall be clearly marked ''BAGGAGE.'' Shipments of unaccompanied baggage may be made at the time of, or within a reasonable time before or after departure of the consignee or owner from the United States. Personal baggage controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), encryption items (EI) or nuclear nonproliferation (NP) must be shipped within 3 months before or after the month in which the consignee or owner departs the United States. However, commodities controlled for CB, MT, NS, EI or NP may not be exported under this License Exception as unaccompanied baggage to Country Groups D:1, D:2, D:3, D:4, or E:1. (*See* Supplement No. 1 of this part).

(e) *Special provisions: shotguns and shotgun shells.* (1) A United States citizen or a permanent resident alien leaving the United States may export or reexport shotguns with a barrel length of 18 inches or over and shotgun shells under this License Exception, subject to the following limitations:

(i) Not more than three shotguns may be taken on any one trip.

(ii) The shotguns and shotgun shells must be with the person's baggage but they may not be mailed.

(iii) The shotguns and shotgun shells must be for the person's exclusive use for legitimate hunting or lawful sporting purposes, scientific purposes, or personal protection, and not for resale or other transfer of ownership or control. Accordingly, except as provided in (e)(2) of this section, shotguns may not be exported permanently under this License Exception. All shotguns and unused shotgun shells must be returned to the United States. Note that since certain countries may require an Import Certificate or a U.S. export license before allowing the import of a shotgun, you should determine the import requirements of your country of destination in advance.

(2) A nonresident alien leaving the United States may export or reexport under this License Exception only such shotguns and shotgun shells as he or she brought into the United States under the provisions of Department of Treasury Regulations (27 CFR 178.115(d)).

(f) *Special provisions: encryption commodities and software subject to EI controls on the Commerce Control List.* (1) A U.S. citizen or permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(20) may use this license exception to export or reexport encryption commodities and software to any destination not in Country Group E:1 of Supplement No. 1 of this part.

(2) A person other than a U.S. citizen or permanent resident alien of the

United States as defined by 8 U.S.C. 1101(a)(20) (except a national of a country listed in Country Group E:1 of Supplement No. 1 of this part who is not a U.S. citizen or permanent resident alien of the United States) may also use this license exception to export or reexport encryption commodities and software to any destination not in Country Group E:1 of Supplement No. 1 of this part.

(g) *Special provision: Cuba.* Baggage taken by individuals leaving the United States for travel to Cuba pursuant to this License Exception is limited to 44 pounds per traveler, except if authorized by the Office of Foreign Assets Control of the Department of the Treasury to engage in travel-related transactions pursuant to a general or specific license in one of the following categories: 31 CFR 515.562 (official business of the U.S. government, foreign governments, and certain intergovernmental organizations), 31 CFR 515.563 (journalistic activity), 31 CFR 515.566 (religious activities), 31 CFR 515.574 (support for the Cuban people), 31 CFR 515.575 (humanitarian projects), or 31 CFR 515.545 (exportation, importation, or transmission of informational material).

NOTE: Other travelers seeking to take more than 44 lbs of baggage would require a license from BIS pursuant to §746.2 of the EAR.

[61 FR 12768, Mar. 25, 1996. Redesignated at 61 FR 64274, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, and amended at 62 FR 25458, May 9, 1997; 63 FR 50522, Sept. 22, 1998; 64 FR 17973, Apr. 13, 1999; 68 FR 35784, June 17, 2003; 69 FR 34567, June 22, 2004]

§ 740.15 Aircraft and vessels (AVS).

This License Exception authorizes departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. civil aircraft for temporary sojourn abroad; the export of equipment and spare parts for permanent use on a vessel or aircraft; and exports to vessels or planes of U.S. or Canadian registry and U.S. or Canadian Airlines' installations or agents. Generally, no License Exception symbol is necessary for export clearance purposes; however, when necessary, the symbol ''AVS'' may be used.

(a) *Aircraft on temporary sojourn*—(1) *Foreign registered aircraft.* An operating civil aircraft of foreign registry that has been in the United States on a temporary sojourn may depart from the United States under its own power for any destination, provided that:

(i) No sale or transfer of operational control of the aircraft to nationals of a destination in Country Group E:1 (see Supplement No. 1 to this part) has occurred while in the United States;

(ii) The aircraft is not departing for the purpose of sale or transfer of operational control to nationals of a destination in Country Group E:1 (see Supplement No. 1 to this part); and

(iii) It does not carry from the United States any item for which an export license is required and has not been granted by the U.S. Government.

(2) *U.S. registered aircraft.* (i) A civil aircraft of U.S. registry operating under an Air Carrier Operating Certificate, Commercial Operating Certificate, or Air Taxi Operating Certificate issued by the Federal Aviation Administration or conducting flights under operating specifications approved by the Federal Aviation Administration pursuant to 14 CFR part 129 of the regulations of the Federal Aviation Administration, may depart from the United States under its own power for any destination, provided that:

(A) The aircraft does not depart for the purpose of sale, lease or other disposition of operational control of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(B) The aircraft's U.S. registration will not be changed while abroad;

(C) The aircraft is not to be used in any foreign military activity while abroad; and

(D) The aircraft does not carry from the United States any item for which a license is required and has not been granted by the U.S. Government.

(ii) Any other operating civil aircraft of U.S. registry may depart from the United States under its own power for any destination, except to a destination in Country Group E:1 (see Supplement No. 1 to this part) (flights to these destinations require a license), provided that:

(A) The aircraft does not depart for the purpose of sale, lease or other disposition of operational control of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(B) The aircraft's U.S. registration will not be changed while abroad;

(C) The aircraft is not to be used in any foreign military activity while abroad;

(D) The aircraft does not carry from the United States any item for which an export license is required and has not been granted by the U.S. Government; and

(E) The aircraft will be operated while abroad by a U.S. licensed pilot, except that during domestic flights within a foreign country, the aircraft may be operated by a pilot currently licensed by that foreign country.

(3) *Criteria.* The following nine criteria each must be met if the flight is to qualify as a temporary sojourn. To be considered a temporary sojourn, the flight must not be for the purpose of sale or transfer of operational control. An export is for the transfer of operational control unless the exporter retains each of the following indicia of control:

(i) *Hiring of cockpit crew.* Right to hire and fire the cockpit crew.

(ii) *Dispatch of aircraft.* Right to dispatch the aircraft.

(iii) *Selection of routes.* Right to determine the aircraft's routes (except for contractual commitments entered into by the exporter for specifically designated routes).

(iv) *Place of maintenance.* Right to perform or obtain the principal maintenance on the aircraft, which principal maintenance is conducted outside a destination in Country Group E:1 (see Supplement No. 1 to this part), under the control of a party who is not a national of any of these countries. (The minimum necessary in-transit maintenance may be performed in any country).

(v) *Location of spares.* Spares are not located in a destination in Country Group E:1 (see Supplement No. 1 to this part).

(vi) *Place of registration.* The place of registration is not changed to a destination in Country Group E:1 (see Supplement No. 1 to this part).

(vii) No transfer of technology. No technology is transferred to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part), except the minimum necessary in transit maintenance to perform flight line servicing required to depart safely.

(viii) *Color and logos.* The aircraft does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 (see Supplement No. 1 to this part).

(ix) *Flight number.* The aircraft does not fly under a flight number issued to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part) as such a number appears in the Official Airline Guide.

(4) *Reexports.* Civil aircraft legally exported from the United States may be reexported under this section, provided the restrictions described in this paragraph (a) are met.

(b) *Equipment and spare parts for permanent use on a vessel or aircraft, and ship and plane stores*—(1) *Vessel.* Equipment and spare parts for permanent use on a vessel, when necessary for the proper operation of such vessel, may be exported or reexported for use on board a vessel of any registry, except a vessel registered in Country Group D:1 (see Supplement No. 1 to part 740), Cuba, or owned or controlled by, or under charter or lease to any of these countries or their nationals. In addition, other equipment and services for necessary repair to fishing and fishery support vessels of Country Group D:1 may be exported for use on board such vessels when admitted into the United States under governing international fishery agreements.

(2) *Aircraft.* Equipment and spare parts for permanent use on an aircraft, when necessary for the proper operation of such aircraft, may be exported or reexported for use on board an aircraft of any registry, except an aircraft registered in, owned or controlled by, or under charter or lease to a country included in Country Group D:1, Cuba, or a national of any of these countries.

(3) *Ship and plane stores.* Usual and reasonable kinds and quantities of the following commodities may be exported for use or consumption on board

an aircraft or vessel of any registry during the outgoing and immediate return flight or voyage. (Note that fuel and related commodities that qualify as ship or plane stores as described in this License Exception must be exported under the short supply License Exception SPR (see § 754.2(h) of the EAR.)

(i) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements;

(ii) Medical and surgical supplies;

(iii) Food stores;

(iv) Slop chest articles;

(v) Saloon stores or supplies.

(c) *Shipments to U.S. or Canadian vessels, planes and airline installations or agents*—(1) *Exports to vessels or planes of U.S. or Canadian registry.* Export may be made of the commodities set forth in paragraph (c)(3) of this section, for use by or on a specific vessel or plane of U.S. or Canadian registry located at any seaport or airport outside the United States or Canada except a port in Cuba or Country Group D:1 (excluding the PRC), (see Supplement No. 1 to part 740) provided that such commodities are all of the following:[6]

(i) Ordered by the person in command or the owner or agent of the vessel or plane to which they are consigned;

(ii) Intended to be used or consumed on board such vessel or plane and necessary for its proper operation;

(iii) In usual and reasonable kinds and quantities during times of extreme need; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record is filed in accordance with the requirements of the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their own use.

(2) *Exports to U.S. or Canadian airline's installation or agent.* Exports of the commodities set forth in paragraph (c)(3) of this section, except fuel, may be made to a U.S. or Canadian airline's[7] installation or agent in any foreign destination except Cuba or Country Group D:1 (excluding the PRC), (see Supplement No. 1 to part 740) provided such commodities are all of the following:

(i) Ordered by a U.S. or Canadian airline and consigned to its own installation or agent abroad;

(ii) Intended for maintenance, repair, or operation of aircraft registered in either the United States or Canada, and necessary for the aircraft's proper operation, except where such aircraft is located in, or owned, operated or controlled by, or leased or chartered to, Cuba or Country Group D:1 (excluding the PRC) (see Supplement No. 1 to part 740) or a national of such country;

(iii) In usual and reasonable kinds and quantities; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record is filed in accordance with the requirements of the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations.

(3) *Applicable commodities.* This paragraph (c) applies to the following commodities, subject to the provisions in paragraph (c)(1) and (c)(2) of this section:

NOTE TO PARAGRAPH (c)(3) OF THIS SECTION: Fuel and related commodities for shipment to vessels or planes of U.S. or Canadian registry as described in this License Exception must be shipped under the short supply License Exception SPR (see § 754.2(h) of the EAR);

(i) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements;

(ii) Medical and surgical supplies;

(iii) Food stores;

(iv) Slop chest articles;

(v) Saloon stores or supplies; and

(vi) Equipment and spare parts.

(d) *Vessels on temporary sojourn.* (1) *Foreign flagged vessels.* A foreign flagged vessel in the United States may

[6] Where a validated license is required, see §§ 748.2 and 748.4(g) of the EAR.

[7] See Part 772 of the EAR for definitions of United States and Canadian airlines.

depart from the United States under its own power for any destination, provided that:

(i) No sale or transfer of operational control of the vessel to nationals of a destination in Country Group E:1 (*see* Supplement No.1 to this part) has occurred while in the United States;

(ii) The vessel is not departing for the purpose of sale or transfer of operational control to nationals of a destination in Country Group E:1 (*see* Supplement No. 1 to this part); and

(iii) The vessel does not carry from the United States any item for which a license is required and has not been granted by the U.S. Government.

(2) *U.S. flagged vessels.* A U.S. flagged vessel may depart from the United States under its own power for any destination, provided that:

(i) The vessel does not depart for the purpose of sale, lease, or transfer of operational control of the vessel, or its equipment, parts, accessories, or components, to a foreign country or any national thereof;

(ii) The vessel's U.S. flag will not be changed while abroad;

(iii) The vessel will not be used in any foreign military activity while abroad;

(iv) The vessel will not carry from the United States any item for which a license is required and has not been granted by the U.S. Government;

(v) Spares for the vessel are not located in a destination in Country Group E:1 (*see* Supplement No. 1 to this part);

(vi) Technology is not transferred to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part), except the minimum necessary in-transit maintenance to perform servicing required to depart and enter a port safely; and

(vii) The vessel does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 (*see* Supplement No. 1 to this part).

(3) *Criteria for temporary sojourn of vessels.* The following criteria must be met if a voyage is to be considered a temporary sojourn under this paragraph (d). To be considered a temporary sojourn, the voyage must not be for the purpose of sale or transfer of operational control. A transfer of operational control occurs unless the exporter or reexporter retains each of the following indicia of control:

(i) *Hiring of crew.* Right to hire and fire the crew.

(ii) *Dispatch of vessel.* Right to dispatch the vessel.

(iii) *Selection of routes.* Right to determine the vessel's routes (except for contractual commitments entered into by the exporter for specifically designated routes).

(iv) *Place of maintenance.* Right to perform or obtain the principal maintenance on the vessel, which principal maintenance is conducted outside a destination in Country Group E:1 (*see* Supplement No. 1 to this part), under the control of a party who is not a national of any of these countries. (The minimum necessary in-transit maintenance may be performed in any country).

(4) *Reexports.* Vessels subject to the EAR may be reexported under this section on temporary sojourn, provided that:

(i) The vessel does not depart for the purpose of sale, lease, or transfer of operational control of the vessel, or its equipment, parts, accessories, or components, to a foreign country or any national thereof;

(ii) The vessel's flag will not be changed while abroad;

(iii) The vessel will not be used in any foreign military activity while abroad;

(iv) The vessel will not carry any item for which a license is required and has not been granted by the U.S. Government;

(v) Spares for the vessel are not located in a destination in Country Group E:1 (*see* Supplement No. 1 to this part);

(vi) Technology is not transferred to a national of a destination in Country Group E:1 (*see* Supplement No. 1 to this part), except the minimum necessary in-transit maintenance to perform servicing required to depart and enter a port safely; and

(vii) The vessel does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 (*see* Supplement No. 1 to this part).

(5) No vessels may be exported or reexported under this License Exception

to a country in Country Group E:1, except Libya.

[61 FR 12678, Mar. 25, 1996. Redesignated and amended at 61 FR 64274, 64283, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996; 65 FR 38150, June 19, 2000; 66 FR 42110, Aug. 10, 2001; 68 FR 50472, Aug. 21, 2003; 69 FR 23628, Apr. 29, 2004; 70 FR 14390, Mar. 22, 2005; 70 FR 67348, Nov. 7, 2005]

§740.16 Additional permissive reexports (APR).

This License Exception allows the following reexports:

(a) *Reexports from Country Group A:1 and cooperating countries.* Reexports may be made from Country Group A:1 or from cooperating countries, provided that:

(1) The reexport is made in accordance with the conditions of an export authorization from the government of the reexporting country;

(2) The commodities being reexported are not controlled for NP, CB, MT, SI, or CC reasons; and

(3) The reexport is destined to *either:*

(i) A country in Country Group B *that is not also included in Country Group D:2, D:3, or D:4;* Cambodia; or Laos; and the commodity being reexported is both controlled for national security reasons and not controlled for export to Country Group A:1; or

(ii) A country in Country Group D:1 (National Security) (see Supplement No. 1 to part 740), other than Cambodia, Laos, or North Korea and the commodity being reexported is controlled for national security reasons.

(b) *Reexports to and among Country Group A:1 and cooperating countries.* Reexports may be made to and among Country Group A:1 and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (see Supplement No. 1 to part 740) or cooperating country, or for reexport from such country in accordance with other provisions of the EAR. All commodities are eligible except those controlled for nuclear nonproliferation reasons or missile technology reasons.

(c) Reexports to a destination to which direct shipment from the United States is authorized under an unused outstanding license may be made under the terms of that license. Such reexports shall be recorded in the same manner as exports are recorded, regardless of whether the license is partially or wholly used for reexport purposes. (See part 762 of the EAR for recordkeeping requirements.)

(d) Reexports of any item from Canada that, at the time of reexport, may be exported directly from the United States to the new country of destination under any License Exception.

(e) Reexports (return) to the United States of any item. If the reexporting party requests written authorization because the government of the country from which the reexport will take place requires formal U.S. Government approval, such authorization will generally be given.

(f) Reexports from a foreign destination to Canada of any item if the item could be exported to Canada without a license.

(g) Reexports between Switzerland and Liechtenstein.

(h) Shipments of foreign-made products that incorporate U.S.-origin components may be accompanied by U.S.-origin controlled spare parts, provided that they do not exceed 10 percent of the value of the foreign-made product, subject to the restrictions in §734.4 of the EAR.

(i) Reexports to Sudan of items controlled by ECCNs 2A994; 3A992.a; 5A991.f; 5A992; 6A991; 6A998; 7A994; 8A992.d, .e, .f, and .g; 9A990.a and .b; and 9A991.d and .e. In addition, items in these ECCNs are not counted as controlled U.S. content for purposes of determining license requirements for U.S. parts, components, and materials incorporated in foreign-made products. However, the export from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Sudan is prohibited without a license.

(j) Reexports of items controlled by NP Column 1 (see Supplement No. 1 to part 774 of the EAR) to, among, and from countries described in Country Group A:4 (see Supplement No. 1 to part 740), except:

(1) Reexports from countries that are not identified in Country Group A:1 of

items that are controlled for NS reasons to destinations in Country Group D:1; and

(2) Reexports to destinations in Country Group E:2 and Country Group D:2.

[61 FR 12768, Mar. 25, 1996. Redesignated at 61 FR 64274, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, and amended at 62 FR 25458, May 9, 1997; 63 FR 42228, Aug. 7, 1998; 65 FR 38150, June 19, 2000; 65 FR 60855, Oct. 13, 2000; 67 FR 10614, Mar. 8, 2002]

§ 740.17 Encryption commodities and software (ENC).

Subject to the eligibility criteria and restrictions described in paragraphs (a), (b) and (f) of this section, License Exception ENC is available for the export and reexport of: commodities and software controlled by ECCNs 5A002.a.1, .a.2, .a.5, and .a.6, 5B002, and 5D002 that do not meet the ''mass market'' criteria of the Cryptography Note (Note 3) of Category 5, part 2 (''Information Security'') of the Commerce Control List (Supplement No. 1 to part 774 of the EAR); technology controlled by ECCN 5E002; and certain technical assistance as described in § 744.9 of the EAR. The initial export or reexport of an encryption commodity or software under paragraphs (b)(2) or (b)(3) of this section is subject to a 30 day waiting period, as described in paragraph (d)(2) of this section. In addition, persons exporting or reexporting under paragraphs (a), (b)(2) or (b)(3) of this section must file the semi-annual reports required by paragraph (e) of this section. Review request procedures for encryption items eligible for License Exception ENC are described in paragraph (d) of this section (*e.g.*, for items that have not previously been reviewed, or for items that have been reviewed but for which the cryptographic functionality has been changed). See § 742.15(b)(2) of the EAR for similar review procedures for ''mass market'' encryption commodities and software.

(a) *Exports, reexports, and technical assistance to countries listed in Supplement No. 3 to this part.* This paragraph (a) authorizes export or reexport of items controlled under ECCNs 5A002.a.1, .a.2, .a.5, or .a.6, 5B002, 5D002, or 5E002, and provision of technical assistance described in § 744.9 of the EAR, to end-users in countries listed in Supplement No. 3 to part 740 of the EAR. This paragraph also authorizes exports or reexports to foreign subsidiaries and offices of end-users headquartered in Canada or in countries listed in Supplement No. 3 to part 740. In addition, the transaction must meet the terms of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(1) *Internal development of new products.* No prior review is required for exports or reexports of U.S. origin encryption items or related technical assistance under this paragraph (a) to private sector end-users that are headquartered in Canada or in countries listed in Supplement No. 3 to part 740, for internal use for the development of new products by those end-users and their offices or subsidiaries. Any encryption item produced or developed with an item exported or reexported under this paragraph (a)(1) is subject to the EAR and requires review and authorization before any sale or retransfer outside of the private sector end-user that developed it. In this paragraph (a)(1), private sector end-user means:

(i) An individual who is not acting on behalf of any foreign government; or

(ii) A commercial firm (including its subsidiary and parent firms, and other subsidiaries of the same parent) that is not wholly owned by, or otherwise controlled by or acting on behalf of, any foreign government.

(2) *Items previously reviewed by the U.S. Government.* No additional U.S. Government review is required under this paragraph (a) for export or reexport of encryption commodities or software or parts or components thereof that, prior to October 19, 2000, were authorized for export or reexport under a license or Encryption Licensing Arrangement, or were reviewed and authorized for export and reexport to entities other than U.S. subsidiaries under License Exception ENC. No additional U.S. Government review is required under this paragraph for export or reexport of encryption technology that, prior to October 19, 2000, was approved for export or reexport under a license or Encryption Licensing Arrangement.

(3) *Other transactions.* For any use not described in paragraph (a)(1) of this section, before you export or reexport any item or related technical assistance that has not been previously reviewed by the U.S. Government and authorized under this paragraph (a), you must submit a review request in accordance with paragraph (d) of this section.

(b) *Exports and reexports to countries not listed in supplement No. 3 to this part*—(1) *Encryption items for U.S. subsidiaries.* This paragraph (b)(1) authorizes export, or reexport or items controlled under ECCNs 5A002.a.1, .a.2, .a.5, or .a.6, 5B002, 5D002 or 5E002:

(i) To any ''U.S. subsidiary''; and

(ii) By a U.S. company and its subsidiaries to foreign nationals who are employees, contractors or interns of a U.S. company or its subsidiaries if the items are for internal company use, including the development of new products.

(iii) *General restriction.* All items produced or developed with commodities, software or technology exported under this paragraph (b)(1) are subject to the EAR and require review and authorization before sale or transfer outside the U.S. company and its subsidiaries.

(2) *Encryption commodities and software restricted to non-''government end-users.''* This paragraph (b)(2) authorizes the export and reexport of items described in § 740.17(b)(2)(iii) of the EAR that do not provide an ''open cryptographic interface'' and that are controlled by ECCNs 5A002.a.1, .a.2, .a.5, or .a.6, or 5D002 to individuals, commercial firms, and other entities that are not ''government end-users'' and that are not located in a country listed in Supplement No. 3 to this part. In addition, the transaction must meet the provisions of either § 740.17(b)(2)(i) or (ii) of the EAR.

(i) *Commodities and software previously reviewed by the U.S. Government.* No additional U.S. Government review is required under this paragraph (b)(2) for export or reexports of encryption commodities or software or parts or components thereof that, prior to October 19, 2000, were authorized for export or reexport under a license or Encryption Licensing Arrangement, or were reviewed and authorized for export and reexport to entities other than U.S. subsidiaries under License Exception ENC.

(ii) *Other commodities and software not previously reviewed.* Before exporting or reexporting any item that has not been reviewed by the U.S. Government and authorized under this paragraph (b)(2), you must submit a review request in accordance with paragraph (d) of this section and wait until 30 days after that request is registered (as defined in § 750.4(a)(2) of the EAR) with BIS. Days during which the review request is on ''hold without action'' status are not counted towards fulfilling the 30 day waiting period.

(iii) The encryption commodities, software and components eligible for export or reexport under this paragraph (b)(2) (see paragraph (b)(3) of this section for commodities, software and components not listed in this paragraph (b)(2)(iii)) are:

(A) Network infrastructure commodities and software, and parts and components thereof (including commodities and software necessary to activate or enable cryptographic functionality in network infrastructure products) providing secure Wide Area Network (WAN), Metropolitan Area Network (MAN), Virtual Private Network (VPN), satellite, cellular or trunked communications meeting any of the following with key lengths exceeding 64-bits for symmetric algorithms:

(*1*) Aggregate encrypted WAN, MAN, VPN or backhaul throughput (includes communications through wireless network elements such as gateways, mobile switches, controllers, etc.) greater than 44 Mbps.; or

(*2*) Wire (line), cable or fiber-optic WAN, MAN or VPN single-channel input data rate exceeding 44 Mbps; or

(*3*) Maximum number of concurrent encrypted data tunnels or channels exceeding 250; or

(*4*) Air-interface coverage (*e.g.*, through base stations, access points to mesh networks, bridges, etc.) exceeding 1,000 meters, where any of the following applies:

(*i*) Maximum data rates exceeding 5 Mbps (at operating ranges beyond 1,000 meters); or

(*ii*) Maximum number of concurrent full-duplex voice channels exceeding 30; or

(*iii*) Substantial support is required for installation or use.

(B) Encryption source code that would not be eligible for export or reexport under License Exception TSU because it is not publicly available as that term is used in § 740.13(e)(1) of the EAR.

(C) Encryption commodities or software that do not provide an ''open cryptographic interface'', but that have:

(*1*) Been modified or customized for government end-user(s) or government end-use (*e.g.* to secure departmental, police, state security, or emergency response communications); or

(*2*) Cryptographic functionality that has been modified or customized to customer specification; or

(*3*) Cryptographic functionality or ''encryption component'' (except encryption software that would be considered publicly available, as that term is used in § 740.13(e)(1) of the EAR) that is user-accessible and can be easily changed by the user.

(D) ''Cryptanalytic items''; or

(E) Encryption commodities and software that provide functions necessary for quantum cryptography; or

(F) Encryption commodities and software that have been modified or customized for computers controlled by ECCN 4A003.

(3) *Encryption commodities, software and components available to both ''government end-users'' and to non-''government end-users''.* This paragraph authorizes export and reexport of commodities, software and components controlled by ECCNs 5A002.a.1, .a.2, .a.5, or .a.6, 5B002, or 5D002. To be eligible under this paragraph (b)(3) the requirements of paragraphs (b)(3)(i) and (b)(3)(ii) must be met.

(i) The commodities or software must *not:*

(A) Provide an ''open cryptographic interface''; or

(B) Be listed in paragraph (b)(2) of this section.

(ii) *Review and authorization requirement.* (A) *Commodities and software previously reviewed by the U.S. Government.* Encryption commodities, software and components reviewed and authorized by BIS for export and reexport as ''retail'' commodities or software under this paragraph (b)(3) prior to December 9, 2004 do not require additional review or authorization for export or reexport under this paragraph.

(B) *Other commodities and software not previously reviewed.* Before exporting or reexporting any item that has not been reviewed by the U.S. Government and authorized under this paragraph (b)(3), you must submit a review request in accordance with paragraph (d) of this section and wait until 30 days after that request is registered (as defined in § 750.4(a)(2) of the EAR) with BIS. Days during which the review request is on ''hold without action'' are not counted towards fulfilling the 30 day waiting period.

(4) *Exemptions from the 30 day waiting period and review requirements.* (i) *Exemptions from the 30 day waiting period.* Items listed in this paragraph (b)(4)(i) may be exported or reexported under authority of paragraphs (b)(2) or (b)(3) immediately upon filing the review requests required by those paragraphs provided all other requirements for export or reexport under the paragraph being relied upon are met.

(A) Encryption commodities and software (including key management products) with key lengths not exceeding 64 bits for symmetric algorithms, 1024 bits for asymmetric key exchange algorithms, and 160 bits for elliptic curve algorithms;

(B) Encryption source code that would not be considered publicly available for export or reexport under License Exception TSU, provided that a copy of your source code is included in the review request to BIS and the ENC Encryption Request Coordinator.

(ii) *Exemptions from the review requirement.* The following products do not require review under this license exception, but remain subject to the EAR (including all terms and provisions of this license exception, and all licensing requirements that may apply to a particular item or transaction for reasons other than encryption):

(A) Commodities and software that would not otherwise be controlled under Category 5 (telecommunications and ''information security'') of the

Commerce Control List, but that are controlled under ECCN 5A002 or 5D002 only because they incorporate components or software that provide short-range wireless encryption functions (*e.g.*, with an operating range typically not exceeding 100 meters);

(B) Foreign products developed with or incorporating U.S.-origin encryption source code, components or toolkits (or otherwise designed to operate with U.S. products, *e.g.*, via signing), provided that the U.S.-origin encryption items (and related technical assistance, as described in § 744.9 of the EAR) have previously been reviewed and authorized by BIS and the cryptographic functionality has not been changed.

(c) *Reexports and transfers.* U.S. or foreign distributors, resellers or other entities who are not original manufacturers of encryption commodities and software are permitted to use License Exception ENC only in instances where the export or reexport meets the applicable terms and conditions of this section. Transfers of encryption items listed in paragraph (b) of this section to government end-users, or for government end-uses, within the same country are prohibited, unless otherwise authorized by license or license exception. Foreign products developed with or incorporating U.S.-origin encryption source code, components or toolkits remain subject to the EAR, but do not require review (for encryption reasons) by BIS. These products can be exported or reexported under License Exception ENC without notification and without further authorization (for encryption reasons) from BIS. Such products include foreign-developed products that are designed to operate with U.S. products through a cryptographic interface.

(d) *Review request procedures.* To request review of your encryption items under License Exception ENC (*e.g.*, for items that have not previously been reviewed, or for items that have been reviewed but for which the cryptographic functionality has been changed), you must submit to BIS and to the ENC Encryption Request Coordinator the information described in paragraph (d)(1) of this section and in paragraphs (a) through (e) of Supplement No. 6 to part 742 of the EAR (Guidelines for Submitting Review Requests for Encryption Items).

(1) *Instructions for requesting review.* Review requests must be submitted on Form BIS–748P (Multipurpose Application), or its electronic equivalent, as described in § 748.3 of the EAR. To ensure that your review request is properly routed, insert the phrase ''License Exception ENC'' in Block 9 (Special Purpose) of the paper or electronic application. Also, place an ''X'' in the box marked ''Classification Request'' in Block 5 (Type of Application) of Form BIS–748P or select ''Commodity Classification'' if filing electronically. Neither the electronic nor paper forms provide a separate Block to check for the submission of encryption review requests. Failure to properly complete these items may delay consideration of your review request. Review requests that are not submitted electronically to BIS should be mailed to the address indicated on the BIS–748P form. See paragraph (e)(5)(ii) of this section for the mailing address for the ENC Encryption Request Coordinator.

(2) *Action by BIS.* Upon completion of its review, BIS will send you written notice of the provisions, if any, of this section under which your items may be exported or reexported. If BIS has not, within 30 days of registration of a complete review request from you, informed you that your item is not authorized for License Exception ENC, you may export or reexport under the applicable provisions of License Exception ENC. BIS may hold your review request without action if necessary to obtain additional information or for any other reason necessary to ensure an accurate determination with respect to ENC eligibility. Time on such ''hold without action'' status shall not be counted towards fulfilling the 30 day waiting period specified in this paragraph and in paragraphs (b)(2) and (b)(3) of this section. BIS may require you to supply additional relevant technical information about your encryption item(s) or information that pertains to their eligibility for License Exception ENC at any time, before or after the expiration of the 30 day waiting period specified in this paragraph and in paragraphs (b)(2) and (b)(3) of this section. If you do not supply such

information within 14 days after receiving a request for it from BIS, BIS may return your review request(s) without action or otherwise suspend or revoke your eligibility to use License Exception ENC for that item(s). At your request, BIS may grant you up to an additional 14 days to provide the requested information. Any request for such an additional number of days must be made prior to the date by which the information was otherwise due to be provided to BIS, and may be approved if BIS concludes that additional time is necessary.

(3) *Key length increases.* Commodities and software that are modified only to upgrade the key length used for confidentiality or key exchange algorithms (after having been reviewed and authorized for License Exception ENC by BIS) may be exported or reexported under the previously authorized provision of License Exception ENC without further review, provided:

(i) The exporter or reexporter certifies to BIS and the ENC Encryption Request Coordinator that no change to the encryption functionality has been made other than to upgrade the key length for confidentiality or key exchange algorithms;

(ii) The certification includes the original authorization number issued by BIS and the date of issuance;

(iii) The certification is received by BIS and the ENC Encryption Request Coordinator before the export or reexport of the upgraded product; and

(iv) The certification is e-mailed to *crypt@bis.doc.gov* and *enc@nsa.gov*.

(e) *Reporting requirements*—(1) *Semi-annual reporting requirement.* Semi-annual reporting is required for exports to all destinations other than Canada, and for reexports from Canada, under this license exception. Certain encryption items and transactions are excluded from this reporting requirement (see paragraph (e)(4) of this section). For instructions on how to submit your reports, see paragraph (e)(5) of this section.

(2) *General information required.* Exporters must include all of the following applicable information in their reports:

(i) For items exported (or reexported from Canada) to a distributor or other reseller, including subsidiaries of U.S. firms, the name and address of the distributor or reseller, the item and the quantity exported or reexported and, if collected by the exporter as part of the distribution process, the end-user's name and address;

(ii) For items exported (or reexported from Canada) to individual consumers through direct sale (provided the transaction is not exempted from reporting under paragraph (e)(4)(iii) or (e)(4)(iv) of this section), the name and address of the recipient, the item, and the quantity exported;

(iii) For exports of ECCN 5E002 items to be used for technical assistance that are not released by § 744.9 of the EAR, the name and address of the end-user; and

(iv) For each item, the authorization number and the name of the item(s) exported (or reexported from Canada).

(3) *Information on foreign manufacturers and products that use encryption items.* For direct sales or transfers, under License Exception ENC, of encryption components, source code, general purpose toolkits, equipment controlled under ECCN 5B002, technology, or items that provide an ''open cryptographic interface'' to foreign developers or manufacturers when intended for use in foreign products developed for commercial sale, you must submit the names and addresses of the manufacturers using these encryption items and, if you know when the product is made available for commercial sale, a non-proprietary technical description of the foreign products for which these encryption items are being used (*e.g.*, brochures, other documentation, descriptions or other identifiers of the final foreign product; the algorithm and key lengths used; general programming interfaces to the product, if known; any standards or protocols that the foreign product adheres to; and source code, if available).

(4) *Exclusions from reporting requirements.* Reporting is not required for the following items and transactions:

(i) Any encryption item exported or reexported under paragraph (a)(1) or (b)(1) of this section;

(ii) Encryption commodities or software with a symmetric key length not exceeding 64 bits;

(iii) Encryption commodities and software authorized under paragraph (b)(3) of this section, exported (or reexported from Canada) to individual consumers;

(iv) Encryption items exported (or reexported from Canada) via free and anonymous download;

(v) Encryption items from or to a U.S. bank, financial institution or its subsidiaries, affiliates, customers or contractors for banking or financial operations;

(vi) Items that incorporate components limited to providing short-range wireless encryption functions;

(vii) General purpose operating systems, or desktop applications (*e.g.*, e-mail, browsers, games, word processing, data base, financial applications or utilities) authorized under paragraph (b)(3) of this section;

(viii) Client Internet appliance and client wireless LAN cards; or

(ix) Foreign products developed by bundling or compiling of source code.

(5) *Submission requirements.* You must submit the reports required under this section, semi-annually, to BIS and to the ENC Encryption Request Coordinator, unless otherwise provided in this paragraph (e)(5). For exports occurring between January 1 and June 30, a report is due no later than August 1 of that year. For exports occurring between July 1 and December 31, a report is due no later than February 1 the following year. These reports must be provided in electronic form. Recommended file formats for electronic submission include spreadsheets, tabular text or structured text. Exporters may request other reporting arrangements with BIS to better reflect their business models. Reports may be sent electronically to BIS at *crypt@bis.doc.gov* and to the ENC Encryption Request Coordinator at *enc@nsa.gov*, or disks and CDs containing the reports may be sent to the following addresses:

(i) Department of Commerce, Bureau of Industry and Security, Office of National Security and Technology Transfer Controls, 14th Street and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230, Attn: Encryption Reports, and

(ii) Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6940, Ft. Meade, MD 20755–6000.

(f) *Restrictions.* Notwithstanding any language elsewhere in this section, License Exception ENC does not authorize:

(1) Any export or reexport of any ''cryptanalytic item'' to any ''government end-user'' (as that definition is applied to encryption items); or

(2) Any export or reexport of any ''open cryptographic interface'' item to any end-user not located in or headquartered in Canada or in countries listed in Supplement No. 3 part 740 of the EAR; or

(3) Any export or reexport to, or provision of any service in any country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR; or

(4) Furnishing source code or technology to any national of a country listed in Country Group E:1.

[67 FR 38862, June 6, 2002, as amended at 68 FR 35785, June 17, 2003; 69 FR 71360, Dec. 9, 2004; 70 FR 22249, Apr. 29, 2005]

§ 740.18 Agricultural commodities (AGR).

(a) *Eligibility requirements.* License Exception AGR permits the export of agricultural commodities to Cuba, as well as the reexport of U.S. origin agricultural commodities to Cuba, provided your transaction meets *all* of the following criteria:

(1) The commodity meets the definition of ''agricultural commodities'' in part 772 of the EAR;

(2) The commodity is EAR99. You must have an official commodity classification of EAR99 from BIS for fertilizers, western red cedar and live horses before you submit a notification under this license exception. See § 748.3 of the EAR for information on how to submit a commodity classification request;

(3) The export or reexport is made pursuant to a written contract, except for donations and commercial samples which are not subject to this contract requirement;

(4) The export or reexport is made within 12 months of the signing of the contract or within 12 months of notification that no objections were raised (if no contract is required). In the case

of multiple partial shipments, all such shipments must be made within the 12 months of the signing of the contract or within 12 months of notification that no objections were raised (if no contract is required); and

(5) You notify BIS prior to exporting or reexporting according to the procedures set forth in paragraph (c) of this section. If you intend to engage in multiple shipments during the one-year period after the signing of the contract, you need only notify BIS prior to the first shipment.

(b) *Restrictions.* (1) No export or reexport to any individual or entity designated as a Specially Designated Terrorist or Foreign Terrorist Organization may be made under License Exception AGR (see part 744 of the EAR).

(2) No export or reexport to or for use in biological, chemical, nuclear warfare or missile proliferation activities may be made under License Exception AGR (see part 744 of the EAR).

(3) No U.S.-owned or controlled foreign firm may export from abroad to Cuba a foreign produced agricultural commodity containing more than 10% U.S.-origin content. Such U.S.-owned or controlled foreign firms require a specific license from BIS as well as the Department of the Treasury's Office of Foreign Assets Control (OFAC). Transactions not subject to the EAR (under 10% U.S.-origin content) require a license from OFAC.

(c) *Prior notification*—(1) *General requirement.* You must notify BIS prior to any export or reexport (or prior to the first of multiple shipments) under License Exception AGR.

(2) *Procedures.* You must provide prior notification of exports and reexports under License Exception AGR by submitting a completed Multipurpose Application Form (BIS-748P) or its electronic equivalent. The following blocks must be completed, as appropriate, on the Multipurpose Application Form: Blocks 1, 2, 3, 4, 5 (by marking box 5 ''Other''), 14, 16, 17, 18, 19, 21, 22 (a), (e), (f), (g), (h), (i), (j), 23, and 25 according to the instructions described in Supplement No. 1 to part 748 of the EAR. If your commodity is fertilizer, western red cedar or live horses, you must confirm that BIS has previously classified your commodity as EAR99 by placing the Commodity Classification Automatic Tracking System (CCATS) number in block 22(d). BIS will not initiate the registration of an AGR notification unless all requested information on the Multipurpose Application form is complete.

(3) *Action by BIS.* Within two business days of the registration of the AGR notification, BIS will refer the notification for interagency review, or if necessary return the notification without action (e.g., if the information provided is incomplete). Registration is defined as the point at which the notification is entered into BIS's electronic system.

(4) *Review by other departments or agencies.* The Departments of Defense, State, and other agencies, as appropriate, may review the AGR notification. BIS must receive department or agency objections within nine business days of the referral. Unlike the provisions described in § 750.4(b) of the EAR, there are no provisions for stopping the processing time of the AGR notification. If, within 11 business days after the date of registration, any reviewing agency provides a written objection that the recipient may promote international terrorism or the transaction raises nonproliferation concerns, you may not use License Exception AGR. In such cases, BIS will notify you that a license is required for the export or reexport. BIS will then process the AGR notification as a license application in accordance with the provisions described in § 750.4 of the EAR, and the licensing policies set forth in the EAR. At this time, BIS may request additional information. When BIS confirms that no agency has raised an objection within eleven business days (as described in paragraph (c)(5) of this section), you may proceed with the transaction provided that you satisfy all other requirements of License Exception AGR, including the requirement to have a written contract prior to any shipment (unless a donation or commercial sample). (Note that the fact that you have been advised that no agency has objected to the transaction does not exempt you from other licensing requirements under the EAR, such

as those based on knowledge of a prohibited end-use or end-user as referenced in general prohibition five (part 736 of the EAR) and set forth in part 744 of the EAR.)

(5) *Status of pending AGR notification requests.* You must contact BIS's System for Tracking Export License Applications (''STELA'') at (202) 482–2752 for status of your pending AGR notification. (See §750.5 of the EAR for procedures to access information on STELA.) STELA will provide the date of registration of the AGR notification. If no department or agency objection is raised within 11 business days, STELA will, on the twelfth business day following the date of registration, provide you with confirmation of that fact. You may not proceed with your shipment unless you confirm with STELA that no objection has been raised. BIS will subsequently issue written confirmation to you. If an objection is raised, STELA will indicate that a license is required. The AGR notification will then be processed as a license application. In addition, BIS may provide notice of an objection by telephone, fax, courier service, or other means.

(d) *Donations.* (1) Donations of agricultural commodities are eligible for export and reexport to Cuba under License Exception AGR, provided the transaction meets the requirements and procedures of this license exception (except the written contract requirement).

(2) Donations of food items to nongovernmental organizations (NGOs) and individuals in Cuba may also be eligible for License Exception GFT. See §740.12 for eligibility requirements of gift parcels and humanitarian donations under License Exception GFT.

[66 FR 36681, July 12, 2001]

§740.19 United States persons in Libya (USPL).

(a) *Scope.* This License Exception authorizes exports and reexports to U.S. persons in Libya of items controlled for AT reasons only under the following ECCNs as described:

(1) All items controlled under the following ECCNs:

(i) 2A994;

(ii) 5A992;

(iii) 5D992; and

(iv) 9A990.

(2) Other items, as follows:

(i) 3A991.a through 3A991.j, and 3A991.n;

(ii) 3A992.b.1, 3A992.b.2 and 3A992.c;

(iii) 3B992.b;

(iv) 4A994, for items with CTP levels up to 12,000 MTOPS; and

(v) 5A991.b.2, 5A991.b.3, 5A991.b.4, 5A991.b.7, 5A991.c.1 through c.9, 5A991.e, 5A991.g and 5A991.h.

(b) *Additional restrictions.* Items exported or reexported to Libya pursuant to this License Exception must be consigned to and for exclusive use in business or professional activities (including humanitarian activities) by U.S. persons or their employees only, and must remain under the control and supervision of the U.S. person employer.

(c) *Definition of U.S. person.* See part 772 of the EAR.

[70 FR 69434, Nov. 16, 2005]

SUPPLEMENT NO. 1 TO PART 740—COUNTRY GROUPS

COUNTRY GROUP A

Country	[A:1]	Missile technology control regime [A:2]	Australia group [A:3]	Nuclear suppliers group [A:4]
Argentina		X	X	X
Australia	X	X	X	X
Austria [1]		X	X	X
Belarus				X
Belgium	X	X	X	X
Brazil		X		X
Bulgaria		X	X	X
Canada	X	X	X	X
Cyprus			X	X
Czech Republic		X	X	X
Denmark	X	X	X	X
Estonia			X	
Finland [1]		X	X	X
France	X	X	X	X
Germany	X	X	X	X
Greece	X	X	X	X
Hong Kong [1].				
Hungary		X	X	X
Iceland		X	X	
Ireland [1]		X	X	X
Italy	X	X	X	X
Japan	X	X	X	X
Kazakhstan				X
Korea, South [1]		X	X	X
Latvia			X	X
Lithuania			X	
Luxembourg	X	X	X	X
Malta			X	
Netherlands	X	X	X	X
New Zealand [1]		X	X	X
Norway	X	X	X	X
Poland	.....	X	X	X

COUNTRY GROUP A—Continued

Country	[A:1]	Missile technology control regime [A:2]	Australia group [A:3]	Nuclear suppliers group [A:4]
Portugal	X	X	X	X
Romania			X	X
Russia		X		X
Slovakia			X	X
Slovenia			X	X
South Africa		X		X
Spain	X	X	X	X

COUNTRY GROUP A—Continued

Country	[A:1]	Missile technology control regime [A:2]	Australia group [A:3]	Nuclear suppliers group [A:4]
Sweden [1]		X	X	X
Switzerland [1]		X	X	X
Turkey	X	X	X	X
Ukraine		X	X	X
United Kingdom	X	X	X	X
United States	X	X	X	X

[1] Cooperating Countries.

COUNTRY GROUP B—COUNTRIES

Afghanistan
Algeria
Andorra
Angola
Antigua and Barbuda
Argentina
Aruba
Australia
Austria
The Bahamas
Bahrain
Bangladesh
Barbados
Belgium
Belize
Benin
Bhutan
Bolivia
Bosnia & Herzegovina
Botswana
Brazil
Brunei
Bulgaria
Burkina Faso
Burma
Burundi
Cameroon
Canada
Cape Verde
Central African Republic
Chad
Chile
Colombia
Comoros
Congo (Democratic Republic of the)
Congo (Republic of the)
Costa Rica
Cote d'Ivoire
Croatia
Cyprus
Czech Republic
Denmark
Djibouti
Dominica
Dominican Republic
East Timor
Ecuador
Egypt
El Salvador
Equatorial Guinea
Eritrea
Estonia
Ethiopia
Fiji
Finland
France
Gabon
Gambia, The
Germany
Ghana
Greece

COUNTRY GROUP B—COUNTRIES—Continued

Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kenya
Kiribati
Korea, South
Kuwait
Latvia
Lebanon
Lesotho
Liberia
Liechtenstein
Lithuania
Luxembourg
Macedonia, The Former Yugoslav Republic of
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Marshall Islands
Mauritania
Mauritius
Mexico
Micronesia, Federated States of
Monaco
Morocco
Mozambique
Namibia
Nauru
Nepal
Netherlands Antilles
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Palau
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Rwanda
Saint Kitts & Nevis
Saint Lucia
Saint Vincent and the Grenadines
Samoa

COUNTRY GROUP B—COUNTRIES—Continued

San Marino
Sao Tome & Principe
Saudi Arabia
Senegal
Serbia and Montenegro
Seychelles
Sierra Leone
Singapore
Slovakia
Slovenia
Solomon Islands
Somalia
South Africa
Spain
Sri Lanka
Surinam
Swaziland
Sweden
Switzerland
Taiwan
Tanzania
Thailand
Togo
Tonga
Trinidad & Tobago
Tunisia
Turkey
Tuvalu
Uganda
United Arab Emirates
United Kingdom
United States
Uruguay
Vanuatu
Vatican City
Venezuela
Western Sahara
Yemen
Zambia
Zimbabwe

COUNTRY GROUP C [RESERVED]

• COUNTRY GROUP D

Country	[D: 1] National Security	[D: 2] Nuclear	[D: 3] Chemical & Biological	[D: 4] Missile Technology
Afghanistan			X	
Albania	X			
Algeria.				
Andorra.				
Armenia	X		X	
Azerbaijan	X		X	
Bahrain			X	X
Belarus	X		X	
Burma			X	
Cambodia	X			
China (PRC)	X		X	X
Comoros.				
Cuba		X	X	
Djibouti.				
Egypt			X	X
Georgia	X		X	
India		X	X	X
Iran		X	X	X
Iraq	X	X	X	X
Israel		X	X	X
Jordan			X	X
Kazakhstan	X		X	
Korea, North		X	X	X

• COUNTRY GROUP D—Continued

Country	[D: 1] National Security	[D: 2] Nuclear	[D: 3] Chemical & Biological	[D: 4] Missile Technology
Kuwait			X	X
Kyrgyzstan	X		X	
Laos	X			
Lebanon			X	X
Libya		X	X	X
Macau	X		X	X
Micronesia, Federated States of.				
Moldova	X		X	
Mongolia	X		X	
Oman			X	X
Pakistan		X	X	X
Qatar			X	X
Russia	X		X	
Saudi Arabia			X	X
Syria			X	X
Taiwan			X	
Tajikstan	X		X	
Turkmenistan	X		X	
Ukraine	X			
United Arab Emirates			X	X
Uzbekistan	X		X	
Vanuatu.				
Vietnam	X		X	

• COUNTRY GROUP D—Continued

Country	[D: 1] National Security	[D: 2] Nuclear	[D: 3] Chemical & Biological	[D: 4] Missile Technology
Yemen			X	X

COUNTRY GROUP E [1]

Country	[E:1] Terrorist supporting countries [2]	[E:2] Unilateral embargo
Cuba	X	X
Iran	X	
Korea, North	X	
Libya	X	
Sudan	X	
Syria	X	

[1] In addition to the controls maintained by the Bureau of Industry and Security pursuant to the EAR, note that the Department of the Treasury administers:

(a) A comprehensive embargo against Cuba, Iran, and Sudan; and

(b) An embargo against certain persons, e.g., Specially Designated Terrorists (SDT), Foreign Terrorist Organizations (FTO), Specially Designated Global Terrorists (SDGT), and Specially Designated Narcotics Traffickers (SDNT). Please see part 744 of the EAR for controls maintained by the Bureau of Industry and Security on these and other persons.

[2] The President made inapplicable with respect to Iraq provisions of law that apply to countries that have supported terrorism.

[61 FR 12768, Mar. 25, 1996, as amended at 62 FR 6686, Feb. 12, 1997; 62 FR 25458, May 9, 1997; 62 FR 42048, Aug. 5, 1997; 63 FR 37769, July 14, 1998; 64 FR 28908, May 28, 1999; 65 FR 38151, June 19, 2000; 66 FR 18402, Apr. 9, 2001; 66 FR 42110, Aug. 10, 2001; 66 FR 49524, Sept. 28, 2001; 67 FR 37982, May 31, 2002; 67 FR 55598, Aug. 29, 2002; 68 FR 16146, Apr. 2, 2003; 68 FR 60289, Oct. 22, 2003; 69 FR 3005, Jan. 22, 2004; 69 FR 21056, Apr. 20, 2004; 69 FR 23628, Apr. 29, 2004; 69 FR 46075, July 30, 2004; 69 FR 64658, Nov. 8, 2004; 69 FR 77893, Dec. 29, 2004; 70 FR 11861, Mar. 10, 2005; 70 FR 45280, Aug. 5, 2005; 70 FR 67348, Nov. 7, 2005]

SUPPLEMENT NO. 2 TO PART 740—ITEMS THAT MAY BE DONATED TO MEET BASIC HUMAN NEEDS UNDER THE HUMANITARIAN LICENSE EXCEPTION

(a) *Health*

Equipment for the Handicapped
Hospital Supplies and Equipment
Laboratory Supplies and Equipment
Medical Supplies and Devices
Medicine-Processing Equipment
Medicines
Vitamins
Water Resources Equipment
Food
Agricultural Materials and Machinery Suited to Small-Scale Farming Operations
Agricultural Research and Testing Equipment
Fertilizers
Fishing Equipment and Supplies Suited to Small-Scale Fishing Operations

(b) *Food*

Insecticides
Pesticides
Seeds
Small-Scale Irrigation Equipment
Veterinary Medicines and Supplies

(c) *Clothes and Household Goods*

Bedding
Clothes
Cooking Utensils
Fabric
Personal Hygiene Items
Soap-Making Equipment
Weaving and Sewing Equipment

(d) *Shelter*

Building Materials
Hand Tools

(e) *Education*

Books
Individual School Supplies
School Furniture
Special Education Supplies and Equipment for the Handicapped

(f) *Basic Support Equipment and Supplies Necessary To Operate and Administer the Donative Program*

Audio-Visual Aids for Training
Generators
Office Supplies and Equipment

SUPPLEMENT NO. 3 TO PART 740—COUNTRIES ELIGIBLE FOR THE PROVISIONS OF § 740.17(a)

Austria.
Australia.
Belgium.
Cyprus.
Czech Republic.
Estonia.
Denmark.
Finland.
France.
Germany.
Greece.
Hungary.
Ireland.
Italy.
Japan.
Latvia.
Lithuania.
Luxembourg.
Malta.
Netherlands.
New Zealand.
Norway.
Poland.
Portugal.
Slovakia.
Slovenia.
Spain.
Sweden.
Switzerland.

United Kingdom.

[69 FR 71363, Dec. 9, 2004]

PART 742—CONTROL POLICY—CCL BASED CONTROLS

Sec.
742.1 Introduction.
742.2 Proliferation of chemical and biological weapons.
742.3 Nuclear nonproliferation.
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742.5 Missile technology.
742.6 Regional stability.
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742.8 Anti-terrorism: Iran.
742.9 Anti-terrorism: Syria.
742.10 Anti-terrorism: Sudan.
742.11 Specially designed implements of torture.
742.12 High performance computers.
742.13 Communications intercepting devices.
742.14 Significant items: hot section technology for the development, production or overhaul of commercial aircraft engines, components, and systems.
742.15 Encryption items.
742.16 [Reserved]
742.17 Exports of firearms to OAS member countries.
742.18 Chemical Weapons Convention (CWC or Convention).
742.19 Anti-terrorism: North Korea.
742.20 Anti-terrorism: Libya.
SUPPLEMENT NO. 1 TO PART 742—NONPROLIFERATION OF CHEMICAL AND BIOLOGICAL WEAPONS
SUPPLEMENT NO. 2 TO PART 742—ANTI-TERRORISM CONTROLS: IRAN, LIBYA, NORTH KOREA, SYRIA AND SUDAN CONTRACT SANCTITY DATES AND RELATED POLICIES
SUPPLEMENT NO. 3 TO PART 742—HIGH PERFORMANCE COMPUTERS; SAFEGUARD CONDITIONS AND RELATED INFORMATION
SUPPLEMENT NO. 4 TO PART 742—KEY ESCROW OR KEY RECOVERY PRODUCTS CRITERIA
SUPPLEMENT NO. 5 TO PART 742—CHECKLIST ON ENCRYPTION AND OTHER ''INFORMATION SECURITY'' FUNCTIONS
SUPPLEMENT NO. 6 TO PART 742—GUIDELINES FOR SUBMITTING REVIEW REQUESTS FOR ENCRYPTION ITEMS
SUPPLEMENT NO. 7 TO PART 742 [RESERVED]

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SOURCE: 61 FR 12786, Mar. 25, 1996, unless otherwise noted.

§742.1 Introduction.

In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C.

(a) *Scope.* This part describes all the reasons for control reflected in the Country Chart in Supplement No. 1 to part 738 of the EAR. In addition, it includes licensing requirements and licensing policies for the following items that are not reflected on the Country Chart: specially designed implements of torture, high performance computers, and communications intercepting devices. In addition to describing the reasons for control and licensing requirements and policies, this part describes any applicable contract sanctity provisions that may apply to specific controls and includes a description of any multilateral regime under which specific controls are maintained.

(b) *Reasons for control listed on the CCL not covered by this part.* This part describes the license requirements and the licensing policies for all the ''Reasons for Control'' that are listed on the Commerce Control List (CCL) except ''Short Supply'' and ''U.N. Sanctions,'' which do not appear on the Country Chart.

(1) *Short Supply.* ECCNs containing items subject to short supply controls (''SS'') refer the exporter to part 754 of the EAR. These ECCNs are: 0A980 (Horses for export by sea); 1C980 (certain inorganic chemicals); 1C981 (Crude petroleum, including reconstituted crude petroleum, tar sands, and crude shale oil); 1C982 (certain other petroleum products); 1C983 (Natural gas liquids and other natural gas derivatives); 1C984 (certain manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy); and 1C988 (Western red cedar (thuja plicata) logs and timber, and rough, dressed and worked lumber containing wane).

(2) *U.N. Sanctions.* The United Nations imposes sanctions, short of complete embargoes, against certain countries which may result in controls that supplement those otherwise maintained under the EAR for that particular country. This part does not address license requirements and licensing policies for controls implementing U.N. sanctions. CCL entries containing items subject to U.N. sanctions will refer the exporter to part 746 of the EAR, Embargoes and Other Special Controls, for any supplemental controls that may apply to exports and reexports involving these countries.

(c) *Exports and reexports involving Cuba and Iran.* This part does not cover license requirements and licensing policies that apply to exports and reexports to embargoed destinations (Cuba and Iran). These comprehensive embargoes cover a broader range of items than those reflected in the CCL. If you are exporting or reexporting to any of these destinations, you should first review part 746 of the EAR, Embargoes and Other Special Controls.

(d) *Anti-terrorism Controls on Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.* Commerce maintains anti-terrorism controls on Cuba, Iran, Iraq, Libya, North Korea, Syria and Sudan under section 6(a) of the Export Administration Act. Items controlled under section 6(a) to Iran, Syria, Sudan, North Korea and Libya are described in §§ 742.8, 742.9, 742.10, 742.19, and 742.20, respectively, and in Supplement No. 2 to part 742. Items controlled under section 6(a) to Iraq are described in § 746.3(a)(3). Commerce also maintains controls under section 6(j) of the EAA to Cuba, Libya, Iran, North Korea, Sudan and Syria. Items controlled to these countries under EAA section 6(j) are also described in Supplement 2 to part 742. The Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days before issuing a license for an item controlled under section 6(j) to Cuba, Libya, North Korea, Iran, Sudan or Syria. As noted in paragraph (c) of this section, if you are exporting or reexporting to Cuba, Iran, or Iraq you should review part 746 of the EAR, Embargoes and Other Special Controls.

(e) *End-user and end-use based controls.* This part does not cover prohibitions and licensing requirements for exports of items not included on the CCL that are subject to end-use and end-user controls: certain nuclear end-uses; certain missile end-uses; certain chemical and biological weapons end-uses; certain naval nuclear propulsion end-uses; certain activities of U.S. persons; and certain exports to and for the use of certain foreign vessels and aircraft. Licensing requirements and policies for these exports are contained in part 744 of the EAR.

(f) *Overlapping license policies.* Many items on the CCL are subject to more than one type of control (e.g., national security (NS), missile technology (MT), nuclear nonproliferation (NP), regional stability (RS)). In addition, applications for all items on the CCL, other than those controlled for short supply reasons, may be reviewed for missile technology (see § 742.5(b)(3) of this part), nuclear nonproliferation (see § 742.3(b)(2) of this part), or chemical and biological weapons (see § 742.2(b)(3) of this part), if the end-use or end-user may be involved in certain proliferation activities. Finally, many multilaterally controlled items are reviewed for anti-terrorism reasons if they are destined for a terrorism-supporting country (see paragraph (d) of this section). Your application for a license will be reviewed under all applicable licensing policies. A license will be issued only if an application can be approved under all applicable licensing policies.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25458, May 9, 1997; 65 FR 38151, June 19, 2000; 69 FR 23629, Apr. 29, 2004; 69 FR 46075, July 30, 2004]

§ 742.2 Proliferation of chemical and biological weapons.

(a) *License requirements.* The following controls are maintained in support of the U.S. foreign policy of opposing the proliferation and illegal use of chemical and biological weapons. (See also § 742.18 of this part for license requirements pursuant to the Chemical Weapons Convention).

(1) If CB Column 1 of the Country Chart (Supplement No. 1 to part 738 of

the EAR) is indicated in the appropriate ECCN, a license is required to all destinations, including Canada, for the following:

(i) Human pathogens, zoonoses, toxins, animal pathogens, genetically modified microorganisms and plant pathogens identified in ECCNs 1C351, 1C352, 1C353 and 1C354; and

(ii) Technology (ECCNs 1E001 and 1E351) for the production and/or disposal of microbiological commodities described in paragraph (a)(1)(i) of this section.

(2) If CB Column 2 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to all destinations except countries in Country Group A:3 (see Supplement No. 1 to part 740 of the EAR) (Australia Group members) for the following:

(i) Chemicals identified in ECCN 1C350 (precursor and intermediate chemicals used in the production of chemical warfare agents).

(A) This license requirement includes chemical mixtures identified in ECCN 1C350.b, .c, or .d, except as specified in License Requirements Note 2 to that ECCN.

(B) This licensing requirement does not include chemical compounds created with any chemicals identified in ECCN 1C350, unless those compounds are also identified in ECCN 1C350.

(C) This licensing requirement does not apply to any of the following medical, analytical, diagnostic, and food testing kits that consist of pre-packaged materials of defined composition that are specifically developed, packaged, and marketed for diagnostic, analytical, or public health purposes:

(*1*) Test kits containing no more than 300 grams of any chemical controlled by ECCN 1C350.b or .c (CB-controlled chemicals also identified as Schedule 2 or 3 chemicals under the CWC) that are destined for export or reexport to CWC States Parties (destinations listed in Supplement No. 2 to part 745 of the EAR). Such test kits are controlled by ECCN 1C395 for CB and CW reasons, to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR), and for AT reasons.

(*2*) Test kits that contain no more than 300 grams of any chemical controlled by ECCN 1C350.d (CB-controlled chemicals not also identified as Schedule 1, 2, or 3 chemicals under the CWC). Such test kits are controlled by ECCN 1C995 for AT reasons.

(ii) Software (ECCN 1D390) for process control that is specifically configured to control or initiate production of the chemical precursors controlled by ECCN 1C350.

(iii) Technology (ECCN 1E001) for the development or production of chemical detection systems and dedicated detectors therefore, controlled by ECCN 1A004.c, that also have the technical characteristics described in ECCN 2B351.a.

(iv) Technology (ECCNs 1E001 and 1E350) involving the following for facilities designed or intended to produce chemicals described in 1C350:

(A) Overall plant design;

(B) Design, specification, or procurement of equipment;

(C) Supervision of construction, installation, or operation of complete plant or components thereof;

(D) Training of personnel; or

(E) Consultation on specific problems involving such facilities.

(v) Technology (ECCNs 1E001 and 1E351) for the production and/or disposal of chemical precursors described in ECCN 1C350;

(vi) Equipment and materials identified in ECCN 2B350 or 2B351 on the CCL, chemical detection systems controlled by 1A004.c for detecting chemical warfare agents and having the characteristics of toxic gas monitoring systems described in 2B351.a, and valves controlled by ECCN 2A226 or ECCN 2A292 having the characteristics of those described in 2B350.g, which can be used in the production of chemical weapons precursors or chemical warfare agents.

(vii) Equipment and materials identified in ECCN 2B352, which can be used in the production of biological agents.

(viii) Technology identified in ECCN 2E001, 2E002, or 2E301 for:

(A) The development, production, or use of items controlled by ECCN 2B350, 2B351, or 2B352; or

(B) The development or production of valves controlled by ECCN 2A226 or

2A292 having the characteristics of those described in ECCN 2B350.g.

(ix) Technology identified in ECCN 2E201 or 2E290 for the use of valves controlled by ECCN 2A226 or 2A292 having the characteristics of those described in 2B350.g.

(3) If CB Column 3 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to Country Group D:3 (*see* Supplement No. 1 to part 740 of the EAR) for medical products identified in ECCN 1C991.d.

(4) A license is required, to States not Party to the CWC (destinations not listed in Supplement No. 2 to Part 745 of the EAR), for mixtures controlled by 1C395.a and test kits controlled by 1C395.b.

(b) *Licensing policy*. (1) License applications for the items described in paragraph (a) of this section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the design, development, production, stockpiling or use of chemical or biological weapons. When an export or reexport is deemed to make such a material contribution, the license will be denied. When an export or reexport is intended to be used in a chemical weapons or biological weapons program, or for chemical or biological weapons terrorism purposes, it is deemed to make a material contribution. The factors listed in paragraph (b)(2) of this section are among those that will be considered to determine what action should be taken on license applications for these items.

(2) The following factors are among those that will be considered to determine what action should be taken on license applications for the items described in paragraph (a) of this section:

(i) The specific nature of the end-use, including the appropriateness of the stated end-use;

(ii) The significance of the export and reexport in terms of its potential contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The nonproliferation credentials of the importing country, including the importing country's chemical and biological capabilities and objectives;

(iv) The extent and effectiveness of the export control system in the importing country and in any intermediary country through which the items being exported or reexported will transit or be transshipped en route to the importing country;

(v) The risk that the items will be diverted for use in a chemical weapons or biological weapons program, or for chemical weapons or biological weapons terrorism purposes;

(vi) The reliability of the parties to the transaction, including whether:

(A) An export or reexport license application involving any such parties has previously been denied;

(B) Any such parties have been engaged in clandestine or illegal procurement activities;

(C) The end-user is capable of securely handling and storing the items to be exported or reexported;

(vii) Relevant information about proliferation and terrorism activities, including activities involving the design, development, production, stockpiling, or use of chemical or biological weapons by any parties to the transaction;

(viii) The types of assurances or guarantees against the design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case, including any relevant assurances provided by the importing country or the end-user;

(ix) The applicability of other multilateral export control or nonproliferation agreements (*e.g.*, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention) to the transaction; and

(x) The existence of a pre-existing contract.

(3) BIS will review license applications in accordance with the licensing policy described in paragraph (b)(1) of this section for items not described in paragraph (a) of this section that:

(i) Require a license for reasons other than short supply; *and*

(ii) Could be destined for the design, development, production, stockpiling, or use of chemical or biological weapons, or for a facility engaged in such activities.

(c) *Contract sanctity*. Contract sanctity dates are set forth in Supplement

No. 1 to part 742. Applicants who wish that a preexisting contract be considered in reviewing their license applications must submit documentation sufficient to establish the existence of such a contract.

(d) *Australia Group.* The Australia Group, a multilateral body that works to halt the spread of chemical and biological weapons, has developed common control lists of items specifically related to chemical and biological weapons. Australia Group members are listed in Country Group A:3 (see Supplement No. 1 to part 740 of the EAR). Controls on items listed in paragraph (a) of this section are consistent with lists agreed to in the Australia Group.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25458, May 9, 1997; 63 FR 42228, Aug. 7, 1998; 64 FR 27142, May 18, 1999; 64 FR 28909, May 28, 1999; 66 FR 49524, Sept. 28, 2001; 67 FR 37982, May 31, 2002; 67 FR 55598, Aug. 29, 2002; 68 FR 34529, June 10, 2003; 68 FR 67031, Dec. 1, 2003; 69 FR 42865, July 19, 2004; 69 FR 77893, Dec. 29, 2004; 70 FR 2349, Jan. 13, 2005; 70 FR 19690, Apr. 14, 2005]

§742.3 Nuclear nonproliferation.

(a) *License requirements.* Section 309(c) of the Nuclear Non-Proliferation Act of 1978 requires BIS to identify items subject to the EAR that could be of significance for nuclear explosive purposes if used for activities other than those authorized at the time of export or reexport. ECCNs on the CCL that include the symbol ''NP 1'' or ''NP 2'' in the ''Country Chart'' column of the ''License Requirements'' section identify items that could be of significance for nuclear explosive purposes and are therefore subject to licensing requirements under this part and under section 309(c) of the Nuclear Non-Proliferation Act of 1978. These items are referred to as ''The Nuclear Referral List'' and are subject to the following licensing requirements:

(1) If NP Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to all destinations except Nuclear Suppliers Group (NSG) member countries (Country Group A:4) (see Supplement No. 1 to part 740 of the EAR).

(2) If NP Column 2 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the applicable ECCN, a license is required to Country Group D:2 (see Supplement No. 1 to part 740 of the EAR) except India.

(3) Other nuclear-related license requirements are described in §§744.2 and 744.5 of the EAR.

(b) *Licensing policy.* (1) To implement the controls in paragraph (a) of this section, the following factors are among those used to determine what action should be taken on individual applications:

(i) Whether the items to be transferred are appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;

(ii) The significance for nuclear purposes of the particular item;

(iii) Whether the items to be exported or reexported are to be used in research on, or for the development, design, manufacture, construction, operation, or maintenance of, any reprocessing or enrichment facility;

(iv) The types of assurances or guarantees given against use for nuclear explosive purposes or proliferation in the particular case;

(v) Whether any party to the transaction has been engaged in clandestine or illegal procurement activities;

(vi) Whether an application for a license to export or reexport to the end-user has previously been denied, or whether the end-user has previously diverted items received under a general license, a License Exception, or a validated license to unauthorized activities;

(vii) Whether the export or reexport would present an unacceptable risk of diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity described in §744.2(a) of the EAR; and

(viii) The nonproliferation credentials of the importing country, based on consideration of the following factors:

(A) Whether the importing country is a party to the Nuclear Non-Proliferation Treaty (NPT) or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) or to a similar international legally-binding nuclear nonproliferation agreement;

(B) Whether the importing country has all of its nuclear activities, facilities, or installations that are operational, being designed, or under construction under International Atomic Energy Agency (IAEA) safeguards or equivalent full scope safeguards;

(C) Whether there is an agreement for cooperation in the civil uses of atomic energy between the U.S. and the importing country;

(D) Whether the actions, statements, and policies of the government of the importing country are in support of nuclear nonproliferation and whether that government is in compliance with its international obligations in the field of non-proliferation;

(E) The degree to which the government of the importing country cooperates in non-proliferation policy generally (e.g., willingness to consult on international nonproliferation issues); and

(F) Information on the importing country's nuclear intentions and activities.

(2) In addition, BIS will review license applications in accordance with the licensing policy described in paragraph (b) of this section for items *not* on the Nuclear Referral List that:

(i) Require a license on the CCL for reasons other than ''short supply;'' and

(ii) Are intended for a nuclear related end-use or end-user.

(3) For the People's Republic of China, the general licensing policy for applications for those items that would make a direct and significant contribution to nuclear weapons and their delivery systems is extended review or denial.

(c) *Contract sanctity*. Contract sanctity provisions are not available for license applications reviewed under this section.

(d) *Nuclear Suppliers Group*. Most items on the Nuclear Referral List that require a license under NP Column No. 1 on the Country Chart (see Supplement No. 1 to part 738 of the EAR) are contained in the Annex to the ''Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology'' (the Annex), as published by the International Atomic Energy Agency in INFCIRC/254/Revision 1/Part 2. The adherents to INFCIRC/254/Revision 1/Part 2, which includes the Nuclear Suppliers Guidelines, have agreed to establish export licensing procedures for the transfer of items identified in the Annex. Items that are listed as requiring a license under NP Column No. 2 on the Country Chart (see Supplement No. 1 to part 738 of the EAR) are not included in the Annex and are controlled only by the United States.

[61 FR 12786, Mar. 25, 1996, as amended at 70 FR 51252, Aug. 30, 2005]

§ 742.4 National security.

(a) *License requirements.* It is the policy of the United States to restrict the export and reexport of items that would make a significant contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States. Accordingly, a license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include NS Column 1 in the Country Chart column of the ''License Requirements'' section. A license is required to all destinations except Country Group A:1 and cooperating countries (see Supplement No. 1 to part 740), Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia for all items in ECCNs on the CCL that include NS Column 2 in the Country Chart column of the ''License Requirements'' section. The purpose of the controls is to ensure that these items do not make a contribution to the military potential of countries in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) that would prove detrimental to the national security of the United States. License Exception GBS is available for the export and reexport of certain national security controlled items to Country Group B (see § 740.4 and Supplement No. 1 to part 740 of the EAR).

(b) *Licensing policy*. (1) The policy for national security controlled items exported or reexported to any country except a country in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) is to approve applications unless there is a significant risk that the

items will be diverted to a country in Country Group D:1.

(2) Except for those countries described in paragraphs (b)(5) through (b)(7) of this section, the general policy for exports and reexports of items to Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) is to approve applications when BIS determines, on a case-by-case basis, that the items are for civilian use or would otherwise not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States.

(3) To permit such policy judgments to be made, each application is reviewed in the light of prevailing policies with full consideration of all aspects of the proposed transaction. The review generally includes:

(i) An analysis of the kinds and quantities of items to be shipped;

(ii) Their military or civilian uses;

(iii) The unrestricted availability abroad of the same or comparable items;

(iv) The country of destination;

(v) The ultimate end-users in the country of destination; and

(vi) The intended end-use.

(4) Although each proposed transaction is considered individually, items described in Advisory Notes on the Commerce Control List are more likely to be approved than others.

(5) In recognition of efforts made to adopt safeguard measures for exports and reexports, Kazakhstan, Mongolia, and Russia are accorded enhanced favorable consideration licensing treatment.

(6) The general policy for Cambodia and Laos is to approve license applications when BIS determines, on a case-by-case basis, that the items are for an authorized use in Cambodia or Laos and are not likely to be diverted to another country or use contrary to the national security or foreign policy controls of the United States.

(7) For the People's Republic of China, the general licensing policy is to approve applications, except that those items that would make a direct and significant contribution to electronic and anti-submarine warfare, intelligence gathering, power projection, and air superiority receive extended review or denial. Each application will be considered individually. Items may be approved even though they may contribute to Chinese military development or the end-user or end-use is military. Note that the Advisory Notes in the CCL headed ''Note for the People's Republic of China'' provide guidance on equipment likely to be approved more rapidly for China.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(d) [Reserved]

[61 FR 12786, Mar. 25, 1996, as amended at 61 FR 64283, Dec. 4, 1996; 70 FR 67348, Nov. 7, 2005]

§742.5 Missile technology.

(a) *License requirements.* (1) In support of U.S. foreign policy to limit the proliferation of missiles, a license is required to export and reexport items related to the design, development, production, or use of missiles. These items are identified in ECCNs on the CCL as MT Column No. 1 in the Country Chart column of the ''License Requirements'' section. Licenses for these items are required to all destinations, except Canada, as indicated by MT Column 1 of the Country Chart (see Supplement No. 1 to part 738 of the EAR).

(2) The term ''missiles'' is defined as rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least 500 kilograms (kg) payload to a range of a least 300 kilometers (km). See §746.3 of the EAR for definition of a ''ballistic missile'' to be exported or reexported to Iraq.

(b) *Licensing policy.* (1) Applications to export and reexport items identified in ECCNs on the CCL as MT Column No. 1 in the Country Chart column of the ''License Requirements'' section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the proliferation of missiles. Applications for exports and reexports of such items contained in Category 7A or described by ECCN

9A101 on the CCL will be considered more favorably if such exports or reexports are determined to be destined to a manned aircraft, satellite, land vehicle, or marine vessel, in quantities appropriate for replacement parts for such applications. When an export or reexport is deemed to make a material contribution to the proliferation of missiles, the license will be denied.

(2) The following factors are among those that will be considered in reviewing individual applications.

(i) The specific nature of the end-use;

(ii) The significance of the export and reexport in terms of its contribution to the design, development, production, or use of missiles;

(iii) The capabilities and objectives of the missile and space programs of the recipient country;

(iv) The nonproliferation credentials of the importing country;

(v) The types of assurances or guarantees against design, development, production, or use of missiles that are given in a particular case; and

(vi) The existence of a preexisting contract.

(3) *Controls on other items.* BIS will review license applications, in accordance with the licensing policy described in paragraph (b)(1) of this section, for items not described in paragraph (a) of this section that:

(i) Require a validated license for reasons other than short supply; and

(ii) Could be destined for the design, development, production, or use of missiles, or for a facility engaged in such activities.

(c) *Contract sanctity.* The following contract sanctity dates have been established:

(1) License applications for batch mixers specified in ECCN 1B117 involving contracts that were entered into prior to January 19, 1990, will be considered on a case-by-case basis.

(2) License applications subject to ECCN 1B115.b or .c that involve a contract entered into prior to March 7, 1991, will be considered on a case-by-case basis.

(3) Applicants who wish that a preexisting contract be considered in reviewing their license applications must submit documentation sufficient to establish the existence of a contract.

(d) *Missile Technology Control Regime.* Missile Technology Control Regime (MTCR) members are listed in Country Group A:2 (see Supplement No. 1 to part 740 of the EAR). Controls on items identified in paragraph (a) of this section are consistent with the list agreed to in the MTCR and included in the MTCR Annex.

[61 FR 12786, Mar. 25, 1996, as amended at 68 FR 16147, Apr. 2, 2003; 69 FR 46075, July 30, 2004]

§ 742.6 Regional stability.

(a) *License requirements.* The following controls are maintained in support of U.S. foreign policy to maintain regional stability:

(1) As indicated in the CCL and in RS Column 1 of the Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3 and b.4; 6A008.j.1; 6A998.b; 6D001 (only ''software'' for the ''development'' or ''production'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only ''software'' for the ''use'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D991 (only ''software'' for the ''development,'' ''production,'' or ''use'' of equipment controlled by 6A002.e or 6A998.b); 6E001 (only ''technology'' for ''development'' of items in 6A002.a.1, a.2, a.3, and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only ''technology'' for ''production'' of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only ''technology'' for the ''development,'' ldquo;production,'' or ''use'' of equipment controlled by 6A998.b); 7D001 (only ''software'' for ''development'' or ''production'' of items in 7A001, 7A002, or 7A003); 7E001 (only ''technology'' for the ''development'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only ''technology'' for the ''production'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only ''technology'' for the ''use'' of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft).

(2) As indicated in the CCL and in RS Column 2 of the Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except Australia, Japan, New Zealand, and countries in the North Atlantic Treaty Organization (NATO) for items described on the CCL under ECCNs 0A918, 0E918, 2A983, 2D983, 2E983, 8A918, and for military vehicles and certain commodities (specially designed) used to manufacture military equipment, described on the CCL in ECCNs 0A018.c, 1B018.a, 2B018, and 9A018.a and .b.

(b) *Licensing policy*. (1) Applications to export and reexport items described in paragraph (a)(1) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States.

(2) Applications to export and reexport commodities described in paragraph (a)(2) of this section will generally be considered favorably on a case-by-case basis unless there is evidence that the export or reexport would contribute significantly to the destabilization of the region to which the equipment is destined.

(3) For terrorist-designated countries, the applicable licensing policies are found in parts 742 and 746 of the EAR.

(c) *Contract sanctity date:* March 21, 2003. This contract sanctity date applies only to items controlled under ECCNs 2A983, 2D983 and 2E983 destined for countries not listed in Country Group E (Supplement 1 to part 740). See parts 742 and 746 for the contract sanctity requirements applicable to exports and reexports to countries listed in Country Group E.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining regional stability controls, at this time these controls are maintained only by the United States.

[61 FR 12786, Mar. 25, 1996, as amended at 63 FR 2458, Jan. 15, 1998; 67 FR 11897, Mar. 18, 2002; 67 FR 59725, Sept. 23, 2002; 68 FR 16211, Apr. 3, 2003; 69 FR 16480, Mar. 30, 2004; 69 FR 36010, June 28, 2004]

§742.7 Crime control.

(a) *License requirements.* In support of U.S. foreign policy to promote the observance of human rights throughout the world, a license is required to export and reexport crime control and detection equipment, related technology and software as follows:

(1) Crime control and detection instruments and equipment and related technology and software identified in the appropriate ECCNs on the CCL under CC Column 1 in the Country Chart column of the ''License Requirements'' section. A license is required to countries listed in CC Column 1 (Supplement No. 1 to part 738 of the EAR). Items affected by this requirement are identified on the CCL under the following ECCNs: 0A978, 0A979, 0A984, 0A987, 0E984, 1A984, 1A985, 3A980, 3A981, 3D980, 3E980, 4A003 (for fingerprint computers only), 4A980, 4D001 (for fingerprint computers only), 4D980, 4E001 (for fingerprint computers only), 4E980, 6A002 (for police-model infrared viewers only), 6E001 (for police-model infrared viewers only), 6E002 (for police-model infrared viewers only), and 9A980.

(2) Shotguns with a barrel length greater than or equal to 24 inches, identified in ECCN 0A984 on the CCL under CC Column 2 in the Country Chart column of the ''License Requirements'' section regardless of end-user to countries listed in CC Column 2 (Supplement No. 1 part 738 of the EAR).

(3) Shotguns with barrel length greater than or equal to 24 inches, identified in ECCN 0A984 on the CCL under CC Column 3 in the Country Chart column of the ''License Requirements'' section only if for sale or resale to police or law enforcement entities in countries listed in CC Column 3 (Supplement No. 1 part 738 of the EAR).

(4) Certain crime control items require a license to all destinations, except Canada. These items are identified under ECCNs 0A982, 0A985, and 0E982.

Controls for these items appear in each ECCN; a column specific to these controls does not appear in the Country Chart (Supplement No. 1 to part 738 of the EAR).

(5) See § 742.11 of the EAR for further information on items controlled under ECCN 0A983, which require a license to all destinations, including Canada.

(b) *Licensing policy*. Applications for items controlled under this section will generally be considered favorably on a case-by-case basis unless there is civil disorder in the country or region or unless there is evidence that the government of the importing country may have violated internationally recognized human rights. The judicious use of export controls is intended to deter the development of a consistent pattern of human rights abuses, distance the United States from such abuses and avoid contributing to civil disorder in a country or region.

(c) *Contract sanctity*. Contract sanctity date: August 22, 2000. Contract sanctity applies only to items controlled under ECCNs 0A982, 0A985 and 0E982 destined for countries not listed in CC Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR).

(d) *U.S. controls*. Although the United States seeks cooperation from like-minded countries in maintaining controls on crime control and detection items, at this time these controls are maintained only by the United States.

[65 FR 55178, Sept. 13, 2000]

§ 742.8 Anti-terrorism: Iran.

(a) *License requirements*. (1) If AT column 1 or AT column 2 of the Country Chart (Supplement No. 1 to Part 738 of the EAR) is indicated in the appropriate ECCN, a license is required for export to Iran for anti-terrorism purposes. In addition, portable electric power generators and related software and technology (ECCNs 2A994, 2D994 and 2E994) are controlled for export to Iran for anti-terrorism purposes. See paragraph (a)(5) of this section for controls maintained by the Department of the Treasury.

(2) If AT column 1 or AT column 2 of the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required for *reexport* to Iran for anti-terrorism purposes, *except* for ECCNs 2A994; 3A992.a; 5A991.g; 5A992; 6A991; 6A998; 7A994; 8A992.d, .e, .f, and .g; 9A990.a and .b; and 9A991.d and .e. In addition, items in these ECCNs are not counted as controlled U.S. content for the purpose of determining license requirements for U.S. parts, components or materials incorporated into foreign made products. However, the export from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Iran is prohibited without a license. See paragraph (a)(5) of this section for controls maintained by the Department of the Treasury.

(3) The Secretary of State has designated Iran as a country whose Government has repeatedly provided support for acts of international terrorism.

(4) In support of U.S. foreign policy on terrorism-supporting countries, BIS maintains two types of anti-terrorism controls on the export and reexport of items described in Supplement 2 to part 742.

(i) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 are controlled under section 6(j) of the Export Administration Act, as amended (EAA), if destined to military, police, intelligence or other sensitive end-users.

(ii) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to non-sensitive end-users, as well as items described in paragraphs (c)(6) through (c)(44) to all end-users, are controlled to Iran under section 6(a) of the EAA. (See Supplement No. 2 to part 742 for more information on items controlled under sections 6(a) and 6(j) of the EAA and § 750.6 of the EAR for procedures for processing license applications for items controlled under EAA section 6(j).)

(5) Exports and certain reexports to Iran are subject to a comprehensive embargo administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC). If you wish to export or reexport to Iran, the Government of Iran or any entity owned or controlled by that Government, you should review part 746 of the EAR and consult with OFAC. Please

note that authorization from OFAC constitutes authorization under the EAR and no separate license or authorization from BIS is required.

(b) *Licensing policy.* (1) The Iran-Iraq Arms Non-Proliferation Act of October 23, 1992, requires BIS to deny licenses for items controlled to Iran for national security (section 5 of the 1979 EAA) or foreign policy reasons (section 6 of the 1979 EAA), absent contract sanctity or a Presidential waiver. License applications for which contract sanctity is established may be considered under policies in effect prior to the enactment of that Act. Otherwise, licenses for such items to Iran are subject to a general policy of denial.

(2) License applications for items controlled under section 6(a) of the EAA will also be reviewed to determine whether requirements of section 6(j) apply. Whenever the Secretary of State determines that an export or reexport could make a significant contribution to the military potential of Iran, including its military logistics capability, or could enhance Iran's ability to support acts of international terrorism, the Secretaries of State and Commerce will notify the Congress 30 days prior to the issuance of a license.

(c) *Contract sanctity.* Contract sanctity dates and related policies for Iran are listed in Supplement No. 2 to part 742. Applicants who wish a pre-existing contract to be considered must submit sufficient evidence to establish the existence of a contract.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining anti-terrorism controls, at this time these controls are maintained only by the United States.

[61 FR 12786, Mar. 25, 1996, as amended at 63 FR 42228, Aug. 7, 1998; 64 FR 27142, May 18, 1999; 65 FR 34075, May 26, 2000; 66 FR 36682, July 12, 2001; 68 FR 16212, Apr. 3, 2003]

§ 742.9 Anti-terrorism: Syria.

(a) *License requirements.* (1) If AT Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required for export and reexport to Syria for anti-terrorism purposes.

(2) The Secretary of State has designated Syria as a country whose government has repeatedly provided support for acts of international terrorism.

(3) In support of U.S. foreign policy against terrorism, BIS maintains two types of anti-terrorism controls on the export and reexport to Syria of items described in Supplement No. 2 to part 742.

(i) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742, if destined to military, police, intelligence or other end-users in Syria, are controlled under section 6(j) of the Export Administration Act, as amended (EAA).

(ii) Items listed in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to other end-users in Syria, as well as items to all end-users listed in (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through (c)(19), and (c)(22) through (c)(44) of Supplement No. 2 to part 742, are controlled to Syria under section 6(a) of the EAA.

(b) *Licensing policy.* (1) Applications for export and reexport to all end-users in Syria of the following items will generally be denied:

(i) Items that are controlled for chemical and biological weapons proliferation reasons to any destination. These are items that contain CB Column 1, CB Column 2, or CB Column 3 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(ii) Military-related items controlled for national security reasons to any destination. These are items that contain NS Column 1 in the Country Chart column of the ''License Requirements'' section in an ECCN on the CCL *and* is controlled by equipment or material entries ending in the number ''18.''

(iii) Items that are controlled for missile proliferation reasons to any destination. These are items that have an MT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(iv) All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components, except that parts and components intended to ensure the safety of civil

aviation and the safe operation of commercial passenger aircraft will be reviewed on a case-by-case basis, with a presumption of approval. These are items controlled to any destination for national security and missile technology reasons and items controlled to Syria for anti-terrorism purposes. Such items contain an NS Column 1, NS Column 2, MT Column 1, or AT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL. Note that, consistent with the general rule that applies to computing U.S. parts and components content incorporated into foreign made products, all aircraft-related items that require a license to Syria will be included as controlled U.S. content, except for ECCNs 6A998, 7A994, and 9A991.d, for purposes of such licensing requirements.

(v) Cryptographic, cryptoanalytic, and cryptologic items controlled to any destination for national security reasons. Such items contain an AT Column 1 and an NS Column 1 or NS Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(vi) Explosives detection equipment controlled under ECCN 2A983.

(vii) ''Software'' (ECCN 2D983) specially designed or modified for the ''development'', ''production'' or ''use'' of explosives detection equipment controlled by 2A983.

(viii) ''Technology'' (ECCN 2E983) specially designed or modified for the ''development'', ''production'' or ''use'' of explosives detection equipment controlled by 2A983.

(ix) Commercial charges and devices controlled under ECCN 1C992.

(x) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997.

(xi) Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals controlled under ECCN 1E355.

(2) Applications for export and reexport to Syria of all other items described in paragraph (a) of this section, and not described by paragraph (b)(1) of this section, will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2), of this section, applications for Syria will be considered on a case-by-case basis if:

(i) The transaction involves the reexport to Syria of items where Syria was not the intended ultimate destination at the time of original export from the United States, provided that the exports from the U.S. occurred prior to the applicable contract sanctity date (or, where the contract sanctity date is December 16, 1986, prior to June 18, 1987).

(ii) The U.S. content of foreign-produced commodities is 20% or less by value; or

(iii) The commodities are medical items.

NOTE TO PARAGRAPH (b) OF THIS SECTION: Applicants who wish any of the factors described in paragraph (b) of this section to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content, the specifications and medical use of the equipment, or the date of export from the United States.

(4) License applications for items reviewed under 6(a) controls will also be reviewed to determine the applicability of 6(j) controls to the transaction. When it is determined that an export or reexport could make a significant contribution to the military potential of Syria, including its military logistics capability, or could enhance Syria's ability to support acts of international terrorism, the Secretaries of State and Commerce will notify the Congress 30 days prior to issuance of a license.

(c) *Contract sanctity.* Contract sanctity dates and related licensing policies for Syria are set forth in Supplement No. 2 to part 742. Applicants who wish a pre-existing contract to be considered must submit sufficient documentation to establish the existence of a contract.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining anti-terrorism controls, at this time these

controls are maintained only by the United States.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997; 63 FR 42228, Aug. 7, 1998; 64 FR 27142, May 18, 1999; 64 FR 47667, Sept. 1, 1999; 64 FR 50248, Sept. 16, 1999; 66 FR 36682, July 12, 2001; 68 FR 16212, Apr. 3, 2003]

§ 742.10 Anti-terrorism: Sudan.

(a) *License requirements.* (1) If AT column 1 or AT column 2[1] of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required for export to Sudan for anti-terrorism purposes.

(2) If AT column 1 or AT column 2 of the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required for *reexport* to Sudan for anti-terrorism purposes, *except* for ECCNs 2A994; 3A992.a; 5A991.g; 5A992; 6A991; 6A998; 7A994; 8A992.d, .e, .f, and .g; 9A990.a and .b; and 9A991.d and .e. In addition, items in these ECCNs are not counted as controlled U.S. content for the purpose of determining license requirements for U.S. parts, components or materials incorporated into foreign made products. However, the export from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Sudan is prohibited without a license.

(3) The Secretary of State has designated Sudan as a country whose government has repeatedly provided support for acts of international terrorism.

(4) In support of U.S. foreign policy against terrorism, BIS maintains anti-terrorism controls on the export and reexport to Sudan of items described in Supplement No. 2 to part 742.

(i) Items described in paragraph (c)(1) through (c)(5) of Supplement No. 2 to part 742 if destined to military, police, intelligence or other sensitive end-users in Sudan are controlled under section 6(j) of the Export Administration Act, as amended (EAA).

(ii) Items listed in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to other end-users in Sudan, as well as items to all end-users listed in (c)(6) through (c)(14) and (c)(16) through (c)(44) of Supplement No. 2 to part 742 are controlled to Sudan under section 6(a) of the EAA.

(b) *Licensing policy.* (1) Applications for export and reexport to all end-users in Sudan of the following items will generally be denied:

(i) Items that are controlled for chemical and biological weapons proliferation reasons to any destination. These are items that contain CB Column 1, CB Column 2, or CB Column 3 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(ii) Military-related items controlled for national security reasons to any destination. These are items that contain NS Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL and is controlled by equipment or material entries ending in the number ''18.''

(iii) Items that are controlled for missile proliferation reasons to any destination. These are items that contain a MT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(iv) All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components. These are items controlled to any destination for national security reasons and items controlled to Sudan for anti-terrorism reasons. Such items contain an NS Column 1, NS Column 2, or AT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL. Note that, consistent with the general rule that applies to computing U.S. parts and components content incorporated in foreign made products, all aircraft-related items that require a license to Sudan will be included as controlled US content for purposes of such license requirements.

(v) Cryptographic, cryptoanalytic, and cryptologic items controlled to any destination. These are items that contain an NS Column 1, NS Column 2,

[1] AT column 1 refers to items controlled to Iran, Sudan, and Syria for anti-terrorism purposes. AT column 2 refers to additional items controlled to Iran and Sudan for anti-terrorism purposes. In addition, items included in ECCNs 2A994, 2D994 and 2E994 are controlled to Iran for anti-terrorism purposes.

AT Column 1 or AT Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(vi) Explosives detection equipment controlled under ECCN 2A983.

(vii) ''Software'' (ECCN 2D983) specially designed or modified for the ''development'', ''production'' or ''use'' of explosives detection equipment controlled by 2A983.

(viii) ''Technology'' (ECCN 2E983) specially designed or modified for the ''development'', ''production'' or ''use'' of explosives detection equipment controlled by 2A983.

(ix) Commercial charges and devices controlled under ECCN 1C992.

(x) Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals controlled under ECCN 1E355.

(xi) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997.

(2) Applications for the export and reexport of all other items described in paragraph (a) of this section, and not described in paragraph (b)(1) of this section, will be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section, applications for Sudan will be considered on a case-by-case basis if:

(i) The transaction involves the reexport to Sudan of items where Sudan was not the intended ultimate destination at the time of original export from the United States, provided that the exports from the U.S. occurred prior to the applicable contract sanctity date.

(ii) The U.S. content of foreign-produced commodities is 20% or less by value; or

(iii) The commodities are medical items.

NOTE TO PARAGRAPH (b) OF THIS SECTION: Applicants who wish any of the factors described in paragraph (b)(4) of this section to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content, the specifications and medical use of the equipment, or the date of export from the United States.

(4) License applications for items reviewed under 6(a) controls will also be reviewed to determine the applicability of 6(j) controls to the transaction. When it is determined that an export or reexport could make a significant contribution to the military potential of Sudan, including its military logistics capability, or could enhance Sudan's ability to support acts of international terrorism, the appropriate committees of the Congress will be notified 30 days before issuance of a license to export or reexport such items.

(c) *Contract sanctity.* Contract sanctity dates and related licensing information for Sudan are set forth in Supplement No. 2 to part 742. Applicants who wish a pre-existing contract to be considered must submit sufficient documentation to establish the existence of a contract.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining anti-terrorism controls, at this time these controls are maintained only by the United States.

[61 FR 12786, Mar. 25, 1996, as amended at 63 FR 42228, Aug. 7, 1998; 64 FR 27142, May 18, 1999; 64 FR 47667, Sept. 1, 1999; 65 FR 14859, Mar. 20, 2000; 65 FR 34075, May 26, 2000; 66 FR 36682, July 12, 2001; 68 FR 16212, Apr. 3, 2003]

§ 742.11 Specially designed implements of torture.

(a) *License requirements.* In support of U.S. foreign policy to promote the observance of human rights throughout the world, a license is required to export specially designed implements of torture controlled by 0A983 to all destinations, including Canada.

(b) *Licensing policy.* Applications for such licenses will generally be denied to all destinations.

(c) *Contract sanctity.* The contract sanctity date is November 9, 1995. Contract sanctity will be a factor in considering only applications for export to the NATO countries, Japan, Australia, and New Zealand.

(d) *U.S. controls.* Although the United States seeks cooperation from like-minded countries in maintaining controls on implements of torture, at this

time these controls are maintained only by the United States.

§742.12 High performance computers.

(a) *License and recordkeeping requirements.* (1) This section contains special provisions for exports, reexports, and certain intra-country transfers of high performance computers, including software, and technology. This section affects the following ECCNs: 4A001; 4A002; 4A003; 4D001; 4D002; and 4E001. Licenses are required under this section for ECCN's having an ''XP'' under ''Reason for Control'', unless a License Exception is available (see part 740 of the EAR). Post-shipment verification reporting or Wassenaar reporting may be required when exporting or reexporting ''XP'' items under the authorization of a License Exception (See 743.1 of the EAR for Wassenaar reporting requirements and paragraph (b)(3)(iv) of this section for post-shipment verification requirements). License requirements reflected in this section are based on particular destinations, end-users, or end-uses. For the calculation of CTP, see the Technical Note that follows the list of ECCNs for Category 4 in the Commerce Control List. Note that License Exception CTP contains restrictions on access by nationals of certain countries, and on reexports and transfers of computers.

(2) In recognition of the strategic and proliferation significance of high performance computers, a license is required for the export or reexport of high performance computers to destinations, end-users, and end-uses, as specified in this section and on the CCL. These license requirements supplement requirements that apply for other control reasons, such as nuclear nonproliferation provided in section 742.3 of the EAR. The license requirements described in this section 742.12 are not reflected on the Country Chart (Supplement No. 1 to part 738 of the EAR). Three Computer Country Tiers have been established for the purposes of these controls. Countries included in Computer Tiers 1 and 3 are listed in License Exception CTP in section 740.7 of the EAR. As of January 19, 2001 there is no longer a Computer Tier 2, and countries that were in Tier 2 are incorporated into Computer Tier 1. Computer Tier 4 consists of Cuba, Iran, Libya, North Korea, Sudan, and Syria.

(3) Exporters must keep accurate records of each export to non-Wassenaar member countries (see Supplement No. 1 to part 743 of the EAR) of a computer with a CTP greater than 190,000 MTOPS. These records must be submitted semiannually to BIS and must contain the information as described in §743.1 of the EAR.

(b) *Licensing policy.* Licensing policies described in this section vary according to the country of destination, and the end-use or end-user involved in the transaction. Note that in addition, license applications for items covered by §742.12 will also be reviewed under the nuclear nonproliferation licensing policy in §742.3(b). In certain cases, licenses may be subject to safeguard conditions. The specific conditions that may be imposed by BIS will depend on the country of destination, and the end-use or end-user of the export. BIS may also require end-use certification which, in appropriate cases, is certified by the government of the importing country. The range of possible safeguard conditions and related information are provided in Supplement No. 3 to part 742.

(1) *Computer Tier 1*—(i) *License requirement.* No license is required under this §742.12 for exports or reexports of computers to and among countries listed in Computer Tier 1, for consumption in such countries or other disposition in accordance with the EAR.

(ii) *Licensing policy.* A license is not required under this §742.12.

(2) [Reserved]

(3) *Computer Tier 3.* (i) *License requirement.* (A) A license is required to export or reexport computers to countries in Computer Tier 3 to nuclear, chemical, biological, or missile end-users and end-uses and military end-users and end-uses subject to license requirements under §744.2, §744.3, §744.4, §744.5, and §744.12 of the EAR in Computer Tier 3 countries.

(B) A license is required to export or reexport computers with a CTP greater than 190,000 MTOPS to a country in Computer Tier 3.

NOTE TO PARAGRAPH (b)(3)(i) OF THIS SECTION: Exporters are required to obtain a People's Republic of China (PRC) End-User Certificate before exporting computers described by paragraph (b)(3)(i) of this section to the PRC, regardless of value. (See § 748.10(c)(3) of the EAR for information on obtaining the PRC End-User Certificate.)

(ii) *Licensing policy for nuclear, chemical, biological, or missile end-users and end-uses and military end-users and end-uses.* License applications for exports and reexports to nuclear, chemical, biological, or missile end-users and end-uses and military end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, § 744.5, and § 744.12 of the EAR in countries in Computer Tier 3 will be reviewed on a case-by-case basis using the following criteria:

(A) The presence and activities of countries and end-users of national security and proliferation concern and the relationships that exist between the government of the importing country and such countries and end-users;

(B) The ultimate consignee's participation in, or support of, any of the following:

(*1*) Activities that involve national security concerns; or

(*2*) Nuclear, chemical, biological or missile proliferation activities described in part 744 of the EAR;

(C) The extent to which the importing country is involved in nuclear, chemical, biological, or missile proliferation activities described in part 744 of the EAR;

(D) The end-user, whether the end-use is single-purpose or multiple-purpose.

(iii) *Licensing policy for other end-users and end-uses.* License applications for exports and reexports to other end-uses and end-users located in Computer Tier 3 countries will generally be approved, except there is a presumption of denial for all applications for exports and reexports of high performance computers destined to Indian and Pakistani entities determined to be involved in nuclear, missile, or military activities included in Supplement No. 4 to part 744 (Entity List). All license applications for exports and reexports to India and Pakistan not meeting these criteria for presumption of denial will be considered on a case-by-case basis under other licensing policies set forth in the EAR applicable to such computers.

(iv) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of certain computers to destinations in Computer Tier 3. Post-shipment reports must be submitted in accordance with the provisions of this paragraph (b)(3)(iv), and all relevant records of such exports must be kept in accordance with part 762 of the EAR.

(A) Exporters must file post-shipment reports for high performance computer exports, as well as exports of items used to enhance previously exported or reexported computers, where the CTP is greater than 190,000 MTOPS.

(B) *Information that must be included in each post-shipment report.* No later than the last day of the month following the month in which the export takes place, the exporter must submit the following information to BIS at the address listed in paragraph (b)(3)(iv)(C) of this section:

(*1*) Exporter name, address, and telephone number;

(*2*) License number;

(*3*) Date of export;

(*4*) End-user name, point of contact, address, telephone number;

(*5*) Carrier;

(*6*) Air waybill or bill of lading number;

(*7*) Commodity description, quantities—listed by model numbers, serial numbers, and CTP level in MTOPS; and

(*8*) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

NOTE TO PARAGRAPH (b)(3)(iv)(B) OF THIS SECTION: Exporters are required to provide the PRC End-User Certificate Number to BIS as part of their post-shipment report (see paragraph (b)(3)(iv) of this section). When providing the PRC End-User Certificate Number to BIS, you must identify the transaction in the post shipment report to which that PRC End-User Certificate Number applies.

(C) *Mailing address.* A copy of the post-shipment report[s] required under paragraph (b)(3)(iv)(A) of this section shall be delivered to one of the following addresses. Note that BIS will not accept reports sent C.O.D.

(*1*) For deliveries by U.S. postal service: U.S. Department of Commerce, Bureau of Industry and Security, P.O. Box 273, Washington, D.C. 20044, Attn: Office of Enforcement Analysis HPC Team, Room 4065.

(*2*) For courier deliveries: U.S. Department of Commerce, Office of Enforcement Analysis HPC Team, 14th Street and Constitution Ave., NW, Room 4065, Washington, DC 20230.

(4) *Computer Tier 4*—(i) *License requirement.* A license is required to export or reexport any items covered by this section to a country in Country Tier 4.

(ii) *Licensing policy.* The licensing policies for countries in Computer Tier 4 are the same as described in the following EAR sections: for Sudan see § 742.10(b); for Syria see § 742.9(b); for Cuba see § 746.2; for Iran see § 746.7; for Libya see § 746.4; and for North Korea see § 742.19(b).

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications involving exports and reexports of high performance computers.

(d) *High performance computer regime.* The United States and Japan participate in a high performance computer regime. The regime provides uniform and effective safeguards to protect high performance computers from unauthorized destinations, end-users and end-uses.

[61 FR 12786, Mar. 25, 1996, as amended at 61 FR 64283, Dec. 4, 1996; 63 FR 2458, Jan. 15, 1998; 63 FR 5451, Feb. 3, 1998; 63 FR 63143, Nov. 12, 1998; 63 FR 64324, Nov. 19, 1998; 64 FR 2431, Jan. 14, 1999; 64 FR 42012, Aug. 3, 1999; 65 FR 12922, Mar. 10, 2000; 65 FR 38151, June 19, 2000; 65 FR 60855, Oct. 13, 2000; 66 FR 5446, Jan. 19, 2001; 67 FR 10615, 10610, Mar. 8, 2002; 67 FR 13567, Mar. 25, 2002; 69 FR 46076, July 30, 2004; 70 FR 41102, July 15, 2005]

§ 742.13 Communications intercepting devices.

(a) *License requirement.* (1) As set forth in ECCN 5A980, a license is required for the export or reexport to any destination, including Canada, of any electronic, mechanical, or other device primarily useful for surreptitious interception of wire or oral communications. This control implements a provision of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90–361). This license requirement is not reflected on the Country Chart (Supplement No. 1 to part 738 of the EAR).

(2) Communications intercepting devices are electronic, mechanical, or other devices that can be used for interception of wire or oral communications if their design renders them primarily useful for surreptitious listening even though they may also have innocent uses. A device is not restricted merely because it is small or may be adapted to wiretapping or eavesdropping. Some examples of devices to which these restrictions apply are: the martini olive transmitter; the infinity transmitter; the spike mike; and the disguised microphone appearing as a wristwatch, cufflink, or cigarette pack; etc. The restrictions do not apply to devices such as the parabolic microphone or other directional microphones ordinarily used by broadcasters at sports events, since these devices are not primarily useful for surreptitious listening.

(b) *Licensing policy.* (1) License applications will generally be approved for:

(i) A provider of wire or electronic communication services or an officer, agent, or employee of, or person under contract with, such a provider in the normal course of the business of providing that wire or electronic communication service; and

(ii) Officers, agents, or employees of, or person under contract with the United States, one of the 50 States, or a political subdivision thereof, when engaged in the normal course of government activities.

(2) Other applications will generally be denied.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications involving exports and reexports of communications interception devices.

(d) *U.S. controls.* Controls on this equipment are maintained by the United States government in accordance with the Omnibus Crime Control and Safe Streets Act of 1968.

§ 742.14 Significant items: hot section technology for the development, production or overhaul of commercial aircraft engines, components, and systems.

(a) *License requirement.* Licenses are required for all destinations, except Canada, for ECCNs having an ''SI'' under the ''Reason for Control'' paragraph. These items include hot section technology for the development, production or overhaul of commercial aircraft engines controlled under ECCN 9E003.a.1. through a.12., .f, and related controls.

(b) *Licensing policy.* Pursuant to section 6 of the Export Administration Act of 1979, as amended, foreign policy controls apply to technology required for the development, production or overhaul of commercial aircraft engines controlled by ECCN 9E003.a.1. through a.12, .f, and related controls. These controls supplement the national security controls that apply to these items. Applications for export and reexport to all destinations will be reviewed on a case-by-case basis to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. The following factors are among those that will be considered to determine what action will be taken on license applications:

(1) The country of destination;

(2) The ultimate end-user(s);

(3) The technology involved;

(4) The specific nature of the end-use(s); and

(5) The types of assurance against unauthorized use or diversion that are given in a particular case.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this § 742.14.

(d) [Reserved]

[64 FR 13339, Mar. 18, 1999]

§ 742.15 Encryption items.

Encryption items can be used to maintain the secrecy of information, and thereby may be used by persons abroad to harm U.S. national security, foreign policy and law enforcement interests. The United States has a critical interest in ensuring that important and sensitive information of the public and private sector is protected. Consistent with our international obligations as a member of the Wassenaar Arrangement, the United States has a responsibility to maintain control over the export and reexport of encryption items. As the President indicated in Executive Order 13026 and in his Memorandum of November 15, 1996, exports and reexports of encryption software, like exports and reexports of encryption hardware, are controlled because of this functional capacity to encrypt information on a computer system, and not because of any informational or theoretical value that such software may reflect, contain, or represent, or that its export or reexport may convey to others abroad. For this reason, export controls on encryption software are distinguished from controls on other software regulated under the EAR.

(a) *Licensing requirements and policy*—(1) *Encryption items controlled under ECCN 5A002, 5D002, or 5E002.* (i) *Licensing requirements.* A license is required to export or reexport encryption items (''EI'') controlled under ECCN 5A002, 5D002 or 5E002 to all destinations, except Canada. Refer to part 740 of the EAR, for license exceptions that apply to certain encryption items, and to § 772.1 of the EAR for definitions of encryption items and terms. Exporters must submit applications to obtain authorization under a license or an Encryption Licensing Arrangement for exports and reexports of encryption items that are not eligible for a license exception.

(ii) *Licensing policy.* Applications will be reviewed on a case-by-case basis by BIS, in conjunction with other agencies, to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. Exports of encryption items to governments, or Internet and telecommunications service providers for the provision of services specific to governments, may be favorably considered for civil uses, e.g., social or financial services to the public; civil justice; social insurance, pensions and retirement; taxes and communications between governments and their citizens. Encryption Licensing Arrangements

may be authorized for exports and reexports of unlimited quantities of encryption items to all destinations, except countries listed in Country Group E:1 of Supplement No. 1 to part 740. Encryption Licensing Arrangements, including those which authorize exports and reexports of encryption technology to strategic partners (as defined in § 772.1 of the EAR) of U.S. companies, are valid for four years and may require reporting. Applicants seeking authorization for Encryption Licensing Arrangements must specify the sales territory and class of end-user on their license applications.

(2) *Encryption items controlled under ECCN 5A992, 5D992, or 5E992.* (i) *Licensing requirements.* Items controlled under ECCN 5A992, 5D992 or 5E992 are controlled for anti-terrorism (AT) reasons to countries listed in AT column 1 or AT column 2, as applicable, of the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). A license also may be required to certain destinations or persons for other reasons specified elsewhere in the EAR (e.g., embargoes). In addition, these encryption items are subject to the notification or review requirements described in paragraph (b)(1) and (b)(2) of this section, unless specifically excluded by paragraph (b)(3) of this section.

(ii) *Licensing policy.* Applications will be reviewed on a case-by-case basis by BIS, in conjunction with other agencies, to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. BIS does not authorize Encryption Licensing Arrangements for exports and reexports of encryption items to any of the countries listed in Country Group E:1 of Supplement No. 1 to Part 740 of the EAR.

(b) *Notification and review requirements for encryption items controlled under ECCN 5A992, 5D992 or 5E992.* You may export and reexport encryption commodities, software and technology controlled under ECCN 5A992, 5D992 or 5E992 without a license (NLR: No License Required) to most destinations, in accordance with paragraph (a)(2) of this section, provided that you have met the notification and review requirements described in paragraphs (b)(1) and (b)(2) of this section. Certain encryption items controlled under ECCN 5A992, 5D992 or 5E992 may be exported or reexported without notification or review—these items are identified in paragraph (b)(3) of this section. In addition, no post-shipment reporting is required for encryption items controlled under ECCN 5A992, 5D992, or 5E992. See § 732.5 of the EAR for Shipper's Export Declaration (SED), Destination Control Statements (DCS), and recordkeeping requirements for items exported and reexported without a license (NLR).

(1) *Notification requirement for specified encryption items.* You may export or reexport encryption items controlled under ECCNs 5A992, 5D992, or 5E992 and identified in paragraphs (b)(1)(i) or (b)(1)(ii) of this section to most destinations without a license (NLR: No License Required), provided that you have submitted to BIS and to the ENC Encryption Request Coordinator at *crypt@bis.doc.gov* and *enc@nsa.gov,* by the time of export, the information described in paragraphs (a) through (e) of Supplement No. 6 to this part. If you are unsure as to whether your encryption items are eligible for export or reexport under this paragraph (b)(1), you should submit a request, to BIS and to the ENC Encryption Request Coordinator, for a review of your encryption items pursuant to the requirements of paragraph (b)(2) of this section (for mass market encryption commodities and software), or under the provisions of License Exception ENC (see § 740.17 of the EAR). The following encryption items controlled by ECCN 5A992, 5D992, or 5E992 are eligible for export or reexport without a license, to most destinations, with notification only:

(i) Up to (and including) 64-bit mass market encryption commodities and software;

(ii) Encryption items (including key management products and company proprietary implementations) with key lengths not exceeding 56 bits for symmetric algorithms, 512 bits for asymmetric key exchange algorithms, and 112 bits for elliptic curve algorithms;

(2) *Review requirement for mass market encryption commodities and software exceeding 64 bits:* Mass market encryption commodities and software employing a

key length greater than 64 bits for the symmetric algorithm (including such products previously reviewed by BIS and exported under ECCN 5A002 or 5D002) remain subject to the EAR and require review by BIS, prior to export or reexport under this paragraph (b)(2). Encryption commodities and software that are described in § 740.17(b)(2) of the EAR do not qualify for mass market treatment.

(i) *Procedures for requesting review.* To request review of your mass market encryption products, you must submit to BIS and the ENC Encryption Request Coordinator the information described in paragraphs (a) through (e) of Supplement 6 to this part 742, and you must include specific information describing how your products qualify for mass market treatment under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 (''Information Security''), of the Commerce Control List (Supplement No. 1 to Part 774 of the EAR). Review requests must be submitted on Form BIS-748P (Multipurpose Application), or its electronic equivalent, as described in § 748.3 of the EAR. To ensure that your review request is properly routed, insert the phrase ''Mass market encryption'' in Block 9 (Special Purpose) of the application form and place an ''X'' in the box marked ''Classification Request'' in Block 5 (Type of Application)—Block 5 does not provide a separate item to check for the submission of encryption review requests. Failure to properly complete these items may delay consideration of your review request. Review requests that are not submitted electronically to BIS should be mailed to the address indicated in § 748.2(c) of the EAR. Submissions to the ENC Encryption Request Coordinator should be directed to the mailing address indicated in § 740.17(e)(5)(ii) of the EAR. BIS will notify you if there are any questions concerning your request for review (e.g., because of missing or incomplete support documentation).

(ii) *Action by BIS.* Once BIS has completed its review, you will receive written confirmation concerning the eligibility of your items for export or reexport as mass market encryption commodities or software controlled under ECCN 5A992 or 5D992. If, during the course of its review, BIS determines that your encryption items do not qualify for mass market treatment under the EAR, or are otherwise controlled under ECCN 5A002, 5B002, 5D002 or 5E002, BIS will notify you and will review your commodities or software for eligibility under License Exception ENC (see § 740.17 of the EAR for review and reporting requirements for encryption items under License Exception ENC). BIS reserves the right to suspend your eligibility to export and reexport under the provisions of this paragraph (b)(2) and to return review requests, without action, if the requirements for review have not been met.

(iii) *Exports and reexports to government and non-government end-users.* Immediately upon registration by BIS of your completed review request (''registration'' is defined in § 750.4(a)(2) of the EAR), you may export or reexport mass market encryption commodities and software exceeding 64 bits, under ECCNs 5A992 and 5D992, without a license (NLR: No License Required) to government and non-government end-users located in the countries listed in Supplement 3 to part 740 of the EAR. These mass market encryption products also may be exported or reexported, without a license (NLR), to most destinations (except those that require a license for AT reasons or for reasons described elsewhere in the EAR) for the internal use of foreign subsidiaries or offices of firms, organizations and governments headquartered in Canada or in countries listed in Supplement 3 to part 740 of the EAR. Thirty days after BIS registers your review request, you may export or reexport these mass market encryption products, without a license, to government and non-government end-users located in most destinations outside the countries listed in Supplement 3 to part 740 of the EAR (certain destinations and persons may require a license for AT reasons or for reasons specified elsewhere in the EAR), unless otherwise notified by BIS (e.g., because of missing or incomplete support documentation, or conversion to License Exception ENC review). The thirty days may not include any time that

your review request was on hold without action. See § 772.1 of the EAR for the definition of ''government end-user'' as it applies to encryption items.

(3) *Exclusions from notification and review requirements.* The following items and transactions do not require notification or review prior to export or reexport. However, a license may be required to export or reexport these items to certain destinations for AT reasons or for reasons set forth elsewhere in the EAR (e.g., embargoes).

(i) *Encryption items for U.S. subsidiaries.* Encryption items controlled under ECCN 5A992, 5D992, or 5E992 that are exported to foreign subsidiaries of U.S. companies (as defined in § 772.1 of the EAR) for any end-use, including the development of new products, that is not prohibited elsewhere in the EAR. All items produced or developed by U.S. subsidiaries with encryption commodities, software and technology exported under this paragraph are subject to the EAR and require review and authorization before any sale or retransfer outside of the U.S. company.

(ii) *Mass market short-range wireless commodities or software.* Mass market commodities or software that would not otherwise be controlled under Category 5 (telecommunications and ''information security'') of the Commerce Control List, but which are controlled under ECCN 5A992 or 5D992 only because they incorporate components or software that provide short-range wireless encryption functions (*e.g.*, wireless products with an operating range typically not exceeding 100 meters).

(iii) *Items with limited cryptographic functionality.* Encryption items controlled under ECCN 5A992, 5D992, or 5E992 for which the use of cryptography is limited to cryptographic functions that are not controlled for ''EI'' reasons under the EAR (e.g. items with cryptographic functions limited to authentication or digital signature, execution of copy protected software, and ''finance specific'' items specially designed and limited for banking use or money transactions). These items are described in the Related Controls paragraph and the Technical Notes under ECCN 5A002 on the Commerce Control List (Supplement No. 1 to part 774 of the EAR), which are cross-referenced under ECCNs 5D002 and 5E002.

(4) *Commodities and software that activate or enable cryptographic functionality.* Commodities, software, and components that allow the end-user to activate or enable cryptographic functionality in encryption products which would otherwise remain disabled, are controlled according to the functionality of the activated encryption product. The notification and review requirements enumerated in this paragraph (b) of this section apply to commodities, software and components which activate cryptographic functionality in encryption products controlled under ECCNs 5A992 and 5D992. (See § 740.17 of the EAR for review and reporting requirements for commodities, software and components that enable cryptographic functionality in encryption products controlled under ECCNs 5A002 and 5D002.) This paragraph (b)(4) does not authorize the export or reexport of any activated encryption product. Separate review or authorization of the enabled encryption product is required.

(5) *Examples of mass market encryption products.* Subject to the requirements of the Cryptography Note (Note 3) in Category 5, Part 2, of the Commerce Control List, mass market encryption products include, but are not limited to, general purpose operating systems and desktop applications (e.g. e-mail, browsers, games, word processing, database, financial applications or utilities) designed for, bundled with, or pre-loaded on single CPU computers, laptops, or hand-held devices; commodities and software for client Internet appliances and client wireless LAN devices; home use networking commodities and software (e.g. personal firewalls, cable modems for personal computers, and consumer set top boxes); portable or mobile civil telecommunications commodities and software (e.g. personal data assistants (PDAs), radios, or cellular products); and commodities and software exported via free or anonymous downloads.

[67 FR 38865, June 6, 2002, as amended at 68 FR 35785, June 17, 2003; 69 FR 71363, Dec. 9, 2004]

§ 742.16 [Reserved]

§ 742.17 Exports of firearms to OAS member countries.

(a) *License requirements.* BIS maintains a licensing system for the export of shotguns and related items to all OAS member countries. This action is based on the Organization of American States (OAS) Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Munitions (OAS Model Regulations) which were developed to assist OAS member countries to implement the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (Firearms Convention).[1] Items subject to these controls are identified by ''FC Column 1'' in the ''License Requirements'' section of their Export Control Classification Number (ECCN) on the Commerce Control List (CCL). If ''FC Column 1'' of the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated for a particular country, a license is required for export to that destination. Licenses will generally be issued on an Import Certificate or equivalent official document, satisfactory to BIS, issued by the government of the importing country is also required for the export of such items to OAS member countries.

(b) *Licensing policy.* Applications supported by an Import Certificate or equivalent official document issued by the government of the importing country for such items will generally be approved, except there is a policy of denial for applications to export items linked to such activities as drug trafficking, terrorism, and transnational organized crime.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications under this § 742.17.

(d) *OAS Model Regulations.* The OAS Model Regulations on which regulations are based are designed by OAS member countries to combat illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials in North and South America because of their links to such activities as drug trafficking, terrorism, and transnational organized crime.

(e) *OAS member countries to which firearms controls under this section apply.* The OAS member countries include: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States, Uruguay, and Venezuela.

(f) *Items/Commodities.* Items requiring a license under this section are ECCNs 0A984 (shotguns with a barrel length 18 inches or over and related parts, and buckshot shotgun shells), 0A986 (shotgun shells, and related parts) and 0A987 (optical sighting devices). (See Supplement No. 1 to Part 774 of the EAR.)

(g) *Validity period for licenses.* Although licenses generally will be valid for a period of two years, your ability to ship items that require an Import Certificate or equivalent official document under this section may be affected by the validity of the Import Certificate or equivalent official document (see § 748.14(f) of the EAR).

[64 FR 17973, Apr. 13, 1999]

§ 742.18 Chemical Weapons Convention (CWC or Convention).

States that are parties to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention), undertake never to develop, produce, acquire, stockpile, transfer, or use chemical weapons. As a State Party to the Convention, the United States is subjecting certain toxic chemicals and their precursors listed in Schedules within the Convention to trade restrictions. Trade restrictions include: a prohibition on the export of Schedule 1 chemicals to States not Party to the CWC; a prohibition on the reexport of Schedule 1

[1] Status of Convention as of April 13, 1999 had not entered into force.

chemicals to all destinations (both States Parties to the CWC and States not Party to the CWC); license requirements for the export of Schedule 1 chemicals to all States Parties; a prohibition on the export of Schedule 2 chemicals to States not Party to the CWC; and an End-Use Certificate requirement for exports of Schedule 3 chemicals to States not Party to the CWC. Exports of CWC chemicals that do not require a license for CW reasons (*e.g.*, exports and reexports of Schedule 2 and Schedule 3 chemicals to States Parties to the CWC) may require a license for other reasons set forth in the EAR. (*See*, in particular, the license requirements in § 742.2 of the EAR that apply to exports and reexports of precursor chemicals controlled by ECCN 1C350, for CB reasons. Also note the end-use and end-user restrictions in part 744 of the EAR and the restrictions that apply to embargoed countries in part 746 of the EAR.)

(a) *License requirements*—(1) *Schedule 1 chemicals and mixtures controlled under ECCN 1C351.* A license is required for CW reasons to export or reexport Schedule 1 chemicals controlled under ECCN 1C351.d.5 or d.6 to all destinations including Canada. CW applies to 1C351.d.5 for ricin in the form of Ricinus Communis $Agglutinin_{II}$ (RCA_{II}), which is also known as ricin D or Ricinus Communis $Lectin_{III}$ (RCL_{III}), and Ricinus Communis $Lectin_{IV}$ (RCL_{IV}), which is also known as ricin E. CW applies to 1C351.d.6 for saxitoxin identified by C.A.S. #35523–89–8. (Note that the advance notification procedures and annual reporting requirements described in § 745.1 of the EAR also apply to exports of Schedule 1 chemicals.)

(2) *Schedule 2 and 3 chemicals and mixtures controlled under ECCN 1C350, ECCN 1C355, or ECCN 1C395.* (i) *States Parties to the CWC.* Neither a license nor an End-Use Certificate is required for CW reasons to export or reexport Schedule 2 or 3 chemicals and mixtures controlled under ECCN 1C350, ECCN 1C355, or ECCN 1C395 to States Parties to the CWC (destinations listed in Supplement No. 2 to part 745 of the EAR).

(ii) *States not Party to the CWC.* (A) *Schedule 2 chemicals.* A license is required for CW reasons to export or reexport Schedule 2 chemicals and mixtures controlled under ECCN 1C350.b, ECCN 1C355.a, or ECCN 1C395 to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR).

(B) *Schedule 3 chemicals.* (*1*) *Exports.* A license is required for CW reasons to export Schedule 3 chemicals and mixtures controlled under ECCN 1C350.c, ECCN 1C355.b, or ECCN 1C395.b to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to Part 745 of the EAR), *unless* the exporter obtains from the consignee an End-Use Certificate (issued by the government of the importing country) prior to exporting the Schedule 3 chemicals and submits it to BIS in accordance with the procedures described in § 745.2 of the EAR. Note, however, that obtaining an End-Use Certificate does not relieve the exporter from the responsibility of complying with other license requirements set forth elsewhere in the EAR.

(*2*) *Reexports.* (*i*) *Reexports from States Parties to the CWC.* Neither a license nor an End-Use Certificate is required for CW reasons to reexport Schedule 3 chemicals and mixtures controlled under ECCN 1C350.c, ECCN 1C355.b, or ECCN 1C395.b from States Parties to the CWC (destinations listed in Supplement No. 2 to part 745 of the EAR) to States not Party to the CWC. However, a license may be required for other reasons set forth elsewhere in the EAR. In addition, reexports of Schedule 3 chemicals may be subject to an End-Use Certificate requirement by governments of other countries when the chemicals are destined for States not Party to the CWC.

(*ii*) *Reexports from States not Party to the CWC.* A license is required for CW reasons to reexport Schedule 3 chemicals and mixtures controlled under ECCN 1C350.c, ECCN 1C355.b, or ECCN 1C395.b from a State not Party to the CWC (a destination *not* listed in Supplement No. 2 to part 745 of the EAR) to any other State not Party to the CWC.

(C) *Technology controlled under ECCN 1E355.* A license is required for CW reasons to export or reexport technology controlled under ECCN 1E355 to all

States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR), except for Israel and Taiwan.

(b) *Licensing Policy*—(1) *Schedule 1 chemicals and mixtures.* (i) *Exports to States Parties to the CWC.* Applications to export Schedule 1 Chemicals controlled under ECCN 1C351.d.5 or .d.6 to States Parties to the CWC (destinations listed in Supplement No. 2 to part 745 of the EAR) generally will be denied, unless all of the following conditions are met:

(A) The chemicals are destined only for purposes not prohibited under the CWC (*i.e.*, research, medical, pharmaceutical, or protective purposes);

(B) The types and quantities of chemicals are strictly limited to those that can be justified for those purposes;

(C) The Schedule 1 chemicals were not previously imported into the United States (this does not apply to Schedule 1 chemicals imported into the United States prior to April 29, 1997, or imported into the United States directly from the same State Party to which they now are to be returned, *i.e.*, exported); *and*

(D) The aggregate amount of Schedule 1 chemicals in the country of destination at any given time is equal to or less than one metric ton *and* receipt of the proposed export will *not* cause the country of destination to acquire or to have acquired one metric ton or more of Schedule 1 chemicals in any calendar year.

(ii) *Exports to States not Party to the CWC.* Applications to export Schedule 1 chemicals controlled under ECCN 1C351.d.5 or .d.6 to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR) generally will be denied, consistent with U.S. obligations under the CWC to prohibit exports of these chemicals to States not Party to the CWC.

(iii) *Reexports.* Applications to reexport Schedule 1 chemicals controlled under ECCN 1C351.d.5 or .d.6 generally will be denied to all destinations (including both States Parties to the CWC and States not Party to the CWC).

(2) *Schedule 2 chemicals and mixtures.* Applications to export or reexport Schedule 2 chemicals and mixtures controlled under ECCN 1C350.b, ECCN 1C355.a, or ECCN 1C395 to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR) generally will be denied, consistent with U.S. obligations under the CWC to prohibit exports of these chemicals to States not Party to the CWC.

(3) *Schedule 3 chemicals and mixtures.* (i) *Exports.* Applications to export Schedule 3 chemicals and mixtures controlled under ECCN 1C350.c, ECCN 1C355.b, or ECCN 1C395.b to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR) generally will be denied.

(ii) *Reexports from States not Party to the CWC.* Applications to reexport Schedule 3 chemicals and mixtures controlled under ECCN 1C350.c, ECCN 1C355.b, or ECCN 1C395.b from a State not Party to the CWC (a destination *not* listed in Supplement No. 2 to part 745 of the EAR) to any other State not Party to the CWC generally will be denied.

(4) *Technology controlled under ECCN 1E355.* Exports and reexports of technology controlled under ECCN 1E355 will be reviewed on a case-by-case basis.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

[67 FR 37982, May 31, 2002, as amended at 69 FR 42865, July 19, 2004]

§ 742.19 Anti-terrorism: North Korea.

(a) *License requirements.* (1) All items on the Commerce Control List (CCL) (i.e., with a designation other than EAR 99) require a license for export or reexport to North Korea, except ECCNs 0A988 and 0A989. This includes all items controlled for AT reasons, including any item on the CCL containing AT column 1 or AT column 2 in the Country Chart column of the License Requirements section of an ECCN; and ECCNs 0A986, 0A999, 0B986, 0B999, 0D999, 1A999, 1B999, 1C995, 1C999, 1D999, 2A994, 2A999, 2B999, 2D994, 2E994, 3A999, and 6A999.

(2) The Secretary of State has designated North Korea as a country

whose Government has repeatedly provided support for acts of international terrorism.

(3) In support of U.S. foreign policy on terrorism-supporting countries, BIS maintains two types of anti-terrorism controls on the export and reexport of items described in Supplement 2 to part 742.

(i) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 are controlled under section 6(j) of the Export Administration Act, as amended (EAA), if destined to military, police, intelligence or other sensitive end-users.

(ii) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to non-sensitive end-users, as well as items described in paragraph (c)(6) through (c)(45) to all end-users, are controlled to North Korea under section 6(a) of the EAA. (See Supplement No. 2 to part 742 for more information on items controlled under sections 6(a) and 6(j) of the EAA and § 750.6 of the EAR for procedures for processing license applications for items controlled under EAA section 6(j).)

(b) *Licensing policy*. (1) Applications for export and reexport to all end-users in North Korea of the following items will generally be denied:

(i) Items controlled for chemical and biological weapons proliferation reasons to any destination. These items contain CB Column 1, CB Column 2, or CB Column 3 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(ii) Items controlled for missile proliferation reasons to any destination. These items have an MT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(iii) Items controlled for nuclear weapons proliferation reasons to any destination. These items contain NP Column 1 or NP Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(iv) Items controlled for national security reasons to any destination. These items contain NS Column 1 or NS Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(v) Military-related items controlled for national security reasons to any destination. These items contain NS Column 1 in the Country Chart column of the ''License Requirements'' section in an ECCN on the CCL *and* are controlled by equipment or material entries ending in the number ''18.''

(vi) All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components. Such items contain an NS Column 1, NS Column 2, MT Column 1, or AT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(vii) Cryptographic, cryptoanalytic, and crypto-logic items controlled any destination. These are items that contain an NS Column 1, NS Column 2, AT Column 1 or AT Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(viii) Submersible systems controlled under ECCN 8A992.

(ix) Scuba gear and related equipment controlled under ECCN 8A992.

(x) Pressurized aircraft breathing equipment controlled under ECCN 9A991.

(xi) Explosives detection equipment controlled under ECCN 2A983.

(xii) ''Software'' (ECCN 2D983) specially designed or modified for the ''development'', ''production'' or ''use'' of explosives detection equipment controlled by 2A983.

(xiii) ''Technology'' (ECCN 2E983) specially designed or modified for the ''development'', ''production'' or ''use'' of explosives detection equipment controlled by 2A983.

(xiv) Commercial charges and devices controlled under ECCN 1C992.

(xv) Computer numerically controlled machine tools controlled under ECCN 2B991.

(xvi) Aircraft skin and spar milling machines controlled under ECCN 2B991.

(xvii) Semiconductor manufacturing equipment controlled under ECCN 3B991.

(xviii) Digital computers with a CTP above 2000.

(xix) Microprocessors with a CTP of 550 or above.

(xx) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997.

(xxi) Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 Chemicals controlled under ECCN 1E355.

(2) Applications for export and reexport to North Korea of all other items described in paragraph (a) of this section, and not described by paragraph (b)(1) of this section, will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(3) Applications for export and reexport to North Korea of items described in paragraphs (c)(12), (c)(24), (c)(34), (c)(37), (c)(38), and (c)(45) of Supplement No. 2 to part 742 will generally be denied if the export or reexport is destined to nuclear end-users or nuclear end-uses. Applications for non-nuclear end-users or for non-nuclear end-uses, excluding items described in (c)(24)(iv)(A) of Supplement No. 2 to part 742, will be considered on a case-by-case basis.

(4) License applications for items reviewed under section 6(a) controls will also be reviewed to determine the applicability of section 6(j) controls to the transaction. When it is determined that an export or reexport could make a significant contribution to the military potential of North Korea, including its military logistics capability, or could enhance North Korea's ability to support acts of international terrorism, the Secretaries of State and Commerce will notify the Congress 30 days prior to issuance of a license.

[65 FR 38151, June 19, 2000, as amended at 66 FR 36682, July 12, 2001; 68 FR 16212, Apr. 3, 2003; 70 FR 54628, Sept. 16, 2005]

§ 742.20 Anti-terrorism: Libya.

(a) *License requirements.* (1) If AT Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, or the License Requirements Section of an ECCN on the Commerce Control List (Supplement No. 1 to part 774 of the EAR) indicates that such an ECCN is otherwise controlled to Libya for AT reasons without reference to a particular column on the Country Chart, BIS requires a license for export and reexport to Libya for antiterrorism purposes. Also see § 740.19 of the EAR.

(2) The Secretary of State has designated Libya as a country whose government has repeatedly provided support for acts of international terrorism.

(3) In support of U.S. foreign policy against terrorism, BIS maintains two types of anti-terrorism controls on the export and reexport to Libya of items described in Supplement No. 2 to part 742.

(i) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742, if destined to military, police, intelligence or other end-users in Libya, are controlled under section 6(j) of the Export Administration Act, as amended (EAA).

(ii) Items listed in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to other end-users in Libya, as well as items to all end-users listed in (c)(6) through (c)(8), (c)(10) through (c)(19), and (c)(22) through (c)(44) of Supplement No. 2 to part 742, are controlled to Libya under section 6(a) of the EAA.

(b) *Licensing policy.* (1) Applications for export and reexport to all end-users in Libya of the following items will generally be denied:

(i) Items controlled for chemical and biological weapons proliferation reasons to any destination. These are items that contain CB Column 1, CB Column 2, or CB Column 3 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(ii) Military-related items controlled for national security reasons to any destination. These are items that contain NS Column 1 or RS Column 2 in the Country Chart column of the ''License Requirements'' section in an ECCN on the CCL and are controlled by equipment or material entries ending in the number ''18.''

(iii) Items controlled for missile proliferation reasons to any destination. These are items that have an MT Column 1 in the Country Chart column of

the ''License Requirements'' section of an ECCN on the CCL.

(iv) Cryptographic, cryptoanalytic, and crypto-logic items controlled to any destination for national security reasons. Such items contain an AT Column 1 and an NS Column 1 or NS Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(v) Explosives detection equipment controlled under ECCN 2A983.

(vi) ''Software'' (ECCN 2D983) specially designed or modified for the ''development'', ''production'' or ''use'' of explosives detection equipment controlled by 2A983.

(vii) ''Technology'' (ECCN 2E983) specially designed or modified for the ''development'', ''production'' or ''use'' of explosives detection equipment controlled by 2A983.

(viii) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997.

(ix) Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals controlled under ECCN 1E355.

(2)(i) Applications to export or reexport aircraft, helicopters, engines, or related spare parts and components will be reviewed on a case-by-case basis. Applications for military end-use or end-users in Libya will generally be denied. Notwithstanding the general policy of denial for MT controlled items to Libya, those MT items used for safety of flight in civil aircraft or helicopters will be reviewed on a case-by-case basis.

(ii) Applications to export or reexport oil well perforators and devices controlled under ECCN 1C992 will be reviewed on a case-by-case basis.

(3) Applications for export and reexport to Libya of all other items described in paragraph (a) of this section, and not described by paragraph (b)(1) of this section, will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(4) Notwithstanding the provisions of paragraphs (b)(1), (b)(2), and (b)(3) of this section, applications for Libya will be considered on a case-by-case basis if:

(i) The U.S. content of foreign-produced commodities is 20% or less by value; or

(ii) The commodities are medical items.

NOTE TO PARAGRAPH (b) OF THIS SECTION: Applicants who wish any of the factors described in paragraph (b) of this section to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content or the specifications and medical use of the equipment.

(5) License applications for items reviewed under 6(a) controls will also be reviewed to determine the applicability of 6(j) controls to the transaction. When it is determined that an export or reexport could make a significant contribution to the military potential of Libya, including its military logistics capability, or could enhance Libya's ability to support acts of international terrorism, the Secretaries of State and Commerce will notify the Congress 30 days prior to issuance of a license.

[69 FR 23629, Apr. 29, 2004, as amended at 70 FR 14390, Mar. 22, 2005; 70 FR 69434, Nov. 16, 2005]

SUPPLEMENT NO. 1 TO PART 742—NONPROLIFERATION OF CHEMICAL AND BIOLOGICAL WEAPONS

NOTE: Exports and reexports of items in performance of contracts entered into before the applicable contract sanctity date(s) will be eligible for review on a case-by-case basis or other applicable licensing policies that were in effect prior to the contract sanctity date. The contract sanctity dates set forth in this supplement are for the guidance of exporters. Contract sanctity dates are established in the course of the imposition of foreign policy controls on specific items and are the relevant dates for the purpose of licensing determinations involving such items. If you believe that a specific contract sanctity date is applicable to your transaction, you should include all relevant information with your license application.

(1) The contract sanctity date for exports to Iran or Syria of dimethyl methylphosphonate, phosphorous oxychloride, thiodiglycol, dimethylamine hydrochloride, dimethylamine, ethylene chlorohydrin (2-chloroethanol), and potassium fluoride is April 28, 1986.

(2) The contract sanctity date for exports to Iran or Syria of dimethyl phosphite (dimethyl hydrogen phosphite), methyl phosphonyldichloride, 3-quinuclidinol, N,N-diisopropylamino-ethane-2-thiol, N,N-diisopropylaminoethyl-2-chloride, 3-hydroxy-1-methylpiperidine, trimethyl phosphite, phosphorous trichloride, and thionyl chloride is July 6, 1987.

(3) The contract sanctity date for exports to Iran or Syria of items in ECCNs 1C351, 1C352, 1C353 and 1C354 is February 22, 1989.

(4) The contract sanctity date for exports to Iran of dimethyl methylphosphonate, phosphorus oxychloride, and thiodiglycol is February 22, 1989.

(5) The contract sanctity date for exports to Iran, Libya or Syria of potassium hydrogen fluoride, ammonium hydrogen fluoride, sodium fluoride, sodium bifluoride, phosphorus pentasulfide, sodium cyanide, triethanolamine, diisopropylamine, sodium sulfide, and N,N -diethylethanolamine is December 12, 1989.

(6) The contract sanctity date for exports to all destinations (except Iran or Syria) of phosphorus trichloride, trimethyl phosphite, and thionyl chloride is December 12, 1989. For exports to Iran or Syria, paragraph (2) of this supplement applies.

(7) The contract sanctity date for exports to all destinations (except Iran, Libya or Syria) of 2-chloroethanol and triethanolamine is January 15, 1991. For exports of 2-chloroethanol to Iran or Syria, paragraph (1) of this supplement applies. For exports of triethanolamine to Iran, Libya or Syria, paragraph (5) of this supplement applies.

(8) The contract sanctity date for exports to all destinations (except Iran, Libya or Syria) of chemicals controlled by ECCN 1C350 is March 7, 1991, except for applications to export the following chemicals: 2-chloroethanol, dimethyl methylphosphonate, dimethyl phosphite (dimethyl hydrogen phosphite), phosphorus oxychloride, phosphorous trichloride, thiodiglycol, thionyl chloride triethanolamine, and trimethyl phosphite. (See also paragraphs (6) and (7) of this Supplement.) For exports to Iran, Libya or Syria, see paragraphs (1) through (6) of this Supplement.

(9) The contract sanctity date for exports and reexports of the following commodities and technical data is March 7, 1991:

(i) Equipment (for producing chemical weapon precursors and chemical warfare agents) described in ECCNs 2B350 and 2B351;

(ii) Equipment and materials (for producing biological agents) described in ECCNs 1C351, 1C352, 1C353, 1C354, and 2B352; and

(iii) Technology (for the development, production, and use of equipment described in ECCNs 1C351, 1C352, 1C353, 1C354, 2B350, 2B351, and 2B352) described in ECCNs 2E001, 2E002, and 2E301.

(10) The contract sanctity date for license applications subject to §742.2(b)(3) of this part is March 7, 1991.

(11) The contract sanctity date for reexports of chemicals controlled under ECCN 1C350 is March 7, 1991, except that the contract sanctity date for reexports of these chemicals to Iran, Libya or Syria is December 12, 1989.

(12) The contract sanctity date for reexports of human pathogens, zoonoses, toxins, animal pathogens, genetically modified microorganisms and plant pathogens controlled by ECCNs 1C351, 1C352, 1C353 and 1C354 is March 7, 1991.

[61 FR 12786, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997; 69 FR 42865, July 19, 2004]

SUPPLEMENT NO. 2 TO PART 742—ANTI-TERRORISM CONTROLS: IRAN, LIBYA, NORTH KOREA, SYRIA AND SUDAN CONTRACT SANCTITY DATES AND RELATED POLICIES

NOTE: Exports and reexports of items in performance of contracts entered into before the applicable contract sanctity date(s) will be eligible for review on a case-by-case basis or other applicable licensing policies that were in effect prior to the contract sanctity date. The contract sanctity dates set forth in this Supplement are for the guidance of exporters. Contract sanctity dates are established in the course of the imposition of foreign policy controls on specific items and are the relevant dates for the purpose of licensing determinations involving such items. If you believe that a specific contract sanctity date is applicable to your transaction, you should include all relevant information with your license application. BIS will determine any applicable contract sanctity date at the time an application with relevant supporting documents is submitted.

(a) *Terrorist-supporting countries.* The Secretary of State has designated Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria as countries whose governments have repeatedly provided support for acts of international terrorism under section 6(j) of the Export Administration Act (EAA).

(b) *Items controlled under EAA sections 6(j) and 6(a).* Whenever the Secretary of State determines that an export or reexport to any of these countries could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism, the item is subject to mandatory control under EAA section 6(j) and the Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days before a license for such an item may be issued.

(1) On December 28, 1993, the Secretary of State determined that the export to Cuba, Libya, Iran, Iraq, North Korea, Sudan, or Syria of items described in paragraphs (c)(1) through (c)(5) of this Supplement, if destined to military, police, intelligence or other sensitive end-users, are controlled under EAA section 6(j). Therefore, the 30-day advance Congressional notification requirement applies to the export or reexport of these items to sensitive end-users in any of these countries.

NOTE TO PARAGRAPH (b)(1): The items described in paragraphs (c)(1) through (c)(5) are not controlled under EAA section 6(j) to military, police, intelligence and other sensitive end-users in Iraq. The 30-day prior Congressional notification requirement also does not apply for the issuance of licenses for such transactions involving Iraq, consistent with Presidential Determination 2003–23, in which the President exercised his authority under the Emergency Wartime Supplemental Appropriations Act, 2003, to make inapplicable with respect to Iraq provisions of law that apply to countries that have supported terrorism. As described in §746.3(a)(3), items to all end-users in Iraq classified under ECCNs 0B999, 0D999, 1B999, 1C992, 1C995, 1C997, 1C999 and 6A992 continue to be controlled under EAA section 6(a). Other licensing requirements continue to apply.

(2) License applications for items controlled to designated terrorist-supporting countries under EAA section 6(a) will also be reviewed to determine whether the Congressional notification requirements of EAA section 6(j) apply.

(3) Items controlled for anti-terrorism reasons under section 6(a) to Iran, Libya, North Korea, Sudan, and Syria are:

(i) Items described in paragraphs (c)(1) through (c)(5) to non-sensitive end-users, and

(ii) The following items to all end-users: for Iran, items in paragraphs (c)(6) through (c)(44) of this Supplement; for North Korea, items in paragraph (c)(6) through (c)(45) of this Supplement; for Sudan, items in paragraphs (c)(6) through (c)(14), and (c)(16) through (c)(44) of this Supplement; for Libya, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(19), and (c)(22) through (c)(44) of this Supplement; and for Syria, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through (c)(19), and (c)(22) through (c)(44) of this Supplement.

(c) The license requirements and licensing policies for items controlled for anti-terrorism reasons to Iran, Syria, Sudan, North Korea, and Libya are generally described in §§742.8, 742.9, 742.10, 742.19, and 742.20 of this part, respectively. This Supplement provides guidance on licensing policies for Iran, Libya, North Korea, Syria, and Sudan and related contract sanctity dates that may be available for transactions benefitting from pre-existing contracts involving Iran, Syria, and Sudan. Exporters are advised that the Treasury Department's Office of Foreign Assets Control administers a comprehensive trade and investment embargo against Iran (See Executive Orders 12957, 12959 and 13059 of March 15, 1995, May 6, 1995 and August 19, 1997, respectively.) Exporters are further advised that exports and reexports to Iran of items that are listed on the CCL as requiring a license for national security or foreign policy reasons are subject to a policy of denial under the Iran-Iraq Arms Non-Proliferation Act of October 23, 1992 (50 U.S.C. 1701 note (1994)). Transactions involving Iran and benefitting from a contract that pre-dates October 23, 1992 may be considered under the applicable licensing policy in effect prior to that date.

(1) *All items subject to national security controls*—(i) *Iran*. Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of items valued at $7 million or more: January 23, 1984.

(B) Contract sanctity date for military end-users or end-uses of all other national security controlled items: September 28, 1984.

(C) Contract sanctity date for non-military end-users or end-uses: August 28, 1991, *unless* otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement.

(ii) *Syria*. Applications for military end-users or military end-uses in Syria will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis, unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement. No contract sanctity date is available for items valued at $7 million or more to military end-users or end-uses. The contract sanctity date for all other items for all end-users: December 16, 1986.

(iii) *Sudan*. Applications for military end-users or military end-uses in Sudan will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement. Contract sanctity date: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea*. Applications for all end-users in North Korea of such equipment will generally be denied.

(v) *Libya*. Applications for military end-users or military end-uses in Libya will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis, unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement.

(2) *All items subject to chemical and biological weapons proliferation controls.* Applications for all end-users in Iran, Libya, North Korea, Syria, or Sudan of these items will generally be denied. See Supplement No. 1 to part 742 for contract sanctity dates for Iran and Syria. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993), or unless an earlier date for any item is listed in Supplement 1 to part 742.

(3) *All items subject to missile proliferation controls (MTCR).* Applications for all end-users in Iran, Libya, North Korea, Syria, or Sudan will generally be denied. Contract sanctity provisions for Iran and Syria are not available. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(4) *All items subject to nuclear weapons proliferation controls (NRL)*—(i) *Iran.* Applications for all end-users in Iran will generally be denied. No contract sanctity date is available.

(ii) *Syria.* Applications for military end-users or end-uses to Syria will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement. No contract sanctity date is available.

(iii) *Sudan.* Applications for military end-users or end-uses in Sudan will generally be denied. Applications for export and reexport to non-military end-users or end-uses will be considered on a case-by-case basis unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement. No contract sanctity date is available.

(iv) *North Korea.* Applications for all end-users in North Korea will generally be denied.

(v) *Libya.* Applications for military end-users or end-uses to Libya will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement.

(5) *All military-related items, i.e., applications for export and reexport of items controlled by CCL entries ending with the number ''18''*—(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: see paragraph (c)(1)(i) of this Supplement.

(ii) *Syria.* Applications for all end-users in Syria will generally be denied. Contract sanctity date: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for all end-users in Sudan will generally be denied. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea will generally be denied.

(v) *Libya.* Applications for all end-users in Libya will generally be denied.

(6) *All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components*—(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for helicopters exceeding 10,000 lbs. empty weight or fixed wing aircraft valued at $3 million or more: January 23, 1984.

(B) Contract sanctity date for other helicopters and aircraft and gas turbine engines therefor: September 28, 1984.

(C) Contract sanctity date for helicopter or aircraft parts and components controlled by 9A991.d: October 22, 1987.

(ii) *Syria.* Applications for all end-users in Syria will generally be denied.

(A) There is no contract sanctity for helicopters exceeding 10,000 lbs. empty weight or fixed wing aircraft valued at $3 million or more; except that passenger aircraft, regardless of value, have a contract sanctity date of December 16, 1986, if destined for a regularly scheduled airline with assurance against military use.

(B) Contract sanctity date for helicopters with 10,000 lbs. empty weight or less: April 28, 1986.

(C) Contract sanctity date for other aircraft and gas turbine engines therefor: December 16, 1986.

(D) Contract sanctity date for helicopter or aircraft parts and components controlled by ECCN 9A991.d: August 28, 1991.

(iii) *Sudan.* Applications for all end-users in Sudan will generally be denied. Contract sanctity date: January 19, 1996.

(iv) *North Korea.* Applications for all end-users in North Korea will generally be denied.

(v) Aircraft, helicopters, engines, and related spare parts and components will be reviewed on a case-by-case basis. Applications for military end-uses or end-users in Libya will generally be denied.

(7) *Heavy duty, on-highway tractors*—(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-

case basis. Contract sanctity date: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(8) *Off-highway wheel tractors of carriage capacity 9t (10 tons) or more*—(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(9) *Large diesel engines (greater than 400 horsepower) and parts to power tank transporters*—(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iii) *North Korea.* Applications for military end-users or for military end-uses in North Korea will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(10) *Cryptographic, cryptoanalytic, and cryptologic equipment*—(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of cryptographic, cryptoanalytic, and cryptologic equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other cryptographic, cryptoanalytic, and cryptologic equipment for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for all national security-controlled cryptographic, cryptoanalytic, and cryptologic equipment to all end-users. Applications for all end-users in Syria will generally be denied. Contract sanctity date for cryptographic, cryptoanalytic, and cryptologic equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for all end-users in Sudan of any such equipment will generally be denied. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of any such equipment will generally be denied.

(v) *Libya.* A license is required for all national security-controlled cryptographic, cryptoanalytic, and cryptologic equipment to all end-users. Applications for all end-users in Libya will generally be denied.

(11) *Navigation, direction finding, and radar equipment*—(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of navigation, direction finding, and radar equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other navigation, direction finding, and radar equipment for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for exports of navigation, direction finding, and radar equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other navigation, direction finding, and radar equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan of such equipment will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(12) *Electronic test equipment*—(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of electronic test equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other electronic test equipment for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for electronic test equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other electronic test equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(13) *Mobile communications equipment*—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of mobile communications equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all end-users of all other mobile communications equipment: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for mobile communications equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other mobile communications equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan of such equipment will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(14) *Acoustic underwater detection equipment*—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of acoustic underwater

detection equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other acoustic underwater detection equipment for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for acoustic underwater detection equipment that was subject to national security controls on August 28, 1991, to all end-users. Applications for military end-users or for military end-uses in Syria will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for acoustic underwater detection equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for military end-users or for military end-uses to Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea of such equipment will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(15) *Portable electric power generator*—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea of such equipment will be considered on a case-by-case basis.

(iii) *Libya.* Applications for all military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya of such equipment will be considered on a case-by-case basis.

(16) *Vessels and boats, including inflatable boats*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of vessels and boats that were subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other vessels and boats for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for national security-controlled vessels and boats. Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for vessels and boats that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea of these items will be considered on a case-by-case basis.

(v) *Libya.* A license is required for national security-controlled vessels and boats. Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(17) *Marine and submarine engines (outboard/inboard, regardless of horsepower)*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of marine and submarine engines that were subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for outboard engines of 45 HP or more for all end-users: September 28, 1984.

(C) Contract sanctity date for all other marine and submarine engines for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for all marine and submarine engines subject to national security controls to all end-users. Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-

uses in Syria will be considered on a case-by-case basis. Contract sanctity date for marine and submarine engines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea of these items will be considered on a case-by-case basis.

(v) *Libya.* A license is required for all marine and submarine engines subject to national security controls to all end-users. Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(18) *Underwater photographic equipment*—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of underwater photographic equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other underwater photographic equipment for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for underwater photographic equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) *of this Supplement.*

(B) Contract sanctity date for all other underwater photographic equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(19) *Submersible systems*—(i) *Iran.* Applications for all end-users in Iran of such systems will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of submersible systems that were subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other submersible systems for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such systems will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for submersible systems that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other submersible systems: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such systems will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies(*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such systems will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(20) *Scuba gear and related equipment*—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied. No contract sanctity is available for such items to Iran.

(ii) *Sudan.* Applications for military end-users and end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iii) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(21) *Pressurized aircraft breathing equipment*—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iii) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(22) *Computer numerically controlled machine tools*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of computer numerically controlled machine tools that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other computer numerically controlled machine tools for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for computer numerically controlled machine tools that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other computer numerically controlled machine tools: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(23) *Vibration test equipment*—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of vibration test equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other vibration test equipment for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for vibration test equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other vibration test equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(24) *Digital computers with a CTP of 6 or above, assemblies, related equipment, equipment for development or production of magnetic and optical storage equipment, and materials for fabrication of head/disk assemblies*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity dates for military end-users and end-uses of items that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other items for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for

non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity dates for items that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other items: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* (A) Computers with a CTP above 2000 MTOPS: Applications for all end-users will generally be denied.

(B) Computers with a CTP at or below 2000 MTOPS: Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(25) *Telecommunications equipment*—(i) A license is required for the following telecommunications equipment:

(A) Radio relay systems or equipment operating at a frequency equal to or greater than 19.7 GHz or ''spectral efficiency'' greater than 3 bit/s/Hz;

(B) Fiber optic systems or equipment operating at a wavelength greater than 1000 nm;

(C) ''Telecommunications transmission systems'' or equipment with a ''digital transfer rate'' at the highest multiplex level exceeding 45 Mb/s.

(ii) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of telecommunications equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other vibration test equipment for all end-users: August 28, 1991.

(iii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for exports of telecommunications equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other telecommunications equipment: August 28, 1991.

(iv) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(v) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(vi) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(26) *Microprocessors*—(i) Operating at a clock speed over 25 MHz.

(A) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(*1*) Contract sanctity date for military end-users and end-uses of microprocessors that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(*2*) Contract sanctity dates for all other microprocessors for all end-users: August 28, 1991.

(B) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for microprocessors that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(*2*) Contract sanctity date for all other microprocessors: August 28, 1991.

(C) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies

(*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(D) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(ii) With a CTP of 550 MTOPS or above.

(A) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied.

(B) [Reserved]

(27) *Semiconductor manufacturing equipment.* For Iran, Syria, Sudan, North Korea, or Libya a license is required for all such equipment described in ECCNs 3B001 and 3B991.

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of semiconductor manufacturing equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other microprocessors for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for semiconductor manufacturing equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other semiconductor manufacturing equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(28) *Software specially designed for the computer-aided design and manufacture of integrated circuits*—(i) *Iran.* Applications for all end-users in Iran of such software will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such software that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such software for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such software that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such software: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such software will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(29) *Packet switches. Equipment described in ECCN 5A991.c*—(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses in Iran of packet switches that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other packet switches for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for packet switches that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other packet switches: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(30) *Specially designed software for air traffic control applications that uses any digital signal processing techniques for automatic target tracking or that has a facility for electronic tracking*—(i) *Iran.* Applications for all end-users in Iran of such software will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such software that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such software for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such software that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other such software: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such software will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(31) *Gravity meters having static accuracy of less (better) than 100 microgal, or gravity meters of the quartz element (worden) type*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of gravity meters that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such gravity meters for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for gravity meters that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other such gravity meters: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(32) *Magnetometers with a sensitivity lower (better) than 1.0 nt rms per square root Hertz*—

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such magnetometers that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such magnetometers for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such magnetometers that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such magnetometers: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(33) *Fluorocarbon compounds described in ECCN 1C006.d for cooling fluids for radar*—(i) *Iran.* Applications for all end-users in Iran of such compounds will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such fluorocarbon compounds that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such fluorocarbon compounds for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such compounds will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such fluorocarbon compounds that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such fluorocarbon compounds: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such compounds will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of such compounds will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(34) *High strength organic and inorganic fibers (kevlar) described in ECCN 1C210*—(i) *Iran.* Applications for all end-users in Iran of such fibers will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of high strength organic and inorganic fibers (kevlar) described in ECCN 1C210 that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other high strength organic and inorganic fibers (kevlar) described in ECCN 1C210 for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such fibers will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for high strength organic and inorganic fibers (kevlar) described in ECCN 1C210 that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other high strength organic and inorganic fibers (kevlar) described in ECCN 1C210: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such fibers will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,*

items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(v) *Libya.*Applications for military end-users or for military end-uses in Libya of such fibers will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(35) *Machines described in ECCNs 2B003 and 2B993 for cutting gears up to 1.25 meters in diameter*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such machines for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other machines: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(36) *Aircraft skin and spar milling machines*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of aircraft skin and spar milling machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other aircraft skin and spar milling machines to all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for aircraft skin and spar milling machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other aircraft skin and spar milling machines: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(37) *Manual dimensional inspection machines described in ECCN 2B996*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of manual dimensional inspection machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other manual dimensional inspection machines for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for such manual dimensional inspection machines that were

subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such manual dimensional inspection machines: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(38) *Robots capable of employing feedback information in real time processing to generate or modify programs*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of such robots that were subject to national security controls on August 28, 1991: see paragraphs (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other such robots: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by case basis.

(A) Contract sanctity date for such robots that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such robots: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by case basis.

(39) *Explosives detection equipment described in ECCN 2A983*—(i) Explosives detection equipment described in ECCN 2A983, controlled prior to April 3, 2003 under ECCN 2A993.

(A) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date: January 19, 1996.

(B) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: January 19, 1996.

(C) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date: January 19, 1996.

(D) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied.

(E) *Libya.* Applications for all end-users in Libya of these items will generally be denied.

(ii) Explosives detection equipment described in ECCN 2A983, not controlled prior to April 3, 2003 under ECCN 2A993.

(A) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(B) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.

(C) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(D) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.

(E) *Libya.* Applications for all end-users in Libya of these items will generally be denied.

(40) *''Software'' described in ECCN 2D983 specially designed or modified for the ''development'', ''production'' or ''use'' of explosives detection equipment*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.

(v) *Libya.* Applications for all end-users in Libya of these items will generally be denied.

(41) *''Technology'' described in ECCN 2E983 specially designed or modified for the ''development'', ''production'' or ''use'' of explosives detection equipment*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.

(v) *Libya.* Applications for all end-users in Libya of these items will generally be denied.

(42) *Production technology controlled under ECCN 1C355 on the CCL*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied.

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(v) *Libya.* Applications for military end-users or for military end-uses in Libya of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya will be considered on a case-by-case basis.

(43) *Commercial Charges and devices controlled under ECCN 1C992 on the CCL*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied.

(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied.

(v) *Libya.* Applications for all military end-uses or military end-users in Libya of such equipment will generally be denied. Applications for non-military end-users and non-military end-uses in Libya will be considered on a case-by-case basis. Applications to export or reexport oil well perforators and devices controlled under ECCN 1C992 will be reviewed on a case-by-case basis.

(44) *Ammonium nitrate, including certain fertilizers containing ammonium nitrate, under ECCN 1C997 on the CCL*—(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: June 15, 2001.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied.

(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: June 15, 2001.

(v) *Libya.* Applications for all end-users in Libya of these items will generally be denied.

(45) *Specific processing equipment, materials and software controlled under ECCNs 0A999, 0B999, 0D999, 1A999, 1C999, 1D999, 2A999, 2B999, 3A999, and 6A999 on the CCL.*

(i) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(ii) [Reserved]

[69 FR 23630, Apr. 29, 2004, as amended at 69 FR 46076, July 30, 2004; 70 FR 14391, Mar. 22, 2005]

SUPPLEMENT NO. 3 TO PART 742—HIGH PERFORMANCE COMPUTERS; SAFEGUARD CONDITIONS AND RELATED INFORMATION

This supplement sets forth the security conditions and safeguard plans for the export, reexport, or in-country transfer of high performance computers that may be imposed by BIS to certain destinations. The licensing policies for the export, reexport, or in-country transfer of high performance computers are set forth in §742.12 of this part.

(a) *Safeguard conditions.* Following interagency review of the application, the Bureau

of Industry and Security (BIS) will instruct the exporter to submit a safeguard plan signed by the ultimate consignee and certified by the export control authorities of the importing country (see *Certification by export control authorities of importing country* in this supplement). The safeguard plan must indicate that the ultimate consignee agrees to implement those safeguards required by the BIS as a condition of issuing the license. BIS will inform exporters concerning which of the following safeguards will be imposed as license conditions:

(1) The applicant will assume responsibility for providing adequate security against physical diversion of the computer during shipment (e.g., delivery by either attended or monitored shipment, using the most secure route possible—this precludes using the services or facilities of any country in Computer Tier 4).

(2) There will be *no* reexport or intra-country transfer of the computer without prior written authorization from BIS.

(3) The computer systems will be used only for those activities approved on the license or reexport authorization.

(4) There will be no changes either in the end-users or the end-uses indicated on the license without prior written authorization by BIS.

(5) Only software that supports the approved end-uses will be shipped with the computer system.

(6) The end-user will station security personnel at the computer using facility to ensure that the appropriate security measures are implemented.

(7) The exporter will station representatives at the computer using facility, or make such individuals readily available, to guide the security personnel in the implementation and operation of the security measures.

(8) The security personnel will undertake the following measures under the guidance of the exporter's representatives:

(i) The physical security of the computer using facility;

(ii) The establishment of a system to ensure the round-the-clock supervision of computer security;

(iii) The inspection, if necessary, of any program or software to be run on the computer system in order to ensure that all usage conforms to the conditions of the license;

(iv) The suspension, if necessary, of any run in progress and the inspection of any output generated by the computer to determine whether the program runs or output conform with the conditions of the license;

(v) The inspection of usage logs daily to ensure conformity with the conditions of the license and the retention of records of these logs for at least a year;

(vi) The determination of the acceptability of computer users to ensure conformity with the conditions of the license;

(vii) The immediate reporting of any security breaches or suspected security breaches to the government of the importing country and to the exporter's representatives;

(viii) The execution of the following key tasks:

(A) Establishment of new accounts;

(B) Assignment of passwords;

(C) Random sampling of data;

(D) Generation of daily logs;

(ix) The maintenance of the integrity and security of tapes and data files containing archived user files, log data, or system backups.

(9) The exporter's representatives will be present when certain key functions are being carried out (e.g., the establishment of new accounts, the assignment of passwords, the random sampling of data, the generating of daily logs, the setting of limits to computer resources available to users in the development mode, the certification of programs for conformity to the approved end-uses before they are allowed to run in the production mode, and the modification to previously certified production programs).

(10) The security personnel and the exporter's representatives will provide monthly reports on the usage of the computer system and on the implementation of the safeguards.

(11) The computer system will be housed in one secure building and protected against theft and unauthorized entry at all times.

(12) Restricted nationals, i.e., nationals of Computer Tier 4 countries, will not be allowed access to computers:

(i) No physical or computational access to computers may be granted to restricted nationals without prior written authorization from BIS, except that commercial consignees as described in this supplement are prohibited only from giving such nationals user-accessible programmability without prior written authorization;

(ii) No passwords or IDs may be issued to restricted nationals;

(iii) No work may be performed on the computer on behalf of restricted nationals; and

(iv) No conscious or direct ties may be established to networks (including their subscribers) operated by restricted nationals.

(13) Physical access to the computer, the operator consoles, and sensitive storage areas of the computer using facility will be controlled by the security personnel, under the guidance and monitoring of the exporter's representatives, and will be limited to the fewest number of people needed to maintain and run the computer system.

(14) The computer will be equipped with the necessary software to: Permit access to authorized persons only, detect attempts to

gain unauthorized access, set and maintain limits on usage, establish accountability for usage, and generate logs and other records of usage. This software will also maintain the integrity of data and program files, the accounting and audit system, the password or computational access control system, and the operating system itself.

(i) The operating system will be configured so that all jobs can be designated and tracked as either program development jobs or as production jobs.

(ii) In the program development mode, users will be free, following verification that their application conforms to the agreed end-use, to create, edit, or modify programs, to use utilities such as editors, debuggers, or compilers and to verify program operation. Programs in the development mode will be subject to inspection as provided by paragraph (a)(8)(iii) of this supplement.

(iii) In the production mode, users will have access to the full range of computer resources, but will be prohibited from modifying any program or using utilities that could modify any program. Before being allowed to run in the production mode, a program will have to be certified for conformity to approved end-uses by the security personnel and the exporter's representatives.

(iv) Programs certified for execution in the production mode will be protected from unauthorized modification by appropriate software and physical security measures. Any modifications to previously certified production programs will be approved by the security personnel under the guidance and monitoring of the exporter's representatives.

(v) The computer will be provided with accounting and audit software to ensure that detailed logs are maintained to record all computer usage. A separate log of security-related events will also be kept.

(vi) For each job executed in the production mode, the operating system will record execution characteristics in order to permit generation of a statistical profile of the program executed.

(15) The source code of the operating system will be accessible only to the exporter's representatives. Only those individuals will make changes in this source code.

(16) The security personnel, under the guidance of the exporter's representatives, will change passwords for individuals frequently and at unpredictable intervals.

(17) The security personnel, under the guidance of the exporter's representatives, will have the right to deny passwords to anyone. Passwords will be denied to anyone whose activity does not conform to the conditions of the license.

(18) Misuse of passwords by users will result in denial of further access to the computer.

(19) The exporter's representatives will install a strict password system and provide guidance on its implementation.

(20) Only the exporter's representatives will be trained in making changes in the password system and only they will make such changes.

(21) No computer will be networked to other computers outside the computer center without prior authorization from BIS.

(22) Generally, remote terminals will not be allowed outside the computer using facility without prior authorization by BIS. If remote terminals are specifically authorized by the license:

(i) The terminals will have physical security equivalent to the safeguards at the computer using facility;

(ii) The terminals will be constrained to minimal amounts of computer resources (CPU time, memory access, number of input-output operations, and other resources);

(iii) The terminals will not be allowed direct computational access to the computer (i.e., the security personnel, under the guidance of the exporter's representatives, will validate the password and identity of the user of any remote terminals before any such user is permitted to access the computer); all terminals will be connected to the computer system by a dedicated access line and a network access controller.

(23) There will be no direct input to the computer from remote terminals. Any data originating from outside the computer using facility, except for direct input from terminals within the same compound as the computer using facility, will first be processed by a separate processor or network access controller in order to permit examination of the data prior to its entry into the computer.

(24) The exporter will perform all maintenance of the computer system.

(25) Spare parts kept on site will be limited to the minimum amount. Spares will be kept in an area accessible only to the exporter's representatives. These representatives will maintain a strict audit system to account for all spare parts.

(26) No development or production technology on the computer system will be sent with the computer to the ultimate consignee.

(27) The end-user must immediately report any suspicions or facts concerning possible violations of the safeguards to the exporter and to the export control authorities of the importing country.

(28) The exporter must immediately report any information concerning possible violations of the safeguards to BIS. A violation of the safeguards might constitute grounds for suspension or termination of the license, preventing the shipment of unshipped spare parts, or the denial of additional licenses for spare parts, etc.

(29) The end-user will be audited quarterly by an independent consultant who has been approved by the export control authorities of the importing and exporting countries, but is employed at the expense of the end-user. The consultant will audit the computer usage and the implementation of the safeguards.

(30) The installation and operation of the computer will be coordinated and controlled by the following management structure:

(i) *Steering Committee.* The Steering Committee will comprise nationals of the importing country who will oversee the management and operation of the computer.

(ii) *Security Staff.* The Security Staff will be selected by the end-user or the government of the importing country to ensure that the required safeguards are implemented. This staff will be responsible for conducting an annual audit to evaluate physical security, administrative procedures, and technical controls.

(iii) *Technical Consultative Committee.* This committee will comprise technical experts from the importing country and the exporting company who will provide guidance in operating and maintaining the computer. At least one member of the committee will be an employee of the exporter. The committee will approve all accounts and maintain an accurate list of all users. In addition, the committee will advise the Steering Committee and the Security Staff concerning the security measures needed to ensure compliance with the safeguards required by the license.

(31) An ultimate consignee who is a multiple-purpose end-user, such as a university, will establish a peer review group comprising experts who represent each department or application area authorized for use on the computer under the conditions of the license. This group shall have the following responsibilities:

(i) Review all requests for computer usage and make recommendations concerning the acceptability of all projects and users;

(ii) Submit these recommendations to the Security Staff and Technical Consultative Committee for review and approval (see paragraph (a)(28) of this supplement);

(iii) Establish acceptable computer resource parameters for each project and review the results to verify their conformity with the authorized end-uses, restrictions, and parameters; and

(iv) Prepare monthly reports that would include a description of any runs exceeding the established parameters and submit them to the security staff.

(32) The end-user will also cooperate with any post-shipment inquiries or inspections by the U.S. Government or exporting company officials to verify the disposition and/or use of the computer, including access to the following:

(i) Usage logs, which should include, at a minimum, computer users, dates, times of use, and amount of system time used;

(ii) Computer access authorization logs, which should include, at a minimum, computer users, project names, and purpose of projects.

(33) The end-user will also cooperate with the U.S. Government or exporting company officials concerning the physical inspection of the computer using facility, on short notice, at least once a year and will provide access to all data relevant to computer usage. This inspection will include:

(i) Analyzing any programs or software run on the computer to ensure that all usage complies with the authorized end-uses on the license. This will be done by examining user files (e.g., source codes, machine codes, input/output data) that are either on-line at the time of the inspection or that have been previously sampled and securely stored.

(ii) Checking current and archived usage logs for conformity with the authorized end-uses and the restrictions imposed by the license.

(iii) Verifying the acceptability of all computer users in conformity with the authorized end-uses and the restrictions imposed by the license.

(34) Usage requests that exceed the quantity of monthly CPU time specified on the license shall not be approved without prior written authorization from the BIS. Requests for computational access approval shall include a description of the intended purpose for which access is sought.

(35) In addition to, or in lieu of, the normal access by on-site exporting company staff or its representatives, the company, when required by the exporting government, will provide a separate remote electronic access capability to the computer for the purposes of maintenance, troubleshooting, inspection of work in progress, and auditing of all work performed on the computer. On-site and central exporting company hardware and software maintenance facilities, at the direction of the exporting company staff or its representatives, to gather information such as:

(i) Statistical profiles of production jobs;

(ii) Logs of jobs run in both production and development mode;

(iii) Logs and reports of security related events.

If such method is used, the remote maintenance facilities will be considered part of the operating system and protected accordingly, and will be available only to exporting company operational staff or its representatives. The maintenance hardware and software and associated communication links will be protected to ensure the integrity and authenticity of data and programs and to prevent tampering with hardware.

(36) The export company staff or its representatives will be required to provide personnel for a specified period of time at the computer facility for management, operation, and safeguarding of the computer.

(b) *Certification by export control authorities of importing country.* (1) The following importing government certification may be required under §742.12 of this part:

This is to certify that (*name of ultimate consignee*) has declared to (*name of appropriate foreign government agency*) that the computer (*model name*) will be used only for the purposes specified in the end-use statement and that the ultimate consignee will establish and adhere to all the safeguard conditions and perform all other undertakings described in the end-use statement.

The (*name of appropriate foreign government agency*) will advise the United States Government of any evidence that might reasonably indicate the existence of circumstances (e.g., transfer of ownership) that could affect the objectives of the security safeguard conditions.

(2) Other importing government assurances regarding prohibited activities may also be required on a case-by-case basis.

(c) *Commercial consignees.* Exports or reexports of computers that are solely dedicated to the following non-scientific and non-technical commercial business uses will usually be eligible for a reduced set of security safeguard conditions:

(1) Financial services (e.g., banking, securities and commodity exchanges);

(2) Insurance;

(3) Reservation systems;

(4) Point-of-sales systems;

(5) Mailing list maintenance for marketing purposes;

(6) Inventory control for retail/wholesale distribution.

SUPPLEMENT NO. 4 TO PART 742—KEY ESCROW OR KEY RECOVERY PRODUCTS CRITERIA

Key Recoverable Feature

(1) The key(s) or other material/information required to decrypt ciphertext shall be accessible through a key recoverable feature.

(2) The product's cryptographic functions shall be inoperable until the key(s) or other material/information required to decrypt ciphertext is recoverable by government officials under proper legal authority and without the cooperation or knowledge of the user.

(3) The output of the product shall automatically include, in an accessible format and with a frequency of at least once every three hours, the identity of the key recovery agent(s) and information sufficient for the key recovery agent(s) to identify the key(s) or other material/information required to decrypt the ciphertext.

(4) The product's key recoverable functions shall allow access to the key(s) or other material/information needed to decrypt the ciphertext regardless of whether the product generated or received the ciphertext.

(5) The product's key recoverable functions shall allow for the recovery of all required decryption key(s) or other material/information required to decrypt ciphertext during a period of authorized access without requiring repeated presentations of access authorization to the key recovery agent(s).

Interoperability Feature

(6) The product's cryptographic functions may:

(i) Interoperate with other key recoverable products that meet these criteria, and shall not interoperate with products whose key recovery feature has been altered, bypassed, disabled, or otherwise rendered inoperative;

(ii) Send information to non-key recoverable products only when assured access is permitted to the key(s) or other material/information needed to decrypt ciphertext generated by the key recoverable product. Otherwise, key length is restricted to less than or equal to 56-bit DES or equivalent.

(iii) Receive information from non-key recoverable products with a key length restricted to less than or equal to 56-bit DES or equivalent.

Design, Implementation and Operational Assurance

(7) The product shall be resistant to efforts to disable or circumvent the attributes described in criteria one through six.

(8) The product's cryptographic function's key(s) or other material/information required to decrypt ciphertext shall be accessible to government officials under proper legal authority.

[63 FR 50523, Sept. 22, 1998, as amended at 63 FR 72164, Dec. 31, 1998]

SUPPLEMENT NO. 5 TO PART 742—CHECKLIST ON ENCRYPTION AND OTHER ''INFORMATION SECURITY'' FUNCTIONS

1. Does your product perform ''cryptography'', or otherwise contain any parts or components that are capable of performing any of the following ''information security'' functions?

(Mark with an ''X'' all that apply)

a. ____ encryption

b. ____ decryption only (no encryption)

c. ____ key management/public key infrastructure (PKI)

d. ____ authentication (*e.g.*, password protection, digital signatures)

e. ____ copy protection

f. ____ anti-virus protection
g. ____ other (please explain) :_____
h. ____ NONE/NOT APPLICABLE

2. For items with encryption, decryption and/or key management functions (1.a, 1.b, 1.c above):

a. What symmetric algorithms and key lengths (*e.g.*, 56-bit DES, 112/168-bit Triple-DES, 128/256-bit AES/Rijndael) are implemented or supported?

b. What asymmetric algorithms and key lengths (*e.g.*, 512-bit RSA/Diffie-Hellman, 1024/2048-bit RSA/Diffie-Hellman) are implemented or supported?

c. What encryption protocols (*e.g.*, SSL, SSH, IPSEC or PKCS standards) are implemented or supported?

d. What type of data is encrypted?

3. For products that contain an ''encryption component'', can this encryption component be easily used by another product, or else accessed/re-transferred by the end-user for cryptographic use?

[68 FR 35785, June 17, 2003]

SUPPLEMENT NO. 6 TO PART 742—GUIDELINES FOR SUBMITTING REVIEW REQUESTS FOR ENCRYPTION ITEMS

Review requests for encryption items must be submitted on Form BIS-748P (Multipurpose Application), or its electronic equivalent, and supported by the documentation described in this Supplement, in accordance with the procedures described in §748.3 of the EAR. To ensure that your review request is properly routed, insert the phrase ''Mass market encryption'' or ''License Exception ENC'' (whichever is applicable) in Block 9 (Special Purpose) of the application form and place an ''X'' in the box marked ''Classification Request'' in Block 5 (Type of Application)—Block 5 does not provide a separate item to check for the submission of encryption review requests. Failure to properly complete these items may delay consideration of your review request. BIS recommends that review requests be delivered via courier service to: Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230. For electronic submissions via SNAP, you may fax a copy of the support documents to BIS at (202) 219–9179 or –9182 or you may send the documents to: Bureau of Industry and Security, Information Technology Controls Division, Room 2093, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230. In addition, you must send a copy of your review request and all support documents to: Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6940, Fort Meade, MD 20755–6000. For all review requests of encryption items, you must provide brochures or other documentation or specifications related to the technology, commodity or software, relevant product descriptions, architecture specifications, and as necessary for the review, source code. You also must indicate whether there have been any prior reviews of the product, if such reviews are applicable to the current submission. In addition, you must provide the following information in a cover letter accompanying your review request:

(a) State the name of the encryption item being submitted for review;

(b) State that a duplicate copy has been sent to the ENC Encryption Request Coordinator;

(c) For review requests for a commodity or software, provide the following information:

(1) Description of all the symmetric and asymmetric encryption algorithms and key lengths and how the algorithms are used. Specify which encryption modes are supported (e.g., cipher feedback mode or cipher block chaining mode).

(2) State the key management algorithms, including modulus sizes, that are supported.

(3) For products with proprietary algorithms, include a textual description and the source code of the algorithm.

(4) Describe the pre-processing methods (e.g., data compression or data interleaving) that are applied to the plaintext data prior to encryption.

(5) Describe the post-processing methods (e.g., packetization, encapsulation) that are applied to the cipher text data after encryption.

(6) State the communication protocols (e.g., X.25, Telnet or TCP) and encryption protocols (e.g., SSL, IPSEC or PKCS standards) that are supported.

(7) Describe the encryption-related Application Programming Interfaces (APIs) that are implemented and/or supported. Explain which interfaces are for internal (private) and/or external (public) use.

(8) Describe the cryptographic functionality that is provided by third-party hardware or software encryption components (if any). Identify the manufacturers of the hardware or software components, including specific part numbers and version information as needed to describe the product. Describe whether the encryption software components (if any) are statically or dynamically linked.

(9) For commodities or software using Java byte code, describe the techniques (including obfuscation, private access modifiers or final classes) that are used to protect against decompilation and misuse.

(10) State how the product is written to preclude user modification of the encryption algorithms, key management and key space.

(11) For products that meet the requirements of §740.17(b)(3)—Encryption commodities, software and components available to

both ''government end-users'' and to non-''government end-users''—describe how they are not restricted by the provisions of §740.17(b)(2).

(12) For products which incorporate an open cryptographic interface as defined in part 772 of the EAR, describe the Open Cryptographic Interface.

(d) For review requests regarding components, provide the following additional information:

(1) Reference the application for which the components are used in, if known;

(2) State if there is a general programming interface to the component;

(3) State whether the component is constrained by function; and

(4) Identify the encryption component and include the name of the manufacturer, component model number or other identifier.

(e) For review requests for source code, provide the following information:

(1) If applicable, reference the executable (object code) product that was previously reviewed;

(2) Include whether the source code has been modified, and the technical details on how the source code was modified; and

(3) Include a copy of the sections of the source code that contain the encryption algorithm, key management routines and their related calls.

(f) For step-by-step instructions and guidance on submitting review requests for encryption items, visit our webpage at *www.bis.doc.gov/Encryption* and click on the navigation button labeled ''Guidance''.

[67 FR 38868, June 6, 2002, as amended at 69 FR 71363, Dec. 9, 2004; 70 FR 22249, Apr. 29, 2005]

SUPPLEMENT NO. 7 TO PART 742
[RESERVED]

PART 743—SPECIAL REPORTING

Sec.
743.1 Wassenaar Arrangement.
743.2 [Reserved]
SUPPLEMENT NO. 1 TO PART 743—WASSENAAR ARRANGEMENT MEMBER COUNTRIES

AUTHORITY: 50 U.S.C. app. 2401 *et seq.;* Pub. L. 106–508; 50 U.S.C. 1701 *et seq.;* E.O. 13206, 66 FR 18397, 3 CFR, 2001 Comp., p. 763.

SOURCE: 63 FR 2458, Jan. 15, 1998, unless otherwise noted.

§743.1 Wassenaar Arrangement.

(a) *Scope.* This section outlines special reporting requirements for exports of certain commodities, software and technology controlled under the Wassenaar Arrangement. Such reports must be submitted to BIS semiannually in accordance with the provisions of paragraph (f) of this section, and records of all exports subject to the reporting requirements of this section must be kept in accordance with part 762 of the EAR. This section does not require reports for reexports.

NOTE TO PARAGRAPH (a) OF THIS SECTION: For purposes of part 743, the term ''you'' has the same meaning as the term ''exporter'', as defined in part 772 of the EAR.

(b) *Requirements.* You must submit two (2) copies of each report required under the provisions of this section and maintain accurate supporting records (see §762.2(b) of the EAR) for all exports of items specified in paragraph (c) of this section for the following:

(1) Exports authorized under License Exceptions GBS, CIV, TSR, LVS, CTP, and the cooperating government portions (§§740.11(b)(2)(iii) and 740.11(b)(2)(iv) of the EAR) of GOV (see part 740 of the EAR). Note that exports of technology and source code under License Exception TSR to foreign nationals located in the U.S. should not be reported; and

(2) Exports authorized under the Special Comprehensive License procedure (see part 752 of the EAR).

(c) *Items for which reports are required.* (1) You must submit reports to BIS under the provisions of this section only for exports of items controlled under the following ECCNs:

(i) *Category 1:* 1A002; 1C007.c and .d; 1C010.c and .d; 1D002 for ''development'' of 1A002, 1C007.c and .d, and 1C010.c and .d; 1E001 for ''development'' and ''production'' of 1A002, 1C007.c and .d, and 1C010.c and .d ; 1E002.e and .f;

(ii) *Category 2:* 2D001 (certain items only; see Note to this paragraph), 2E001 (certain items only; see Note to this paragraph), and 2E002 (certain items only; see Note to this paragraph);

NOTE TO PARAGRAPH (c)(1)(ii): *Reports for 2D001,* for ''software'', other than that controlled by 2D002, specially designed for the ''development'' or ''production'' of the equipment in 2B003 or 2B001.a or .b (changing 6 µm to 5.1 µm in 2B001.a.1 and 2B001.b.1.a; and adding ''a positioning accuracy with ''all compensations available'' equal to or less (better) than 5.1 µm along any linear axis'' to the existing text for 2B001.b.2) of the Commerce Control List (CCL).

Reports for 2E001, are for ''technology'' according to the General Technology Note for ''development'' of ''software'' as described in this paragraph for 2D001, or for the equipment in 2B003 or 2B001.a or .b (changing 6 µm to 5.1µm in 2B001.a.1 and 2B001.b.1.a; and adding ''a positioning accuracy with ''all compensations available'' equal to or less (better) than 5.1 µm along any linear axis'' to the existing text for 2B001.b.2) of the CCL.

Reports for 2E002, are for ''technology'' according to the General Technology Note for ''production'' of the equipment in 2B003 or 2B001.a or .b (changing 6 µm to 5.1 µm in 2B001.a.1 and 2B001.b.1.a; and adding ''a positioning accuracy with ''all compensations available'' equal to or less (better) than 5.1 µm along any linear axis'' to the existing text for 2B001.b.2) of the CCL.

(iii) *Category 3:* 3A002.g.2, 3B001.a.2, 3D001 for ''development'' or ''production'' of 3A002.g.2 or 3B001.a.2, and 3E001 for ''development'' or ''production'' of 3A002.g.2 or 3B001.a.2;

(iv) *Category 4:* 4A001.a.2; 4D001 (see paragraph (c)(2) of this section); and 4E001 (see paragraph (c)(2) of this section);

(v) *Category 5:* 5A001.b.3 or b.5; 5B001.a (items specially designed for 5A001.b.3 or b.5); 5D001.a (specially designed for the ''development'' or ''production'' of equipment, function, or features in 5A001.b.3 or b.5) and 5D001.b (specially designed or modified to support ''technology'' under 5E001.a); and 5E001.a (for the ''development'' or ''production'' of equipment, function, features, or ''software'' in 5A001.b.3 or b.5, 5B001.a, 5D001.a and .b);

(vi) *Category 6:* 6A001.a.1.b (changing 10 kHz to 5 kHz and adding the text ''or a sound pressure level exceeding 224 dB (reference 1 µPa at 1 m) for equipment with an operating frequency in the band from 5kHz to 10 kHz inclusive'' to the existing text in 6A001.a.1.b.1) , and .a.2.d; 6A002.b; 6A004.c and d; 6A006.g (excluding compensators which provide only absolute values of the earth's magnetic field as output (*i.e.*, the frequency bandwidth of the output extends from DC to at least 0.8 Hz) and h; 6A008.d, .h, and .k; 6D001 (for 6A004.c and .d and 6A008.d, .h, and .k); 6D003.a; 6E001 (for equipment and software listed in this paragraph); and 6E002 (for equipment listed in this paragraph);

(vii) *Category 8:* 8A001.c; 8A002.b (for 8A001.c), .h, .j, .o.3, and .p; 8D001 (for commodities listed in this paragraph); 8D002; 8E001 (for commodities listed in this paragraph); and 8E002.a; and

(viii) *Category 9:* 9B001.b.

(2) Reports for ''software'' controlled by 4D001(that is specially designed), and ''technology'' controlled by 4E001 (according to the General Technology Note in Supplement No. 2 to part 774 of the EAR) are required for the ''development'' or ''production'' of computers controlled under 4A001.a.2, or for the ''development'' or ''production'' of ''digital computers'' having a CTP exceeding 190,000 MTOPS. For the calculation of CTP, see the Technical Note for Category 4 in the Commerce Control List (Supplement No. 2 to part 774 of the EAR).

(d) *Country Exceptions.* You must report each export subject to the provisions of this section, except for exports to Wassenaar member countries, as identified in Supplement No. 1 to part 743.

(e) *Information that must be included in each report.* (1) Each report submitted to BIS for items other than those identified in paragraph (e)(2) of this section must include the following information for each export during the time periods specified in paragraph (f) of this section:

(i) Export Control Classification Number and paragraph reference as identified on the Commerce Control List;

(ii) Number of units in the shipment; and

NOTE TO PARAGRAPH (e)(1)(ii): For exports of technology for which reports are required under § 743.1(c) of this section, the number of units in the shipment should be reported as one (1) for the initial export of the technology to a single ultimate consignee. Additional exports of the technology must be reported only when the type or scope of technology changes or exports are made to other ultimate consignees. Additionally, do not report the release of technology or source code subject to the EAR to foreign nationals in the U.S.

(iii) Country of ultimate destination.

(2) [Reserved]

(f) *Frequency and timing of reports.* You must submit reports subject to the provisions of this section semiannually. The reports must be labeled with the exporting company's name and address at the top of each page and must

include for each such export all the information specified in paragraph (e) of this section. The reports shall cover exports made during six month time periods spanning from January 1 through June 30 and July 1 through December 31.

(1) The first report must be submitted to and received by BIS no later than August 1, 1998 for the partial reporting period beginning January 15, 1998 and ending June 30, 1998. Thereafter, reports are due according to the provisions of paragraphs (f)(2) and (f)(3) of this section.

(2) Reports for the reporting period ending June 30 must be submitted to and received by BIS no later than August 1.

(3) Reports for the reporting period ending December 31 must be submitted to and received by BIS no later than February 1.

(g) *Mailing address and facsimile number:* (1) Two (2) copies of reports required under this section shall be delivered to one of the following addresses. BIS will not accept reports sent C.O.D.

(i) For deliveries by U.S. postal service:

Bureau of Industry and Security, U.S. Department of Commerce, P.O. Box 273, Attn: ''Wassenaar Reports'', Washington, D.C. 20044

(ii) For courier deliveries:

Bureau of Industry and Security, U.S. Department of Commerce, Attn: ''Wassenaar Reports'', Room 2705, 14th Street and Pennsylvania Ave., N.W., Washington, D.C. 20230

(2) Reports may also be sent by facsimile to: (202) 482–3345, Attn: ''Wassenaar Reports''.

(h) *Contacts.* General information concerning the Wassenaar Arrangement and reporting obligations thereof is available from the Office of Strategic Trade and Foreign Policy Controls, Tel. (202) 482–0092, Fax: (202) 482–4094.

[63 FR 2458, Jan. 15, 1998, as amended at 63 FR 55020, Oct. 14, 1998; 63 FR 72165, Dec. 31, 1998; 64 FR 3214, Jan. 21, 1999; 64 FR 40110, July 23, 1999; 64 FR 47105, Aug. 30, 1999; 65 FR 12922, Mar. 10, 2000; 65 FR 34075, May 26, 2000; 65 FR 42568, July 10, 2000; 65 FR 60856, Oct. 13, 2000; 66 FR 461, Jan. 3, 2002; 67 FR 10615, 10610, Mar. 8, 2002; 68 FR 10591, Mar. 5, 2003; 68 FR 68980, Dec. 10, 2003; 70 FR 41102, July 15, 2005]

§ 743.2 [Reserved]

SUPPLEMENT NO. 1 TO PART 743—WASSENAAR ARRANGEMENT MEMBER COUNTRIES

Argentina
Australia
Austria
Belgium
Bulgaria
Canada
Czech Republic
Denmark
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Japan
Luxembourg
Netherlands
New Zealand
Norway
Poland
Portugal
Romania
Russia
Slovakia
Slovenia
South Korea
Spain
Sweden
Switzerland
Turkey
Ukraine
United Kingdom
United States

[63 FR 55020, Oct. 14, 1998, as amended at 70 FR 41102, July 15, 2005]

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

Sec.

744.1 General provisions.
744.2 Restrictions on certain nuclear end-uses.
744.3 Restrictions on Certain Rocket Systems (including ballistic missile systems and space launch vehicles and sounding rockets) and Unmanned Air Vehicles (including cruise missile systems, target drones and reconnaissance drones) End-Uses.
744.4 Restrictions on certain chemical and biological weapons end-uses.
744.5 Restrictions on certain maritime nuclear propulsion end-uses.
744.6 Restrictions on certain activities of U.S. persons.

744.7 Restrictions on certain exports to and for the use of certain foreign vessels or aircraft.
744.8 [Reserved]
744.9 Restrictions on technical assistance by U.S. persons with respect to encryption items.
744.10 Restrictions on certain entities in Russia.
744.11 [Reserved]
744.12 Restrictions on exports and reexports to persons designated in or pursuant to Executive Order 13224 (Specially Designated Global Terrorist) (SDGT).
744.13 Restrictions on exports and reexports to persons designated pursuant to Executive Order 12947 (Specially Designated Terrorist) (SDT).
744.14 Restrictions on exports and reexports to designated Foreign Terrorist Organizations (FTOs).
744.15–744.16 [Reserved]
744.17 Restrictions on certain exports and reexports of general purpose microprocessors for ''military end-uses'' and to ''military end-users.''
744.18 Restrictions on exports, reexports, and transfers to persons designated in or pursuant to Executive Order 13315.
744.19 Licensing policy regarding persons sanctioned pursuant to specified statutes.
744.20 License requirements that apply to certain sanctioned entities.
SUPPLEMENT NO. 1 TO PART 744—MILITARY END-USE EXAMPLES FOR §744.17
SUPPLEMENT NO. 2 TO PART 744 [RESERVED]
SUPPLEMENT NO. 3 TO PART 744—COUNTRIES NOT SUBJECT TO CERTAIN NUCLEAR END-USE RESTRICTIONS IN §744.2(A)
SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 4, 2004, 69 FR 64637, 3 CFR, 2004 Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

SOURCE: 61 FR 12802, Mar. 25, 1996, unless otherwise noted.

§744.1 General provisions.

(a)(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part contains prohibitions against exports, reexports, and selected transfers to certain end-users and end-uses as introduced under General Prohibition Five (End-use/End-users) and Nine (Orders, Terms, and Conditions), unless authorized by BIS. Sections 744.2, 744.3, 744.4 and 744.5 prohibit exports and reexports of items subject to the EAR to defined nuclear, missile, chemical and biological activities and nuclear maritime end-uses. Section 744.6 prohibits certain activities by U.S. persons in support of certain nuclear, missile, chemical, or biological end-uses regardless of whether that support involves the export or reexport of items subject to the EAR. Sections 744.7 and 744.8 prohibit exports and reexports of certain items for certain aircraft and vessels. Section 744.9 prohibits U.S. persons from providing technical assistance to certain foreign persons seeking to develop or manufacture certain encryption commodities or software. Section 744.10 prohibits exports and reexports of any item subject to the EAR to Russian entities, included in Supplement No. 4 of this part. Sections 744.12, 744.13 and 744.14 prohibit exports and reexports of any item subject to the EAR to persons designated as Specially Designated Global Terrorists, Specially Designated Terrorists, or Foreign Terrorist Organizations, respectively. Section 744.19 sets forth BIS's licensing policy for applications for exports or reexports when a party to the transaction is an entity that has been sanctioned pursuant to any of three specified statutes that require certain license applications to be denied. Section 744.20 requires a license, to the extent specified in Supplement No. 4 to this part, for exports and reexports of items subject to the EAR destined to certain sanctioned entities listed in Supplement No. 4 to this part. Section 744.15 describes restrictions on exports and reexports to persons named in general orders. In addition, these sections include license review standards for export license applications submitted as required by these sections. It should also be noted that part 764 of the EAR prohibits exports, reexports and certain in-country transfers of items subject to the EAR to denied parties.

(2) If controls set forth under more than one section of part 744 apply to a person, the license requirements for such a person will be determined based on the requirements of all applicable sections of part 744, and license applications will be reviewed under all applicable licensing policies.

(b) *Steps.* The following are steps you should follow in using the provisions of this part:

(1) *Review end-use and end-user prohibitions.* First, review each end-use and end-user prohibition described in this part to learn the scope of these prohibitions.

(2) *Determine applicability*. Second, determine whether any of the end-use and end-user prohibitions described in this part are applicable to your planned export, reexport, or other activity. See Supplement No. 1 to part 732 for guidance.

(c) A list of entities is included in Supplement No. 4 to this part 744 of the EAR (Entity List). The public is hereby informed that these entities are ineligible to receive any items subject to the EAR without a license to the extent specified in the supplement. No License Exceptions are available for exports and reexports to listed entities of specified items, except License Exceptions for items listed in § 740.2(a)(5) of the EAR destined to listed Indian or Pakistani entities to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, and in the case of entities added to the Entity List pursuant to § 744.20, to the extent specified on the Entity List.

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 51370, Oct. 1, 1997; 63 FR 64324, Nov. 19, 1998; 66 FR 50091, Oct. 1, 2001; 68 FR 34194, June 6, 2003; 69 FR 56694, Sept. 22, 2004; 69 FR 65369, Nov. 12, 2004; 70 FR 10867, Mar. 7, 2005]

§ 744.2 Restrictions on certain nuclear end-uses.

(a) *General prohibition*. In addition to the license requirements for items specified on the CCL, you may not export or reexport to any destination, other than countries in the Supplement No. 3 to this part, any item subject to the EAR without a license if at the time of the export or reexport you know[1] the item will be used directly or indirectly in any one or more of the following activities described in paragraphs (a)(1), (a)(2), and (a)(3) of this section:

(1) *Nuclear explosive activities.* Nuclear explosive activities, including research on or development, design, manufacture, construction, testing or maintenance of any nuclear explosive device, or components or subsystems of such a device.[2 3]

(2) *Unsafeguarded nuclear activities.* Activities including research on, or development, design, manufacture, construction, operation, or maintenance of any nuclear reactor, critical facility, facility for the fabrication of nuclear fuel, facility for the conversion of nuclear material from one chemical form to another, or separate storage installation, where there is no obligation to accept International Atomic Energy Agency (IAEA) safeguards at the relevant facility or installation when it contains any source or special fissionable material (regardless of whether or not it contains such material at the time of export), or where any such obligation is not met.

[1] Part 772 of the EAR defines ''knowledge'' for all of the EAR except part 760, Restrictive Trade Practices and Boycotts. The definition, which includes variants such as ''know'' and ''reason to know'', encompasses more than positive knowledge. Thus, the use of ''know'' in this section in place of the former wording ''know or have reason to know'' does not lessen or otherwise change the responsibilities of persons subject to the EAR.

[2] Nuclear explosive devices and any article, material, equipment, or device specifically designed or specially modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices are subject to export licensing or other requirements of the Directorate of Defense Trade Controls, U.S. Department of State, or the licensing or other restrictions specified in the Atomic Energy Act of 1954, as amended. Similarly, items specifically designed or specifically modified for use in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions (except such items as are in normal commercial use for other purposes) are subject to the same requirements.

[3] Also see §§ 744.5 and 748.4 of the EAR for special provisions relating to technical data for maritime nuclear propulsion plants and other commodities.

(3) *Safeguarded and unsafeguarded nuclear activities.* Safeguarded and unsafeguarded nuclear fuel cycle activities, including research on or development, design, manufacture, construction, operation or maintenance of any of the following facilities, or components for such facilities:[4]

(i) Facilities for the chemical processing of irradiated special nuclear or source material;

(ii) Facilities for the production of heavy water;

(iii) Facilities for the separation of isotopes of source and special nuclear material; or

(iv) Facilities for the fabrication of nuclear reactor fuel containing plutonium.

(b) *Additional prohibition on exporters or reexporters informed by BIS.* BIS may inform an exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for export or reexport of specified items to specified end-users, because BIS has determined that there is an unacceptable risk of use in, or diversion to, any of the activities described in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. The absence of any such notification does not excuse the exporter or reexporter from compliance with the license requirements of paragraph (a) of this section.

(c) *Exceptions.* Despite the prohibitions described in paragraphs (a) and (b) of this section, you may export technology subject to the EAR under the *operation technology and software* or *sales technology and software provisions* of License Exception TSU (see § 740.13(a) and (b)), but only to and for use in countries listed in Supplement No. 3 to Part 744 of the EAR (Countries Not Subject to Certain Nuclear End-Use Restrictions in § 744.2(a)). Notwithstanding the provisions of Part 740 of the EAR, the provisions of § 740.13(a) and (b) will only overcome General Prohibition Five for countries listed in Supplement No. 3 to Part 744 of the EAR.

(d) *License review standards.* The following factors are among those used by the United States to determine whether to grant or deny license applications required under this section:

(1) Whether the commodities, software, or technology to be transferred are appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;

(2) The significance for nuclear purposes of the particular commodity, software, or technology;

(3) Whether the commodities, software, or technology to be exported are to be used in research on or for the development, design, manufacture, construction, operation, or maintenance of any reprocessing or enrichment facility;

(4) The types of assurances or guarantees given against use for nuclear explosive purposes or proliferation in the particular case;

(5) Whether the end-user has been engaged in clandestine or illegal procurement activities;

(6) Whether an application for a license to export to the end-user has previously been denied, or whether the end-use has previously diverted items received under a license, License Exception, or NLR to unauthorized activities;

(7) Whether the export would present an unacceptable risk of diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity described in § 744.2 of this part; and

(8) The nonproliferation credentials of the importing country, based on consideration of the following factors:

(i) Whether the importing country is a party to the Nuclear Non-Proliferation Treaty (NPT) or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) (see Supplement No. 2 to part 742 of the EAR), or to a similar international legally-binding nuclear nonproliferation agreement;

[4] Such activities may also require a specific authorization from the Secretary of Energy pursuant to § 57.b.(2) of the Atomic Energy Act of 1954, as amended, as implemented by the Department of Energy's regulations published in 10 CFR 810.

(ii) Whether the importing country has all of its nuclear activities, facilities or installations that are operational, being designed, or under construction, under International Atomic Energy Agency (IAEA) safeguards or equivalent full scope safeguards;

(iii) Whether there is an agreement for cooperation in the civil uses of atomic energy between the U.S. and the importing country;

(iv) Whether the actions, statements, and policies of the government of the importing country are in support of nuclear nonproliferation and whether that government is in compliance with its international obligations in the field of nonproliferation;

(v) The degree to which the government of the importing country cooperates in nonproliferation policy generally (e.g., willingness to consult on international nonproliferation issues);

(vi) Intelligence data on the importing country's nuclear intentions and activities.

[61 FR 12802, Mar. 25, 1996, as amended at 61 FR 64284, Dec. 4, 1996; 62 FR 25459, May 9, 1997; 67 FR 55598, Aug. 29, 2002]

§ 744.3 Restrictions on Certain Rocket Systems (including ballistic missile systems and space launch vehicles and sounding rockets) and Unmanned Air Vehicles (including cruise missile systems, target drones and reconnaissance drones) End-Uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR, without a license if at the time of the export, reexport or transfer you know the item:

(1) Will be used in the design, development, production or use of rocket systems or unmanned air vehicles capable of a range of at least 300 kilometers in or by a country listed in Country Group D:4 of Supplement No. 1 to part 740 of the EAR.

(2) Will be used, anywhere in the world except by governmental programs for nuclear weapons delivery of NPT Nuclear Weapons States that are also member of NATO, in the design, development, production or use of rocket systems or unmanned air vehicles, regardless of range capabilities, for the delivery of chemical, biological, or nuclear weapons; or

(3) Will be used in the design, development, production or use of any rocket systems or unmanned air vehicles in or by a country listed in Country Group D:4, but you are unable to determine:

(i) The characteristics (*i.e.*, range capabilities) of the rocket systems or unmanned air vehicles, or

(ii) Whether the rocket systems or unmanned air vehicles, regardless of range capabilities, will be used in a manner prohibited under paragraph (a)(2) of this section.

NOTE TO PARAGRAPH (a) OF THIS SECTION: For the purposes of this section, ''Rocket Systems'' include, but are not limited to, ballistic missile systems, space launch vehicles, and sounding rockets. Also, for the purposes of this section, ''unmanned air vehicles'' include, but are not limited to, cruise missile systems, target drones and reconnaissance drones.

(b) *Additional prohibition.* BIS may inform, either individually, by specific notice, or generally through amendment to the EAR, that a license is required for a specific export, reexport or transfer of specified items to a certain end-user, anywhere in the world, because there is an unacceptable risk of use in or diversion to activities described in paragraphs (a)(1) or (a)(2) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse non-compliance with the license requirements of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(c) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraph (a) and (b) of this section.

(d) *License Review Standards.* (1) Applications to export, reexport or transfer the items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport or transfer would make a material contribution to the proliferation

of certain rocket systems, or unmanned air vehicles. When an export, reexport or transfer is deemed to make a material contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required by this section:

(i) The specific nature of the end use;

(ii) The significance of the export, reexport or transfer in terms of its contribution to the design, development, production or use of certain rocket systems or unmanned air vehicles;

(iii) The capabilities and objectives of the rocket systems or unmanned air vehicles of the recipient country;

(iv) The nonproliferation credentials of the importing country;

(v) The types of assurances or guarantees against design, development, production, or use for certain rocket system or unmanned air vehicle delivery purposes that are given in a particular case; and

(vi) The existence of a pre-existing contract.

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997; 69 FR 64659, Nov. 8, 2004; 70 FR 11861, Mar. 10, 2005]

§744.4 Restrictions on certain chemical and biological weapons end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR without a license if, at the time of export, reexport, or transfer you know that the item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

(b) *Additional prohibition on persons informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export, reexport, or transfer (in-country), or for the export, reexport, or transfer (in-country) of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to the activities specified in paragraph (a) of this section, anywhere in the world. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraph (a) of this section.

(c) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

(d) *License review standards.* (1) Applications to export, reexport, or transfer (in-country) items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport, or transfer would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export, reexport, or transfer is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required under this section:

(i) The specific nature of the end-use;

(ii) The significance of the export, reexport, or transfer in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The nonproliferation credentials of the importing country or the country in which the transfer would take place;

(iv) The types of assurances or guarantees against the design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case; and

(v) The existence of a pre-existing contract. See Supplement No. 1 to Part 742 of the EAR for relevant contract sanctity dates.

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997; 70 FR 16111, Mar. 30, 2005; 70 FR 19691, Apr. 14, 2005]

§ 744.5 Restrictions on certain maritime nuclear propulsion end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport certain technology subject to the EAR without a license if at the time of the export or reexport you know the item is for use in connection with a foreign maritime nuclear propulsion project. This prohibition applies to any technology relating to maritime nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, or maintenance, including any machinery, devices, components, or equipment specifically developed or designed for use in such plants or facilities.

(b) *Exceptions.* The exceptions provided in part 740 of the EAR do not apply to the prohibitions described in paragraph (a) of this section.

(c) *License review standards.* It is the policy of the United States Government not to participate in and not to authorize United States firms or individuals to participate in foreign naval nuclear propulsion plant projects, except under an Agreement for Cooperation on naval nuclear propulsion executed in accordance with § 123(d) of the Atomic Energy Act of 1954. However, it is the policy of the United States Government to encourage United States firms and individuals to participate in maritime (civil) nuclear propulsion plant projects in friendly foreign countries provided that United States naval nuclear propulsion information is not disclosed.

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997]

§ 744.6 Restrictions on certain activities of U.S. persons.

(a) *General prohibitions*—(1) *Activities related to exports.* (i) No U.S. person as defined in paragraph (c) of this section may, without a license from BIS, export, reexport, or transfer to or in any country any item where that person knows that such items:

(A) Will be used in the design, development, production, or use of nuclear explosive devices in or by a country listed in Country Group D:2 (see Supplement No. 1 to part 740 of the EAR).

(B) Will be used in the design, development, production, or use of missiles in or by a country listed in Country Group D:4 (see Supplement No. 1 to part 740 of the EAR); or

(C) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

(ii) No U.S. person shall, without a license from BIS, knowingly support an export, reexport, or transfer that does not have a license as required by this section. Support means any action, including financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer without being the actual exporter or reexporter.

(2) *Other activities unrelated to exports.* No U.S. person shall, without a license from BIS:

(i) Perform any contract, service, or employment that the U.S. person knows will directly assist in the design, development, production, or use of missiles in or by a country listed in Country Group D:4 (see Supplement No. 1 to part 740 of the EAR); or

(ii) Perform any contract, service, or employment that the U.S. person knows will directly assist in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

(3) *Whole plant requirement.* No U.S. person shall, without a license from BIS, participate in the design, construction, export, or reexport of a whole plant to make chemical weapons precursors identified in ECCN 1C350, in countries other than those listed in Country Group A:3 (Australia Group) (See Supplement No. 1 to part 740 of the EAR).

(b) *Additional prohibitions on U.S. persons informed by BIS.* BIS may inform U.S. persons, either individually or through amendment to the EAR, that a license is required because an activity could involve the types of participation and support described in paragraph (a) of this section anywhere in the world.

Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided

orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(c) *Definition of U.S. person.* For purposes of this section, the term U.S. person includes:

(1) Any individual who is a citizen of the United States, a permanent resident alien of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3);

(2) Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and

(3) Any person in the United States.

(d) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

(e) *License review standards.* Applications to engage in activities otherwise prohibited by this section will be denied if the activities would make a material contribution to the design, development, production, stockpiling, or use of nuclear explosive devices, chemical or biological weapons, or of missiles.

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997; 70 FR 19691, Apr. 14, 2005]

§744.7 Restrictions on certain exports to and for the use of certain foreign vessels or aircraft.

(a) *General end-use prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR to, or for the use of, a foreign vessel or aircraft, whether an operating vessel or aircraft or one under construction, located in any port including a Canadian port, unless a License Exception or NLR permits the shipment to be made:

(1) To the country in which the vessel or aircraft is located, and

(2) To the country in which the vessel or aircraft is registered, or will be registered in the case of a vessel or aircraft under construction, and

(3) To the country, including a national thereof, which is currently controlling, leasing, or chartering the vessel or aircraft.

(b) *Exception for U.S. and Canadian carriers.* (1) Notwithstanding the general end-use prohibition in paragraph (a) of this section, export and reexport may be made of the commodities described in paragraph (b)(3) of this section, for use by or on a specific vessel or plane of U.S. or Canadian registry located at any seaport or airport outside the United States or Canada except a port in Country Group D:1 (excluding the PRC), (see Supplement No. 1 to part 740) provided that such commodities are[6] all of the following:

(i) Ordered by the person in command or the owner or agent of the vessel or plane to which they are consigned;

(ii) Intended to be used or consumed on board such vessel or plane and necessary for its proper operation;

(iii) In usual and reasonable kinds and quantities during times of extreme need, except that usual and reasonable quantities of ship's bunkers or aviation fuel are considered to be only that quantity necessary for a single onward voyage or flight; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record is filed in accordance with the requirements of the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their own use.

(2) *Exports to U.S. or Canadian Airline's Installation or Agent.* Exports and reexports of the commodities described in paragraph (e) of this section, except fuel, may be made to a U.S. or Canadian airline's installation or agent in any foreign destination except Country Group D:1 (excluding the PRC), (see Supplement No. 1 to part 740) provided such commodities are all of the following:

(i) Ordered by a U.S. or Canadian airline and consigned to its own installation or agent abroad;

(ii) Intended for maintenance, repair, or operation of aircraft registered in

[6] Where a license is required, see §§748.2 and 748.4(g) of the EAR.

either the United States or Canada, and necessary for the aircraft's proper operation, except where such aircraft is located in, or owned, operated or controlled by, or leased or chartered to, Country Group D:1 (excluding the PRC) (see Supplement No. 1 to part 740) or a national of such country;

(iii) In usual and reasonable kinds and quantities; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record is filed in accordance with the requirements of the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations.

(3) *Applicable commodities.* This § 744.7 applies to the commodities listed subject to the provisions in paragraph (b) of this section:

(i) Fuel, except crude petroleum and blends of unrefined crude petroleum with petroleum products, which is of non-Naval Petroleum Reserves origin or derivation (refer to short supply controls in part 754 of the EAR);

(ii) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements, except crude petroleum, provided that any commodities which are listed in Supplement No. 2 to part 754 of the EAR are of non-Naval Petroleum Reserves origin or derivation (refer to short supply controls in part 754 of the EAR);

(iii) Medical and surgical supplies;

(iv) Food stores;

(v) Slop chest articles;

(vi) Saloon stores or supplies; and

(vii) Equipment and spare parts.

[61 FR 12802, Mar. 25, 1996, as amended at 65 FR 38160, June 19, 2000; 68 FR 50472, Aug. 21, 2003; 70 FR 67348, Nov. 7, 2005]

§ 744.8 [Reserved]

§ 744.9 Restrictions on technical assistance by U.S. persons with respect to encryption items.

(a) *General prohibition.* No U.S. person may, without authorization from BIS, provide technical assistance (including training) to foreign persons with the intent to aid a foreign person in the development or manufacture outside the United States of encryption commodities and software that, if of United States origin, would be controlled for EI reasons under ECCN 5A002 or 5D002. Technical assistance may be exported and reexported immediately to nationals of the countries listed in Supplement 3 to part 740 of the EAR (except for technical assistance to government end-users for cryptanalytic items), provided that the exporter has submitted to BIS a completed encryption review request by the time of export (as described in § 740.17(a)(3) of the EAR, for technical assistance not otherwise authorized under § 740.17(a)(1) of the EAR). Note that this prohibition does not apply if the U.S. person providing the assistance has a license or is otherwise entitled to export the encryption commodities and software in question to the foreign person(s) receiving the assistance. Note in addition that the mere teaching or discussion of information about cryptography, including, for example, in an academic setting or in the work of groups or bodies engaged in standards development, by itself would not establish the intent described in this section, even where foreign persons are present.

(b) *Definition of U.S. person.* For purposes of this section, the term U.S. person includes:

(1) Any individual who is a citizen or permanent resident alien of the United States;

(2) Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and

(3) Any person in the United States.

(c) *License review standards.* Applications involving activities described in this section will be reviewed on a case-by-case basis to determine whether the activity is consistent with U.S. national security and foreign policy interests.

[61 FR 68584, Dec. 30, 1996, as amended at 65 FR 62609, Oct. 19, 2000; 69 FR 71364, Dec. 9, 2004]

§744.10 Restrictions on certain entities in Russia.

(a) *General prohibition.* Certain entities in Russia are included in Supplement No. 4 to this part 744 (Entity List). (See also §744.1(c) of the EAR.) Exporters are hereby informed that these entities are ineligible to receive any items subject to the EAR without a license.

(b) *Exceptions.* No License Exceptions apply to the prohibition described in paragraph (a) of this section.

(c) *License review standards.* Applications to export or reexport items subject to the EAR to these entities will be reviewed with a presumption of denial.

[64 FR 14605, Mar. 26, 1999]

§744.11 [Reserved]

§744.12 Restrictions on exports and reexports to persons designated in or pursuant to Executive Order 13224 (Specially Designated Global Terrorist) (SDGT).

BIS maintains restrictions on exports and reexports to persons designated in or pursuant to Executive Order 13224 of September 23, 2001 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism). These persons include individuals and entities listed in the Annex to Executive Order 13224, as well as persons subsequently designated by the Secretary of State or Secretary of the Treasury pursuant to criteria set forth in the Order. Pursuant to Executive Order 13224, the Department of the Treasury's Office of Foreign Assets Control (OFAC) maintains 31 CFR part 594, the Global Terrorism Sanctions Regulations. OFAC announces the names of persons designated pursuant to Executive Order 13224 in the FEDERAL REGISTER and includes such persons in Appendix A to 31 CFR Chapter V, which lists persons subject to various sanctions programs administered by OFAC. The Department of State also announces the names of foreign persons designated pursuant to Executive Order 13224 in the FEDERAL REGISTER. All persons designated in or pursuant to Executive Order 13224 are identified in Appendix A to 31 CFR Chapter V by the bracketed initials [SDGT] and are also known as Specially Designated Global Terrorists (SDGTs).

(a) *License requirement(s).* (1) A license requirement applies to the export or reexport to an SDGT of any item subject to the EAR.

(2) To avoid duplication, U.S. persons are not required to seek separate authorization for an export or reexport to an SDGT of an item subject to both the EAR and OFAC's regulatory authority pursuant to Executive Order 13224. Therefore, if OFAC authorizes an export from the United States or an export or reexport by a U.S. person to an SDGT, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export or reexport to an SDGT of any item subject to the EAR that is not subject to OFAC's Global Terrorism Sanctions Regulations in 31 CFR part 594.

(4) Non-U.S. persons must seek authorization from BIS for any export from abroad or reexport to an SDGT of any item subject to the EAR.

(5) Any export or reexport to an SDGT of any item subject to both the EAR and OFAC's regulatory authority pursuant to Executive Order 13224 and not authorized by OFAC is a violation of the EAR.

(6) Any export or reexport by a U.S. person to an SDGT of any item subject to the EAR that is not subject to regulation by OFAC and not authorized by BIS is a violation of the EAR. Any export from abroad or reexport by a non-U.S. person to an SDGT of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) *Exceptions.* No License Exceptions or other BIS authorization are available for any export or reexport to an SDGT of any item subject to the EAR.

(c) *Licensing policy.* Applications for licenses for the export or reexport to an SDGT of any item subject to the EAR generally will be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

NOTE TO § 744.12: This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

[68 FR 34194, June 6, 2003]

§ 744.13 Restrictions on exports and reexports to persons designated pursuant to Executive Order 12947 (Specially Designated Terrorist) (SDT).

Consistent with the purpose of Executive Order 12947 of January 23, 1995, BIS maintains restrictions on exports and reexports to Specially Designated Terrorists (SDTs). Executive Order 12947 prohibits transactions by U.S. persons with terrorists who threaten to disrupt the Middle East peace process. Pursuant to the Executive Order, the Department of the Treasury, Office of Foreign Assets Control (OFAC), maintains 31 CFR part 595, the Terrorism Sanctions Regulations. In Appendix A to 31 CFR Chapter V, pursuant to 31 CFR part 595, these Specially Designated Terrorists are identified by the bracketed suffix initials [SDT]. The requirements set forth below further the objectives of Executive Order 12947.

(a) *License requirement(s).* (1) A license requirement applies to the export or reexport to an SDT of any item subject to the EAR.

(2) To avoid duplication, U.S. persons are not required to seek separate authorization for an export or reexport to an SDT of an item subject both to the EAR and to OFAC's Terrorism Sanctions Regulations in 31 CFR part 595. Therefore, if OFAC authorizes an export or reexport of an item by a U.S. person to a SDT, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export or reexport to an SDT of an item subject to the EAR but not subject to OFAC's Terrorism Sanctions Regulations in 31 CFR part 595.

(4) Non-U.S. persons must seek authorization from BIS for the export from abroad or reexport to an SDT of any item subject to the EAR.

(5) Any export or reexport to an SDT by a U.S. person of any item subject both to the EAR and OFAC's Terrorism Sanctions Regulations in 31 CFR part 595 and not authorized by OFAC is a violation of the EAR.

(6) Any export or reexport by a U.S. person to an SDT of any item subject to the EAR that is not subject to OFAC's Terrorism Sanctions Regulations in 31 CFR part 595 and not authorized by BIS is a violation of the EAR. Any export from abroad or reexport by a non-U.S. person to an SDT of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) *Exceptions.* No License Exceptions or other BIS authorization are available for export or reexport to an SDT of any item subject to the EAR.

(c) *Licensing policy.* Applications for licenses for the export or reexport to an SDT of any item subject to the EAR generally will be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

NOTE TO § 744.13: This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

[68 FR 34194, June 6, 2003]

§ 744.14 Restrictions on exports and reexports to designated Foreign Terrorist Organizations (FTOs).

Consistent with the objectives of section 219 of the Immigration and Nationality Act, as amended (INA) (8 U.S.C. 1189), and section 303 of the Antiterrorism and Effective Death Penalty Act 1996, as amended (Anti-Terrorism Act) (18 U.S.C. 2339B) (Public Law 104–132. 110 Stat. 1214–1319), BIS maintains restrictions on exports and

reexports to organizations designated as Foreign Terrorist Organizations (FTOs) pursuant to section 219 of the INA. The Department of the Treasury, Office of Foreign Assets Control, maintains 31 CFR part 597, the Foreign Terrorist Organizations Sanctions Regulations, requiring U.S. financial institutions to block all financial transactions involving assets of designated FTOs within the possession or control of such U.S. financial institutions. Section 303 of the Anti-Terrorism Act prohibits persons within the United States or subject to U.S. jurisdiction from knowingly providing material support or resources to a designated FTO and makes violations punishable by criminal penalties under title 18, United States Code. These designated FTOs are listed in Appendix A to 31 CFR Chapter V and identified by the bracketed initials [FTO]. A designation of a foreign organization determined to meet the criteria of section 219 of the INA takes effect upon publication in the FEDERAL REGISTER by the Secretary of State, or the Secretary's designee.

(a) *License requirement(s).* (1) A license requirement applies to the export or reexport to an FTO of any item subject to the EAR.

(2) U.S. persons must seek authorization from BIS for the export or reexport to an FTO of any item subject to the EAR.

(3) Non-U.S. persons must seek authorization from BIS for the export from abroad or reexport to an FTO of any item subject to the EAR.

(4) Any export or reexport to an FTO by any person of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(5) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) *Exceptions.* No License Exceptions or other BIS authorization for items described by paragraph (a) of this section are available for exports or reexports to FTOs.

(c) *Licensing policy.* Applications for exports and reexports to FTOs of all items identified by paragraph (a) of this section will generally be denied, to the extent they constitute material support or resources, as defined in 18 U.S.C. 2339A(b).

(d) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(e) *FTOs also designated as SDTs or SDGTs.* In cases in which an FTO is also an SDT, as described in §744.13, or an SDGT, as described in §744.12, the license requirements and licensing policy set forth in §744.13 or §744.12 will apply.

NOTE TO §744.14: This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

[68 FR 34195, June 6, 2003]

§744.15–744.16 [Reserved]

§744.17 Restrictions on certain exports and reexports of general purpose microprocessors for "military end-uses" and to "military end-users."

(a) *General prohibition.* In addition to the license requirements for anti-terrorism reasons set forth in part 742 of the EAR, you may not export or reexport commodities described in ECCN 3A991.a.1 on the CCL (''microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits having a ''composite theoretical performance'' (''CTP'') of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more), without a license if, at the time of the export or reexport, you know, have reason to know, or are informed by BIS that the item will be or is intended to be used for a ''military end-use,'' as defined in paragraph (d) of this section, in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR); or by a ''military end-user,'' as defined in paragraph (e) of this section, in Country Group D:1. This license requirement does not apply to exports or reexports of items for the official use by personnel and agencies of the U.S. Government or agencies of a cooperating government. See §740.11(b)(3) of the EAR for definitions

of ''agency of the U.S. Government'' and ''agency of a cooperating government''.

(b) *Additional prohibition on exporters or reexporters informed by BIS.* BIS may inform an exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for export or reexport of items described in ECCN 3A991.a.1 to specified end-users, because BIS has determined that there is an unacceptable risk of diversion to the uses or users described in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. The absence of any such notification does not excuse the exporter or reexporter from compliance with the license requirements of paragraph (a) of this section.

(c) *License review standards.* There is a presumption of denial for applications to export or reexport items subject to this section.

(d) *Military end-use.* In this section, the phrase ''military end-use'' means incorporation into: a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations) or the International Munitions List (IML) (as set out on the Wassenaar Arrangement website at *http://www.wassenaar.org*); commodities listed under ECCN's ending in ''A018'' on the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR; or any item that is designed for the ''use'', ''development'', ''production'', or deployment of military items described on the USML, the IML, or commodities listed under ECCN's ending in ''A018'' on the CCL. Supplement No. 1 of this part lists examples of 'military end-use.'

(e) *Military end-user.* In this section, the term ''military end-user'' means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support ''military end-uses'' as defined in paragraph (d) of this section.

(f) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

[68 FR 1797, Jan. 14, 2003]

§ 744.18 Restrictions on exports, reexports, and transfers to persons designated in or pursuant to Executive Order 13315.

Consistent with Executive Order (E.O.) 13315 of August 28, 2003 (''Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions''), BIS maintains restrictions on exports, reexports, and transfers to persons designated in or pursuant to E.O. 13315. These persons include individuals and entities listed in the Annex to Executive Order 13315, as well as persons subsequently designated pursuant to criteria set forth in the order. OFAC includes the names of persons designated pursuant to E.O. 13315 in Appendix A to 31 CFR Chapter V, which lists persons subject to various sanctions programs administered by OFAC. All persons designated in or pursuant to E.O. 13315 are identified in Appendix A by the bracketed initials [IRAQ2].

(a) *License Requirements.* (1) A license requirement applies to the export, reexport, or transfer of any item subject to the EAR to—

(i) Persons listed in the Annex to E.O. 13315 of August 28, 2003; or

(ii) Persons determined to be subject to E.O. 13315.

(2) To avoid duplication, U.S. persons are not required to seek separate BIS authorization for an export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to both the EAR and regulations maintained by OFAC. Therefore, if OFAC authorizes an export from the United States or an export, reexport, or transfer by a U.S. person to a person identified in paragraph (a) of this section, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export, reexport, or transfer to a person identified in paragraph (a) of this section of any

item subject to the EAR but not subject to regulations maintained by OFAC.

(4) Non-U.S. persons must seek authorization from BIS for the export from abroad, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR.

(5) Any export, reexport, or transfer to a person identified in paragraph (a) of this section by a U.S. person of any item subject both to the EAR and regulations maintained by OFAC and not authorized by OFAC is a violation of the EAR.

(6) Any export, reexport, or transfer by a U.S. person to a person identified in paragraph (a) of this section of any item subject to the EAR that is not subject to regulations maintained by OFAC and not authorized by BIS is a violation of the EAR. Any export from abroad, reexport, or transfer by a non-U.S. person to a person identified in paragraph (a) of this section of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) *Exceptions.* No License Exceptions or other BIS authorizations are available for export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR.

(c) *Licensing policy.* Applications for licenses for the export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR will generally be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

[69 FR 46076, July 30, 2004]

§ 744.19 Licensing policy regarding persons sanctioned pursuant to specified statutes.

Notwithstanding any other licensing policy elsewhere in the EAR, BIS will deny any export or reexport license application if the applicant, other party authorized to receive a license, purchaser, intermediate consignee, ultimate consignee, or end-user is subject to one or more of the sanctions described in paragraphs (a), (b), and (c) of this section and will deny any export or reexport license application for an item listed on the Commerce Control List with a reason for control of MT if such party is subject to a sanction described in paragraph (d) of this section.

(a) A sanction issued pursuant to the Iran-Iraq Arms Nonproliferation Act of 1992 (Public Law 102–484) that prohibits the issuance of any license to or by the sanctioned entity.

(b) A sanction issued pursuant to the Iran Nonproliferation Act of 2000 (Public Law 106–178) that prohibits the granting of a license for the transfer to foreign entities of items, the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations.

(c) A sanction issued pursuant to section 11B(b)(1)(B)(i) of the Export Administration Act of 1979, as amended, and as carried out by Executive Order 13222 of August 17, 2001, that prohibits the issuance of new licenses for exports to the sanctioned entity of items controlled pursuant to the Export Administration Act of 1979.

(d) A sanction issued pursuant to section 11B(b)(1)(B)(ii) of the Export Administration Act of 1979, as amended (Missile Technology Control Act of 1990), and as carried out by an Executive Order 13222 of August 17, 2001, that prohibits the issuance of new licenses for exports to the sanctioned entity of MTCR Annex equipment or technology controlled pursuant to the Export Administration Act of 1979.

[70 FR 10867, Mar. 7, 2005]

§ 744.20 License requirements that apply to certain sanctioned entities.

BIS may impose, as foreign policy controls, export and reexport license requirements and set licensing policy with respect to certain entities that have been sanctioned by the State Department. Such license requirements and policy are in addition to those imposed elsewhere in the EAR. License requirements and licensing policy may be imposed pursuant to this section even when the sanction and the legal

authority under which the State Department imposed the sanction do not require or authorize the imposition of any license requirement or licensing policy. License requirements and licensing policy will be imposed pursuant to this section by adding an entity to the Entity List in accordance with paragraphs (a), (b), and (c) of this section.

(a) *General requirement.* Certain entities that have been sanctioned by the State Department are listed in Supplement No. 4 to this part (the Entity List) with a reference to this section. A license is required, to the extent specified on the Entity List, to export or reexport any item to such entities.

(b) *License exceptions.* No license exception may be used to export or reexport to such entities unless specifically authorized on the Entity List.

(c) *Licensing policy.* Applications to export or reexport to such entities will be reviewed according to the licensing policy set forth on the Entity List.

[70 FR 10867, Mar. 7, 2005]

SUPPLEMENT NO. 1 TO PART 744—MILITARY END-USE EXAMPLES FOR §744.17

(a) *Examples of military end-uses (as described in §744.17 (d) of this part) of general-purpose microprocessors classified as ECCN 3A991.a.1 includes employing such microprocessors in the ''use'', ''development'', ''production'', or deployment of:*

(1) Cruise missiles;

(2) Electronic suites of military aircraft and helicopters;

(3) Radar for searching, targeting, or tracking systems;

(4) Command/control/communications or navigation systems;

(5) Unmanned aerial vehicles capable of performing military reconnaissance, surveillance, or combat support;

(6) Rocket or missile systems;

(7) Electronic or information warfare systems; or

(8) Intelligence, reconnaissance, or surveillance systems suitable for supporting military operations.

(b) [Reserved]

[68 FR 1797, Jan. 14, 2003]

SUPPLEMENT NO. 2 TO PART 744 [RESERVED]

SUPPLEMENT NO. 3 TO PART 744—COUNTRIES NOT SUBJECT TO CERTAIN NUCLEAR END-USE RESTRICTIONS IN §744.2(A)

Australia
Austria
Belgium
Canada
Denmark
Finland
France
Germany
Greece
Iceland
Ireland
Italy (includes San Marino and Holy See)
Japan
Luxembourg
Netherlands
New Zealand
Norway
Portugal
Spain
Sweden
Turkey
United Kingdom

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997; 66 FR 18402, Apr. 9, 2001]

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
This Supplement lists certain entities subject to license requirements for specified items under this part 744 of the EAR. License requirements for these entities includes exports and reexports, unless otherwise stated. This list of entities is revised and updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.				
CHINA, PEOPLE'S REPUBLIC OF.	13 Institute, China Academy of Launch Vehicle Technology, (CALT), aka 713 Institute or Beijing Institute of Control Devices.	For all items subject to the EAR.	See §744.3(d) of this part.	66 FR 24265, 05/14/01.

Country	Entity	License requirement	License review policy	Federal Register citation
	33 Institute, aka Beijing Institute of Automatic Control Equipment.	For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are ''999'', e.g., XX999.	See § 744.3(d) of this part.	66 FR 24266, 05/14/01.
	35 Institute, aka Beijing Huahang Radio Measurements Research Institute.	For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are ''999'', e.g., XX999.	See § 744.3(d) of this part.	66 FR 24266, 05/14/01.
	54th Research Institute of China, aka Communication, Telemetry and Telecontrol Research Institute (CTI).	For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are ''999'', e.g., XX999.	See § 744.3(d) of this part.	66 FR 24266, 05/14/01.
	Baotou Guanghua Chemical Industrial Corporation, 202 Factory Baotou, Inner Mongolia.	For all items subject to the EAR having a classification other than EAR99.	See § 744.2(d) of this part.	66 FR 24266, 05/14/01.
	Beijing Aerospace Automatic Control Institute, 51 Yong Ding Road Beijing.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR 05/28/99.
	Beijing Institute of Structure and Environmental Engineering, a.k.a., Beijing Institute of Strength and Environmental Engineering, No. 36 Wanyuan Road Beijing.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR 05/28/99.
	Beijing Power Machinery Institute ...	For all items subject to the EAR.	See § 744.3(d) of this part.	66 FR 24266, 05/14/01.
	Beijing University of Aeronautics and Astronautics (BUAA), a.k.a. Beihang University.	For all items subject to the EAR.	See § 744.3(d) of this part.	66 FR 24266 5/14/01, 70 FR 54628, Sept. 16, 2005
	Chinese Academy of Engineering Physics (aka Ninth Academy, including the Southwest Institutes of: Applied Electronics, Chemical Materials, Electronic Engineering, Explosives and Chemical Engineering, Environmental Testing, Fluid Physics, General Designing and Assembly, Machining Technology, Materials, Nuclear Physics and Chemistry (aka China Academy of Eng[ineering] Physics [CAEP]'s 902 Institute, Mianyang), Structural Mechanics; Research and Applications of Special Materials Factory; Southwest Computing Center (all of preceding located in or near Mianyang, Sichuan Province); Institute of Applied Physics and Computational Mathematics, Beijing; and High Power Laser Laboratory, Shanghai).	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97 66 FR 24266, 05/14/01.
	China Aerodynamics Research and Development Center (CARDC) Sichuan Province.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR 05/28/99.

Country	Entity	License requirement	License review policy	Federal Register citation
	First Department, China Academy of Launch Vehicle Technology, (CALT).	For all items subject to the EAR.	See § 744.3(d) of this part.	66 FR 24266, 05/14/01.
	Northwest Institute of Nuclear Technology, in the Science Research, Xi'an, Shaanxi.	For all items subject to the EAR.	See § 744.2 of this part.	64 FR 05/28/99.
	Northwestern Polytechnical University.	For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are ''999'', e.g., XX999.	See § 744.3(d) of this part.	66 FR 24266, 05/14/01.
	Shanghai Academy of Spaceflight Technology, Shanghai, Spaceflight Tower 222 Cao Xi Road Shanghai, 20023.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR 05/28/99.
	Shanghai Institute of Space Power-Sources, Shanghai, 388 Cang Wu Rd Shanghai.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR 05/28/99.
	Southwest Research Institute of Electronics Technology, Chengdu.	For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are ''999'', e.g., XX999.	See § 744.3(d) of this part.	66 FR 24267, 05/14/01.
	Xian Research Institute of Navigation Technology.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3(d) of this part.	66 FR 24267, 05/14/01.
	Xiangdong Machinery Factory	For all items subject to the EAR.	See § 744.3(d) of this part.	66 FR 24267, 05/14/01.
INDIA	Bharat Dynamics Limited	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50091, 10/01/01
	The following subordinates of Defense Research and Development Organization (DRDO). Armament Research and Development Establishment (ARDE). Defense Research and Development Lab (DRDL), Hyderabad. Missile Research and Development Complex. Solid State Physics Laboratory	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50091, 10/1/01
	The following Indian Space Research Organization (ISRO) subordinate entities:. —Liquid Propulsion Systems Center;. —Solid Propellant Space Booster Plant (SPROB);. —Sriharikota Space Center (SHAR);. —Vikram Sarabhai Space Center (VSSC), Thiruvananthapuram.	For all items subject to the EAR having a classification other than (1) EAR99 or (2) a classification where the third through fifth digits of the ECCN are ''999'', *e.g.* XX999.	Case-by-case review for all items on the CCL.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50090, 10/01/01 69 FR 56694, 09/22/04.

Country	Entity	License requirement	License review policy	Federal Register citation
	The following Department of Atomic Energy entities:. —Bhabha Atomic Research Center (BARC);. —Indira Gandhi Atomic Research Center (IGCAR);. —Indian Rare Earths; ..... —Nuclear reactors (including power plants) not under International Atomic Energy Agency (IAEA) safeguards, (excluding Kundankulam 1 and 2) fuel reprocessing and enrichment facilities, heavy water production facilities and their collocated ammonia plants.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50090, 10/01/01 69 FR 56694, 09/22/04.
ISRAEL	Ben Gurion University, Israel	For computers above the Tier 3 level described in § 742.12(b)(3)(i)(B).	Case-by-case basis	62 FR 4910, 2/3/97 65 FR 12919, 3/10/00.
	Nuclear Research Center at Negev Dimona, Israel.	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97.
PAKISTAN	Abdul Qader Khan Research Laboratories, a.k.a. Khan Research Laboratories (KRL), a.k.a. Engineering Research Laboratories (ERL), Kahuta.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50092, 10/1/01
	Al Technique Corporation of Pakistan, Ltd.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50092, 10/1/01
	Allied Trading Co	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50092, 10/1/01
	ANZ Importers and Exporters, Islamabad.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50092, 10/1/01
	Defence Science and Technology Organization (DESTO), Rawalpindi.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50092, 10/1/01
	High Technologies, Ltd., Islamabad	For all items subject to the EAR.	Case-by-case for all items listed ion the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50092, 10/1/01
	Karachi CBW Research Institute, University of Karachi's Husein Ebrahim Jamal Research Institute of Chemistry (HEJRIC).	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 66 FR 50092, 10/1/01
	Lastech Associates, Islamabad	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50092, 10/1/01
	Machinery Master Enterprises, Islamabad.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50092, 10/1/01
	Maple Engineering Pvt. Ltd. Consultants, Importers and Exporters.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50092, 10/1/01

Country	Entity	License requirement	License review policy	Federal Register citation
	Orient Importers and Exporters, Islamabad.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50092, 10/1/01
	Pakistan Atomic Energy Commission (PAEC), and the following subordinate entities. National Development Complex (NDC). Nuclear reactors (including power plants), fuel reprocessing and enrichment facilities, all uranium processing, conversion and enrichment facilities, heavy water production facilities and any collocated ammonia plants. Pakistan Institute for Nuclear Science and Technology (PINSTECH).	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50093, 10/1/01
	People's Steel Mills, Karachi	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50093, 10/1/01
	Prime International	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50093, 10/1/01
	Space and Upper Atmospheric Research Commission (SUPARCO).	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50093, 10/1/01
	Technical Services, Islamabad	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50093, 10/1/01
	The Tempest Trading Company, Islamabad.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50093, 10/1/01
	Unique Technical Promoters	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50093, 10/1/01
	Wah Chemical Product Plant	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 66 FR 50093, 10/1/01
	Wah Munitions Plant, a.k.a. Explosives Factory, Pakistan Ordnance Factories (POF).	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 66 FR 50093, 10/1/01
RUSSIA	All-Russian Scientific Research Institute of Technical Physics, (aka VNIITF, Chelyabinsk-70, All-Russian Research Institute of Technical Physics, ARITP, Russian Federal Nuclear Center) located in either Snezhinsk or Kremlev (Sarov).	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97 66 FR 24267, 05/14/01.

Country	Entity	License requirement	License review policy	Federal Register citation
	All-Union Scientific Research Institute of Experimental Physics, (aka VNIIEF, Arzamas-16, Russian Federal Nuclear Center, All Russian Research Institute of Experimental Physics, ARIEP, Khariton Institute) located in either Snezhinsk or Kremlev (Sarov).	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97 66 FR 24267, 05/14/01.
	Baltic State Technical University, 1/21, 1-ya Krasnoarmeiskaya Ul., 198005, St. Petersburg.	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.
	Glavkosmos, 9 Krasnoproletarskaya St., 103030 Moscow..	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.
	Medeleyev University of Chemical Technology of Russia (including at 9 Miusskaya Sq. Moscow 125047, Russia).	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	64 FR 14606, 03/26/99.
	Ministry for Atomic Power of Russia (any entities, institutes, or centers associated with) located in either Snezhinsk or Kremlev (Sarov).	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97 66 FR 24267, 05/14/01.
	Moscow Aviation Institute (MAI) (including at 4 Volokolamskoye Shosse, Moscow 125871, Russia).	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	64 FR 14606, 03/26/99.
	Tula Instrument Design Bureau (all locations, including at Tula 300001, Russia) (§ 744.20 of the EAR).	All items subject to the EAR having a classification other than EAR99; no License Exceptions available.	Presumption of Denial.	70 FR 10867, 03/07/05.
SYRIA	Higher Institute of Applied Science and Technology (HIAST).	For all items subject to the EAR. (see § 744.3 of the EAR).	Presumption of denial.	70 FR 11861, 3/10/05.
	Industrial Establishment of Defense (IED).	For all items subject to the EAR. (see § 744.3 of the EAR).	Presumption of denial.	70 FR 11861, 3/10/05.
	National Standards and Calibration Laboratory (NSCL).	For all items subject to the EAR. (see § 744.3 of the EAR).	Presumption of denial.	70 FR 11861, 3/10/05.
	Scientific Studies and Research Center (SSRC).	For all items subject to the EAR. (see § 744.3 of the EAR).	Presumption of denial.	70 FR 11861, 3/10/05.

[1] ''Balance of Plant'' refers to the part of a nuclear power plant used for power generation (*e.g.*, turbines, controllers, or power distribution) to distinguish it from the nuclear reactor.

[63 FR 64325, Nov. 19, 1998, as amended at 63 FR 65552, Nov. 27, 1998; 64 FR 14606, Mar. 26, 1999; 64 FR 28910, May 28, 1999; 65 FR 14446, Mar. 17, 2000; 65 FR 45843, July 26, 2000; 65 FR 60856, Oct. 13, 2000; 66 FR 24265, May 14, 2001; 66 FR 50091, Oct. 1, 2001; 66 FR 65836, Dec. 21, 2001; 69 FR 56694, Sept. 22, 2004; 69 FR 58049, Sept. 29, 2004; 69 FR 59303, Oct. 4, 2004; 69 FR 65540, Nov. 15, 2004; 70 FR 10867, Mar. 7, 2005; 70 FR 11861, Mar. 10, 2005; 70 FR 51252, Aug. 30, 2005; 70 FR 54628, Sept. 16, 2005]

PART 745—CHEMICAL WEAPONS CONVENTION REQUIREMENTS

Sec.
745.1 Advance notification and annual report of all exports of Schedule 1 chemicals to other States Parties.
745.2 End-Use Certificate reporting requirements under the Chemical Weapons Convention.
SUPPLEMENT NO. 1 TO PART 745—SCHEDULES OF CHEMICALS
SUPPLEMENT NO. 2 TO PART 745—STATES PARTIES TO THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING, AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION
SUPPLEMENT NO. 3 TO PART 745—FOREIGN GOVERNMENT AGENCIES RESPONSIBLE FOR ISSUING END-USE CERTIFICATES PURSUANT TO §745.2

AUTHORITY: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347.

SOURCE: 64 FR 27143, May 18, 1999, unless otherwise noted.

§745.1 Advance notification and annual report of all exports of Schedule 1 chemicals to other States Parties.

Pursuant to the Convention, the United States is required to notify the Organization for the Prohibition of Chemical Weapons (OPCW) not less than 30 days in advance of every export of a Schedule 1 chemical, in any quantity, to another State Party. In addition, the United States is required to provide a report of all exports of Schedule 1 chemicals to other States Parties during each calendar year. If you plan to export any quantity of a Schedule 1 chemical controlled under the EAR and licensed by the Department of Commerce or controlled under the International Traffic in Arms Regulations (ITAR) and licensed by the Department of State, you are required under this section to notify the Department of Commerce in advance of this export. You are also required to provide an annual report of exports that actually occurred during the previous calendar year. The United States will transmit the advance notifications and an aggregate annual report to the OPCW of exports of Schedule 1 chemicals from the United States. Note that the notification and annual report requirements of this section do not relieve the exporter of any requirement to obtain a license from the Department of Commerce for the export of Schedule 1 chemicals subject to the EAR or from the Department of State for the export of Schedule 1 chemicals subject to the ITAR.

(a) *Advance notification of exports.* You must notify BIS at least 45 calendar days prior to exporting any quantity of a Schedule 1 chemical listed in Supplement No. 1 to this part to another State Party. This is in addition to the requirement to obtain an export license under the EAR for chemicals controlled by ECCN 1C350 or 1C351 for any reason for control, or from the Department of State for Schedule 1 chemicals controlled under the ITAR. Note that such notifications may be sent to BIS prior to or after submission of a license application to BIS for Schedule 1 chemicals controlled subject to the EAR and under ECCNs 1C350 or 1C351 or to the Department of State for Schedule 1 chemicals controlled on the ITAR. Such notices must be submitted separately from license applications.

(1) Such notification should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and fax numbers, along with the following information:

(i) Common Chemical Name;

(ii) Structural formula of the chemical;

(iii) Chemical Abstract Service (CAS) Registry Number;

(iv) Quantity involved in grams;

(v) Planned date of export;

(vi) Purpose (end-use) of export;

(vii) Name of recipient;

(viii) Complete street address of recipient;

(ix) Export license or control number, if known; and

(x) Company identification number, once assigned by BIS.

(2) Send the notification by fax to (703) 235–1481 or to the following address, for mail and courier deliveries: Information Technology Team, Department of Commerce, Bureau of Industry and Security, 1555 Wilson Boulevard, Suite 710, Arlington, VA 22209. Attn:

''Advance Notification of Schedule 1 Chemical Export''.

(3) Upon receipt of the notification, BIS will inform the exporter of the earliest date the shipment may occur under the notification procedure. To export the Schedule 1 chemical, the exporter must have applied for and been granted a license (see §§742.2 and 742.18 of the EAR, or the ITAR at 22 CFR part 121.

(b) *Annual report of exports.* (1) You must report all exports of any quantity of a Schedule 1 chemical to another State Party during the previous calendar year, starting with exports taking place during calendar year 1997. Reports for exports during calendar years 1997 and 1998 are due to the Department of Commerce August 16, 1999. Thereafter, annual reports of exports are due on February 13 of the following calendar year. The report should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and fax numbers along with the following information for *each* export:

(i) Common Chemical Name;

(ii) Structural formula of the chemical;

(iii) CAS Registry Number;

(iv) Quantity involved in grams;

(v) Date of export;

(vi) Export license number;

(vii) Purpose (end-use) of export;

(viii) Name of recipient;

(ix) Complete address of recipient, including street address, city and country; and (x) Company identification number, once assigned by BIS.

(2) The report must be signed by a responsible party, certifying that the information provided in the annual report is, to the best of his/her knowledge and belief, true and complete.

(3) Send the report by fax to (703) 235–1481 or to the following address, for mail and courier deliveries: Information Technology Team, Department of Commerce, Bureau of Industry and Security, 1555 Wilson Boulevard, Suite 710, Arlington, VA 22209. Attn: ''Annual Report of Schedule 1 Chemical Export''.

[64 FR 27143, May 18, 1999, as amended at 64 FR 28909, May 28, 1999; 65 FR 12923, Mar. 10, 2000]

§745.2 End-Use Certificate reporting requirements under the Chemical Weapons Convention.

NOTE: The End-Use Certificate requirement of this section does not relieve the exporter of any requirement to obtain a license from the Department of Commerce for the export of Schedule 3 chemicals subject to the Export Administration Regulations or from the Department of State for the export of Schedule 3 chemicals subject to the International Traffic in Arms Regulations.

(a)(1) No U.S. person, as defined in §744.6(c) of the EAR, may export from the United States any Schedule 3 chemical identified in Supplement No. 1 to this part to countries not party to the Chemical Weapons Convention (destinations *not* listed in Supplement No. 2 to this part) unless the U.S. person obtains from the consignee an End-Use Certificate issued by the government of the importing destination. This Certificate must be issued by the foreign government's agency responsible for foreign affairs or any other agency or department designated by the importing government for this purpose. Supplement No. 3 to this part includes foreign authorized agencies responsible for issuing End-Use Certificates pursuant to this section. Additional foreign authorized agencies responsible for issuing End-Use Certificates will be included in Supplement No. 3 to this part when known. End-Use Certificates may be issued to cover aggregate quantities against which multiple shipments may be made to a single consignee. An End-Use Certificate covering multiple shipments may be used until the aggregate quantity is shipped. End-Use Certificates must be submitted separately from license applications.

(2) Submit a copy of the End-Use Certificate to the Department of Commerce by fax at (703) 235–1481 or to the following address no later than 7 days after the date of export, for mail and courier deliveries: Information Technology Team, Department of Commerce, Bureau of Industry and Security, 1555 Wilson Boulevard, Suite 710, Arlington, VA 22209. Attn: CWC End-Use Certificate Report.

(b) The End-Use Certificate described in paragraph (a) of this section must state the following:

(1) That the chemicals will be used only for purposes not prohibited under the Chemical Weapons Convention;

(2) That the chemicals will not be transferred to other end-user(s) or end-use(s);

(3) The types and quantities of chemicals;

(4) Their specific end-use(s); and

(5) The name(s) and complete address(es) of the end-user(s).

[64 FR 27143, May 18, 1999, as amended at 64 FR 49381, Sept. 13, 1999; 66 FR 49525, Sept. 28, 2001]

SUPPLEMENT NO. 1 TO PART 745—SCHEDULES OF CHEMICALS

	C.A.S. Registry No.
Schedule 1	
A. Toxic chemicals:	
(1) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates	
e.g. Sarin: O-Isopropyl methylphosphonofluoridate	107–44–8
Soman: O-Pinacolyl methylphosphonofluoridate	96–64–0
(2) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates	
e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate	77–81–6
(3) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts	
e.g. VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate	50782–69–9
(4) Sulfur mustards:	
2-Chloroethylchloromethylsulfide	2625–76–5
Mustard gas: Bis(2-chloroethyl)sulfide	505–60–2
Bis(2-chloroethylthio)methane	63869–13–6
Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane	3563–36–8
1,3-Bis(2-chloroethylthio)-n-propane	63905–10–2
1,4-Bis(2-chloroethylthio)-n-butane	142868–93–7
1,5-Bis(2-chloroethylthio)-n-pentane	142868–94–8
Bis(2-chloroethylthiomethyl)ether	63918–90–1
O-Mustard: Bis(2-chloroethylthioethyl)ether	63918–89–8
(5) Lewisites:	
Lewisite 1: 2-Chlorovinyldichloroarsine	541–25–3
Lewisite 2: Bis(2-chlorovinyl)chloroarsine	40334–69–8
Lewisite 3: Tris(2-chlorovinyl)arsine	40334–70–1
(6) Nitrogen mustards:	
HN1: Bis(2-chloroethyl)ethylamine	538–07–8
HN2: Bis(2-chloroethyl)methylamine	51–75–2
HN3: Tris(2-chloroethyl)amine	555–77–1
(7) Saxitoxin	35523–89–8
(8) Ricin	9009–86–3
B. Precursors:.	
(9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides	
e.g. DF: Methylphosphonyldifluoride	676–99–3
(10) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) O-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts	
e.g. QL: O-Ethyl O-2-diisopropylaminoethyl methylphosphonite	57856–11–8
(11) Chlorosarin: O-Isopropyl methylphosphonochloridate	1445–76–7
(12) Chlorosoman: O-Pinacolyl methylphosphonochloridate	7040–57–5
Schedule 2	
A. Toxic chemicals:	
(1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts	78–53–5
(2) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene	382–21–8
(3) BZ: 3-Quinuclidinyl benzilate	6581–06–2
B. Precursors:	
(4) Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms,	
e.g. Methylphosphonyl dichloride	676–97–1
Dimethyl methylphosphonate	756–79–6
Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphonothiolothionate	944–22–9
(5) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides	
(6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates	
(7) Arsenic trichloride	7784–34–1
(8) 2,2-Diphenyl-2-hydroxyacetic acid	76–93–7
(9) Quinuclidine-3-ol	1619–34–7
(10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts	
(11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts	
Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts	108–01–0
N,N-Diethylaminoethanol and corresponding protonated salts	100–37–8
(12) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts	
(13) Thiodiglycol: Bis(2-hydroxyethyl)sulfide	111–48–8
(14) Pinacolyl alcohol: 3,3-Dimethylbutane-2-ol	464–07–3

	C.A.S. Registry No.
Schedule 3	
A. Toxic chemicals:	
(1) Phosgene: Carbonyl dichloride	75–44–5
(2) Cyanogen chloride	506–77–4
(3) Hydrogen cyanide	74–90–8
(4) Chloropicrin: Trichloronitromethane	76–06–2
B. Precursors:	
(5) Phosphorus oxychloride	10025–87–3
(6) Phosphorus trichloride	7719–12–2
(7) Phosphorus pentachloride	10026–13–8
(8) Trimethyl phosphite	121–45–9
(9) Triethyl phosphite	122–52–1
(10) Dimethyl phosphite	868–85–9
(11) Diethyl phosphite	762–04–9
(12) Sulfur monochloride	10025–67–9
(13) Sulfur dichloride	10545–99–0
(14) Thionyl chloride	7719–09–7
(15) Ethyldiethanolamine	139–87–7
(16) Methyldiethanolamine	105–59–9
(17) Triethanolamine	102–71–6

SUPPLEMENT NO. 2 TO PART 745—STATES PARTIES TO THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING, AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION

LIST OF STATES PARTIES AS OF AUGUST 1, 2005

Afghanistan
Albania
Algeria
Andorra
Argentina
Armenia
Australia
Austria
Azerbaijan
Bahrain
Bangladesh
Belarus
Belize
Belgium
Benin
Bolivia
Bosnia-Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Cape Verde
Chad
Chile
China*
Colombia
Cook Islands
Costa Rica
Cote d'Ivoire (Ivory Coast)
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Dominica
Ecuador
El Salvador
Equatorial Guinea
Eritrea
Estonia
Ethiopia
Fiji
Finland
France
Gabon
Gambia
Georgia
Germany
Ghana
Greece
Guatemala
Guinea
Guyana
Holy See
Hungary
Iceland
India
Indonesia
Iran
Ireland
Italy
Jamaica
Japan
Jordan
Kazakhstan
Kiribati
Kenya
Korea (Republic of)
Kuwait
Kyrgyzstan
Laos (P.D.R.)
Latvia
Lesotho
Libya
Liechtenstein
Lithuania
Luxembourg
Macedonia
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Marshall Islands
Mauritius
Mauritania
Mexico
Micronesia
Moldova (Republic of)
Monaco
Mongolia
Morocco
Mozambique

*For CWC purposes only, China includes Hong Kong.

Namibia
Nauru
Nepal
Netherlands**
New Zealand
Nicaragua
Niger
Nigeria
Niue
Norway
Oman
Pakistan
Palau
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Samoa
San Marino
Sao Tome and Principe
Saudi Arabia
Senegal
Serbia and Montenegro
Seychelles
Sierra Leone
Singapore
Slovak Republic
Slovenia
Solomon Islands
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Tajikistan
Tanzania
Thailand
The United Arab Emirates
Timor Leste (East Timor)
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Tuvalu
Uganda
Ukraine
United Kingdom
United States
Uruguay
Uzbekistan
Venezuela
Vietnam
Yemen
Zambia
Zimbabwe

** For CWC purposes only, the Netherlands includes Aruba and the Netherlands Antilles.

[64 FR 27143, May 18, 1999, as amended at 64 FR 49381, Sept. 13, 1999; 66 FR 49525, Sept. 28, 2001; 67 FR 37983, May 31, 2002; 68 FR 34529, June 10, 2003; 69 FR 12790, Mar. 18, 2004; 69 FR 77894, Dec. 29, 2004; 70 FR 45280, Aug. 5, 2005]

SUPPLEMENT NO. 3 TO PART 745—FOREIGN AUTHORIZED AGENCIES RESPONSIBLE FOR ISSUING END-USE CERTIFICATES PURSUANT TO § 745.2

Israel
Chemical, Environment Technology Administration, Ministry of Industry & Trade, 30 Agron Street, Jerusalem 94190, Israel
Contact: Josef Dancona, Deputy Director, Telephone: 972–2–6220193, Fax: 972–2–6241987
Taiwan[1]
Board of Foreign Trade, Ministry of Economic Affairs, 1 Hukou St., Taipei, Tel: (02) 2351–0271, Fax: (02) 2351–3603
Export Processing Zone Administration, Ministry of Economic Affairs, 600 Chiachang Rd., Nantze, Kaohsiung, Tel: (07) 361–1212, Fax: (07) 361–4348
Science-Based Industrial Park Administration, National Science Council, Executive Yuan, 2 Hsin-an Rd., Hsinchu, Tel: (03) 577–3311, Fax: (03) 577–6222

[64 FR 27143, May 18, 1999, as amended at 64 FR 43982, Sept. 13, 1999]

PART 746—EMBARGOES AND OTHER SPECIAL CONTROLS

Sec.
746.1 Introduction.
746.2 Cuba.
746.3 Iraq.
746.4–746.6 [Reserved]
746.7 Iran.
746.8 Rwanda.
746.9 [Reserved]
SUPPLEMENT NOS. 1–3 TO PART 746 [RESERVED]

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11,117 Stat. 559; 22 U.S.C. 6004; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR,

[1] Two of the three offices (Export Processing Zone Administration and the Science-Based Industrial Park Administration) are in special economic zones and are responsible for the activity in their respective zones.

1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

SOURCE: 61 FR 12806, Mar. 25, 1996, unless otherwise noted.

§746.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part implements broad based controls for items and activities subject to the EAR imposed to implement U.S. government policies. Two categories of controls are included in this part.

(a) *Comprehensive controls.* This part contains or refers to all the BIS licensing requirements, licensing policies, and License Exceptions for countries subject to general embargoes, currently Cuba and Iran. This part is the focal point for all the EAR requirements for transactions involving these countries.

(1) *Cuba.* All the items on the Commerce Control List (CCL) require a license to Cuba. In addition, most other items subject to the EAR, but not included on the CCL, designated by the Number ''EAR99'', require a license to Cuba or Libya. Most items requiring a license to these destinations are subject to a general policy of denial. Because these controls extend to virtually all exports, they do not appear in the Country Chart in part 738 of the EAR, nor are they reflected in the Commerce Control List in part 774 of the EAR.

(2) *Iran.* BIS maintains license requirements and other restrictions on exports and reexports to Iran. A comprehensive embargo on transactions involving this country is administered by the Department of The Treasury's Office of Foreign Assets Control (OFAC).

(b) *Sanctions on selected categories of items to specific destinations.* BIS controls the export and reexport of selected categories of items to Iraq and Rwanda consistent with United Nations Security Council Resolutions.

(c) This part also contains descriptions of controls maintained by the Office of Foreign Assets Control in the Treasury Department and by the Directorate of Defense Trade Controls in the Department of State. Comprehensive embargoes and supplemental controls implemented by BIS under the EAR usually also involve controls on items and activities maintained by these agencies. This part sets forth the allocation of licensing responsibilities between BIS and these other agencies. References to the requirements of other agencies are informational; for current, complete, and authoritative requirements, you should consult the appropriate agency's regulations.

[61 FR 12806, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1996; 65 FR 38160, June 19, 2000; 67 FR 70546, Nov. 25, 2002; 69 FR 3005, Jan. 22, 2004; 69 FR 23638, Apr. 29, 2004; 69 FR 46076, July 30, 2004]

§746.2 Cuba.

(a) *License requirements.* As authorized by section 6 of the Export Administration Act of 1979, as amended (EAA) and by the Trading with the Enemy Act of 1917, as amended, you will need a license to export or reexport all items subject to the EAR (see part 734 of the EAR for the scope of items subject to the EAR) to Cuba, except as follows.

(1) *License Exceptions.* You may export or reexport without a license if your transaction meets all the applicable terms and conditions of any of the following License Exceptions. To determine the scope and eligibility requirements, you will need to turn to the sections or specific paragraphs of part 740 of the EAR (License Exceptions). Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Temporary exports and reexports (TMP) by the news media (see §740.9(a)(2)(viii) of the EAR).

(ii) Operation technology and software (TSU) for legally exported commodities or software (see §740.13(a) of the EAR).

(iii) Sales technology (TSU) (see §740.13(b) of the EAR).

(iv) Software updates (TSU) for legally exported software (see §740.13(c) of the EAR).

(v) Parts (RPL) for one-for-one replacement in certain legally exported commodities (see §740.10(a) of the EAR).

(vi) Baggage (BAG) (see § 740.14 of the EAR).

(vii) Governments and international organizations (GOV) (see § 740.11 of the EAR).

(viii) Gift parcels and humanitarian donations (GFT) (see § 740.12 of the EAR).

(ix) Items in transit (TMP) from Canada through the U.S. (see § 740.9(b)(1)(iv) of the EAR).

(x) Aircraft and vessels (AVS) for certain aircraft on temporary sojourn (see § 740.15(a) of the EAR).

(xi) Permissive reexports of certain spare parts in foreign-made equipment (see § 740.16(h) of the EAR).

(xii) Exports of agricultural commodities, classified as EAR99, under License Exception Agricultural Commodities (AGR) and certain reexports of U.S. origin agricultural commodities, classified as EAR99, under License Exception AGR (see § 740.18 of the EAR).

(2) [Reserved]

(b) *Licensing policy*. Items requiring a license are subject to a general policy of denial, except as follows:

(1) *Medicines and Medical Devices*. Applications to export medicines and medical devices as defined in part 772 of the EAR will generally be approved, except:

(i) To the extent restrictions would be permitted under section 5(m) of the Export Administration Act of 1979, as amended (EAA), or section 203(b)(2) of the International Emergency Economic Powers Act;

(ii) If there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;

(iii) If there is a reasonable likelihood that the item to be exported will be reexported;

(iv) If the item to be exported could be used in the production of any biotechnological product; or

(v) If it is determined that the United States government is unable to verify, by on-site inspection or other means, that the item to be exported will be used for the purpose for which it was intended and only for the use and benefit of the Cuban people, but this exception shall not apply to donations of medicines for humanitarian purposes to a nongovernmental organization in Cuba.

(2) Telecommunications commodities may be authorized on a case-by-case basis, provided the commodities are part of an FCC-approved project and are necessary to provide efficient and adequate telecommunications services between the United States and Cuba.

(3) Exports from third countries to Cuba of non-strategic foreign-made products that contain an insubstantial proportion of U.S.-origin materials, parts, or components will generally be considered favorably on a case-by-case basis, provided all of the following conditions are satisfied:

(i) The local law requires, or policy favors, trade with Cuba;

(ii) The U.S.-origin content does not exceed 20 percent of the value of the product to be exported from the third country. Requests where the U.S.-origin parts, components, or materials represent more than 20 percent by value of the foreign-made product will generally be denied. See Supplement No. 2 to part 734 of the EAR for instructions on how to calculate value; and

(iii) You are not a U.S.-owned or -controlled entity in a third country as defined by OFAC regulations, 31 CFR part 515, or you are a U.S.-owned or controlled entity in a third country and one or more of the following situations applies:

(A) You have a contract for the proposed export that was entered into prior to October 23, 1992.

(B) Your transaction involves the export of foreign-produced medicines or medical devices incorporating U.S. origin parts, components or materials, in which case the application will be reviewed according to the provisions of paragraph (b)(1) of this section.

(C) Your transaction is for the export of foreign-produced telecommunications commodities incorporating U.S.-origin parts, components and materials, in which case the application will be reviewed under the licensing policy set forth in paragraph (b)(2) of this section.

(D) Your transaction is for the export of donated food to individuals or nongovernmental organizations in Cuba and does not qualify as a humanitarian donation under License Exception GFT

(§740.12 of the EAR) or License Exception AGR (§740.18 of the EAR).

(4) Applications for licenses may be approved, on a case-by-case basis, for certain exports to Cuba intended to provide support for the Cuban people, as follows:

(i) Applications for licenses for exports of certain commodities and software may be approved to human rights organizations, or to individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba when such exports do not give rise to U.S. national security or counter-terrorism concerns. Examples of such commodities include fax machines, copiers, computers, business/office, software document scanning equipment, printers, typewriters, and other office or office communications equipment. Applicants may donate or sell the commodities or software to be exported. Reexport to other end-users or end-uses is not authorized.

(ii) Commodities and software may be approved for export to U.S. news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public. In addition to the examples of commodities and software listed in paragraph (b)(4)(i) of this section, certain telecommunications equipment necessary for the operation of news organizations (e.g., 33M bit/s data signaling rate or less) may be approved for export to U.S. news bureaus.

(iii) Exports of agricultural items, which are outside the scope of agricultural commodities as defined in part 772 of the EAR, such as insecticides, pesticides and herbicides, as well as agricultural commodities not eligible for License Exception AGR, require a license and will be reviewed on a case-by-case basis.

(5) Applications for exports of aircraft or vessels on temporary sojourn to Cuba either to deliver humanitarian goods or services, or consistent with the foreign policy interests of the United States, will be considered on a case-by-case basis.

(c) Cuba has been designated by the Secretary of State as a country whose government has repeatedly provided support for acts of international terrorism. For anti-terrorism controls, see Supplement 2 to part 742 of the EAR.

(d) *Definitions.* For purposes of this section, ''U.S. person'' means any person subject to the jurisdiction of the United States, as described in §515.329 of the Cuban Assets Control Regulations (31 CFR 515.329).

(e) *Related controls.* OFAC maintains controls on the activities of persons subject to U.S. jurisdiction, wherever located, involving transactions with Cuba or any specially designated Cuban national, as provided in 31 CFR part 515. OFAC's Terrorism List Government Sanctions Regulations in 31 CFR part 596 prohibit U.S. persons from engaging in a financial transaction with the government of a designated state sponsor of international terrorism without OFAC authorization. The Department of State also implements sanctions on countries that are designated state sponsors of international terrorism. Exporters and reexporters should consult with those agencies for further guidance on these related controls.

[61 FR 12802, Mar. 25, 1996, as amended at 61 FR 64284, Dec. 4, 1996; 62 FR 9364, Mar. 3, 1997; 62 FR 25459, May 9, 1997; 64 FR 25808, May 13, 1999; 66 FR 36682, July 12, 2001; 69 FR 5690, Feb. 6, 2004; 69 FR 34567, June 22, 2004]

§746.3 Iraq.

Pursuant to United Nations Security Council (UNSC) Resolutions 1483 and 1546 and other relevant resolutions, the United Nations maintains an embargo on the sale or supply to Iraq of arms and related materiel and their means of production, except items required by the Interim Government of Iraq or the Multinational Force in Iraq to serve the purposes of Resolution 1546. UNSC Resolutions 707 and 687 require that Iraq eliminate its nuclear weapons program and restrict its nuclear activities to the use of isotopes for medical, industrial or agricultural purposes. Such resolutions further mandate that Iraq eliminate its chemical and biological weapons programs as well as its ballistic missile program. In support of the applicable UNSC resolutions, certain Iraq specific license requirements and licensing policies are detailed in this section. In addition, this section

details restrictions on transfers of items subject to the EAR within Iraq. Exporters should be aware that other provisions of the EAR, including parts 742 and 744, will continue to apply with respect to exports and reexports to Iraq and transfers within Iraq.

(a) *License requirements.* (1) A license is required for the export or reexport to Iraq or transfer within Iraq of any item controlled on the Commerce Control List for NS, MT, NP, CW, CB, RS, CC, EI, SI, or XP reasons. *See* part 742 of the EAR.

(2) A license is required for the export or reexport to Iraq or transfer within Iraq of any item controlled on the Commerce Control List for UN reasons.

(3) A license is required for the export or reexport to Iraq or transfer within Iraq of items on the Commerce Control List controlled for AT reasons under the following ECCNs: 0B999, 0D999, 1B999,1C992, 1C995, 1C997, 1C999 and 6A992.

(4) A license is required for the export or reexport to Iraq or transfer within Iraq of any item subject to the EAR if, at the time of the export, reexport or transfer, you know, have reason to know, or are informed by BIS that the item will be, or is intended to be, used for a ''military end-use'' or by a ''military end-user'', as defined in this section. This license requirement does not apply to exports, reexports or transfers of items for the official use by personnel and agencies of the U.S. Government or exports, reexports or transfers to the Interim Government of Iraq or the Multinational Force in Iraq. *See* § 740.11(b)(3) of the EAR for the definition of ''agency of the U.S. Government.'' BIS may inform an exporter, reexporter, or other person, either individually by specific notice or through amendment to the EAR, that a license is required for export, reexport or transfer of items subject to the EAR to specified end-users, because BIS has determined that there is an unacceptable risk of diversion to the uses or users described in this paragraph. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. The absence of any such notification does not excuse the exporter, reexporter or other person from compliance with the license requirements of this paragraph.

(i) *Military end-use.* In this section, the phrase ''military end-use'' means incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations) or the Wassenaar Arrangement Munitions List (WAML) (as set out on the Wassenaar Arrangement website at *http://www.wassenaar.org*); or use, development, or deployment of military items described on the USML or the WAML.

(ii) *Military end-user.* In this section, the term ''military end-user'' means any ''person'' whose actions or functions are intended to support ''military end-uses'' as defined in paragraph (a)(4)(i) of this section and who is not recognized as a legitimate military organization by the U.S. Government.

(5) *Definitions.* For purposes of exports or reexports to Iraq or transfers within Iraq, ''ballistic missile'' is defined as any missile capable of a range greater than 150 kilometers.

(b) *Licensing policy.* (1) License applications for the export or reexport to Iraq or transfer within Iraq of items listed in paragraph (a)(1), (a)(2), or (a)(3) of this section for Iraqi civil nuclear or military nuclear activity, except for use of isotopes for medical, industrial or agricultural purposes, will be subject to a policy of denial.

(2) License applications for the export or reexport to Iraq or transfer within Iraq of machine tools controlled for national security (NS) or nuclear non-proliferation (NP) reasons, as well as for any items controlled for crime control (CC) or united nations (UN) reasons (including items controlled under ECCN 0A986) or ECCNs that end in the number ''018'', that would make a material contribution to the production, research, design, development, support, maintenance or manufacture of Iraqi weapons of mass destruction, ballistic missiles or arms and related materiel will be subject to a general policy of denial.

(3) License applications for the export or reexport to Iraq or transfer within Iraq of items listed in paragraph (a)(3) of this section will be reviewed on a case-by-case basis to determine if they would contribute to the building of Iraqi civil infrastructure. Applications determined not to contribute to the building of Iraqi civil infrastructure will be subject to a general policy of denial.

(4) License applications for the export or reexport to Iraq or transfer within Iraq of items listed in paragraph (a)(4) of this section will be subject to a policy of denial.

(c) *License exceptions.* You may export or reexport without a license if your transaction meets all the requirements of any of the following License Exceptions: CIV, CTP, TMP, RPL, GOV, GFT, TSU, BAG, AVS, ENC or KMI. For specific requirements of each of these License Exceptions, refer to part 740 of the EAR.

(d) *Related State Department controls.* The Department of State, Directorate of Defense Trade Controls, maintains controls on arms and military equipment to Iraq under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

(e) *Transition for licenses issued by the Department of the Treasury's Office of Foreign Assets Control.* Prior to July 30, 2004, the Department of the Treasury's Office of Foreign Assets Control (OFAC) exercised primary licensing jurisdiction for transactions with Iraq, as provided in 31 CFR part 575. This section establishes a validity period for licenses issued by OFAC for exports or reexports to Iraq.

(1) *Validity period.* Licenses issued by OFAC for the export or reexport of items that require a license to Iraq under the Export Administration Regulations (EAR) shall continue to be valid under the EAR. For those licenses with specified expiration dates, such dates will continue to apply. Licenses without specified expiration dates will be valid through July 30, 2005. The recordkeeping requirements applicable to exports and reexports of items pursuant to licenses issued by OFAC are described in paragraph (e)(3) of this section.

NOTE TO PARAGRAPH (e)(1). Persons that have been authorized by OFAC to export or reexport items that are subject to the export control jurisdiction of other agencies must consult with OFAC and the other relevant agencies with regard to the expiration date of the authorization granted by OFAC.

(2) *Reexports or transfers.* Items subject to a license requirement under the EAR for export or reexport to Iraq as of July 30, 2004, that were previously exported or reexported to Iraq under a specific license granted by OFAC:

(i) May not be transferred within Iraq to a new end-user without a license from BIS,

(ii) May be reexported to the United States without a license,

(iii) May be reexported to third countries subject to the license requirements for the destination, end-use or end-user set forth elsewhere in the EAR.

(3) *Recordkeeping requirement.* Persons in receipt of a specific license granted by OFAC described in paragraph (e)(1) of this section must maintain a record of those items exported or reexported to Iraq pursuant to such specific license and record when the items are consumed or destroyed in the normal course of their use in Iraq, reexported to a third country not requiring further authorization from BIS, or returned to the United States. This requirement applies only to items subject to a license requirement under the EAR for export to Iraq as of July 30, 2004. These records must be maintained in accordance with recordkeeping requirements set forth in part 762 of the EAR and must include the following information:

(i) Date of export or reexport and related details (including means of transport);

(ii) Description of items (including ECCN) and value of items in U.S. Dollars;

(iii) Description of proposed end-use and locations in Iraq where items are intended to be used;

(iv) Parties other than specific OFAC licensee who may be given temporary access to the items; and

(v) Date of consumption or destruction, if the items are consumed or destroyed in the normal course of their use in Iraq, or the date of reexport to a

third country not requiring further authorization from BIS, or return to the United States.

(f) *License Requirements for certain transfers within Iraq of items subject to the EAR*—(1) *Licensed items.* A license is required for the transfer within Iraq of any item subject to the EAR exported or reexported pursuant to a specific license issued by the Department of the Treasury or a Department of Commerce specific license or License Exception.

(2) *Other items.* (i) A license is required for the transfer within Iraq of any item subject to the EAR, if, at the time of the transfer, you know, have reason to know, or are informed by BIS that the item will be used in the design, development, production or use of weapons of mass destruction or the means of their delivery, as set forth in part 744 of the EAR.

(ii) A license is required for the transfer within Iraq to designated terrorists or terrorist organizations, as set forth in §§ 744.12, 744.13, or 744.14 of the EAR.

[69 FR 46077, July 30, 2004]

§§ 746.4–746.6 [Reserved]

§ 746.7 Iran.

The Treasury Department's Office of Foreign Assets Control (OFAC) administers a comprehensive trade and investment embargo against Iran under the authority, inter alia, of the International Emergency Economic Powers Act of 1977, as amended, section 505 of the International Security and Development Cooperation Act of 1985, and Executive Order 13059 of August 19, 1997, which consolidates the provisions of Executive Orders 12613, 12957 and 12959. This embargo includes prohibitions on export and certain reexport transactions involving Iran, including transactions dealing with items subject to the EAR. (See OFAC's Iranian Transactions Regulations, 31 CFR part 560.) BIS continues to maintain licensing requirements on exports and reexports to Iran under the EAR as described in paragraph (a)(2) of this section. No person may export or reexport items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization. Exports and reexports subject to the EAR that are not subject to the Iranian Transactions Regulations may require authorization from BIS.

(a) *License requirements*—(1) *OFAC administered embargo.* You should consult with OFAC if:

(i) You seek authorization to export from the United States; or

(ii) You are a United States person (as defined in OFAC's Iranian Transactions Regulations, 31 CFR part 560) and seek authorization to export or reexport from a third country; or

(iii) You seek authorization to reexport U.S.-origin items that were subject to any export license application requirements prior to Executive Order 12959 of May 6, 1995.

(2) *BIS license requirements.* A license is required under the EAR:

(i) To export to Iran any item on the CCL containing a CB Column 1, CB Column 2, CB Column 3, NP Column 1, NP Column 2, NS Column 1, NS Column 2, MT Column 1, RS Column 1, RS Column 2, CC Column 1, CC Column 2, CC Column 3, AT Column 1 or AT Column 2 in the Country Chart Column of the License Requirements section of an ECCN, or classified under ECCNs 1C980, 1C981, 1C982, 1C983, 1C984, 5A980, 0A980, and 0A983; or

(ii) To reexport to Iran any of the items identified in paragraph (a)(2)(i) of this section, except for ECCNs 2A994; 3A992.a; 5A991.g; 5A992; 6A991; 6A998; 7A994; 8A992.d, .e, .f, and .g; 9A990.a and .b; and 9A991.d and .e. However, the export of these items from the United States to any destination with knowledge that they will be reexported, in whole or in part, to Iran, is prohibited without a license; or

(iii) To export or reexport items subject to the general prohibitions, including proliferation end-use prohibitions (see part 736 of the EAR).

(3) *BIS authorization.* To avoid duplication, exporters or reexporters are not required to seek separate authorization from BIS for an export or reexport subject both to the EAR and to OFAC's Iranian Transactions Regulations. Therefore, if OFAC authorizes an export or reexport, no separate authorization from BIS is necessary.

(4) *Definitions.* For purposes of this section, the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; the term ''foreign person'' means those not defined as United States persons.

(b) Iran has been designated by the Secretary of State as a country that has repeatedly provided support for acts of international terrorism. For anti-terrorism controls, see §742.8 of the EAR and Supplement 2 to part 742.

[61 FR 12806, Mar. 25, 1996, as amended at 63 FR 42229, Aug. 7, 1998; 65 FR 34075, May 26, 2000; 66 FR 36683, July 12, 2001; 69 FR 5690, Feb. 6, 2004]

§746.8 Rwanda.

(a) *Introduction.* In addition to the controls on Rwanda reflected on the Country Chart in Supplement 1 to part 738 of the EAR, there are special controls on items that fall within the scope of a United Nations Security Council arms embargo.

(b) *License requirements.* (1) Under Executive Order 12918 of May 26, 1994, and in conformity with United Nations Security Council (UNSC) Resolution 918 of May 17, 1994, an embargo applies to the sale or supply to Rwanda of arms and related matériel of all types and regardless of origin, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for such items. You will therefore need a license for the sale, supply or export to Rwanda of embargoed items, as listed in paragraph (b)(1)(i) and (ii) of this section, from the territory of the United States by any person. You will also need a license for the export, reexport, sale or supply to Rwanda of such items by any United States person in any foreign country or other location. (Reexport controls imposed by this embargo apply only to reexports by U.S. persons.) You will also need a license for the use of any U.S.-registered aircraft or vessel to supply or transport to Rwanda any such items. These requirements apply to embargoed items, regardless of origin.

(i) Crime Control and Detection Equipment as identified on the CCL under CC Columns No. 1, 2 or 3 in the Country Chart column of the ''License Requirements'' section of the applicable ECCN.

(ii) Items described by any ECCN ending in ''018'', and items described by ECCNs 0A978; 0A979; 0A982; 0A984; 0A986; 0A988; 0B986; 0E982; 1A005; 5A980; 6A002.a.1, a.2, a.3, and .c; 6A003.b.3 and b.4; 6E001; 6E002; and 9A991.a.

(2) This embargo became effective at 11:59 p.m. EDT on May 26, 1994.

(3) *Definitions.* For the purposes of this section, the term:

(i) *Person* means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities; and

(ii) *United States person* means any citizen or national of the United States, any lawful permanent resident of the United States, or any corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities, organized under the laws of the United States (including foreign branches).

(c) *Licensing policy.* Applications for export or reexport of all items listed in paragraphs (b)(1)(i) and (ii) of this section are subject to a general policy of denial. Consistent with United Nations Security Council Resolution 918 and the United Nations Participation Act, this embargo is effective notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to that date, except to the extent provided in regulations, orders, directives or licenses that may be issued in the future under Executive Order 12918 or under the EAR.

(d) *Related controls.* The Department of State, Directorate of Defense Trade Controls, maintains controls on arms and military equipment under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

[61 FR 12806, Mar. 25, 1996, as amended at 63 FR 42229, Aug. 7, 1998; 65 FR 55179, Sept. 13, 2000]

§ 746.9 [Reserved]

SUPPLEMENT NOS.1–3 TO PART 746 [RESERVED]

PART 747—SPECIAL IRAQ RECONSTRUCTION LICENSE

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747.1 Scope.
747.2 Eligibility requirements.
747.3 Eligible items.
747.4 Steps you must follow to apply for a SIRL.
747.5 SIRL application review process.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

SOURCE: 69 FR 46078, July 30, 2004, unless otherwise noted.

§ 747.1 Scope.

A Special Iraq Reconstruction License (SIRL) authorizes exports and reexports to Iraq and transfers within Iraq of items in furtherance of civil reconstruction and other related projects.

§ 747.2 Eligibility requirements.

(a) A SIRL authorizes exports and reexports to Iraq and transfers within Iraq of items in furtherance of civil reconstruction and other projects funded by:

(1) The United States Government;

(2) The United Nations, the World Bank, and the International Monetary Fund, their affiliated entities (*i.e.*, International Bank for Reconstruction and Development, International Finance Corporation, and United Nations Development Programme); and

(3) Any other entities that the U.S. Government may designate.

(b) To be eligible for a SIRL, exports, reexports or transfers must be made pursuant to and within the scope of contractual or similar arrangements in furtherance of civil reconstruction or other projects in Iraq funded by any of the entities described above.

§ 747.3 Eligible items.

All items subject to the EAR, other than items controlled for missile technology (MT), nuclear nonproliferation (NP) or chemical and biological weapons (CB) reasons, are eligible for export, reexport or transfer under a SIRL.

§ 747.4 Steps you must follow to apply for a SIRL.

(a) *Step One: Prepare your documentation.* (1) Form BIS-748P, Multipurpose Application, and Form BIS-748P-A, Item Appendix. You must complete the Multipurpose Application Form (BIS-748P) to apply for a SIRL. Applications must specifically describe, on Form BIS-748P-A, Item Appendix, all items subject to the EAR to be exported or reexported to Iraq, or transferred within Iraq, for which BIS approval is sought. Export control classification numbers (ECCNs) must be identified for all such items. Applicants should provide BIS commodity classifications, where available, as this will assist BIS to rule upon the application quickly.

(2) Form BIS-748P-B, End-User Appendix. All end-users must be identified on Form BIS-748P-B, End-User Appendix.

(b) *Step Two: Narrative statement to support application*—In support of an application for a SIRL, exporters must submit with the application a narrative statement that includes the following information:

(1) Identity of all parties to the proposed transaction;

(2) Detailed description of the project, funding entity, the contract or work order which formed the basis of the transaction, and any identification number or project code for that contract or work order;

(3) Explanation of how the project will contribute to the reconstruction of Iraq and any potential security issues associated with the items to be exported, reexported or transferred;

(4) Written statement from one or more funding agencies referred to in § 747.2 addressing whether the transaction is likely to pose security issues;

(5) Certification that items will not be used in any of the prohibited proliferation activities described in part 744 of the EAR;

(6) For items that will remain in the control of the exporter, a commitment to return all items to the United States when the authorized project or activity is complete, excluding those items that are consumed in Iraq, absent specific permission from BIS; and

(7) Certification that parties to the transaction will obtain a license from BIS prior to transferring within Iraq or reexporting items to end-users not authorized under the SIRL, unless they would not require a BIS license to the new country of destination. (Please see the guidance in §747.5(d) regarding the transfer of items to persons within Iraq not included on the End-User Appendix.)

§747.5 SIRL application review process.

(a) *Application processing time frames.* Upon receiving a complete application with all requisite supporting documentation, BIS may review the application for up to ten days before referring the application to the other appropriate agencies. Agencies have 30 days from the date of referral to process the application. The U.S. Government will review the application as expeditiously as possible.

(b) *Review policy.* (1) BIS will review SIRL applications on a case-by-case basis. To approve a SIRL, BIS must be satisfied that the parties to the license will adhere to the conditions of the license and the EAR, and that approval of the application will not be detrimental to U.S. national security, nonproliferation, or foreign policy interests. In reviewing and approving a specific SIRL application, BIS may retain the right to limit the items that are eligible or to prohibit the export, reexport, or transfer of items under the reconstruction license to specific firms or individuals.

(2) BIS will thoroughly analyze all parties, items and activities associated with the applicant's proposed transaction(s). If BIS cannot verify that all parties, items and activities are appropriate, or establish the reliability of the proposed parties to the application, it may deny the application, or modify it by eliminating certain consignees, items, activities or other elements.

(3) The licensing decision will focus on the following factors:

(i) The proposed end-use(s);

(ii) If the proposed transaction will contribute to the reconstruction of Iraq;

(iii) If the proposed transaction could contribute to the design, development, production, stockpiling, or use of nuclear or chemical or biological weapons, or missiles of greater than 150 kilometer range and the types of assurances available against these activities;

(iv) The potential impact of the proposed transaction on the security situation in Iraq; and

(v) The reliability of all parties to the proposed transaction.

(4) If the U.S. Government determines that the proposed transaction does not satisfy all the criteria of part 747, BIS will inform the applicant that the agency will review the application under standard license procedures for individual items rather than as a SIRL. The applicant may elect to have the application Returned Without Action. Applicants are not required to use the SIRL procedure and may seek authorization under standard license procedures.

(c) *Validity period.* SIRLs will be valid until the completion or discontinuation of the associated project detailed in the application or until otherwise determined by BIS. Applicants are required to submit a report to BIS verifying completion of the project or indicating that the project has been discontinued. These reports should be submitted to the following address: U.S. Department of Commerce, Office of Exporter Services, ATTN: Reports, 14th Pennsylvania Ave., NW., Washington, DC, 20230. The report should include the following information:

(1) The SIRL reference number;

(2) The date the project is completed or discontinued;

(3) Verification that items exported under the authority of the SIRL were, as applicable, consumed during use, returned to the United States, reexported to a third country, or transferred to a party within Iraq for whom the applicant has received a license from BIS; and

(4) The reference numbers of the licenses received for the reexport or transfer within Iraq, if required.

(d) *Post-shipment information.* For any items exported or reexported pursuant to a SIRL that are not consumed in Iraq, the applicant must either:

(1) Return the items to the United States,

(2) Reexport the items to a third country, and obtain prior BIS approval where required; or

(3) Seek a license from BIS prior to transferring the items within Iraq to an end-user not identified on the End-User Appendix.

(e) *Changes to a SIRL.* Changes to a SIRL require BIS prior approval if they involve:

(1) Change to consignee name or address;

(2) Addition of new consignee;

(3) Addition of new item;

(4) Changes to end user information or additional end users added; and/or

(5) Change to license holder ownership or control. Applicants must submit a written request for a change to the Office of Exporter Services. BIS will respond to these requests in written form. Changes involving the following must be reported to BIS within 30 days of their occurrence but do not require prior BIS approval:

(i) License holder address, contact information, or license value; or

(ii) Removing consignee(s), items or end users from the SIRL.

(f) *Administrative actions.* If BIS believes any party to a SIRL is not complying with all conditions of the SIRL, BIS may take measures including revoking or suspending parts of the SIRL, or may restrict what items may be shipped under the SIRL. Whenever necessary to protect the national interest of the United States, BIS may take any licensing action it deems appropriate, without regard to contracts or agreements entered into before such administrative action.

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

Sec.

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SUPPLEMENT NO. 1 TO PART 748—BIS-748P, BIS-748P-A; ITEM APPENDIX, AND BIS XA-748P-B; END-USER APPENDIX; MULTIPURPOSE APPLICATION INSTRUCTIONS

SUPPLEMENT NO. 2 TO PART 748—UNIQUE APPLICATION AND SUBMISSION REQUIREMENTS

SUPPLEMENT NO. 3 TO PART 748—BIS–711, STATEMENT BY ULTIMATE CONSIGNEE AND PURCHASER INSTRUCTIONS

SUPPLEMENT NO. 4 TO PART 748—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION (IC/DV) AND END USE CERTIFICATE SYSTEMS IN FOREIGN COUNTRIES

SUPPLEMENT NO. 5 TO PART 748—U.S. IMPORT CERTIFICATE AND DELIVERY VERIFICATION PROCEDURE

SUPPLEMENT NO. 6 TO PART 748—AUTHORITIES ISSUING IMPORT CERTIFICATES UNDER THE FIREARMS CONVENTION [RESERVED]

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

SOURCE: 61 FR 12812, Mar. 25, 1996, unless otherwise noted.

§ 748.1 General provisions.

(a) *Scope.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. The provisions of this part involve applications, whether submitted in writing or electronically, for classifications, advisory opinions or licenses subject to the Export Administration Regulations (EAR). All terms, conditions, provisions, and instructions, including the applicant and consignee certifications, contained in such form(s) are incorporated as part of the EAR. For the purposes of this part, the

term ''application'' refers to the Form BIS-748P: Multipurpose Application or its electronic equivalent. If a provision contained in this part relates solely to a license application the term ''license application'' will appear.

(b) *BIS responses.* BIS will give a formal classification, advisory opinion or licensing decision only through the review of a properly completed application supported by all relevant facts and required documentation submitted in writing or electronically to BIS.

(c) *Confidentiality.* Consistent with section 12(c) of the Export Administration Act, as amended, information obtained for the purpose of considering license applications, and other information obtained by the U.S. Department of Commerce concerning license applications, will not be made available to the public without the approval of the Secretary of Commerce or of the Under Secretary for Industry and Security.

[61 FR 12812, Mar. 25, 1996, as amended at 70 FR 8249, Feb. 18, 2005]

§748.2 Obtaining forms; mailing addresses.

(a) You may obtain the forms required by the EAR from any U.S. Department of Commerce District Office; or in person or by telephone or facsimile from the following BIS offices:

Outreach and Educational Services Division, U.S. Department of Commerce, 14th Street and Pennsylvania Ave., NW., Room H1099D, Washington, DC 20230, Tel: (202) 482–4811, Fax: (202) 482–2927, or

Western Regional Office, U.S. Department of Commerce, 3300 Irvine Avenue, Suite 345, Newport Beach, CA 92660, Tel: (949) 660–0144, Fax: (949) 660–9347, or

U.S. Export Assistance Center, Bureau of Industry and Security, 152 N. Third Street, Suite 550, San Jose, CA 95112–5591, Tel: (408) 998–7402, Fax: (408) 998–7470.

(b) For the convenience of foreign consignees and other foreign parties, certain BIS forms may be obtained at U.S. Embassies and Consulates throughout the world.

(c) All applications should be mailed to the following address, unless otherwise specified: Bureau of Industry and Security, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044. If you wish to submit your application using an overnight courier, use the following address: Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue N.W., Room 2705, Washington, D.C. 20044, Attn: ''Application Enclosed''. BIS will not accept applications sent C.O.D.

[61 FR 12812, Mar. 25, 1996, as amended at 69 FR 5690, Feb. 6, 2004; 70 FR 22249, Apr. 29, 2005]

§748.3 Classification requests, advisory opinions, and encryption review requests.

(a) *Introduction.* You may ask BIS to provide you with the correct Export Control Classification Number down to the paragraph (or subparagraph) level, if appropriate. BIS will advise you whether or not your item is subject to the EAR and, if applicable, the appropriate ECCN. This type of request is commonly referred to as a ''Classification Request''. If requested, for a given end-use, end-user, and/or destination, BIS will advise you whether a license is required, or likely to be granted, for a particular transaction. Note that these responses do not bind BIS to issuing a license in the future. This type of request, along with requests for guidance regarding other interpretations of the EAR are commonly referred to as ''Advisory Opinions''. The encryption requirements in the EAR require that certain encryption items be reviewed by BIS in order for them to be eligible for export or reexport under License Exception ENC (see §740.17 of the EAR) or to be released from ''EI'' controls (see §742.15(b)(2) of the EAR). BIS makes its determination based on the submission of a review request prepared in accordance with the instructions in Supplement No. 6 to Part 742 of the EAR. A review of the questions provided in Supplement No. 5 to part 742 of the EAR may assist in determining whether you must submit an encryption review request (see paragraph (d) of this section) for your particular item.

(b) *Classification requests.* You must submit your Classification Request using Form BIS-748P or its electronic equivalent. See the instructions contained in Supplement No. 1 to part 748 to complete the Blocks identified for

this type of request. Classification Requests must be sent to BIS at one of the addresses listed in § 748.2(c) of this part or submitted electronically. Be certain that your request is complete and does not omit any essential information.

(1) Each Classification Request must be limited to six items. Exceptions may be granted by BIS on a case-by-case basis for several related items if the relationship between the items is satisfactorily substantiated in the request. Classification requests must be supported by any descriptive literature, brochures, precise technical specifications or papers that describe the items in sufficient technical detail to enable classification by BIS.

(2) When submitting a Classification Request, you must complete Blocks 1 through 5, 14, 22 (a), (b), (c), (d), and (i), 24, and 25 on Form BIS-748P. You must provide a recommended classification in Block 22(a) and explain the basis for your recommendation based on the technical parameters specified in the appropriate ECCN in Block 24. If you are unable to determine a recommended classification for your item, include an explanation in Block 24, identifying the ambiguities or deficiencies that precluded you from making a recommended classification.

(c) *Advisory Opinions.* Advisory Opinions must be submitted in writing to the address listed in § 748.2(c) of the EAR. Both your letter and envelope must be marked ''Advisory Opinion.''

(1) Your letter must contain the following information if you are requesting guidance regarding interpretations of the EAR:

(i) The name, title, and telephone and facsimile numbers of the person to contact,

(ii) Your complete address comprised of street address, city, state, country, and postal code; and

(2) If you are requesting BIS to determine whether a license is required, or the licensing policy related to a particular end-use, end-user, and/or destination, in addition to the information required in § 748.3(c)(1) you must also include:

(i) All available information on the parties to the transaction and the proposed end-use or end-user,

(ii) The model number for each item, where appropriate,

(iii) The Export Control Classification Number, if known, for each item; and

(iv) Any descriptive literature, brochures, technical specifications or papers that describe the items in sufficient technical detail to enable BIS to verify the correct classification.

(d) *Review requests for encryption items.* A Department of Commerce review of encryption items transferred from the U.S. Munitions List consistent with Executive Order 13026 of November 15, 1996 (3 CFR, 1996 Comp., p. 228) and pursuant to the Presidential Memorandum of that date may be required to determine eligibility under License Exception ENC or for release from ''EI'' controls. Refer to Supplement No. 5 to part 742 of the EAR for questions that provide initial guidance in determining whether you must submit an encryption review request for your item. Refer to Supplement No. 6 to part 742 of the EAR for a complete list of technical information that is required for encryption review requests. Refer also to § 742.15(b) of the EAR for instructions regarding mass market encryption commodities and software. Refer to § 740.17 of the EAR for the provisions of License Exception ENC.

[61 FR 12812, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996; 62 FR 25461, May 9, 1997; 65 FR 62609, Oct. 19, 2000; 67 FR 38868, June 6, 2002; 68 FR 35785, June 17, 2003; 70 FR 8249, Feb. 18, 2005]

§ 748.4 Basic guidance related to applying for a license.

(a) *License applicant*—(1) *Export transactions.* Only a person in the United States may apply for a license to export items from the United States. The applicant must be the exporter, who is the U.S. principal party in interest with the authority to determine and control the sending of items out of the United States, except for Encryption License Arrangements (ELA) (see § 750.7(d) of the EAR). See definition of ''exporter'' in part 772 of the EAR.

(2) *Routed export transactions.* The U.S. principal party in interest or the duly authorized U.S. agent of the foreign principal party in interest may apply for a license to export items from

the United States. Prior to submitting an application, the agent that applies for a license on behalf of the foreign principal party in interest must obtain a power of attorney or other written authorization from the foreign principal party in interest. See § 758.3(b) and (d) of the EAR.

(3) *Reexport transactions.* The U.S. or foreign principal party in interest, or the duly authorized U.S. agent of the foreign principal party in interest, may apply for a license to reexport controlled items from one country to another. Prior to submitting an application, an agent that applies for a license on behalf of a foreign principal party in interest must obtain a power-of-attorney or other written authorization from the foreign principal party in interest, unless there is a preexisting relationship by ownership, control, position of responsibility or affiliation. See power-of-attorney requirements in paragraph (b)(2) of this section.

(b) *Disclosure of parties on license applications and the power of attorney*—(1) *Disclosure of parties.* License applicants must disclose the names and addresses of all parties to a transaction. When the applicant is the U.S. agent of the foreign principal party in interest, the applicant must disclose the fact of the agency relationship, and the name and address of the agent's principal. If there is any doubt about which persons should be named as parties to the transaction, the applicant should disclose the names of all such persons and the functions to be performed by each in Block 24 (Additional Information) of the BIS-748P Multipurpose Application form. Note that when the foreign principal party in interest is the ultimate consignee or end-user, the name and address need not be repeated in Block 24. See ''Parties to the transaction'' in § 748.5.

(2) *Power of attorney or other written authorization*—(i) *Requirement.* An agent must obtain a power of attorney or other written authorization from the principal party in interest, unless there is a preexisting relationship by ownership, control, position of responsibility or affiliation, prior to preparing or submitting an application for a license, when acting as either:

(A) An agent, applicant, licensee and exporter for a foreign principal party in interest in a routed transaction; or

(B) An agent who prepares an application for export on behalf of a U.S. principal party in interest who is the actual applicant, licensee and exporter in an export transaction.

(ii) *Application.* When completing the BIS-748P Multipurpose Application Form, Block 7 (documents on file with applicant) must be marked ''other'' and Block 24 (Additional information) must be marked ''748.4(b)(2)'' to indicate that the power of attorney or other written authorization is on file with the agent. See § 758.3(d) for power of attorney requirement, and see also part 762 of the EAR for recordkeeping requirements.

(c) *Prohibited from applying for a license.* No person convicted of a violation of any statute specified in section 11(h) of the Export Administration Act, as amended, at the discretion of the Secretary of Commerce, may apply for any license for a period up to 10 years from the date of the conviction. See § 766.25 of the EAR.

(d) *Prior action on a shipment.* If you have obtained a license without disclosure of the facts described in this section, the license will be deemed to have been obtained without disclosure of all facts material to the granting of the license and the license so obtained will be deemed void. See part 764 of the EAR for other sanctions that may result in the event a violation occurs.

(1) *Licenses for items subject to detention or seizure.* If you submit a license application for items that you know have been detained or seized by the Office of Export Enforcement or by the U.S. Customs Service, you must disclose this fact to BIS when you submit your license application.

(2) *Licenses for items previously exported.* You may not submit a license application to BIS covering a shipment that is already laden aboard the exporting carrier, exported or reexported. If such export or reexport should not have been made without first securing a license authorizing the shipment, you must send a letter of explanation to the Office of Export Enforcement, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., H4520, Washington, D.C., 20230. The letter

must state why a license was not obtained and disclose all facts concerning the shipment that would normally have been disclosed on the license application. You will be informed of any action and furnished any instructions by the Office of Export Enforcement.

(e) *Multiple shipments.* Your license application need not be limited to a single shipment, but may represent a reasonable estimate of items to be shipped throughout the validity of the license. Do not wait until the license you are using expires before submitting a new application. You may submit a new application prior to the expiration of your current license in order to ensure uninterrupted shipping.

(f) *Second application.* You may not submit a second license application covering the same proposed transaction while the first is pending action by BIS.

(g) *Resubmission.* If a license application is returned without action to you by BIS or your application represents a transaction previously denied by BIS, and you want to resubmit the license application, a new license application must be completed in accordance with the instructions contained in Supplement No. 1 to part 748. Cite the Application Control Number on your original application in Block 24 on the new license application.

(h) *Emergency processing.* Applicants may request emergency processing of license applications by contacting the Outreach and Educational Services Division of the Office of Exporter Services by telephone on (202) 482–4811 or by facsimile on (202) 482–2927. Refer to the Application Control Number when making emergency processing requests. BIS will expedite its evaluation, and attempt to expedite the evaluations of other government agencies, of a license application when, in its sole judgement, the circumstances justify emergency processing. Emergency processing is not available for Special Comprehensive License applications. See § 750.7(h) of the EAR for the limit on the validity period of emergency licenses.

[61 FR 12812, Mar. 25, 1996, as amended at 65 FR 42569, July 10, 2000; 70 FR 8249, Feb. 18, 2005; 70 FR 22249, Apr. 29, 2005]

§ 748.5 Parties to the transaction.

The following parties may be entered on the BIS-748P Multipurpose Application Form or electronic equivalent. The definitions, which also appear in part 772 of the EAR, are set out here for your convenience to assist you in filling out your application correctly.

(a) *Applicant.* The person who applies for an export or reexport license, and who has the authority of a principal party in interest to determine and control the export or reexport of items. See § 748.4(a) and definition of ''exporter'' in part 772 of the EAR.

(b) *Other party authorized to receive license.* The person authorized by the applicant to receive the license. If a person and address is listed in Block 15 of the BIS-748P Multipurpose Application Form or the electronic equivalent, the Bureau of Industry and Security will send the license to that person instead of the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant, licensee or exporter.

(c) *Purchaser.* The person abroad who has entered into the transaction to purchase an item for delivery to the ultimate consignee. In most cases, the purchaser is not a bank, forwarding agent, or intermediary. The purchaser and ultimate consignee may be the same entity.

(d) *Intermediate consignee.* The person that acts as an agent for a principal party in interest and takes possession of the items for the purpose of effecting delivery of the items to the ultimate consignee. The intermediate consignee may be a bank, forwarding agent, or other person who acts as an agent for a principal party in interest.

(e) *Ultimate consignee.* The principal party in interest located abroad who receives the exported or reexported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end-user.

(f) *End-user.* The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.

[65 FR 42569, July 10, 2000]

§748.6 General instructions for license applications.

(a) *Form and instructions.* An application for license, whether to export or reexport, must be submitted on Form BIS-748P, Multipurpose Application (revised June 15, 1996 or later), and Form BIS-748P-A, Item Appendix, and Form BIS-748P-B, End-User Appendix. Facsimiles or copies of these forms are not acceptable. Instructions for preparing Form BIS-748P are contained in Supplement No. 1 to this part 748. See §748.7(a) of this part for instructions on submitting license applications electronically.

(b) *Application Control Number.* Each application form includes a preprinted Application Control Number. The Application Control Number, consisting of a letter followed by six digits, is for use by BIS when processing applications, and by applicants when communicating with BIS concerning pending applications. This number is used for tracking purposes within the U.S. Government. The Application Control Number is not a license number.

(c) *Approval or denial in entirety.* License applications may be approved in whole or in part, denied in whole or in part, or returned without action. However, you may specifically request that your license application be considered as a whole and either approved or denied in its entirety.

(d) *Combining items on license applications.* Any items may be combined on a single application, however, if the items differ dramatically (e.g., computers and shotguns) the number of BIS offices to which a license application may be referred for review may increase significantly. Accordingly, it is recommended that you limit items on each license application to those that are similar and/or related.

(e) *Assembly and additional information.* All documents or correspondence accompanying your license application should bear the Application Control Number, and be stapled together. Where necessary, BIS may require you to submit additional information beyond that stated in the EAR confirming or amplifying information contained in your license application.

(f) *Changes in facts.* Answers to all items on the license application will be deemed to be continuing representations of the existing facts or circumstances. Any material or substantive change in the terms of the order, or in the facts relating to the transaction, must be promptly reported to BIS, whether a license has been granted or the license application is still under consideration. If a license has been granted and such changes are not excepted in §750.7(c) of the EAR, they must be reported immediately to BIS, even though shipments against the license may be partially or wholly completed, during the validity period of the license.

(g) *Request for extended license validity period.* An extended validity period will generally be granted if your transaction is related to a multi-year project, when production lead time will not permit export or reexport during the normal validity period or for other similar circumstances. A continuing requirement to supply spare or replacement parts will not normally justify an extended validity period. To request an extended validity period, include justification for your request in Block 24 on the application.

§748.7 Applying electronically for a license or Classification request.

(a) *Authorization.* You may apply electronically once you have been authorized to do so by BIS. An authorization to submit applications electronically may be limited or withdrawn by BIS at any time. There are no prerequisites for obtaining permission to submit electronically or limitations in terms of country eligibility. However, BIS may direct for any reason that any electronic application be resubmitted in writing, in whole or in part

(1) *Requesting approval to submit applications electronically.* To submit applications electronically, your company must submit a written request to BIS at one of the addresses identified in §748.2(c) of this part. Both the envelope and letter must be marked ''Attn: Electronic Submission Request''. Your letter must contain your company's name, and the address, telephone number, and name of the principal contact person in your company. Before approving your request, BIS will provide

you with language for a number of required certifications. Once you have completed the necessary certifications, you may be approved by BIS to submit applications electronically.

(2) *Assignment and use of company and personal identification numbers.* (i) Each company granted permission to submit applications electronically will be assigned a company identification number. Each person approved by BIS to submit applications electronically for the company will be assigned a personal identification number (''PIN'') telephonically by BIS. A PIN will be assigned to you only if your company has certified to BIS that you are authorized to act for it in making electronic submissions under the EAR.

(ii) Your company may reveal the assigned company identification number only to the PIN holders, their supervisors, employees, or agents of the company with a commercial justification for knowing the company identification number.

(iii) An individual PIN holder may not:

(A) Disclose the PIN to anyone;

(B) Record the PIN either in writing or electronically;

(C) Authorize another person to use the PIN; or

(D) Use the PIN following termination by BIS or your company of your authorization or approval for PIN use.

(iv) To prevent misuse of the PIN:

(A) If a PIN is lost, stolen or otherwise compromised, the company and the PIN holder must report the loss, theft or compromise of the PIN immediately by telephoning BIS at (202) 482–0436. You must confirm this notification in writing within two business days to BIS at the address provided in § 748.2(c) of this part.

(B) Your company is responsible for immediately notifying BIS whenever a PIN holder leaves the employ of the company or otherwise ceases to be authorized by the company to submit applications electronically on its behalf.

(v) No person may use, copy, steal or otherwise compromise a PIN assigned to another person; and no person may use, copy, steal or otherwise compromise the company identification number where the company has not authorized such person to have access to the number.

(b) *Electronic submission of applications*—(1) *All applications.* Upon submission of the required certifications and approval of the company's request to use electronic submission, BIS will provide instructions both on the method to transmit applications electronically and the process for submitting required supporting documents and technical specifications. These instructions may be modified by BIS from time to time.

(2) *License Applications.* The electronic submission of an application for license will constitute an export control document. Such submissions must provide the same information as written applications and are subject to the recordkeeping provisions of part 762 of the EAR. The applicant company and PIN holder submitting the application will be deemed to make all representations and certifications as if the submission were made in writing by the company and signed by the submitting PIN holder. Electronic submission of a license application will be considered complete upon the transmittal of the application to BIS or to an entity under contract to receive such applications for BIS.

(c) *Maintenance of a log.* Your company must maintain a log, either manually or electronically, specifying the date and time of each electronic submission, the ECCNs of items on each electronic submission, and the name of the employee or agent submitting the license application. This log may not be altered. Written corrections must be made in a manner that does not erase or cover original entries. If the log is maintained electronically, corrections may only be made as notations.

(d) *Updating.* An applicant company must promptly notify BIS of any change in its name or address. If your company wishes to have an individual added as a PIN holder, your company must advise BIS and follow the instructions provided by BIS. Your company should conduct periodic reviews to ensure that PINs are held only by individuals whose current responsibilities make it necessary and appropriate that

they act for the company in this capacity.

§748.8 Unique application and submission requirements.

In addition to the instructions contained in Supplement No. 1 to this part 748, you must also ensure that the additional requirements for certain items or types of transactions described in this section are addressed in your license application. See Supplement No. 2 to this part 748 if your application involves:

(a) Chemicals, medicinals, and pharmaceuticals.

(b) Communications intercepting devices.

(c) Digital computers, telecommunications, and related equipment.

(d) Gift parcels; consolidated in a single shipment.

(e) Intransit shipments through the United States.

(f) Intransit shipments outside of the United States.

(g) Nuclear Nonproliferation items and end-uses.

(h) Numerical control devices, motion control boards, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed assemblies and specially designed software.

(i) Parts, components, and materials incorporated abroad into foreign-made products.

(j) Ship stores, plane stores, supplies, and equipment.

(k) Regional stability controlled items.

(l) Reexports.

(m) Robots.

(n) Short Supply controlled items.

(o) Technology.

(p) Temporary exports or reexports.

(q) Exports of chemicals controlled for CW reasons by ECCN 1C350 to countries not listed in Supplement No. 2 to part 745 of the EAR.

(r) Encryption review requests.

(s) Foreign National Review Request.

(t) Foreign National Support Statement for deemed exports.

(u) Aircraft and vessels on temporary sojourn.

(v) In-country transfers.

[61 FR 12812, Mar. 25, 1996, as amended at 64 FR 27146, May 18, 1999; 69 FR 64489, Nov. 5, 2004; 70 FR 8249, Feb. 18, 2005; 70 FR 54629, Sept. 16, 2005]

§748.9 Support documents for license applications.

(a) *Exemptions.* If you plan to submit a license application involving one of the following situations and your item is not a firearms item destined for an OAS member country, no support documentation is required. Simply submit the license application. If your item is a firearms item (Reason for Control identified as ''FC'' on the Commerce Control List, Supplement No. 1 to part 774 of the EAR) destined for an OAS member country, proceed to §748.14 of this part.

(1) All exports and reexports involving ultimate consignees located in any of the following destinations:

Bahamas	Haiti
Barbados	Honduras
Belize	Jamaica
Bermuda	Leeward and Windward Islands
Bolivia	Mexico
Brazil	Miquelon and St. Pierre Islands
Canada	Netherlands Antilles
Chile	Nicaragua
Colombia	Panama
Costa Rica	Paraguay
Dominican Republic	Peru
Ecuador	Surinam
El Salvador	Trinidad and Tobago
French West Indies	Uruguay
French Guiana	Venezuela
Greenland	
Guatemala	
Guyana	

(2) The ultimate consignee or purchaser is a foreign government(s) or foreign government agency(ies), other than the government of the People's Republic of China. To determine whether the parties to your transaction meet the definition of ''government agency'' refer to the definition contained in part 772 of the EAR. Remember, if either the ultimate consignee or purchaser is not a foreign government or foreign government agency, a statement is required from the nongovernmental party.

(3) The license application is filed by, or on behalf of, a relief agency registered with the Advisory Committee on Voluntary Foreign Aid, U.S. Agency

for International Development, for export to a member agency in the foreign country.

(4) The license application is submitted to export or reexport items for temporary exhibit, demonstration, or testing purposes.

(5) The license application is submitted for items controlled for short supply reasons (see part 754 of the EAR).

(6) The license application is submitted under the Special Comprehensive License procedure described in part 752 of the EAR.

(7) The license application is submitted to export or reexport software or technology.

(8) The license application is submitted to export or reexport encryption items controlled under ECCNs 5A002, 5B002, 5D002 and 5E002.

(b) *Support document requirements.* License applications not exempt under paragraph (a) of this section generally must be supported by documents designed to elicit information concerning the disposition of the items intended for export or reexport. These support documents must be either submitted at the time the license application is filed or retained in the applicant's files in accordance with the recordkeeping provisions of part 762 of the EAR. The type of support documentation required is dependent on the item involved and the country of ultimate destination. To determine which type of support documentation is required, answer the following questions:

(1) Does your transaction involve items controlled for national security reasons?

(i) If yes, continue with question number 2 in paragraph (b)(2) of this section.

(ii) If no, your transaction may require a Statement by Ultimate Consignee and Purchaser. Read the remainder of this section beginning with paragraph (c) of this section, then proceed to § 748.11 of the EAR.

(2) Does your transaction involve items controlled for national security reasons destined for one of the following countries? (This applies only to those overseas destinations specifically listed.)

Argentina	Korea, Republic of
Australia	Liechtenstein
Austria	Luxembourg
Belgium	Netherlands
Bulgaria	New Zealand
China (PRC)	Norway
Czech Republic	Pakistan
Denmark	Poland
Finland	Portugal
France	Romania
Germany	Singapore
Greece	Slovakia
Hong Kong	Spain
Hungary	Sweden
India	Switzerland
Ireland, Republic of	Taiwan
Italy	Turkey
Japan	United Kingdom

(i) If yes, your transaction may require an Import or End-User Certificate. Note that if the destination is the People's Republic of China, a Statement of Ultimate Consignee and Purchaser may be substituted for a PRC End-User Certificate under the following conditions:

(A) The item to be exported (i.e., replacement parts and sub-assemblies) is for servicing previously exported items and is valued at $75,000 or less; or

(B) The End-User is not a Chinese entity.

(ii) If no, your transaction may require a Statement by Ultimate Consignee and Purchaser. Read the remainder of this section beginning with paragraph (c) of this section, then proceed to § 748.11 of the EAR.

(c) *License applications requiring support documents.* License applications requiring support by either a Statement by the Ultimate Consignee and Purchaser or an Import or End-User Certificate must indicate the type of support document obtained in Block 6 or 7 on your application with an ''X'' in the appropriate box. If the support document is an Import or End User Certificate, you must also identify the originating country and number of the Certificate in Block 13 on your application. If a license application is submitted without either the correct Block or Box marked on the application or the required support document, the license application will be immediately returned without action unless the satisfactory reasons for failing to obtain the document are supplied in Block 24 or in an attachment to your license application.

(1) *License applications supported by an Import or End User Certificate.* If submission of the original certificate is not required by § 748.10(g) of this part, you may submit your license application upon receipt of a facsimile or other legible copy of the Import or End User Certificate provided that no shipment is made against any license issued based upon the Import or End User Certificate prior to receipt and retention of the original statement by the applicant. If § 748.10(g) of this part requires submission of the original certificate with your license application, you must submit the original. Copies will not be accepted.

(2) *License applications supported by Ultimate Consignee and Purchaser statements.* These types of license applications may be submitted upon receipt of a facsimile or other legible copy of the original statement provided that the applicant receives the manually-signed original within 60 days from the date the original is signed by the ultimate consignee.

(d) *Exceptions to obtaining the required support document.* BIS will consider the granting of an exception to the requirement for supporting document where the requirements cannot be met due to circumstances beyond your control. An exception will not be granted contrary to the objectives of the U.S. export control laws and regulations. Refer to § 748.12(d) of this part for specific instructions on procedures for requesting an exception.

(e) *Validity period.* (1) When an Import or End-User Certificate or a Statement by Ultimate Consignee and Purchaser is required to support one or more license applications, you must submit the first license application within the validity period shown on the Certificate, or 6 months from the date the Certificate was issued or Statement signed, whichever is shorter.

(2) All subsequent license applications supported by the same Import or End-Use Certificate must be submitted to BIS within one year from the date that the first license application supported by the same Import or End-Use Certificate was submitted to BIS.

(3) All subsequent license applications supported by the same Statement by Ultimate Consignee and Purchaser must be submitted within two years of the first application if the statement was completed as a single transaction statement. If the statement was completed as a multiple transaction statement, all applications must be submitted within two years of signature by the consignee or purchaser, whichever was last.

(f) *English translation requirements.* All abbreviations, coded terms, or other expressions on support documents having special significance in the trade or to the parties to the transaction must be explained on an attachment to the document. Documents in a language other than English must be accompanied by an attachment giving an accurate English translation, either made by a translating service or certified by you to be correct. Explanations or translations should be provided on a separate piece of paper, and not entered on the support documents themselves.

(g) *Responsibility for full disclosure.* (1) Information contained in a support document cannot be construed as extending or expanding or otherwise modifying the specific information supplied in a license application or license issued by BIS. The license application covering the transaction discloses all facts pertaining to the transaction. The authorizations contained in the resulting license are not extended by information contained in an Import Certificate, End-User Certificate or Statement by Ultimate Consignee and Purchaser regarding reexport from the country of destination or any other facts relative to the transaction that are not reported on the license application.

(2) Misrepresentations, either through failure to disclose facts, concealing a material fact, or furnishing false information, will subject responsible parties to administrative action by BIS. Administrative action may include suspension, revocation, or denial of licensing privileges and denial of other participation in exports from the United States.

(3) In obtaining the required support document, you as the applicant are not relieved of the responsibility for full disclosure of any other information concerning the ultimate destination

and end-use, end-user of which you know, even if inconsistent with the representations made in the Import Certificate, End-User Certificate, or Statement by Ultimate Consignee and Purchaser. You are responsible for promptly notifying BIS of any change in the facts contained in the support document that comes to your attention.

(h) *Effect on license application review.* BIS reserves the right in all respects to determine to what extent any license will be issued covering items for which an Import or End-User Certificate has been issued by a foreign government. BIS will not seek or undertake to give consideration to recommendations from the foreign government as to the action to be taken on a license application. A supporting document issued by a foreign government will be only one of the factors upon which BIS will base its licensing action, since end-uses and other considerations are important factors in the decision making process.

(i) *Request for return of support documents submitted to BIS.* If an applicant is requested by a foreign importer to return an unused or partially used Import or End-User Certificate submitted to BIS in support of a license application, the procedure provided in this paragraph (i) should be followed:

(1) The applicant must send a letter request for return of an Import or End-User Certificate to the address stated in § 748.2(c) of this part, ''Attn: Import/End-User Certificate Request''.

(2) The letter request must include the name and address of the importer, the Application Control Number under which the original Import or End-User Certificate was submitted, the Application Control Numbers for any subsequent license applications supported by the same certificate, and one of the following statements, if applicable:

(i) If the certificate covers a quantity greater than the total quantity identified on the license application(s) submitted against it, a statement that the certificate will not be used in connection with another license application.

(ii) If you do not intend to make any additional shipments under a license covered by the certificate, or are in possession of an expired license covered by the certificate, a statement to this effect, indicating the unshipped items.

(j) *Recordkeeping requirements for returning certificates retained by the applicant.* (1) Though the recordkeeping provisions of the EAR require that all original support documents be retained for a period of five years, an unused or partially used certificate may be returned at the request of a foreign importer provided that you submit the original certificate, accompanied by a letter of explanation, a copy of each license covered by the certificate, and a list of all shipments made against each license to BIS at the address listed in § 748.2(c). BIS will notify you in writing whether your request has been granted. The following information must be contained in your letter of explanation:

(i) A statement citing the foreign importer's request for return of the certificate;

(ii) The license number(s) that have been issued against the certificate (including both outstanding and expired licenses); and

(iii) If the certificate covers a quantity greater that the total quantity stated on the license(s), you must include a statement that the certificate will not be used in connection with another license application.

(2) If your request is granted, BIS will return the certificate to you. You must make a copy of the certificate before you return the original to the importer. This copy must show all the information contained on the original certificate including any notation made on the certificate by BIS. The copies must be retained on file along with your correspondence in accordance with the recordkeeping provisions in part 762 of the EAR.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997; 63 FR 50525, Sept. 22, 1998; 64 FR 2431, Jan. 14, 1999; 64 FR 17973, Apr. 13, 1999; 70 FR 72074, Dec. 1, 2005]

§ 748.10 Import and End-User Certificates.

(a) *Scope.* There are a variety of Import and End-User Certificates currently in use by various governments. The control exercised by the government issuing the Import or End-User Certificate is in addition to the conditions and restrictions placed on the

transaction by BIS. The laws and regulations of the United States are in no way modified, changed, or superseded by the issuance of an Import or End-User Certificate. This section describes exceptions and relationships true for both Import and End-User Certificates, and applies only to transactions involving national security controlled items destined for one of the countries identified in § 748.9(b)(2) of this part.

(b) *Import or End-User Certificate.* An Import or End-User Certificate must be obtained, unless your transaction meets one of the exemptions stated in § 748.9(a) of this part, if:

(1) Any commodities on your license application are controlled for national security (NS) reasons, except for items controlled under ECCN 5A002 or 5B002;

(2) The ultimate destination is a country listed in § 748.9(b)(2) of this part.

(3) Your transaction involves an export to the People's Republic of China (PRC) of a computer, regardless of dollar value, that requires a license application.

(4) Your license application involves the export of commodities and software classified in a single entry on the CCL, the total value of which exceeds $5,000. Note that this $5,000 threshold does not apply to exports to the People's Republic of China of computers subject to the provisions of § 748.10(b)(3).

(i) Your license application may list several separate CCL entries. If any entry controlled for national security reasons exceeds $5,000, then an Import or End-User Certificate must be obtained covering all items controlled for national security reasons on your license application;

(ii) If your license application involves a lesser transaction that is part of a larger order for items controlled for national security reasons in a single ECCN exceeding $5,000, an Import or End-User Certificate must be obtained.

(iii) You may be specifically requested by BIS to obtain an Import Certificate for a transaction valued under $5,000.

(c) *How to obtain an Import or End-User Certificate.* (1) Applicants must request that the importer (e.g., ultimate consignee or purchaser) obtain the Import or End-User Certificate, and that it be issued covering only those items that are controlled for national security reasons. Importers should not be requested to obtain an Import or End-User Certificate for items that are controlled for reasons other than national security. Upon receipt, the importer must transmit the original document to the applicant.

(2) The applicant's name must appear on the Import or End-User Certificate submitted to BIS as either the applicant, supplier, or order party. The Import Certificate may be made out to either the ultimate consignee or the purchaser, even though they are different parties, as long as both are located in the same country.

NOTE TO PARAGRAPH (c) OF THIS SECTION: You should furnish the consignee with the item description contained in the CCL to be used in applying for the Import or End-User Certificate. It is also advisable to furnish a manufacturer's catalog, brochure, or technical specifications if the item is new.

(3) If your transaction requires support of a PRC End-User Certificate, you must ensure the following information is included on the PRC End-User Certificate signed by an official of the Department of Science and Technology of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) with MOFTEC's seal affixed to it:

(i) Title of contract and contract number (optional);

(ii) Names of importer and exporter;

(iii) End-User and end-use;

(iv) Description of the item, quantity and dollar value; and

(v) Signature of the importer and date.

(d) *Where to obtain Import and End-User Certificates.* See Supplement No. 4 to this part for a list of the authorities administering the Import Certificate/Delivery Verification and End-User Certificate Systems in other countries.

(e) *Triangular symbol on International Import Certificates.* (1) In accordance with international practice, the issuing government may stamp a triangular symbol on the International Import Certificate (IIC). This symbol is notification that the importer does not intend to import or retain the items in the country issuing the certificate, but that, in any case, the items will not be

delivered to any destination except in accordance with the export regulations of the issuing country.

(2) If you receive an IIC bearing a triangular symbol, you must identify all parties to the transaction on the license application, including those located outside the country issuing the IIC. If the importer declines to provide you with this information, you may advise the importer to provide the information directly to BIS, through a U.S. Foreign Commercial Service office, or in a sealed envelope to you marked ''To be opened by BIS only''.

(f) *Multiple license applications supported by one certificate.* An Import or End-User Certificate may cover more than one purchase order and more than one item. Where the certificate includes items for which more than one license application will be submitted, you must include in Block 24 on your application, or in an attachment to each license application submitted against the certificate, the following certification:

I (We) certify that the quantities of items shown on this license application, based on the Certificate identified in Block 13 of this license application, when added to the quantities shown on all other license applications submitted to BIS based on the same Certificate, do not total more than the total quantities shown on the above cited Certificate.

(g) *Submission of Import and End-User Certificates.* If a PRC End-User Certificate is required for your proposed transaction, you must submit the original certificate with your license application. Copies will not be accepted. All other certificates must be retained on file by the applicant in accordance with the recordkeeping provisions of part 762 of the EAR, and not submitted with the license application.

(h) *Alterations.* After an Import or End-User Certificate is issued by a foreign government, no corrections, additions, or alterations may be made on the Certificate by any person. If you desire to explain any information contained on the Certificate, you may attach a signed statement to the Certificate.

(i) *Request for Delivery Verification.* BIS will, on a selective basis, require Delivery Verification documents for shipments supported by Import Certificates. You will be notified if Delivery Verification is required at the time of issuance of the license. Please refer to § 748.13 of this part for detailed information on these procedures.

(j) *Retention procedures.* You must retain on file the original copy of any certificate issued in support of a license application submitted to BIS, unless the original is submitted with the license application. All recordkeeping provisions contained in part 762 of the EAR apply to this requirement, except that reproductions may not be substituted for the officially authenticated original in this instance.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997; 63 FR 50525, Sept. 22, 1998; 64 FR 2431, Jan. 14, 1999; 65 FR 12923, Mar. 10, 2000; 65 FR 60856, Oct. 13, 2000; 66 FR 5447, Jan. 19, 2001; 66 FR 6465, Jan. 22, 2001; 67 FR 10615, Mar. 8, 2002]

§ 748.11 Statement by Ultimate Consignee and Purchaser.

(a) *Exceptions to completing a Statement by Ultimate Consignee and Purchaser.* A Statement by the Ultimate Consignee and/or Purchaser involved in a transaction must be completed unless:

(1) An International Import Certificate, a People's Republic of China End-User Certificate, an Indian Import Certificate, or a Bulgarian, Czech, Hungarian, Polish, Romanian or Slovak Import Certificate is required in support of the license application;

(2) The applicant is the same person as the ultimate consignee, provided the required statements are contained in Block 24 on the license application. This exemption does not apply where the applicant and consignee are separate entities, such as parent and subsidiary, or affiliated or associated firms;

(3) The application is valued at $5000 or less, and is not part of a larger transaction; or

(4) The transaction meets one of the exemptions stated in § 748.9(a) of this part.

(b) *Submission of the Statement by Ultimate Consignee and Purchaser.* A copy of the statement must be submitted with your license application if the country of ultimate destination is listed in either Country Group D:2, D:3, or D:4

(See Supplement No. 1 to part 740 of the EAR). The copy submitted by the applicant must be of sufficient quality to ensure all assertions made on the statement are legible and that the signatures are sufficiently legible to permit identification of the signature as that of the signer. The applicant must receive the manually-signed original within 60 days from the date the original is signed by the ultimate consignee. The applicant must, upon receipt, retain the manually-signed original, and both the ultimate consignee and purchaser should retain a copy of the statement in accordance with the recordkeeping provisions contained in part 762 of the EAR.

(c) *Form or letter.* The ultimate consignee and purchaser must complete either a statement on company letterhead in accordance with paragraph (e) of this section or Form BIS–711, Statement by Ultimate Consignee and Purchaser. If the consignee and purchaser elect to complete the statement on letterhead and both the ultimate consignee and purchaser are the same entity, only one statement is necessary. If the ultimate consignee and purchaser are separate entities, separate statements must be prepared and signed. If the ultimate consignee and purchaser elects to complete Form BIS–711, only one Form BIS–711 (containing the signatures of the ultimate consignee and purchaser) need be completed. Whether your ultimate consignee and purchaser sign a written statement or complete Form BIS–711, the following constraints apply:

(1) Responsible officials representing the ultimate consignee and purchaser must sign the statement. ''Responsible official'' is defined as someone with personal knowledge of the information included in the statement, and authority to bind the ultimate consignee or purchaser for whom they sign, and who has the power and authority to control the use and disposition of the licensed items.

(2) The authority to sign the statement may not be delegated to any person (agent, employee, or other) whose authority to sign is not inherent in his or her official position with the ultimate consignee or purchaser for whom he or she signs. The signing official may be located in the U.S. or in a foreign country. The official title of the person signing the statement must also be included.

(3) The consignee and/or purchaser must submit information that is true and correct to the best of their knowledge and must promptly send a new statement to the applicant if changes in the facts or intentions contained in their statement(s) occur after the statement(s) have been forwarded to the applicant. Once a statement has been signed, no corrections, additions, or alterations may be made. If a signed statement is incomplete or incorrect in any respect, a new statement must be prepared, signed and forwarded to the applicant.

(d) *Instructions for completing Form BIS–711.* Instructions on completing Form BIS–711 are contained in Supplement No. 3 to this part. The ultimate consignee and purchaser may sign a legible copy of Form BIS–711. It is not necessary to require your ultimate consignee and purchaser sign an original Form BIS–711, provided all information contained on the copy is legible.

(e) *Instructions for completing the statement on letterhead.* Information in response to each of the following criteria must be included in the statement. If any information is unknown, that fact should be disclosed in the statement. Preprinted information supplied on the statement, including the name, address, or nature of business of the ultimate consignee or purchaser appearing on the letterhead or order form is acceptable but will not constitute evidence of either the signer's identity, the country of ultimate destination, or end-use of the items described in the license application.

(1) *Paragraph 1.* One of the following certifications must be included depending on whether the statement is proffered in support of a single license application or multiple license applications:

(i) *Single.* This statement is to be considered part of a license application submitted by [name and address of applicant].

(ii) *Multiple.* This statement is to be considered a part of every license application submitted by [name and address of applicant] until two years from the date this statement is signed.

(2) *Paragraph 2.* One or more of the following certifications must be included. Note that if any of the facts related to the following statements are unknown, this must be clearly stated.

(i) The items for which a license application will be filed by [name of applicant] will be used by us as capital equipment in the form in which received in a manufacturing process in [name of country] and will not be reexported or incorporated into an end product.

(ii) The items for which a license application will be filed by [name of applicant] will be processed or incorporated by us into the following product(s) [list products] to be manufactured in [name of country] for distribution in [list name of country or countries].

(iii) The items for which a license application will be filed by [name of applicant] will be resold by us in the form in which received for use or consumption in [name of country].

(iv) The items for which a license application will be filed by [name of applicant] will be reexported by us in the form in which received to [name of country or countries].

(v) The items received from [name of applicant] will be [describe use of the items fully].

(3) *Paragraph 3.* The following two certifications must be included:

(i) The nature of our business is [possible choices include; broker, distributor, fabricator, manufacturer, wholesaler, retailer, value added reseller, original equipment manufacturer, etc.].

(ii) Our business relationship with [name of applicant] is [possible choices include; contractual, franchise, distributor, wholesaler, continuing and regular individual business, etc.] and we have had this business relationship for [number of years].

(4) *Paragraph 4.* The final paragraph must include all of the following certifications:

(i) We certify that all of the facts contained in this statement are true and correct to the best of our knowledge and we do not know of any additional facts that are inconsistent with the above statements. We shall promptly send a replacement statement to [name of the applicant] disclosing any material change of facts or intentions described in this statement that occur after this statement has been prepared and forwarded to [name of applicant]. We acknowledge that the making of any false statement or concealment of any material fact in connection with this statement may result in imprisonment or fine, or both, and denial, in whole or in part, of participation in U.S. exports or reexports.

(ii) Except as specifically authorized by the U.S. Export Administration Regulations, or by written approval from the Bureau of Industry and Security, we will not reexport, resell, or otherwise dispose of any items approved on a license supported by this statement:

(A) To any country not approved for export as brought to our attention by the exporter; or

(B) To any person if there is reason to believe that it will result directly or indirectly in disposition of the items contrary to the representations made in this statement or contrary to the U.S. Export Administration Regulations.

(iii) We understand that acceptance of this statement as a support document cannot be construed as an authorization by BIS to reexport the items in the form in which received even though we may have indicated the intention to reexport, and that authorization to reexport is not granted in an export license on the basis of information provided in the statement, but as a result of a specific request in a license application.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997; 65 FR 42568, July 10, 2000; 70 FR 8249, Feb. 18, 2005]

§ 748.12 Special provisions for support documents.

(a) *Grace periods.* Whenever the requirement for an Import or End-User Certificate or Statement by Ultimate Consignee or Purchaser is imposed or extended by a change in the regulations, the license application need not

conform to the new support documentation requirements for a period of 45 days after the effective date of the regulatory change published in the FEDERAL REGISTER.

(1) Requirements are usually imposed or extended by virtue of one of the following:

(i) Addition or removal of national security controls over a particular item; or

(ii) Development of an Import Certificate/Delivery Verification or End-User Certificate program by a foreign country; or

(iii) Removal of an item from eligibility under the Special Comprehensive License described in part 752 of the EAR, when you hold such a special license and have been exporting the item under that license.

(2) License applications filed during the 45 day grace period must be accompanied by any evidence available to you that will support representations concerning the ultimate consignee, ultimate destination, and end use, such as copies of the order, letters of credit, correspondence between you and ultimate consignee, or other documents received from the ultimate consignee. You must also identify the regulatory change (including its effective date) that justifies exercise of the 45 day grace period. Note that an Import or End-User Certificate will not be accepted, after the stated grace period, for license applications involving items that are no longer controlled for national security reasons. If an item is removed from national security controls, you must obtain a Statement by Ultimate Consignee and Purchaser as described in § 748.11 of this part. Likewise, any item newly controlled for national security purposes requires support of an Import or End-User Certificate as described in § 748.10 of this part after expiration of the stated grace period.

(b) *Reexports.* If a support document would be required for an export from the United States, the same document would be required for reexport to Country Group D:1 and E:2 (see Supplement No. 1 to part 740 of the EAR).

(c) *Granting of exceptions to the support documentation requirement.* An exception to obtaining the required support documentation will be considered by BIS, however, an exception will not be granted contrary to the objectives of the U.S. export control program. A request for exception may involve either a single transaction, or where the reason necessitating the request is continuing in nature, multiple transactions. If satisfied by the evidence presented, BIS may waive the support document requirement and accept the license application for processing. Favorable consideration of a request for exception generally will be given in instances where the support document requirement:

(1) Imposes an undue hardship on you and/or ultimate consignee (e.g., refusal by the foreign government to issue an Import or End-User Certificate and such refusal constitutes discrimination against you); or

(2) Cannot be complied with (e.g., the items will be held in a foreign trade zone or bonded warehouse for subsequent distribution in one or more countries); or

(3) Is not applicable to the transaction (e.g., the items will not be imported for consumption into the named country of destination).

(d) *Procedures for requesting an exception.* (1) Requests for exception must be submitted with the license application to which the request relates. Where the request relates to more than one license application it should be submitted with the first license application and referred to in Block 24 on any subsequent license application. The request for exception must be submitted in writing on the applicant's letterhead.

(2) In instances where you are requesting exception from obtaining an Import or End-User Certificate, the request must be accompanied by a manually-signed original Statement by Ultimate Consignee and Purchaser as described in § 748.11 of this part.

(3) At a minimum, the letter request must include:

(i) Name and address of ultimate consignee;

(ii) Name and address of purchaser, if different from ultimate consignee;

(iii) Location of foreign trade zone or bonded warehouse if the items will be

exported to a foreign trade zone or bonded warehouse;

(iv) Type of request, i.e., whether for a single transaction or multiple transactions;

(v) Full explanation of the reason(s) for requesting the exception;

(vi) Nature and duration of the business relationship between you and ultimate consignee and purchaser shown on the license application;

(vii) Whether you have previously obtained and/or submitted to BIS an Import or End-User Certificate issued in the name of the ultimate consignee and/or purchaser, and a list of the Application Control Number(s) to which the certificate(s) applied; and

(viii) Any other facts to justify granting an exception.

(4) *Action by BIS.* (i) *Single transaction request.* Where a single transaction is involved, BIS will act on the request for exception at the same time as the license application with which the request is submitted. In those instances where the related license application is approved, the issuance of the license will serve as an automatic notice to the applicant that the exception was approved. If any restrictions are placed on granting of the exception, these will appear on the approval. If the request for exception is not approved, BIS will advise you by letter.

(ii) *Multiple transactions request.* Where multiple transactions are involved, BIS will advise you by letter of the action taken on the exception request. The letter will contain any conditions or restrictions that BIS finds necessary to impose (including an exception termination date if appropriate). In addition, a written acceptance of these conditions or restrictions may be required from the parties to the transaction.

(e) *Availability of original.* The original certificate or statement must be kept on file, and made available for inspection in accordance with the provisions of part 762 of the EAR. To ensure compliance with this recordkeeping requirement, BIS will require applicants, on a random basis, to submit specific original certificates and statements that have been retained on file. Applicants will be notified in writing of any such request.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997]

§ 748.13 Delivery Verification (DV).

(a) *Scope.* (1) BIS may request the licensee to obtain verifications of delivery on a selective basis. A Delivery Verification Certificate (DV) is a document issued by the government of the country of ultimate destination after the export has taken place and the items have either entered the export jurisdiction of the recipient country or are otherwise accounted for by the importer to the issuing government. Governments that issue DVs are listed in Supplement No. 4 to this part.

(2) If BIS decides to request verification of delivery, the request will appear as a condition on the face of the license. If the license is sent directly to a party other than the applicant authorized to receive the license (e.g., agent, forwarder, broker, etc.), such party is responsible for notifying the licensee immediately in writing that a DV is required.

(b) *Exception to obtaining Delivery Verification.* The DV requirement for a particular transaction is automatically canceled if, subsequent to the issuance of a license, the item is no longer controlled for national security reasons. In this instance, the licensee must send a letter to BIS at the address listed in § 748.2(c) of this part, stating that the items on the license are no longer controlled for national security reasons, and accordingly, the request for DV will not be fulfilled by the licensee.

(c) *Procedure for obtaining Delivery Verification.* When notified that a DV is required by BIS, the licensee must transmit to the importer a written request for a DV at the time of making each shipment under the license (whenever possible, this request should be submitted together with the related bill of lading or air waybill). The request must include the number of the Import or End-User Certificate for the transaction referred to on the license, and notify the importer that this same Import or End-User Certificate number should be shown on the DV.

(1) The importer must obtain the DV from the appropriate government ministry identified in Supplement No. 4 to this part, and forward the completed DV to the licensee. The DV must cover the items described on the license that have been shipped. Note that BIS must be able to relate the description provided in the DV to the approved license. In order to ensure the same terminology is used, the licensee should provide the importer with the description as it appears on the license.

(2) The original copy of the DV must be sent to BIS within 90 days after the last shipment has been made against the license. If verification of delivery is required for items covered by a license against which partial shipments have been made, the licensee shall obtain the required DV for each partial shipment, and retain these on file until all shipments have been made against the license. Once all shipments against the license have been made (or the licensee has determined that none will be), the licensee must forward, in one package, all applicable DVs to BIS at the address listed in §748.2(c) of this part.

(3) The documents must be forwarded with a dated letter giving the license number, the name, title and signature of the authorized representative, and one of the following statements:

(i) The total quantity authorized by license number _____ has been exported, and all delivery verification documents are attached.

(ii) A part of the quantity authorized by license number _____ will not be exported. Delivery verification documents covering all items exported are attached.

(iii) No shipment has been made against this license, and none is contemplated.

(d) *Inability to obtain Delivery Verification Certificates.* If a licensee is unable to obtain the required DV (within the time frame stated above, or at all) from the importer, the licensee must promptly notify BIS and, upon request, make available all information and records, including correspondence, regarding the attempt to obtain the DV.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25461, May 9, 1997]

§748.14 Import Certificate for firearms destined for Organization of American States member countries.

(a) *Scope.* Consistent with the OAS Model Regulations, BIS requires from all OAS member countries an Import Certificate issued by the government of the importing country for items classified as ECCNs 0A984, 0A986, or 0A987. For those OAS member countries that have not yet established or implemented an Import Certificate procedure, BIS will accept an equivalent official document (e.g., import license or letter of authorization) issued by the government of the importing country as supporting documentation for the export of firearms. This section describes the requirements for Import Certificates or official equivalents in support of license applications submitted to BIS for firearms items that are identified by ''FC Column 1'' in the ''License Requirements'' section of the Commerce Control List.

(b) *Import Certificate Procedure.* An Import Certificate or equivalent official document must be obtained from the government of the importing OAS member country for firearms items classified as ECCNs 0A984, 0A986, or 0A987. Except as provided by §748.9(a) of the EAR, the applicant must obtain and retain on file either the original or certified copy of the Import Certificate, or an original or certified copy of equivalent official document issued by the government of the importing country in support of any license application for export of firearms items classified as 0A984, 0A986, or 0A987. All the recordkeeping provisions of part 762 of the EAR apply to this requirement. The applicant must clearly note the number and date of the Import Certificate or equivalent official document on all export license applications (BIS Form 748P, Multipurpose Application Form, Block 13) supported by that Certificate or equivalent official document. The applicant must also indicate in Block 7 of the application that the Certificate or equivalent official document has been received and will be retained on file. However, the applicant may submit an application before obtaining the original or certified copy of the Import Certificate, or the official

original or certified copy of the equivalent document, provided that:

(1) The applicant has received a facsimile of the Import Certificate or equivalent official document at the time the license application is filed; and

(2) The applicant states on the application that a facsimile of the Import Certificate or equivalent official document has been received and that no shipment will be made against the license prior to obtaining the original or certified copy of the Import Certificate or the original or certified copy of the equivalent official document issued by the importing country and retaining it on file. Generally, BIS will not consider any license application for the export of firearms items if the application is not supported by an Import Certificate or its official equivalent. If the government of the importing country will not issue an Import Certificate or its official equivalent, the applicant must supply the information described in paragraphs (g)(2)(i) and (g)(2)(vi) through (viii) of this section on company letterhead.

(c) *Countries to which firearms controls apply*. The firearms controls apply to all OAS member countries: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States, Uruguay, and Venezuela.

(d) *Items/Commodities.* An Import Certificate or equivalent official document is required for items controlled under Export Control Classification Numbers (ECCNs) 0A984, 0A986, or 0A987.

(e) *Use of the Import Certificate.* An Import Certificate or equivalent official document can only be used to support one BIS Form–748P, Multipurpose Application. The BIS Form–748P, Multipurpose Application, must include the same items as those listed on the Import Certificate or the equivalent official document.

(f) *Validity period*. Import Certificates or equivalent official documents issued by an OAS member country will be valid for a period of one year or less. Although licenses generally are valid for two years, your ability to ship may be affected by the validity of the Import Certificate or equivalent official document.

(g) *How to obtain an Import Certificate for firearms items destined to OAS member countries.* (1) Applicants must request that the importer (e.g., ultimate consignee or purchaser) obtain the Import Certificate or an equivalent official document from the government of the importing country, and that it be issued covering the quantities and types of items that the applicant intends to export. Upon receipt of the Import Certificate or its official equivalent, the importer must provide the original or a certified copy of the Import Certificate or the original or a certified copy of the equivalent official document to the applicant. The applicant shall obtain the required documents prior to submitting a license application, except as provided in paragraphs (b)(1) and (b)(2) of this section.

(2) The Import Certificate or its official equivalent must contain the following information:

(i) Applicant's name and address. The applicant may be either the exporter, supplier, or order party.

(ii) Import Certificate Identifier/Number.

(iii) Name of the country issuing the certificate or unique country code.

(iv) Date the Import Certificate was issued, in international date format (e.g., 24/12/98 (24 December 1998), or 3/1/99 (3 January 1999)).

(v) Name of the agency issuing the certificate, address, telephone and facsimile numbers, signing officer name, and signature.

(vi) Name of the importer, address, telephone and facsimile numbers, country of residence, representative's name if commercial or government body, citizenship, and signature.

(vii) Name of the end-user(s), if known and different from the importer, address, telephone and facsimile numbers, country of residence, representative's name if commercial (authorized distributor or reseller) or government body, citizenship, and signature. Note

that BIS does not require the identification of each end-user when the firearms items will be resold by a distributor or reseller if unknown at the time of export.

(viii) Description of the items approved for import including a technical description and total quantity of firearms, parts and components, ammunition and parts.

NOTE TO PARAGRAPH ≤(g)(2)(viii): You must furnish the consignee with a detailed technical description of each item to be given to the government for its use in issuing the Import Certificate. For example, for shotguns, provide the type, barrel length, overall length, number of shots, the manufacturer's name, the country of manufacture, and the serial number for each shotgun. For ammunition, provide the caliber, velocity and force, type of bullet, manufacturer's name and country of manufacture.

(ix) Expiration date of the Import Certificate in international date format (e.g., 24/12/98) or the date the items must be imported, whichever is earlier.

(x) Name of the country of export (i.e., United States).

(xi) *Additional information.* Certain countries may require the tariff classification number, by class, under the Brussels Convention (Harmonized Tariff Code) or the specific technical description of an item. For example, shotguns may need to be described in barrel length, overall length, number of shots, manufacturer's name and country of manufacture. The technical description is not the Export Control Classification Number (ECCN).

(h) *Where to obtain Import Certificates.* See Supplement No. 6 to this part for a list of the OAS member countries' authorities administering the Import Certificate System.

(i) *Alterations.* After an Import Certificate or official equivalent document is used to support the issuance of a license, no corrections, additions, or alterations may be made on the Certificate by any person. If you desire to explain any information contained on the Import Certificate or official equivalent document, you may attach a signed statement to the Import Certificate or official equivalent.

(j) *Request for return of Import Certificates.* A U.S. exporter may be requested by a foreign importer to return an unused Import Certificate. Refer to §748.9(j) of this part for procedures and recordkeeping requirements for returning an Import Certificate retained by the applicant.

[64 FR 17973, Apr. 13, 1999, as amended at 70 FR 8250, Feb. 18, 2005]

SUPPLEMENT NO. 1 TO PART 748—BIS-748P, BIS-748P-A; ITEM APPENDIX, AND BIS-748P-B; END-USER APPENDIX; MULTIPURPOSE APPLICATION INSTRUCTIONS

All information must be legibly typed within the lines for each Block or Box, except where a signature is required. Enter only one typed line of text per Block or line. Where there is a choice of entering telephone numbers or facsimile numbers, and you wish to provide a facsimile number instead of a telephone number, identify the facsimile number with the letter ''F'' immediately after the number (e.g., 022–358–0–123456F). If you are completing this form to request classification of your item, you must complete Blocks 1 through 5, 14, 22 (a), (b), (c), (d), and (i), 24, and 25 only.

Block 1: Contact Person. Enter the name of the person who can answer questions concerning the application.

Block 2: Telephone. Enter the telephone number of the person who can answer questions concerning the application.

Block 3: Facsimile. Enter the facsimile number, if available, of the person who can answer questions concerning the application.

Block 4: Date of Application. Enter the current date.

Block 5: Type of Application. *Export.* If the items are located within the United States, and you wish to export those items, mark the Box labeled ''Export'' with an (X). *Reexport.* If the items are located outside the United States, mark the Box labeled ''Reexport'' with an (X). *Classification.* If you are requesting BIS to classify your item against the Commerce Control List (CCL), mark the Box labeled ''Classification Request'' with an (X). *Encryption Review.* If you are requesting encryption review under License Exception ENC (§740.17 of the EAR) or ''mass market'' encryption provisions (§742.15(b)(2) of the EAR), mark the Box labeled ''Classification Request'' with an (X). *Special Comprehensive License.* If you are submitting a Special Comprehensive License application in accordance with the procedures described in part 752 of the EAR, mark the Box labeled ''Special Comprehensive License'' with an (X).

Block 6: Documents submitted with Application. Review the documentation you are required to submit with your application in accordance with the provisions of part 748 of the EAR, and mark all applicable Boxes with an (X).

Mark the Box ''Foreign Availability'' with an (X) if you are submitting an assertion of foreign availability with your license application. See part 768 of the EAR for instructions on foreign availability submissions.

Mark the ''Tech. Specs.'' box with an (X) if you are submitting descriptive literature, brochures, technical specifications, etc. with your application.

Block 7: Documents on File with Applicant. Certify that you have retained on file all applicable documents as required by the provisions of part 748 by placing an (X) in the appropriate Box(es).

Block 8: Special Comprehensive License. Complete this Block only if you are submitting an application for a Special Comprehensive License in accordance with part 752 of the EAR.

Block 9: Special Purpose. Complete this block for certain items or types of transactions only if specifically required in Supplement No. 2 to this part.

Block 10: Resubmission Application Control Number. If your original application was returned without action (RWA), provide the Application Control Number. This does not apply to applications returned without being registered.

Block 11: Replacement License Number. If you have received a license for identical items to the same ultimate consignee, but would like to make a modification that is not excepted in §750.7(c) of the EAR, to the license as originally approved, enter the original license number and complete Blocks 12 through 25, where applicable. Include a statement in Block 24 regarding what changes you wish to make to the original license.

Block 12: Items Previously Exported. This Block should be completed only if you have marked the ''Reexport'' box in Block 5. Enter the license number, License Exception symbol (for exports under General Licenses, enter the appropriate General License symbol), or other authorization under which the items were originally exported, if known.

Block 13: Import/End-User Certificate. Enter the name of the country and number of the Import or End User Certificate obtained in accordance with provisions of this part.

Block 14: Applicant. Enter the applicant's name, street address, city, state/country, and postal code. Provide a complete street address. P.O. Boxes are not acceptable. Refer to §748.5(a) of this part for a definition of ''applicant''. If you have marked ''Export'' in Block 5, you must include your company's Employer Identification Number unless you are filing as an individual or as an agent on behalf of the exporter. The Employee Identification Number is assigned by the Internal Revenue Service for tax identification purposes. Accordingly, you should consult your company's financial officer or accounting division to obtain this number.

Block 15: Other Party Authorized to Receive License. If you would like BIS to transmit the approved license to another party designated by you, complete all information in this Block, including name, street address, city, country, postal code and telephone number. Leave this space blank if the license is to be sent to the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant.

Block 16: Purchaser. Enter the purchaser's complete name, street address, city, country, postal code, and telephone or facsimile number. Refer to §748.5(c) of this part for a definition of ''purchaser''. If the purchaser is also the ultimate consignee, enter the complete name and address. If your proposed transaction does not involve a separate purchaser, leave Block 16 blank.

Block 17: Intermediate consignee. Enter the intermediate consignee's complete name, street address, city, country, postal code, and telephone or facsimile number. Provide a complete street address, P.O. Boxes are not acceptable. Refer to §748.5(d) of this part for a definition of ''intermediate consignee''. If this party is identical to that listed in Block 16, enter the complete name and address. If your proposed transaction does not involve use of an intermediate consignee, enter ''None''. If your proposed transaction involves more than one intermediate consignee, provide the same information in Block 24 for each additional intermediate consignee.

Block 18: Ultimate Consignee. This Block must be completed if you are submitting a license application. Enter the ultimate consignee's complete name, street address, city, country, postal code, and telephone or facsimile number. Provide a complete street address, P.O. Boxes are not acceptable. The ultimate consignee is the party who will actually receive the item for the end-use designated in Block 21. Refer to §748.5(e) of this part for a definition of ''ultimate consignee''. A bank, freight forwarder, forwarding agent, or other intermediary may not be identified as the ultimate consignee. Government purchasing organizations are the sole exception to this requirement. This type of entity may be identified as the government entity that is the actual ultimate consignee in those instances when the items are to be transferred to the government entity that is the actual end-user, provided the actual end-user and end-use is clearly identified in Block 21 or in the additional documentation attached to the application.

If your application is for the reexport of items previously exported, enter the new ultimate consignee's complete name, street address, city, country, postal code, and telephone or facsimile number. Provide a complete street address, P.O. Boxes are not acceptable. If your application involves a temporary export or reexport, the applicant should be shown as the ultimate consignee in care of a person or entity who will have control over the items abroad.

Block 19: End-User. Complete this Block only if the ultimate consignee identified in Block 18 is not the actual end-user. If there will be more than one end-user, use Form BIS-748P-B to identify each additional end-user. Enter each end-user's complete name, street address, city, country, postal code, and telephone or facsimile number. Provide a complete street address, P.O. Boxes are not acceptable.

Block 20: Original Ultimate Consignee. If your application involves the reexport of items previously exported, enter the original ultimate consignee's complete name, street address, city, country, postal code, and telephone or facsimile number. Provide a complete street address, P.O. Boxes are not acceptable. The original ultimate consignee is the entity identified in the original application for export as the ultimate consignee or the party currently in possession of the items.

Block 21. Specific End-Use: This Block must be completed if you are submitting a license application. Provide a complete and detailed description of the end-use intended by the ultimate consignee and/or end-user(s). If you are requesting approval of a reexport, provide a complete and detailed description of the end-use intended by the new ultimate consignee or end-user(s) and indicate any other countries for which resale or reexport is requested. If additional space is necessary, use Block 21 on Form BIS-748P-A or B. Be specific—vague descriptions such as ''research'', ''manufacturing'', or ''scientific uses'' are not acceptable.

Block 22: For a license application, you must complete each of the sub-blocks contained in this Block. If you are submitting a classification request, you need not complete Blocks (e), (f), (g), and (h). If you wish to export, reexport, or have BIS classify more than one item, use Form BIS-748P-A for additional items.

(a) ECCN. Enter the Export Control Classification Number (ECCN) that corresponds to the item you wish to export or reexport. If you are asking BIS to classify your item, provide a recommended classification for the item in this Block.

(b) CTP. You must complete this Block only if your application involves a digital computer or equipment containing a digital computer as described in Supplement No. 2 to this part. Instructions on calculating the CTP are contained in a Technical Note at the end of Category 4 in the CCL.

(c) Model Number. Enter the correct model number for the item.

(d) CCATS Number. If you have received a classification for this item from BIS, provide the CCATS number shown on the classification issued by BIS.

(e) Quantity. Identify the quantity to be exported or reexported, in terms of the ''Unit'' identified for the ECCN entered in Block 22(a). If the ''Unit'' for an item is ''$ value'', enter the quantity in units commonly used in the trade.

(f) Units. The ''Unit'' paragraph within each ECCN will list a specific ''Unit'' for those items controlled by the entry. The ''Unit'' must be entered on all license applications submitted to BIS. If an item is licensed in terms of ''$ value'', the unit of quantity commonly used in the trade must also be shown on the license application. This Block may be left blank on license applications only if the ''Unit'' for the ECCN entered in Block 22(a) is shown as ''N/A'' on the CCL.

(g) Unit Price. Provide the fair market value of the items you wish to export or reexport. Round all prices to the nearest whole dollar amount. Give the exact unit price only if the value is less than $0.50. If normal trade practices make it impractical to establish a firm contract price, state in Block 24 the precise terms upon which the price is to be ascertained and from which the contract price may be objectively determined.

(h) Total Price. Provide the total price of the item(s) described in Block 22(j).

(i) Manufacturer. Provide the name only of the manufacturer, if known, for each of the items you wish to export, reexport, or have BIS classify, if different from the applicant.

(j) Technical Description. Provide a description of the item(s) you wish to export, reexport, or have BIS classify. Provide details when necessary to identify the specific item(s), include all characteristics or parameters shown in the applicable ECCN using measurements identified in the ECCN (e.g., basic ingredients, composition, electrical parameters, size, gauge, grade, horsepower, etc.). These characteristics must be identified for the items in the proposed transaction when they are different than the characteristics described in promotional brochure(s).

Block 23: Total Application Dollar Value. Enter the total value of all items contained on the application in U.S. Dollars. The use of other currencies is not acceptable.

Block 24: Additional Information. Enter additional data pertinent to the application as required in the EAR. Include special certifications, names of parties of interest not disclosed elsewhere, explanation of documents attached, etc. Do not include information concerning Block 22 in this space.

If your application represents a previously denied application, you must provide the Application Control Number from the original application.

If you are requesting BIS to classify your product, use this space to explain why you believe the ECCN entered in Block 22(a) is appropriate. This explanation must contain an analysis of the item in terms of the technical control parameters specified in the appropriate ECCN. If you have not identified a recommended classification in Block 22(a), you must state the reason you cannot determine the appropriate classification, identifying anything in the regulations that you believe precluded you from determining the correct classification.

If additional space is necessary, use Block 24 on Form BIS-748P-A or B.

Block 25: You, as the applicant or duly authorized agent of the applicant, must manually sign in this Block. Rubber-stamped or electronic signatures are not acceptable. If you are an agent of the applicant, in addition to providing your name and title in this Block, you must enter your company's name in Block 24. Type both your name and title in the space provided.

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25462, May 9, 1997; 68 FR 35786, June 17, 2003]

SUPPLEMENT NO. 2 TO PART 748—UNIQUE APPLICATION AND SUBMISSION REQUIREMENTS

In addition to the instructions contained in Supplement No. 1 to part 748, you must also ensure that the additional requirements for certain items or types of transactions described in this supplement are addressed in your license application. All other blocks not specifically identified in this supplement must be completed in accordance with the instructions contained in Supplement No. 1 to part 748. The term ''Block'' used in this supplement relates to Form BIS-748P, unless otherwise noted.

(a) *Chemicals, medicinals, and pharmaceuticals.* If you are submitting a license application for the export or reexport of chemicals, medicinals, and/or pharmaceuticals, the following information must be provided in Block 22.

(1) Facts relating to the grade, form, concentration, mixture(s), or ingredients as may be necessary to identify the item accurately, and;

(2) The Chemical Abstract Service Registry (C.A.S.) numbers, if they exist, must be identified.

(b) *Communications intercepting devices.* If you are required to submit a license application under §742.13 of this part, you must enter the words ''Communications Intercepting Device(s)'' in Block 9. The item you are requesting to export or reexport must be specified by name in Block 22(j).

(c) *Digital computers, telecommunications, and related equipment.* If your license application involves items controlled by both Category 4 and Category 5, your license application must be submitted according to the principal function of the equipment. License applications involving computers controlled by Category 4 must identify a Composite Theoretical Performance (CTP) in Block 22(b). If the principal function is telecommunications, a CTP is not required. Computers, related equipment, or software performing telecommunication or local area network functions will be evaluated against the telecommunications performance characteristics of Category 5, while cryptographic, cryptoanalytic, certifiable multilevel security or certifiable user isolation functions, or systems that limit electromagnetic compatibility (EMC) will be evaluated against the information security performance characteristics of Category 5.

(1) *Requirements for license applications involving digital computers.* If you are submitting a license application to export or reexport ''digital computers'' or equipment containing digital computers to destinations in Country Group D:1 (See Supplement No. 1 to part 740 of the EAR), or to upgrade existing ''digital computer'' installations in those countries, you must include in addition to the CTP in Block 22(b) the following information:

(i) A configuration diagram of the entire system must be submitted if the equipment exceeds the limits of the Advisory Notes that indicate a likelihood of approval for Country Group D:1 for the appropriate ECCN in the Commerce Control List (CCL); and

(ii) Technical specifications and product brochures to corroborate the data supplied in your license application.

(2) *Additional requirements.* License applications to export or reexport computers or related equipment that are described in Advisory Note 4 to Category 4, or that exceed any of the limits specified in Advisory Notes 3 or 4 to Category 4, must include:

(i) A signed statement by a responsible representative of the end-user or the importing agency describing the end-use and certifying that the ''digital'' computers or related equipment:

(A) Will be used only for civil applications; and

(B) Will not be reexported or otherwise disposed of without prior written authorization from BIS;

(ii) A full description of the equipment and its intended application and workload; and

(iii) A complete identification of all end-users and their activities.

(d) *Gift parcels; consolidated in a single shipment.* If you are submitting a license application to export multiple gift parcels for delivery to individuals residing in a foreign country, you must include the following information in your license application.

NOTE: Each gift parcel must meet the terms and conditions described for *gift parcels* in License Exception GFT (see §740.12(a) of the EAR).

(1) In Block 16, enter the word ''None'';

(2) In Block 18, enter the word ''Various'' instead of the name and address of a single ultimate consignee;

(3) In Block 21, enter the phrase ''For personal use by recipients''.

(4) In Block 22(e), indicate a reasonable estimate of the number of parcels to be shipped during the validity of the license;

(5) In Block 22(j), enter the phrase ''Gift Parcels'';

(6) In Block 23, indicate a reasonable value approximation proportionate to the quantity of gift parcels identified in Block 22(e); and

(e) *Intransit through the United States.* If you are submitting a license application for items moving intransit through the United States that do not qualify for the *intransit* provisions of License Exception TMP (see §740.9(b)(1) of the EAR), you must provide the following information with your license application:

(1) In Block 9, enter the phrase ''Intransit Shipment'';

(2) In Block 24, enter the name and address of the foreign consignor who shipped the items to the United States and state the origin of the shipment;

(3) Any available evidence showing the approval or acquiescence of the exporting country (or the country of which the exporter is a resident) for shipments to the proposed ultimate destination. Such evidence may be in the form of a Transit Authorization Certificate; and

(4) Any support documentation required by §748.9 of this part for the country of ultimate destination.

(f) *Intransit outside of the United States.* If you are submitting a license application based on General Prohibition No. 8 stated in §734.2(b)(8) of the EAR and identification of the intermediate consignee in the country of unlading or transit is unknown at the time the license application is submitted, the country of unlading or transit must be shown in Block 17.

(g) *Nuclear Nonproliferation items and end-uses*—(1) *Statement requirement.* If a license is required to export or reexport items described in §742.3 of the EAR, or any other item (except those controlled for short supply reasons) where the item is intended for a nuclear end-use, prior to submitting a license application, you must obtain a signed written statement from the end-user certifying the following:

(i) The items to be exported or replicas thereof (''replicas'' refers to items produced abroad based on physical examination of the item originally exported, matching it in all critical design and performance parameters), will not be used in any of the activities described in §744.2(a) of the EAR; and

(ii) Written authorization will be obtained from the BIS prior to reexporting the items, unless they are destined to Canada or would be eligible for export from the United States to the new country of destination under NLR based on Country Chart NP Column 1.

(2) *License application requirements.* Along with the required certification, you must include the following information in your license application:

(i) In Block 7, place an (X) in the box titled ''Nuclear Certification'';

(ii) In Block 9, enter the phrase ''NUCLEAR CONTROLS'';

(iii) In Block 21, provide, if known, the specific geographic locations of any installations, establishments, or sites at which the items will be used;

(iv) In Block 22(j), if applicable, include a description of any specific features of design or specific modifications that make the item capable of nuclear explosive activities, or of safeguarded or unsafeguarded nuclear activities as described in §744.2(a)(3) of the EAR; and

(v) In Block 24, if your license application is being submitted because you know that your transaction involves a nuclear end-use described in §744.2 of the EAR, you must fully explain the basis for your knowledge that the items are intended for the purpose(s) described §744.2 of the EAR. Indicate, if possible, the specific end-use(s) the items will have in designing, developing, fabricating, or testing nuclear weapons or nuclear explosive devices or in designing, constructing, fabricating, or operating the facilities described in §744.2(a)(3) of the EAR.

(h) *Numerical control devices, motion control boards, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed assemblies and specially designed software.* (1) If you are submitting a license application to export, reexport, or request BIS to classify numerical control devices, motion control boards, numerically controlled machine tools, dimensional inspection machines, and specially designed software you must include the following information in your license application:

(i) For numerical control devices and motion control boards:

(A) Make and model number of the control unit;

(B) Description and internal configuration of numerical control device. If the device is a computer with motion control board(s), then include the make and model number of the computer;

(C) Description of the manner in which a computer will be connected to the CNC unit for on-line processing of CAD data. Specify the make and model of the computer;

(D) Number of axes the control unit is capable of simultaneously controlling in a coordinated contouring mode, and type of interpolation (linear, circular, and other);

(E) Minimum programmable increment;

(F) A description and an itemized list of all software/firmware to be supplied with the control device or motion control board, including software/firmware for axis interpolation function and for any programmable control unit or device to be supplied with the control unit;

(G) Description of capabilities related to ''real time processing'' and receiving computer aided-design;

(H) A description of capability to accept additional boards or software that would permit an upgrade of the electronic device or motion control board above the control levels specified in ECCN 2B001; and

(I) Specify if the electronic device has been downgraded, and if so can it be upgraded in future.

(ii) For numerically controlled machine tools and dimensional inspection machines:

(A) Name and model number of machine tool or dimensional inspection machine;

(B) Type of equipment, e.g., horizontal boring machine, machining center, dimensional inspection machine, turning center, water jet, etc.;

(C) Description of the linear and rotary axes capable of being simultaneously controlled in a coordinated contouring mode, regardless of the fact that the coordinated movement of the machine axis may be limited by the numerical control unit supplied by the machine tool;

(D) Maximum workpiece diameter for cylindrical grinding machines;

(E) Motion (camming) of the spindle axis measured in the axial direction in one revolution of the spindle, and a description of the method of measurement for turning machine tools only;

(F) Motion (run out) of the spindle axis measured in the radial direction in one revolution of the spindle, and a description of the method of measurement;

(G) Overall positioning accuracy in each axis, and a description of the method for measurement; and

(H) Slide motion test results.

(i) *Parts, components, and materials incorporated abroad into foreign-made products.* BIS will consider license applications to export or reexport to multiple consignees or multiple countries when an application is required for foreign produced direct product containing parts and components subject to the EAR in §732.4(b) of the EAR and to General Prohibition Two stated in §734.2(b)(2) of the EAR. Such requests will not be approved for countries listed in Country Group E:2 (See Supplement No. 1 to part 740 of the EAR), and may be approved only in limited circumstances for countries listed in Country Group D:1.

(1) *License applications for the export of parts and components.* If you are submitting a license application for the export of parts, components, or materials to be incorporated abroad into products that will then be sent to designated third countries, you must enter in Block 21, a description of end-use including a general description of the commodities to be manufactured, their typical end-use, and the countries where those commodities will be marketed. The countries may be listed specifically or may be identified by Country Groups, geographic areas, etc.

(2) *License applications for the reexport of incorporated parts and components.* If you are submitting a license application for the reexport of parts, components, or materials incorporated abroad into products that will be sent to designated third countries you must include the following information in your license application:

(i) In Block 9, enter the phrase ''Parts and Components'';

(ii) In Block 18, enter the name, street address, city and country of the foreign party who will be receiving the foreign-made product. If you are requesting approval for multiple countries or consignees enter ''Various'' in Block 18, and list the specific countries, Country Groups, or geographic areas in Block 24;

(iii) In Block 20, enter the name, street address, city, and country of the foreign party who will be exporting the foreign-made product incorporating U.S. origin parts, components or materials;

(iv) In Block 21, describe the activity of the ultimate consignee identified in Block 18 and the end-use of the foreign-made product. Indicate the final configuration if the product is intended to be incorporated in a larger system. If the end-use is unknown, state ''unknown'' and describe the general activities of the end-user;

(v) In Block 22(e), specify the quantity for each foreign-made product. If this information is unknown, enter ''Unknown'' in Block 22(e);

(vi) In Block 22(h), enter the digit ''0'' for each foreign-made product;

(vii) In Block 22(j), describe the foreign-made product that will be exported, specifying type and model or part number. Attach brochures or specifications, if available. Show as part of the description the unit value, in U.S. dollars, of the foreign-made product (if more than one foreign-made product is listed on the license application, specify the unit value for each type/model/part number). Also include a description of the U.S. content (including the applicable Export Control Classification Number(s)) and

its value in U.S. dollars. If more than one foreign-made product is identified on the license application, describe the U.S. content and specify the U.S. content value for each foreign-made product. Also, provide sufficient supporting information to explain the basis for the stated values. To the extent possible, explain how much of the value of the foreign-made product represents foreign origin parts, components, or materials, as opposed to labor, overhead, etc. When the U.S. content varies and cannot be specified in advance, provide a range of percentage and value that would indicate the minimum and maximum U.S. content;

(viii) Include separately in Block 22(j) a description of any U.S. origin spare parts to be reexported with the foreign-made product, if they exceed the amount allowed by §740.10 of the EAR. Enter the quantity, if appropriate, in Block 22(e). Enter the ECCN for the spare parts in Block 22(a) and enter the value of the spare parts in Block 22(h);

(ix) In Block 23, enter the digit ''0'';

(x) If the foreign-made product is the direct product of U.S. origin technology that was exported or reexported subject to written assurance, a request for waiver of that assurance, if necessary, may be made in Block 24. If U.S. origin technology will accompany a shipment to a country listed in Country Group D:1 or E:2 (see Supplement No. 1 to part 740 of the EAR) describe in Block 24 the type of technology and how it will be used.

(j) *Ship stores, plane stores, supplies, and equipment*—(1) *Vessels under construction.* If you are submitting a license application for the export or reexport of items, including ship stores, supplies, and equipment, to a vessel under construction you must include the following information in your license application:

(i) In Block 18, enter the name, street address, city, and country of the shipyard where vessel is being constructed;

(ii) In Block 22(j), state the length of the vessel for a vessel under 12 m (40 ft) in length. For a vessel 12 m (40 ft) in length or over, provide the following information (if this information is unknown, enter ''Unknown'' in this Block):

(A) Hull number and name of vessel;

(B) Type of vessel;

(C) Name and business address of prospective owner, and the prospective owner's nationality; and

(D) Country of registry or intended country of registry.

(2) *Aircraft under construction.* If you are submitting a license application for the export or reexport of items, including plane stores, supplies, and equipment, to an aircraft under construction you must include the following information in your license application:

(i) In Block 18, enter the name and address of the plant where the aircraft is being constructed;

(ii) In Block 22(j), enter the following information (if this information is unknown, enter ''Unknown'' in this Block):

(A) Type of aircraft and model number;

(B) Name and business address of prospective owner and his nationality; and

(C) Country of registry or intended country of registry.

(3) *Operating vessels and aircraft.* If you are submitting a license application for the export or reexport of items, including ship or plane stores, supplies, and equipment to an operating vessel or aircraft, whether in operation or being repaired, you must include the following information in your license application:

(i) In Block 18, enter the name of the owner, the name of the vessel, if applicable, and port or point where the items will be taken aboard;

(ii) In Block 18, enter the following statement if, at the time of filing the license application, it is uncertain where the vessel or aircraft will take on the items, but it is known that the items will not be shipped to a country listed in Country Group D:1 or E:2 (see Supplement No. 1 to part 740 of the EAR):

Uncertain; however, shipment(s) will not be made to Country Groups D:1 or E:2.

(iii) Provide information as described in paragraph (j)(1)(ii) of this supplement for vessels or information contained in paragraph (j)(2)(ii) of this supplement for aircraft.

(k) *Regional stability controlled items.* If you are submitting a license application for the export or reexport of items controlled for regional stability reasons and subject to licensing under RS Column 1 on the Country Chart, your license application must be accompanied by full technical specifications.

(l) *Reexports.* If you know that an item that requires a license to be exported from the United States to a certain foreign destination will be reexported to a third destination also requiring approval, such a request must be included on the license application. The license application must specify the country to which the reexport will be made in Block 24. If the export does not require a license but the reexport does, you may apply for a license for the reexport, or you may export without a license and notify the consignee of the requirement to seek a license to reexport.

(m) *Robots.* If you are submitting a license application for the export or reexport of items controlled by ECCNs 2B007 or 2D001 (including robots, robot controllers, end-effectors, or related software) the following information must be provided in Block 24:

(1) Specify if the robot is equipped with a vision system and its make, type, and model number;

(2) Specify if the robot is specially designed to comply with national safety standards for explosive munitions environments;

(3) Specify if the robot is specially designed for outdoor applications and if it meets military specifications for those applications;

(4) Specify if the robot is specially designed for operating in an electro-magnetic pulse (EMP) environment;

(5) Specify if the robot is specially designed or rated as radiation-hardened beyond that necessary to withstand normal industrial (i.e., non-nuclear industry) ionizing radiation, and its rating in grays (Silicon);

(6) Describe the robot's capability of using sensors, image processing or scene analysis to generate or to modify robot program instructions or data;

(7) Describe the manner in which the robot may be used in nuclear industry/manufacturing; and

(8) Specify if the robot controllers, end-effectors, or software are specially designed for robots controlled by ECCN 2B007, and why.

(n) *Short Supply controlled items.* If you are submitting a license application for the export of items controlled for short supply reasons, you must consult part 754 of the EAR for instructions on preparing your license application.

(o) *Technology—(1) License application instructions.* If you are submitting a license application for the export or reexport of technology you must check the box labeled ''Letter of Explanation'' in Block 6, enter the word ''Technology'' in Block 9, leave Blocks 22(e) and (i) blank, and include a general statement that specifies the technology (e.g., blueprints, manuals, etc.) in Block 22(j).

(2) *Letter of explanation.* Each license application to export or reexport technology must be supported by a comprehensive letter of explanation. This letter must describe all the facts for a complete disclosure of the transaction including, if applicable, the following information:

(i) The identities of all parties to the transaction;

(ii) The exact project location where the technology will be used;

(iii) The type of technology to be exported or reexported;

(iv) The form in which the export or reexport will be made;

(v) The uses for which the data will be employed;

(vi) An explanation of the process, product, size, and output capacity of all items to be produced with the technology, if applicable, or other description that delineates, defines, and limits the data to be transmitted (the ''technical scope''); and

(vii) The availability abroad of comparable foreign technology.

(3) *Special provisions*—(i) *Technology controlled for national security reasons.* If you are submitting a license application to export technology controlled for national security reasons to a country *not* listed in Country Group D:1 or E:2 (see Supplement No. 1 to part 740 of the EAR), upon request, you must provide BIS a copy of the written letter from the ultimate consignee assuring that, unless prior authorization is obtained from BIS, the consignee will not knowingly reexport the technology to any destination, or export the direct product of the technology, directly or indirectly, to a country listed in Country Group D:1 or E:2 (see Supplement No. 2 to part 740 of the EAR). If you are unable to obtain this letter of assurance from your consignee, you must state in your license application why the assurances could not be obtained.

(ii) *Maritime nuclear propulsion plants and related items.* If you are submitting a license application to export or reexport technology relating to maritime nuclear propulsion plants and related items including maritime (civil) nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, or maintenance, including any machinery, device, component, or equipment specifically developed or designed for use in such plants or facilities you must include the following information in your license application:

(A) A description of the foreign project for which the technology will be furnished;

(B) A description of the scope of the proposed services to be offered by the applicant, his consultant(s), and his subcontractor(s), including all the design data that will be disclosed;

(C) The names, addresses and titles of all personnel of the applicant, the applicant's consultant(s) and subcontractor(s) who will discuss or disclose the technology or be involved in the design or development of the technology;

(D) The beginning and termination dates of the period of time during which the technology will be discussed or disclosed and a proposed time schedule of the reports the applicant will submit to BIS, detailing the technology discussed or disclosed during the period of the license;

(E) The following certification:

I (We) certify that if this license application is approved, I (we) and any consultants, subcontractors, or other persons employed or retained by us in connection with the project licensed will not discuss with or disclose to others, directly or indirectly, any technology relating to U.S. naval nuclear propulsion plants. I (We) further certify that I (we) will furnish to the Bureau of Industry and Security all reports and information it may require concerning specific transmittals or

disclosures of technology under any license granted as a result of this license application.

(F) A statement of the steps that you will take to assure that personnel of the applicant, the applicant's consultant(s) and subcontractor(s) will not discuss or disclose to others technology relating to U.S. naval nuclear propulsion plants; and

(G) A written statement of assurance from the foreign importer as described in paragraph (o)(3)(i) of this supplement.

(p) *Temporary exports or reexports.* If you are submitting a license application for the temporary export or reexport of an item (not eligible for the *temporary exports and reexports* provisions of License Exception TMP (see §740.9(a) of the EAR)) you must include the following certification in Block 24:

The items described on this license application are to be temporarily exported (or reexported) for (state the purpose e.g., demonstration, testing, exhibition, etc.), used solely for the purpose authorized, and returned to the United States (or originating country) as soon as the temporary purpose has ended, but in no case later than one year of the date of export (or reexport), unless other disposition has been authorized in writing by the Bureau of Industry and Security.

(q) *Chemicals controlled for CW reasons under ECCN 1C350.* In addition to any supporting documentation required by part 748, you must also obtain from your consignee an End-Use Certificate for the export of chemicals controlled for CW reasons by ECCN 1C350 to non-States Parties (destinations not listed in Supplement No. 2 to part 745 of the EAR). See §745.2 of the EAR. In addition to the End-Use Certificate, you may still be required to obtain a Statement by Ultimate Consignee and Purchaser (Form BIS–711P) as support documentation. Consult §§748.9 and 748.11 of the EAR.

(r) *Encryption review requests.* Enter, in Block 9 (Special Purpose) of the BIS-748P, ''License Exception ENC'' if you are submitting an encryption review request for License Exception ENC (§740.17 of the EAR) or ''mass market encryption'' if you are submitting an encryption review request under the mass market encryption provisions (§742.15(b)(2) of the EAR). If you seek an encryption review for another reason, enter ''encryption—other''.

(s) *Foreign National Review Request*—(1) *BIS–748P ''Multipurpose Application'' form.* If you are submitting a Foreign National Review (FNR) request for the deemed export of technology or source code, you must include the following information on the BIS–748P ''Multipurpose Application'' form:

(i) In Block 1 through 3, insert name, telephone, and facsimile of the person that is most knowledgeable about the foreign national;

(ii) In Block 4 (Date of Application), enter the date;

(iii) In Block 5 (Type of Application), place an ''X'' in the box marked ''Other'';

(iv) In Block 6 (Documents Submitted with Application), place an ''X'' in ''Other'' to signify that you are submitting the Foreign National Review Support Statement(s) with the BIS–748P, and place an ''X'' in ''BIS–748P–B'' if you are submitting this FNR for multiple foreign nationals;

(v) In Block 9 (Special Purpose), insert the phrase ''Foreign National Review (FNR)'';

(vi) In Block 14 (Applicant), insert the name of the applicant;

(vii) In Block 18 (Ultimate Consignee), insert the name and address of the Foreign National;

(viii) In Block 21 (Specific End-Use), insert any information which may be of interest regarding the export of the technology or source code;

(ix) In Block 24 (Additional Information), insert contact email information;

(x) In Block 25 (Signature), sign the BIS–748P, and insert the name and title of the signer; and

(xi) All other Blocks on the application may be left blank.

(2) *Multiple Foreign Nationals.* If you are submitting a Foreign National Review Request for more than one individual, you may add other foreign nationals by completing and attaching form BIS–748P–B ''End-User Appendix.''

(t) *Foreign National Review Support Statement.* To request review of your FNR, you must submit to BIS a FNR support statement as set forth below on company letterhead, along with Form BIS–748P (Multipurpose Application), or its electronic equivalent. For FNRs that include multiple foreign nationals, an FNR support statement must be submitted for each foreign national.

(1) Case number (Z number): Zxxxxxx;

(2) Name, and all other names ever used;

(3) Date of birth: dd/mm/yyyy;

(4) Place of birth: city, state/province, and country;

(5) U.S. Address: street address, city, state, zip;

(6) Overseas Address: street address, city, province, country;

(7) Visa type (with expiration date and place issued, if available): type, dd/mm/yyyy, city, country;

(8) I–94 No. xxxxxxx, dd/mm/yyyy;

(9) Passport and Country of Issue: xxxxxxxx, country;

(10) U.S. Education (schools, degrees, and dates received) (if any): degree, subject, university, city, state, country, month/year-month/year;

(11) Foreign Education: degree, subject, university, city, state, country, month/year-month/year;

(12) Employer (applicant) and address: company, street address, city, state, zip;

(13) Detailed explanation of position requirements and individual's qualifications related to the position; and

(14) Prior Employment Record, (including overseas employment) addresses and dates; explain any periods of unemployment.

(u) *Aircraft and vessels on temporary sojourn.* If the application is for an aircraft or a vessel traveling on a temporary sojourn, state the value of the aircraft or vessel as $0 in box 22(g) (unit price) and 22(h) (total price). In box 23 (Total Application Dollar Value), insert the total value of items other than the aircraft or vessel that are included in the same application. If the application is only for the aircraft or vessel on temporary sojourn, insert $0.

(v) *In-country transfers.* To request an in-country transfer, you must specify ''in-country transfer'' in Block 9 (Special Purpose) and mark ''Reexport'' in Block 5 (Type of Application) of the BIS–748P ''Multipurpose Application'' form. The application also must specify the same foreign country for both the original ultimate consignee and the new ultimate consignee.

[61 FR 12812, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996; 62 FR 25462, May 9, 1997; 63 FR 42229, Aug. 7, 1998; 64 FR 27146, May 18, 1999; 64 FR 47105, Aug. 30, 1999; 68 FR 35786, June 17, 2003; 69 FR 42865, July 19, 2004; 69 FR 64489, Nov. 5, 2004; 70 FR 8250, Feb. 18, 2005; 70 FR 54629, Sept. 16, 2005]

SUPPLEMENT NO. 3 TO PART 748—BIS–711, STATEMENT BY ULTIMATE CONSIGNEE AND PURCHASER INSTRUCTIONS

All information must be typed or legibly printed in each appropriate Block or Box.

Block 1: Ultimate Consignee. The Ultimate Consignee must be the person abroad who is actually to receive the material for the disposition stated in Block 2. A bank, freight forwarder, forwarding agent, or other intermediary is not acceptable as the Ultimate Consignee.

Block 2: Disposition or Use of Items by Ultimate Consignee named in Block 1. Place an (X) in ''A.,'' ''B.,'' ''C.,'' ''D.,'' and ''E.,'' as appropriate, and fill in the required information.

Block 3: Nature of Business of Ultimate Consignee named in Block 1. Complete both ''A'' and ''B''.

Possible choices for ''A'' include: broker, distributor, fabricator, manufacturer, wholesaler, retailer, value added reseller, original equipment manufacturer, etc.

Possible choices for ''B'' include: contractual, franchise, distributor, wholesaler, continuing and regular individual business, etc.

Block 4: Additional Information. Provide any other information not appearing elsewhere on the form such as other parties to the transaction, and any other material facts that may be of value in considering license applications supported by this statement.

Block 5: Assistance in Preparing Statement. Name all persons, other than employees of the ultimate consignee or purchaser, who assisted in the preparation of this form.

Block 6: Ultimate Consignee. Enter the requested information and sign the statement in ink. (For a definition of ultimate consignee, see §748.5(e) of this part.)

Block 7: Purchaser. This form must be signed in ink by the Purchaser, if the Purchaser is not the same as the Ultimate Consignee identified in Block 1. (For a definition of purchaser, see §748.5(c) of this part.)

Block 8: Certification for Exporter. This Block must be completed to certify that no correction, addition, or alteration on this form was made subsequent to the signing by the Ultimate Consignee in Block 6 and Purchaser in Block 7.

[61 FR 12812, Mar. 25, 1996, as amended at 65 FR 42568, July 10, 2000]

SUPPLEMENT NO. 4 TO PART 748—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION (IC/DV) AND END USE CERTIFICATE SYSTEMS IN FOREIGN COUNTRIES

Country	IC/DV Authorities	System administered
Argentina	Secretaria Ejecutiva de la Comision Nacional de Control de Exportaciones Sensitivas y Material Belico Balcarce 362—ler. piso Capital Federal—CP 1064 Buenos Aires Tel. 334–0738, Fax 331–1618	IC/DV
Australia	Director, Strategic Trade Policy and Operations, Industry & Procurement Infrastructure Division, Department of Defence, Campbell Park 4–1–53, Canberra ACT 2600 Phone: +61 (0)2 6266 3717, Fax: +61 (0)2 6266 2997	IC/DV
Austria	Bundesministerium fur Handel Gewerbe und Industrie Landstr. Haupstr. 55–57, Vienna 1031	IC/DV
Belgium	Ministere Des Affaires Economiques, Administration Des Relations Economiques Rue General Leman, 60 1040 Bruxelles Phone: 02/206.58.16, Fax: 02/230.83.22	IC/DV

Country	IC/DV Authorities	System administered
Bulgaria	Ministry of Trade 12 Al. Batenberg 1000 Sofia	IC/DV
China, People's Republic of	Technology Import and Export Department MOFTEC No. 2 Dong Chang An Street Beijing, Telephone: 651-97-355, Telex: 22478 MFERTCN	PRC End-User Certificate
Czech Republic	Federal Ministry of Foreign Trade Head of Licensing Politickych Veznu 20 112 49 Praha 1	IC/DV
Denmark	Handelsministeriets Licenskontor Kampmannsgade 1, DK 1604, Copenhagen V	IC/DV
	IC's also issued by Danmarks Nationalbank Holmens Kanal 17, Copenhagen K Custom-houses	DV
Finland	Hensingin Piiritullikamari, Kanavakatu 6 (or P.O. Box 168) 00161 Helsinki	IC/DV
France	Ministere de l'Economie et des Finances Direction Generale des Douanes et Droits Indirects Division des Affaires Juridiques et Contentieuses 8, Rue de la Tour des Dames, Bureau D/3, 75436, Paris Codex 09	IC/DV
Germany	Bundesamt fur gewerbliche Wirtschaft Frankfurter Strasse 29–31 65760 Eschborn	IC/DV
Greece	Banque de Greece, Direction des Transactions Commerciales avec l'Etranger Athens	IC/DV
Hong Kong	Trade Department, Ocean Centre, Canton Road, Tsimshatsui, Kowloon,	IC/DV
Hungary	Ministry of International Economic Relations Export Control Office 1054 Budapest P.O. Box 728 H–1365, Hold Str. 17	IC/DV
India	*For small scale industries and entities, and those not elsewhere specified:*	
	Deputy Director General of Foreign Trade Udyog Bhawan, Maulana Azad Road New Delhi 11011	Indian IC
	For the "organized" sector, except for computers and related equipment:	
	Directorate General of Technical Development, Udyog Bhawan, Maulana Azad Road, New Delhi 11011	Indian IC
	For Defense organizations:	
	Defense Research and Development Organization Room No. 224, "B" Wing Sena Bhawan, New Delhi 110011	Indian IC
	For computers and related electronic items:	
	Department of Electronics, Lok Nayak Bhawan, New Delhi 110003	Indian IC
	For any of the above:	
	Assistant Director, Embassy of India, Commerce Wing, 2536 Massachusetts Ave. NW, Washington D.C. 20008—	Indian IC
Ireland, Republic of	Department of Industry, Trade, Commerce and Tourism, Frederick House, South Frederick Street, Dublin 2	IC/DV
Italy	Ministero del Commercio con l'Estero Direzione Generale delle Importazioni e delle Esportazioni, Div. III, Rome or: Dogana Italiana (of the town where import takes place)	IC/DV
Japan	Ministry of International Trade and Industry in: Fukuoka, Hiroshima, Kanmon (Kitakyushu-shi), Kobe, Nagoya, Osaka, Sapporo, Sendai, Shikoku (Takamatsu-shi), Shimizu, Tokyo, and Yokohama Japanese Customs Offices	IC/DV
Korea, Republic of	Trade Administration Division Trade Bureau Ministry of Trade and Industry Jungang-Dong, Kyonggi-Do, Building 3 Kwachon	IC
	Republic of Korea Customs House	DV
Liechtenstein	Swiss Federal Office for Foreign Economic Affairs, Import and Export Division Zieglerstrasse 30, CH–3003 Bern	IC/DV
Luxembourg	Office des Licences Avenue de la Liberte, 10	IC/DV
Netherlands	Centrale Dienst voor In-en Uitvoer Engelse Kamp 2, Groningen	IC/DV
New Zealand	Comptroller for Customs P.O. Box 2218, Wellington	IC/DV
Norway	Handelsdepartmentet Direktoratet for Eksport-og-Importregulering Fr. Nansens plass 5, Oslo	IC/DV
Pakistan	Chief Controller of Imports and Exports 5, Civic Center Islamabad	IC
	Joint Science Advisor, Ministry of Science and Technology, Secretariat Block 'S', Islamabad	DV
Poland	Ministry of Foreign Economic Relations Department of Commodities and Services Plac Trzech Krzyzy 5, Room 358 00–507 Warsaw	IC/DV
Portugal	Reparticao do Comercio Externo Direccao-Geral do Comercio Secretaria de Estado do Comercio Ministerio da Economia, Lisbon	IC/DV
Romania	National Agency for Control of Strategic Exports and Prohibition of Chemical Weapons, 13, Calea 13 Septembrie Casa (or P.O. Box 5–10) Republicii, Gate A 1, Bucharest, Sector 5, Phone: 401–311–2083, Fax: 401–311–1265	IC/DV
Singapore	Controller of Imports and Exports, Trade Development Board World Trade Centre, 1 Maritime Square, Telok Blangah Road,	IC/DV
Slovakia	Ministry of Foreign Affairs Licensing-Registration Department Spitalska 8, 813 15 Bratislava	IC
Spain	Secretary of State for Commerce Paseo la Cistellana 162, Madrid 28046	IC/DV
Sweden	The Association of Swedish Chambers of Commerce & Industry P.O. Box 16050, S–103 22 Stockholm Office: Vastra Tradgardsgatan 9	IC/DV
Switzerland	Swiss Federal Office for Foreign Economic Affairs, Import and Export Division, Zieglerstrasse 30 CH–3003 Bern	IC/DV

Country	IC/DV Authorities	System administered
Taiwan	Board of Foreign Trade Ministry of Economic Affairs 1 Hu-Kou Street, Taipei	IC/DV
	Science-based Industrial Park Administration No. 2 Hsin Ann Road, Hsinchu	
	Export Processing Zone Administration 600 Chiachang Road Nantz, Kaohsiung	
Turkey	Ministry of Commerce, Department of Foreign Commerce, Ankara	IC
	Head Customs Office at the point of entry	DV
United Kingdom	Department of Trade and Industry Export Licensing Branch Millbank Tower Millbank London, SW1P 4QU	IC
	H.M. Customs and Excise, King's Beam House, Mark Lane London, E.C. 3	DV

[61 FR 12812, Mar. 25, 1996, as amended at 62 FR 25463, May 9, 1997; 64 FR 47105, Aug. 30, 1999]

SUPPLEMENT NO. 5 TO PART 748—U.S. IMPORT CERTIFICATE AND DELIVERY VERIFICATION PROCEDURE

The United States participates in an Import Certificate/Delivery Verification procedure. Under this procedure, U.S. importers are sometimes required to provide their foreign suppliers with an U.S. International Import Certificate that is validated by the U.S. Government. This certificate tells the government of the exporter's country that the items covered by the certificate will be imported into the U.S. Economy and will not be reexported except as authorized by U.S. export control regulations. In addition, in some cases, the exporter's government may require a delivery verification. Under this procedure, the U.S. Customs Service validates a certificate confirming that the items have entered the U.S. economy. The U.S. importer must return this certificate to the foreign exporter.

This supplement establishes the procedures and requirements of BIS with respect to both of these programs. Paragraph (a) of this supplement contains the requirements and procedures of the U.S. International Import Certificate procedure. Paragraph (b) of this supplement contains the requirements and procedures of the Delivery Verification procedure.

(a) U.S. International Import Certificates. If you are a U.S. importer, a foreign supplier may request you to obtain a U.S. import certificate. The reason for this request is that the exporter's government requires a U.S. import certificate as a condition to issuing an export license. To obtain such a certificate you will have to fill in and execute the U.S. International Import Certificate form (Form BIS–645P/ATF–4522/DSP–53) and submit it to the U.S. government agency that has jurisdiction over the items you are importing. In doing so, you will be making a representation to the United States Government that you will import the items described in the certificate into the United States or if not so imported, you will not divert, transship or reexport them to another destination with the explicit approval of the U.S. government agency that has jurisdiction over those items. (Representations that items will be entered into the U.S. do not preclude the temporary unloading of items in a foreign trade zone for subsequent entry into the economy of the U.S.) If the items described in the certificate are subject to U.S. Department of Commerce jurisdiction, the Department will validate the certificate and return it to you. You may then send the certificate to your foreign supplier. In this way the government of the exporting country is assured that the items will become subject to the export control laws of the United States.

(1) Items for which the U.S. Department of Commerce issues U.S. International Import Certificates and forms to use. The Department of Commerce issues U.S. International Import Certificates for the following types of items.

(i) Items controlled for National Security reasons. Items under the export licensing jurisdiction of BIS that are identified as controlled for national security reasons on the Commerce Control List (Supplement No. 1 to part 774 of the EAR). You will need to submit in triplicate a completed Form BIS–645P/ATF–4522/DSP–53;

(ii) Nuclear equipment and materials. Items subject to the export licensing jurisdiction of the Nuclear Regulatory Commission for nuclear equipment and materials. (see 10 CFR part 110). You will need to submit in quadruplicate a completed Form BIS–645P/ATF–4522/DSP–53; and

(iii) Munitions Items. Items listed on the U.S. Munitions List (see 22 CFR part 121) that do not appear on the more limited U.S. Munitions Import List (27 CFR 47.21). You will need to submit in triplicate a completed Form BIS–645P. For triangular transactions (See paragraph (a)(5) of this supplement) involving items on the U.S. Munitions List, you must contact the Department of State, Directorate of Defense Trade Controls and use Form BIS–645P/ATF–4522/DSP–53. You should contact the Treasury Department, Bureau of Alcohol, Tobacco and Firearms for

items appearing on the U.S. Munitions Import List. You will need to use Form ATF–4522.

(2) Where to submit forms. U.S. International Import Certificates and requests to amend certificates may be presented for validation either in person or by mail at the following locations.

(i) By mail to the Bureau of Industry and Security, P.O. Box 273, Washington D.C. 20044, Attn: Import Certificate Request; or

(ii) In person or by mail at one of the following Department of Commerce U.S. and Foreign Commercial Service District Offices:

Boston, MA	New Orleans, LO
Buffalo, NY	New York, NY
Chicago, IL	Philadelphia, PA
Cincinnati, OH	Phoenix, AZ
Cleveland, OH	Pittsburgh, PA
Dallas, TX	Portland, OR
Detroit, MI	St. Louis, MO
Houston, TX	San Francisco, CA
Kansas City, MO	Savannah, GA
Los Angeles, CA	Seattle, WA
Miami, FL	Trenton, NJ

(3) U.S. International Import Certificate validity periods. The U.S. International Import Certificate must be submitted to the foreign government within six months from the date of certification by the U.S. Department of Commerce. The expiration of this six-month period in no way affects the responsibility of the importer to fulfill the commitments made in obtaining the certificate. If the certificate is not presented to the government of the exporting country before the expiration of its validity period, the exporter must apply for a new certificate. The original unused U.S. International Import Certificate must be returned to BIS at the address specified in paragraph (a)(2)(i) of this supplement.

(4) Statements on the certificate or amendments are representations to the U.S. Government which continue in effect.

(i) All statements and representations made in a U.S. International Import Certificate or an amendment thereto, will be deemed to be continuing in nature until the transaction described in the certificate is completed and the items are delivered into the economy of the importing country.

(ii) Any change of fact or intention in regard to the transaction described in the certificate shall be promptly disclosed to BIS by the U.S. importer by presentation of an amended certificate. The amended certificate must describe all of the changes and be accompanied by the original certificate bearing the certification of BIS. If the original certificate has been transferred to the foreign exporter, you must, where possible, attempt to obtain the original certificate prior to applying for an amendment. If the original certificate is unobtainable because the foreign exporter has submitted it to the appropriate foreign government, or for any other reason, then you must submit a written statement with your amendment giving the reasons for your failure to submit the original certificate.

(5) Certificates for Triangular transaction (items will not enter the U.S. or applicant is not sure that they will enter the United States).

(i) In accordance with international practice, BIS will, upon request, stamp the certificate with a triangular symbol as notification to the government of the exporting country that the U.S. importer is uncertain whether the items will be imported into the U. S. or knows that the items will not be imported into the U.S., but that, in any case, the items will not be delivered to any other destination except in accordance with the EAR.

(ii) The triangular symbol on a certificate U.S. International Import Certificate is not, in and of itself, an approval by BIS to transfer or sell items to a foreign consignee. Note that a triangular Certificate will not be issued covering foreign excess property sold abroad by the U.S. Department of Defense.

(6) Approval to export items to a foreign consignee prior to delivery under a U.S. International Import Certificate. The written approval of BIS is required before items covered by a U.S. International Import Certificate (whether or not bearing a triangular symbol) may be shipped to a destination other than the U.S. or Canada or sold to a foreign purchaser, and before title to or possession of such items may be transferred to a foreign transferee. This requirement does not apply after the items have been delivered in accordance with the undertaking set forth in the Certificate or if at the time of such shipment, sale, passage of possession or passage of title, a License Exception or a NLR provision of the EAR would authorize the transaction.

(i) If prior approval is required, a letter requesting authorization to release the shipment shall be submitted to BIS at the address listed in paragraph (a)(2)(i) of this supplement.

(ii) The letter must contain the certificate number; date issued; location of the issuing office; names, addresses, and identities of all parties to the complete transaction; and the quantity, dollar value, and description of the items. The letter must be accompanied by the U.S. International Import Certificate, and all other documentation required by the EAR for the item and country of ultimate destination, as identified in part 748 of the EAR. If requirements stated in part 748 of the EAR do not apply to your transaction, you must identify the intended end-use of the items in your letter.

(iii) Where the letter request is approved and is supported by a foreign import certificate, no further approval from BIS is required for the purchaser or transferee to resell or again transfer the items. However, where BIS approves a request that was not supported by a foreign import certificate, the person to whom approval is granted is required to inform the purchaser or transferee, in writing, that the items are to be shipped to the approved destination only and that no other disposition of the items is permitted without the approval of BIS.

(iv) If the transaction is approved, a validated letter of approval will be sent to the U.S. purchaser for retention in his records. Where a DV or other official government confirmation of delivery is required, the letter will so indicate.

(v) If the items covered by a certificate have been imported into a destination other than the U.S. and the foreign exporter of the items requests a Delivery Verification, the person who obtained the certificate must obtain a DV from the person to whom the items were delivered in the actual importing country. (If a DV is unobtainable, other official government confirmation of delivery must be obtained.) The DV or other official government confirmation of delivery must be submitted to BIS together with an explanatory letter giving the U.S. International Import Certificate number, date issued, and location of issuing office. BIS will then issue Form ITA–6008, Delivery Compliance Notice, in two copies, the original of which must be forwarded to the country of origin in order to serve as evidence to the exporting country that the requirements of the U.S. Government have been satisfied with respect to delivery of the items.

(vi) Delivery, sale, or transfer of items to another U.S. purchaser.

(A) Items covered by a U.S. International Import Certificate may not be sold, and title to or possession of such items may not be transferred, to another U.S. purchaser or transferee before the items are delivered to the U.S. (or to an approved foreign destination, as provided by paragraph (a)(5) of this supplement), except in accordance with the provisions described in paragraph (a)(6) of this supplement. The provisions of this paragraph do not apply after the items have been delivered in accordance with the undertaking set forth in the certificate.

(B) Resale or transfer to another U.S. purchaser or transferee requires the prior approval of BIS only in cases where the buyer or transferee is listed in Supplement No. 1 to part 766 of the EAR. However, you, as the person who obtained the certificate are required to notify BIS of any change in facts or intentions relating to the transaction, and in all cases you will be held responsible for the delivery of the items in accordance with the EAR. You are required in all cases to secure, prior to sale or transfer, and to retain in your files in accordance with the recordkeeping provisions contained in part 762 of the EAR, written acceptance by the purchaser or transferee of:

(*1*) All obligations undertaken by, and imposed under the EAR, upon the holder of the certificate; and

(*2*) An undertaking that all subsequent sales or transfers will be made subject to the same conditions.

(iii) The responsibility of the certificate holder for obtaining a DV also applies to those cases where the items are resold to a U.S. purchaser (See paragraph (b)(1) of this supplement.

(vii) Reexport or transshipment of items after delivery to U.S. Items imported into the U.S. under the provisions of a U.S. International Import Certificate may not be reexported to any destination under the *intransit* provisions of License Exception TMP (see §740.9(b)(1) of the EAR). However, all other provisions of the EAR applicable to items of domestic origin shall apply to the reexport of items of foreign origin shipped to the U.S. under a U.S. International Import Certificate.

(viii) Lost or destroyed U.S. International Import Certificates. If a U.S. International Import Certificate is lost or destroyed, a duplicate copy may be obtained by the person in the U.S. who executed the original U.S. International Import Certificate by submitting to any of the offices listed in paragraph (a)(2)(i) of this supplement new Form BIS–645P/ATF–4522/DSP–53 in the same way as an original request, except that the forms shall be accompanied by a letter detailing the circumstances under which the original certificate was lost or destroyed and certifying:

(A) That the original U.S. International Import Certificate No. _____, dated _____, issued to (name and address of U.S. importer) for import from (foreign exporter's name and address) has been lost or destroyed; and

(B) That if the original U.S. International Import Certificate is found, the applicant agrees to return the original or duplicate of the certificate to the Bureau of Industry and Security.

(ix) Unused U.S. International Import Certificates. If the transaction will not be completed and the U.S. International Import Certificate will not be used, return the certificate for cancellation to BIS at the address listed in paragraph (a)(2)(i) of this supplement.

(b) Delivery Verification Certificate. U.S. importers may be requested by their foreign suppliers to furnish them with a certified Form BIS–647P, Delivery Verification Certificate, covering items imported into the U.S. These requests are made by foreign governments to assure that strategic items shipped to the U.S. are not diverted from

their intended destination. In these instances, the issuance of an export license by the foreign country is conditioned upon the subsequent receipt of a Delivery Verification Certificate from the U.S. importer. Accordingly, your compliance with your foreign exporter's request for a Delivery Verification is necessary to ensure your foreign exporter fulfills its government obligations and is able to participate in future transactions with you. Failure to comply may subject your exporter to penalties that may prevent future trade.

(1) The responsibility of a person or firm executing a U.S. International Import Certificate for providing the foreign exporter with confirmation of delivery of the items includes instances where the items are resold or transferred to another U.S. person or firm prior to actual delivery to the U.S. or to an approved foreign destination. The person who executed the U.S. International Import Certificate shall secure in writing from the U.S. purchaser or transferee, and retain in your files in accordance with the recordkeeping provisions stated in part 762 of the EAR:

(i) Acceptance of the obligation to provide the purchaser or transferee with either the Delivery Verification (or other official government confirmation of delivery if a Delivery Verification is unobtainable) or assurance that this document was submitted to BIS; and

(ii) An undertaking that each succeeding U.S. transferee or purchaser will assume the same obligation or assurance. In each case the seller or transferor must transmit to the U.S. purchaser or transferee the U.S. International Import Certificate number covering the export from the foreign country and request that they pass it on to any other U.S. purchasers or transferees.

(2) Completion and certification of Delivery Verification Certificates. If you are requested by your foreign exporter to provide a Delivery Verification, you must obtain Form BIS–647P from a U.S. customs office or one of the offices listed in paragraph (a)(2) of this supplement and complete all blocks (except those below the line titled ''To be completed by U.S. Customs Service'') on the form. The language used in the block titled ''Description of Goods'' must describe the items in the same terms as those shown on the applicable U.S. International Import Certificate. Upon completion Form BIS–647P must be presented, in duplicate, to a U.S. customs office. The U.S. customs office will certify Form BIS–647P only where the import is made under a warehouse or consumption entry.

(3) Disposition of certified Delivery Verification Certificates. The importer must send the original certified Delivery Verification Certificate to the foreign exporter or otherwise dispose of it in accordance with the instructions of the exporting country. The duplicate copy will be retained by the U.S. customs office.

(4)(i) Issuance of a U.S. Delivery Compliance Notice in lieu of a Delivery Verification Certificate. If you are requested to provide a Delivery Verification Certificate but do not wish to disclose the name of your customer to the foreign exporter (e.g., in the event that the items are resold or transferred to another person or firm before the items enter the U.S.), you may submit an originally completed Form BIS–647P together with an explanatory letter requesting a Delivery Compliance Notice, to BIS at the address listed in (a)(2)(i) of this supplement.

(ii) BIS will provide you with a notice signifying that the items were imported into the U.S. and that a satisfactory DV has been submitted to BIS. You must then forward the original notice to your foreign exporter for submission to the foreign government. A copy of the notice should be retained in your files in accordance with the recordkeeping provisions stated in part 762 of the EAR.

(5)(i) Lost or destroyed Delivery Verification Certificate. When a Delivery Verification Certificate is lost or destroyed, the U.S. importer must submit a letter to BIS at the address listed in paragraph (a)(2)(i) of this supplement certifying that:

(A) The original Delivery Verification Certificate has been lost or destroyed;

(B) The circumstances under which it was lost or destroyed;

(C) The type of customs entry (warehouse or consumption), entry number, and date of entry; and

(D) The number and date of the related U.S. International Import Certificate.

(ii) BIS will, in applicable cases, notify the exporting government that a Delivery Verification Certificate been issued.

(c) Penalties and sanctions for violations. The enforcement provisions of part 764 and Supplement No. 2 to part 736 of the EAR apply to transactions involving imports into the U.S. covered by this supplement and to both foreign and U.S. parties involved in a violation of this supplement. Any provisions of part 764 and Supplement No. 2 to part 736 of the EAR which, by their terms, relate to ''exports'' or ''exports from the U.S.'' are also deemed to apply and extend to imports into the U.S., applications for U.S. International Import Certificates (Forms BIS–645P presented to U.S. Department of Commerce for certification), U.S. International Import Certificates, and Delivery Verification Certificates, described in this supplement. (Applications the documents described in this supplement, are included

within the definition of export control documents provided in part 772 of the EAR.) Refer to §764.3 of the EAR for more information.

[61 FR 12812, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996; 62 FR 25463, May 9, 1997]

SUPPLEMENT NO. 6 TO PART 748—AUTHORITIES ISSUING IMPORT CERTIFICATES UNDER THE FIREARMS CONVENTION [RESERVED]

[Status of Convention as of April 13, 1999 had not entered into force.]

[64 FR 17974, Apr. 13, 1999]

PART 750—APPLICATION PROCESSING, ISSUANCE, AND DENIAL

Sec.
750.1 Scope.
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750.11 Shipping tolerances.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

SOURCE: 61 FR 12829, Mar. 25, 1996, unless otherwise noted.

§750.1 Scope.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part describes the Bureau of Industry and Security's (BIS) process for reviewing your application for a license and the applicable processing times for various types of applications. Information related to the issuance, denial, revocation, or suspension of a license or license application is provided along with the procedures on obtaining a duplicate or replacement license, the transfer of a license and shipping tolerances available on licenses. This part also contains instructions on obtaining the status of any pending application.

[62 FR 25463, May 9, 1997]

§750.2 Processing of Classification Requests and Advisory Opinions.

(a) *Classification requests.* All classification requests submitted in accordance with procedures described in §748.3 (a) and (b) of the EAR will be answered within 14 calendar days after receipt. All responses will inform the person of the proper classification (e.g., whether or not the item is subject to the Export Administration Regulations (EAR) and, if applicable, the appropriate Export Control Classification Number [ECCN]).

(b) *Advisory Opinion requests.* All advisory opinions submitted in accordance with procedures described in §748.3(a) and (c) of the EAR will be answered within 30 calendar days after receipt.

§750.3 Review of license applications by BIS and other government agencies and departments.

(a) *Review by BIS.* In reviewing specific license applications, BIS will conduct a complete analysis of the license application along with all documentation submitted in support of the application. In addition to reviewing the item and end-use, BIS will consider the reliability of each party to the transaction and review any available intelligence information. To the maximum extent possible, BIS will make licensing decisions without referral of license applications to other agencies, however, BIS may consult with other U.S. departments and agencies regarding any license application.

(b) *Review by other departments or agencies.* (1) The Departments of Defense, Energy, State, and the Arms Control and Disarmament Agency (ACDA) have the authority to review any license application submitted under the EAR. In addition, BIS may, where appropriate, refer license applications to other U.S. government departments or agencies. These agencies and departments will be referred to as ''agencies'' for the purposes of this part. Though these agencies have the

authority to review any license application, they may determine that they do not need to review certain types of license applications. In these instances, the agency will provide BIS with a Delegation of Authority to process those license applications without review by that particular agency.

(2) The Departments of Defense, Energy, State, and ACDA are generally concerned with license applications involving items controlled for national security, missile technology, nuclear nonproliferation, and chemical and biological weapons proliferation reasons or destined for countries and/or end uses of concern. In particular, these agencies are concerned with reviewing license applications as follows:

(i) The Department of Defense is concerned primarily with items controlled for national security and regional stability reasons and with controls related to encryption items;

(ii) The Department of Energy is concerned primarily with items controlled for nuclear nonproliferation reasons;

(iii) The Department of State is concerned primarily with items controlled for regional stability, anti-terrorism, crime control reasons, and sanctions; and

(iv) ACDA is concerned primarily with items controlled for national security, nuclear nonproliferation, regional stability, and anti-terrorism reasons.

(v) The Department of Justice is concerned with controls relating to encryption items.

[61 FR 12829, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996; 63 FR 50525, Sept. 22, 1998]

§750.4 Procedures for processing license applications.

(a) *Overview.* (1) All license applications will be resolved or referred to the President no later than 90 calendar days from the date of BIS's registration of the license application. Processing times for the purposes of this section are defined in calendar days. The procedures and time limits described in this part apply to all license applications registered on or after February 4, 1996. The procedures and time limits in effect prior to December 6, 1995 will apply to license applications registered prior to February 4, 1996.

(2) Properly completed license applications will be registered promptly upon receipt by BIS. Registration is defined as the point at which the application is entered into BIS's electronic license processing system. If your application contains deficiencies that prevent BIS from registering your application, BIS will attempt to contact you to correct the deficiencies, however, if BIS is unable to contact you, the license application will be returned without being registered. The specific deficiencies requiring return will be enumerated in a notice accompanying the returned license application. If a license application is registered, but BIS is unable to correct deficiencies crucial to processing the license application, it will be returned without action. The notice will identify the deficiencies and the action necessary to correct the deficiencies. If you decide to resubmit the license application, it will be treated as a new license application when calculating license processing time frames.

(b) *Actions not included in processing time calculations.* The following actions will not be counted in the time period calculations described in paragraph (a)(1) of this section for the processing of license applications:

(1) *Agreement by the applicant to the delay.* BIS may request applicants to provide additional information in support of their license application, respond to questions arising during processing, or accept proposed conditions or riders on their license application. If BIS has provided the applicant with an intent to deny letter described in §750.6 of this part, processing times may be suspended in order to negotiate modifications to a license application and obtain agreement to such modifications from the foreign parties to the license application.

(2) *Pre-license checks.* If a pre-license check, to establish the identity and reliability of the recipient of the controlled items, is conducted through government channels, provided that:

(i) The need for such a pre-license check is established by the Secretary, or by another agency, if the request for a pre-license check is made by such

agency and the request is made in accordance with the following time frames;

(A) The pre-license check is requested within 5 days of the determination that it is necessary; and

(B) The analysis resulting from the pre-license check is completed within 5 days.

(3) *Government-to-Government assurances.* Requests for government-to-government assurances of suitable end-use of items approved for export or reexport when failure to obtain such assurances would result in rejection of the license application, provided that:

(i) The request for such assurances is sent to the Secretary of State within five days of the determination that the assurances are required;

(ii) The Secretary of State initiates the request of the relevant government within 10 days of receipt of the request for such assurances; and

(iii) The license is issued within 5 days of the Secretary's receipt of the requested assurances.

(4) *Consultations.* Consultation with other governments, if such consultation is provided for by a relevant bilateral arrangement or multilateral regime as a precondition for approving a license.

(5) *Multilateral reviews.* Multilateral review of a license application if such review is required by the relevant multilateral regime.

(6) *Congressional notification.* Under Section 6(j) of the Export Administration Act, as amended (EAA), the Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days prior to issuing a license to any country designated by the Secretary of State as being terrorist-supporting for any items that could make a significant contribution to the military potential of such countries, or could enhance the ability of such countries to support acts of international terrorism. Accordingly, the issuance of any license subject to this requirement will be delayed for 30 days.

(i) *Designated countries.* The following countries have been designated by the Secretary of State as terrorist-supporting countries: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. However, the congressional notification requirement does not apply to Iraq in view of Presidential Determination 2003–23, in which the President exercised his authority under the Emergency Wartime Supplemental Appropriations Act, 2003, to make inapplicable with respect to Iraq section 620A of the Foreign Assistance Act and any other provision of law that applies to countries that have supported terrorism.

(ii) *Items subject to notification requirement.* License applications involving the export or reexport of the following items to the military, police, intelligence or other sensitive end-users are subject to this notification requirement:

(A) All items controlled for national security reasons, except digital computers with a Composite Theoretical Performance (CTP) less than 500 Mtops;

(B) All items controlled for chemical and biological weapons proliferation reasons;

(C) All items controlled for missile technology reasons;

(D) All items controlled for nuclear nonproliferation reasons; and

(E) All items controlled by the CCL where the entry heading identifies the items controlled as those contained in the International Munitions List.

(iii) *Additional notifications.* The Secretaries of Commerce and State must also notify the appropriate Congressional committees 30 days before a license is issued for the export or reexport of any item controlled on the CCL to a designated country if the Secretary of State determines that the export or reexport ''could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.''

(c) *Initial processing.* Within 9 days of license application registration, BIS will, as appropriate:

(1) Contact the applicant if additional information is required, if the license application is improperly completed, or required support documents are missing, to request additional or corrected information;

(2) Assure the stated classification on the license application is correct;

(3) Return the license application if a license is not required with a statement notifying the applicant that a license is not required;

(4) Approve the license application or notify the applicant of the intent to deny the license application; or

(5) Refer the license application electronically along with all necessary recommendations and analysis concurrently to all agencies unless the application is subject to a Delegation of Authority. Any relevant information not contained in the electronic file will be simultaneously forwarded in paper copy.

(d) *Review by other agencies and/or interagency groups.* (1) Within 10 days of receipt of a referral the reviewing agency must advise BIS of any information not contained in the referral as described in paragraph (c)(5) of this section. BIS will promptly request such information from the applicant. The time that elapses between the date the information is requested by the reviewing agency and the date the information is received by the reviewing agency will not be counted in processing time frames.

(2) Within 30 days of receipt of the initial referral, the reviewing agency will provide BIS with a recommendation either to approve (with or without conditions or riders) or deny the license application. As appropriate, such a recommendation may be made with the benefit of consultation and/or discussions in interagency groups established to provide expertise and coordinate interagency consultation. These interagency groups consist of:

(i) *The Missile Technology Export Control Group (MTEC).* The MTEC, chaired by the Department of State, reviews license applications involving items controlled for missile technology reasons. The MTEC also reviews license applications involving items not controlled for missile technology (MT) reasons, but destined for a country and/or end-use/end-user of MT concern.

(ii) *The SubGroup on Nuclear Export Coordination (SNEC).* The SNEC, chaired by the Department of State, reviews license applications involving items controlled for nuclear nonproliferation reasons. The SNEC also reviews license applications involving items not controlled for nuclear nonproliferation (NP) reasons, but destined for a country and/or end-use/end-user of NP concern.

(iii) *The Shield.* The Shield, chaired by the Department of State, reviews license applications involving items controlled for chemical and biological weapons reasons. The Shield also reviews license applications involving items not controlled for chemical and biological weapons (CBW) reasons, but destined for a country and/or end-use/end-user of CBW concern.

(e) *Recommendations by reviewing agencies.* Reviewing agencies recommending denial of a license application must provide a statement of reasons, consistent with the provisions of the EAA or EAR, and cite both the statutory and the regulatory basis for the recommendation to deny. A reviewing agency that fails to provide a recommendation within 30 days with a statement of reasons supported by the statutory and regulatory basis shall be deemed to have no objection to the final decision of BIS.

(f) *Interagency dispute resolution and escalation procedures*—(1) *Escalation to the Operating Committee (OC).* (i) In any instance where the reviewing agencies are not in agreement on final disposition of a license application, it will be escalated to the OC for resolution. The Chair of the OC will consider the recommendations of the reviewing agencies and any information provided by the applicant in person during an open OC session. Each agency will be informed of the Chair's decision on the license application within 14 days after the deadline for receiving agency recommendations.

(ii) If any agency disagrees with the OC Chair's decision, the agency may escalate the decision by appealing to the Chair of the Advisory Committee on Export Policy for resolution. If such a request for escalation is not made within 5 days of the decision of the OC Chair, the Chair's decision will be final.

(2) *Escalation to the Advisory Committee on Export Policy (ACEP).* Requests for escalation to the ACEP must be in writing from an official appointed

by the President with the advice and consent of the Senate, or a person properly acting in such capacity, and cite both the statutory and the regulatory basis for the appeal. The ACEP will review all relevant information and recommendations. The Chair of the ACEP will inform the reviewing agencies of the majority vote decision of the ACEP within 11 days from the date of receipt of the escalation request. Within 5 days of the decision, any dissenting agency may appeal in writing the ACEP's decision to the Secretary of Commerce in the Secretary's capacity as the Chair of the Export Administration Review Board. The written request must be made by the head of the agency requesting escalation and cite both the statutory and the regulatory basis for the appeal. Within the same period of time, the Secretary may initiate a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the decision of the ACEP will be final.

(3) *Escalation to the Export Administration Review Board (EARB).* The EARB will review all relevant information and recommendations, and such other export control matters as may be appropriate. The Secretary of Commerce will inform the reviewing agencies of the majority vote decision of the EARB within 11 days from the date of receipt of the appeal. Within 5 days of the decision, any agency dissenting from the decision of the EARB may appeal the decision to the President. The appeal must be in writing from the head of the dissenting agency. In the absence of a timely appeal, the decision of the EARB will be final.

[61 FR 12829, Mar. 25, 1996, as amended at 62 FR 25463, May 9, 1997; 69 FR 46079, July 30, 2004]

§ 750.5 Status of pending applications and other requests.

(a) *Information available.* You may contact BIS for status of your pending Classification Request, Advisory Opinion, or license application. For Advisory Opinion requests, telephone (202) 482–4905 or send a fax to (202) 219–9179. For license applications and Classification Requests, telephone BIS's System for Tracking Export License Applications (''STELA'') at (202) 482–2752. STELA is an automated voice response system, that upon request via any standard touch-tone telephone, will provide you with up to the minute status on any application pending at BIS. Press ''0'' on your keypad for online instructions or ''9'' for the letter ''Z''. Requests for status may be made only by the applicant or the applicant's agent.

(b) *STELA's hours.* STELA is operational Monday through Friday from 7:15am to 11:15pm and on Saturday from 8:00am to 4:00pm, Eastern Time. If you have any difficulty accessing STELA, contact during normal business hours, one of BIS's offices listed in § 748.2(a) of the EAR.

(c) *Procedures to access information on STELA.* Once you dial STELA you will be instructed to enter your Application Control Number using your push button telephone keys. After you enter the Application Control Number, STELA will provide you with the current status of your license application or Classification request.

[61 FR 12829, Mar. 25, 1996, as amended at 62 FR 25463, May 9, 1997]

§ 750.6 Denial of license applications.

(a) *Intent to deny notification.* If BIS intends to deny your license application, BIS will notify you in writing within 5 days of the decision. The notification will include:

(1) The intent to deny decision;

(2) The statutory and regulatory basis for the denial;

(3) To the extent consistent with the national security and foreign policy of the United States, the specific considerations that led to the decision to deny the license application;

(4) What, if any, modifications or restrictions to the license application would allow BIS to reconsider the license application;

(5) The name of the BIS representative in a position to discuss the issues with the applicant; and

(6) The availability of appeal procedures.

(b) *Response to intent to deny notification.* You will be allowed 20 days from the date of the notification to respond to the decision before the license application is denied. If you respond to the notification, BIS will advise you if, as

a result of your response, the decision to deny has been changed. Unless you are so advised by the 45th day after the date of the notification, the denial will become final, without further notice. You will then have 45 days from the date of final denial to exercise the right to appeal under part 756 of the EAR.

§ 750.7 Issuance of licenses.

(a) *Scope.* A license authorizes only a specific transaction, or series of transactions, as described in the license application and any supporting documents. A license application may be approved in whole or in part or further limited by conditions or other restrictions appearing on the license itself or in the EAR. When a license application is approved by BIS, a license is issued as described in paragraph (b) of this section.

(b) *Issuance of a license.* After a license application is approved, a computer generated license is issued by the Department of Commerce bearing the license number and a validation date. Where appropriate, the license will also show an expiration date. Where necessary, attachments to a license will also be validated with the Department of Commerce seal and the date of validation. Exporters must use the complete license number when preparing a Shipper's Export Declaration (SED) or Automated Export System (AES) record and any other export control documents, and in communicating with the Department of Commerce concerning the license.

(c) *Changes to the license.* (1) The following non-material changes do not require submission of a ''Replacement'' license or any other notification to BIS. (If you wish to make any change not identified in this paragraph, you will need to submit a ''Replacement'' license in accordance with the instructions contained in Supplement No. 1 to part 748 of the EAR, Block 11):

(i) Decrease in unit price or total value;

(ii) Increase in price or quantity if permitted under the shipping tolerances in § 750.11 of this part;

(iii) Increase in price that can be justified on the basis of changes in point of delivery, port of export, or as a result of transportation cost, drayage, port charges, warehousing, currency fluctuations, etc.;

(iv) Establishment of unit or total price in conformance with a ''price statement'' on a license that permits price to be based on the market price at a specified date plus an exporter's mark-up, or like basis;

(v) Change in intermediate consignee if the new intermediate consignee is located in the country of ultimate destination as shown on the license, except a change in, or addition of, an intermediate consignee involving a consolidated shipment;

(vi) Change in continuity of shipment by unloading from carrier at a country listed in Country Group B (see Supplement No. 1 to part 740 of the EAR) port not in the country of ultimate destination, without the designation of an intermediate consignee on the shipping documents and license, provided:

(A) The purpose is to transfer the shipment to another vessel, barge, or vehicle, solely for onforwarding to the country of destination shown on the shipping documents and the license;

(B) The shipment is moving on a through bill of lading;

(C) The carrier is not registered in, owned or controlled by, or under charter or lease to a country in Country Group D:1 or E:2 (see Supplement No. 1 to part 740 of the EAR), or a national of any of these countries;

(D) The carrier retains custody of the shipment until it is delivered to the ultimate consignee; and

(E) The original bill of lading or air waybill first issued at the port of export is delivered with the shipment to the ultimate consignee;

(vii) Change in address of purchaser or ultimate consignee if the new address is located within the same country shown on the license; or

(viii) Change in ECCN, unit of quantity, or unit price, where necessary only for the purpose of conforming to an official revision in the CCL; or wording of the item description. This does not cover an actual change in the item to be shipped, or an increase in the total price or quantity on the license; or

(2)(i) For Encryption Licensing Arrangements issued by BIS for exports

and reexports of items controlled under ECCN 5A002, 5B002, and 5D002, and for encryption commodities and software previously on the U.S. Munitions List and currently authorized for export or reexport under a State Department license, distribution arrangement or any other authority of the State Department, you must by letter to BIS a request for approval of any additional country of destination.

(ii) Letters requesting changes pursuant to paragraph (c)(2)(i) of this section should be made by the license holder on company letterhead, clearly identifying the original license number and the requested change. In addition, requests for changes to State licenses or other authorizations must be accompanied by a copy of the original State license or authorization. The requested changes may not take effect until approved in writing by BIS. Send requests for changes to the following address: Office of Strategic Trade, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Ave., NW, Washington, DC 20230, Attn: Encryption Division.

(d) *Responsibility of the licensee.* The person to whom a license is issued is the licensee. In export transactions, the exporter must be the licensee, and the exporter-licensee is responsible for the proper use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. In the case of Encryption License Agreements (ELA), the licensee may not necessarily be the exporter or reexporter. In this case, the authorized user of the ELA is responsible for proper use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. In reexport or routed export transactions, a U.S. agent acting on behalf of a foreign principal party in interest may be the licensee; in these cases, both the agent and the foreign principal party in interest, on whose behalf the agent has acted, are responsible for the use of the license, and for all terms and conditions of the license, except to the extent that certain terms and conditions are directed toward some other party to the transaction. It is the licensee's responsibility to communicate in writing the specific license conditions to the parties to whom those conditions apply. In addition, when required by the license, the licensee is responsible for obtaining written acknowledgment(s) of receipt of the conditions from the party(ies) to whom those conditions apply.

(e) *Prohibited use of a license.* No person convicted of a violation of any statute specified in section 11(h) of the EAA, at the discretion of the Secretary of Commerce, may apply for any license for a period up to 10 years from the date of the conviction. See § 766.25 of the EAR.

(f) *Quantity of commodities authorized.* Unlike software and technology, commodities will be approved with a quantity or dollar value limit. The ''Unit'' paragraph within each CCL commodity entry will list a specific ''Unit'' for those commodities controlled by that entry. Any license resulting from a license application to export or reexport commodities will be licensed in terms of the specified ''Unit''. If a commodity is licensed in terms of ''$ value'', the unit of quantity commonly used in trade may also be shown on the license. Though this unit may be shown on the approved license, the quantity of commodities authorized is limited entirely by the total dollar value shown on the approved license.

(g) *License validity period.* Licenses involving the export or reexport of items will generally have a 24-month validity period, unless a different validity period has been requested and specifically approved by BIS. Exceptions from the 24-month validity period include, license applications reviewed and approved as an ''emergency'' (see § 748.4 (h) of the EAR), license applications for items controlled for short supply reasons, and Special Comprehensive Licenses.

Emergency licenses will expire no later than the last day of the calendar month following the month in which the emergency license is issued. Licenses for items controlled for short supply reasons will be limited to a 12-month validity period. The expiration

date will be clearly stated on the face of the license. If the expiration date falls on a legal holiday (Federal or State), the validity period is automatically extended to midnight of the first day of business following the expiration date. (See part 752 of the EAR for validity periods for Special Comprehensive Licenses.)

(1) *Extended validity period.* Validity periods in excess of 24 months generally will not be granted. BIS will consider granting a validity period exceeding 24 months when extenuating circumstances warrant such an extension, however, no changes will be approved related to any other particular on the license (e.g., parties to the transaction, countries of ultimate destination, etc.). For example, an extended validity period will generally be granted where the transaction is related to a multi-year project, when production lead time will not permit an export or reexport during the original validity period of the license, when an unforeseen emergency prevents shipment within the 24-month validity of the license, or for other similar circumstances. A continuing requirement to supply spare or replacement parts will not normally justify an extended validity period. Licenses issued in accordance with the emergency clearance provisions contained in § 748.4(h) of the EAR will not be extended. See § 752.9 of the EAR for information relating to the extension of a Special Comprehensive License.

(2) *Request for extension.* (i) The applicant must submit a letter in writing to request an extension in the validity period of a previously approved license. The subject of the letter must be titled: ''Request for Validity Period Extension'' and contain the following information:

(A) The name, address, and telephone number of the requestor;

(B) A copy of the original license, with the license number, validation date, and current expiration date legible; and

(C) Justification for the extension;

(ii) It is the responsibility of the applicant to ensure that all applicable support documents remain valid and are in the possession of the applicant. If the request for extension is approved, BIS will provide the applicant with a written response.

(h) *Specific types of licenses*—(1) *Licenses for temporary exports or reexports.* If you have been granted a license for the temporary export or reexport of items and you decide not to return the items to the United States, you must submit a license application requesting authorization to dispose of the items. Except when the items are to be used on a temporary basis at a new destination (and returned to the United States after such use), you must ensure that your license application is accompanied by all documents that would be required if you had requested a license to export or reexport the same item directly to the new destination.

(2) *Intransit within the United States.* If you have been issued a license authorizing an intransit shipment (that does not qualify for the intransit provisions of License Exception TMP) through the United States, your license will be valid only for the export of the intransit shipment wholly of foreign origin and for which a Transportation and Exportation customs entry or an Immediate Exportation customs entry is outstanding.

(3) *Intransit outside the United States.* If you have been issued a license authorizing unlading or transit through a country listed in the General Prohibition Eight contained in § 736.2(b)(8) of the EAR, and you did not know the identity of the intermediate consignee at the time of the original license application, you must notify BIS in writing once you have ascertained the identity of the intermediate consignee. Your notification must contain the original license number, and the complete name, address, and telephone number of the intermediate consignee. The written request must be submitted to BIS at the address listed in § 748.2(c) of the EAR.

(4) *Replacement license.* If you have been issued a ''replacement'' license (for changes to your original license that were not covered in paragraph (c) of this section), you must attach the ''replacement'' license to the original, and retain both.

(i) *Terminating license conditions.* Exporters or reexporters who have shipped under licenses with conditions

that would not apply to an export under a License Exception or if no license was required, and foreign consignees who have agreed to such conditions, are no longer bound by these conditions when the licensed items become eligible for a License Exception or can be exported or reexported without a license. Items that become eligible for a License Exception are subject to the terms and conditions of the applicable License Exception and to the restrictions in § 740.2 of the EAR. Items that become eligible for export without a license remain subject to the EAR and any export, reexport, or disposition of such items may only be made in accordance with the requirements of the EAR. Termination of license conditions does not relieve an exporter or reexporter of its responsibility for violations that occurred prior to the availability of a License Exception or prior to the removal of license requirements.

(j) *Records.* If you have been issued a license you must retain the license, and maintain complete records in accordance with part 762 of the EAR including any licenses (whether used or unused, valid or expired) and all supporting documents and shipping records.

[61 FR 12829, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996; 62 FR 25463, May 9, 1997; 63 FR 50525, Sept. 22, 1998; 64 FR 47106, Aug. 30, 1999; 65 FR 42569, July 10, 2000; 68 FR 50473, Aug. 21, 2003; 69 FR 5691, Feb. 6, 2004; 69 FR 69814, Dec. 1, 2004]

§ 750.8 Revocation or suspension of licenses.

(a) *Revocation.* All licenses for exports or reexports are subject to revision, suspension, or revocation, in whole or in part, without notice whenever it is known that the EAR have been violated or that a violation is about to occur. BIS's Office of Exporter Services may revoke any license in which a person who has been convicted of one of the statutes specified in section 11(h) of the EAA, at the discretion of the Secretary of Commerce, has an interest in the license at the time of the conviction. It may be necessary for BIS to stop a shipment or an export or reexport transaction at any stage in the process (e.g., in order to prevent an unauthorized export or reexport). If a shipment is already en route, it may be further necessary for BIS to order the return or unloading of such shipment at any port of call in accordance with the provisions of the EAA.

(b) *Return of revoked or suspended licenses.* If BIS revokes or suspends a license, the licensee shall return the license immediately upon notification that the license has been suspended or revoked. The license must be returned to BIS at the address listed in § 748.2(c) of the EAR, Attn:'' Return of Revoked/Suspended License''. All applicable supporting documents and records of shipments must be retained by the licensee in accordance with the recordkeeping provisions of part 762 of the EAR. If the licensee fails to return a license immediately upon notification that it has been suspended or revoked, BIS may impose sanctions provided for in part 764 of the EAR.

§ 750.9 Duplicate licenses.

(a) *Lost, stolen or destroyed.* If a license is lost, stolen or destroyed, you, as the licensee, may obtain a duplicate of the license by submitting a letter to the BIS at the address listed in § 748.2(c) of the EAR, Attention: Duplicate License Request''. You must certify in your letter:

(1) That the original license ([number] issued to [name and address of licensee]) has been lost, stolen or destroyed;

(2) The circumstances under which it was lost, stolen or destroyed; and

(3) If the original license is found, the licensee will return either the original or duplicate license to the BIS. Note that if shipment was made against the original license, those shipments must be counted against the duplicate license. If you are issued a duplicate license you must retain the duplicate license in accordance with the recordkeeping provisions of part 762 of the EAR.

(b) *Hong Kong Trade Department.* BIS will automatically issue a duplicate license whenever the license lists a party in Hong Kong as the intermediate consignee, or when Hong Kong is identified as the country from which the reexport will take place. The duplicate license will be labeled ''Duplicate for Hong

Kong Trade Department''. This duplicate must be forwarded to the reexporter or intermediate consignee for submission to the Hong Kong Trade Department. The original license must be retained on file by the licensee in accordance with the recordkeeping provisions contained in part 762 of the EAR.

§ 750.10 Transfers of licenses for exports.

(a) *Authorization.* As the licensee, you may not transfer a license issued for the export of items from the United States to any other party, except with the prior written approval of BIS. BIS may authorize a transfer of a license for export to a transferee who is subject to the jurisdiction of the United States, is a principal party in interest, and will assume all powers and responsibilities under the license for the control of the shipment of the items out of the United States. BIS will approve only one transfer of the same license and only transfers of licenses to export items.

(b) *How to request the transfer of licenses*—(1) *Letter from licensee.* You, as the licensee, must submit a letter in writing to request a transfer of a license or licenses. The letter must contain the following information:

(i) The reasons for the requested transfer;

(ii) Either a list of the outstanding license numbers or a statement that all outstanding licenses in the name of the licensee are to be transferred, and the total number of such outstanding licenses;

(iii) A list of all license applications for export to be transferred that are pending with BIS, identifying the Application Control Number for each, or other information that will assist in identifying the pending license applications;

(iv) Name and address of the person you intend to transfer the licenses and license applications to;

(v) The facts necessitating transfer;

(vi) A statement as to whether or not any consideration has been, or will be, paid for the transfer; and

(vii) Identification by name of the legal document (certificate, agreement, etc.) or other authority by which the new firm name is legally established, the new corporation or firm created, or the assets transferred and showing the effective date of such document and the state where filed or recorded.

(2) *Information from transferee.* The person to whom you wish to transfer your license(s) must provide you a signed letter, that must be submitted with your request, containing the following:

(i) That the transferee is a principal party in interest in the transaction covered by the license, or is acting as agent for a principal party in interest;

(ii) That the transferee is subject to the jurisdiction of the United States;

(iii) That the transferee assumes all powers and responsibilities under the license for the control of the shipment of the items out of the United States;

(iv) Whether any consideration has been, has not been, or will be paid for the transfer;

(v) The name and address of the foreign principal in instances where the transferee will make the export as an agent on behalf of a foreign principal; and

(vi) If the license is to be transferred to a subsidiary or firm, or if you transfer to the transferee all, or a substantial portion, of your assets or business, the transferee must certify that the legal authority changing the exporter imposes on the transferee the responsibility to accept and fulfill the obligations of the transferor under the transactions covered by the license; and

(vii) The following certification:

> The undersigned hereby certifies that, if license number(s) _____ is (are) transferred in accordance with my (our) request, any and all documents evidencing the order covered by this (these) license(s) will be retained and made available upon request in compliance with the recordkeeping provisions contained in Part 762 of the Export Administration Regulations. The undersigned further certifies compliance with all requirements of the Export Administration Regulations regarding these licenses.

(c) *Notification of transfer and recordkeeping.* Unless instructed otherwise by BIS, you must retain the license(s) pending notification by BIS of the action taken. If the request is approved, you must forward the license(s) to the

transferee and the validated letter received from BIS authorizing the transfer. If the transfer request is not approved, the license(s) must either be returned to BIS or used by you if you so choose and have retained the legal and operational capacity fully to meet the responsibilities imposed by the license(s). If your initial request is returned by BIS for additional information, after obtaining the necessary information you may resubmit your request.

[61 FR 12829, Mar. 25, 1996, as amended at 62 FR 25463, May 9, 1997]

§ 750.11 Shipping tolerances.

(a) *Applicability and use of shipping tolerances.* Under some circumstances, you may use a license issued for the export of items from the United States to export more than the quantity or value shown on that license. This additional amount is called a shipping tolerance. This section tells you, as the licensee, when you may take advantage of a shipping tolerance and the amount of shipping tolerance you are permitted to use.

(1) If you have already shipped the full amount approved on your license, you may not use this shipping tolerance provision. No further shipment may be made under the license.

(2) The amount of shipping tolerance you are permitted is based on the ''Unit'' specified for the item you want to export in the applicable ECCN on the CCL (see Supplement No. 1 to part 774 of the EAR). You must calculate shipping tolerance based on the applicable ''Unit'' whether that be Number, Dollar Value, or Area, Weight, or other Measure. You may not use any other unit that may appear on your license.

(b) *Calculating shipping tolerances.* There are three basic rules, one for items licensed by ''Dollar Value'', one for items licensed by ''Number'', and another for items licensed by ''Area, Weight or other Measure''.

(1) *Items licensed by ''Dollar Value''.* If the ''Unit'' paragraph in the ECCN applicable to your item reads ''§ value'' or ''in § value'', there is no shipping tolerance. You may not ship more than the total dollar value stated on your license.

(2) *Items licensed by ''Number''.* If the ''Unit'' paragraph in the ECCN applicable to your item reads ''Number'' or ''in Number'', there is no shipping tolerance with respect to the number of units. However, the value of all of your shipments under one license may exceed the total dollar value stated on that license by up to 25%.

(3) *Items licensed by ''Area, Weight or Measure''.* If the ''Unit'' paragraph in the ECCN applicable to your item reads ''kilograms'' or ''square meters'' or some other unit of area, weight or measure, your shipment may exceed the unshipped balance of the area, weight or other measure listed on your license by up to 10% and the total dollar value shown on your license by up to 25%, unless;

(i) Your license stipulates a specific shipping tolerance; or

(ii) Your item is controlled for short supply reasons and a smaller tolerance has been established. (See part 754 of the EAR).

(c) *Examples of shipping tolerances.* (1) A license authorizes the export of 100,000 kilograms of an item controlled by an ECCN where the ''Unit'' is stated as ''kilograms'', the total cost of which is $1,000,000:

(i) *One shipment.* If one shipment is made, the quantity that may be exported may not exceed 110,000 kg (10% tolerance on the unshipped Area, Weight, or Measure balance), and the total cost of that one shipment may not exceed $1,250,000:

$1,000,000	(the total value shown on the license)
+250,000	(25% of the total value shown on the license)
$1,250,000	

(ii) *Two shipments.* If the first shipment is for 40,000 kg (valued at $400,000), the second shipment may not exceed 66,000 kg (10% of the unshipped balance of 60,000 kg (6,000 kg) plus the unshipped balance), and the total cost of the second shipment shall not exceed $850,000:

$600,000	(the value of the unshipped balance of 60,000 kg)
+250,000	(25% of the original total value shown on the license)
$850,000	

(iii) *Three shipments.* If the first shipment is for 40,000 kg (valued at $400,000) the second shipment is for 20,000 kg

(valued at $200,000), the third shipment may not exceed 44,000 kg (10% of the unshipped balance of 40,000 kg (4,000 kg) plus the unshipped balance), and the total cost of the third shipment can not exceed $650,000:

$400,000	(the value of the unshipped balance of 40,000 kg)
+250,000	(25% of the original total value on the license)
$650,000	

(2) A license authorizes the export of an item controlled by an ECCN where the ''Unit'' is stated as ''$ value'', the total cost of which is $5,000,000. There is no shipping tolerance on this license because the items are controlled by an ECCN where ''$ value'' is the stated ''Unit''.

(3) A license authorizes the export of 10 pieces of equipment controlled by an ECCN where the ''Unit'' is stated as ''Number'', with a total value of $10,000,000 and the export of parts and accessories covered by that same entry valued at $1,000,000:

(i)(A) If one shipment is made, the quantity of equipment that may be exported may not exceed 10 pieces of equipment because there is no shipping tolerance on the ''number'' of units. That one shipment of equipment may not exceed $12,500,000:

$10,000,000	(the total value shown on the license)
+2,500,000	(25% of the total value shown on the license)
$12,500,000	

(B) If the one shipment includes parts and accessories, those parts and accessories may not exceed $1,000,000 because there is no shipping tolerance on any commodity licensed in terms of dollar value.

(ii)(A) If the first shipment is for 4 pieces of equipment valued at $4,000,000, the second shipment may not exceed 6 pieces of equipment (no tolerance on ''number'') valued at no more than $8,500,000:

$6,000,000	(the value of the unshipped 6 pieces).
+2,500,000	(25% of the original total value shown on the license).
$8,500,000	

(B) If the first shipment includes $300,000 of parts and accessories, the second shipment may not exceed $700,000 of parts and accessories because there is no shipping tolerance on any commodity licensed in terms of dollar value.

(iii)(A) If the first shipment is for 4 pieces of equipment valued at $4,000,000 and the second shipment is for 3 pieces of equipment valued at $3,000,000, the third shipment may not exceed 3 pieces of equipment (no tolerance on ''number'') valued at no more than $5,500,000:

$3,000,000	(the value of the unshipped 3 pieces).
+2,500,000	(25% of the original value shown on the license),
$5,500,000	

(B) If the first shipment includes $300,000 of parts and accessories and the second shipment includes another $300,000, the third shipment may not exceed $400,000 because there is no shipping tolerance on commodities licensed in terms of dollar value.

PART 752—SPECIAL COMPREHENSIVE LICENSE

Sec.

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SUPPLEMENT NO. 1 TO PART 752—INSTRUCTIONS FOR COMPLETING FORM BIS-748P, MULTIPURPOSE APPLICATION FOR REQUESTS FOR SPECIAL COMPREHENSIVE LICENSES

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SUPPLEMENT NO. 5 TO PART 752—INSTRUCTIONS FOR COMPLETING FORM BIS-748-B END-USER APPENDIX

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

SOURCE: 61 FR 12835, Mar. 25, 1996, unless otherwise noted.

§ 752.1 Scope.

(a)(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part describes the provisions of the Special Comprehensive License (SCL). You may apply for an SCL, when appropriate, in lieu of a license described in part 748 of the EAR, or a License Exception described in part 740 of the EAR, for multiple exports and reexports of items subject to the EAR. The SCL provides authorization to make specified exports and reexports that are otherwise prohibited by General Prohibitions One, Two, and Three described in part 736 of the EAR. The existence of an SCL does not supersede an exporter's obligation to request a separate license as may be required by part 744 of the EAR. Because the Bureau of Industry and Security (BIS) does not review each individual transaction authorized by an SCL, parties to the SCL must have the mechanisms in place to ensure that each export and reexport made under an SCL meets all the terms and conditions of the license and are in accordance with all applicable provisions of the EAR. It is through the design and effective implementation of an Internal Control Program (ICP) that the SCL holder and the SCL consignee (referred to as ''consignee'' for purposes of this part) assure that exports and reexports are not made contrary to the EAR.

(2) *Definitions*—(i) *SCL holder.* As used in this part, ''SCL holder'' is that party approved on an SCL to perform activities approved under the SCL.

(ii) *SCL consignee.* As used in this part, ''SCL consignee'' or ''consignee'' means any party authorized to receive items under the SCL and named as a consignee on an approved Form BIS-752, Statement by Consignee in Support of Special Comprehensive License.

(b) *ICP requirement.* To qualify for an SCL, you must develop an ICP. Section 752.11 of this part includes a general description of the elements of the ICP, and guidance on which elements your company must implement before making shipments under the SCL. The elements of the ICP your company will develop reflect the complexity of the activities authorized under the SCL, the countries and items involved, and the relationship between the SCL holder and the approved consignees. BIS may require you to include in your ICP any combination of elements, depending upon the nature of your SCL application. During your pre-application consultation required by § 752.5(a)(1), BIS will provide you guidance on which elements you must implement.

[61 FR 12835, Mar. 25, 1996, as amended at 62 FR 25463, May 9, 1997]

§ 752.2 Eligible activities.

(a) *Possible authorizations.* Under the SCL, BIS may authorize you to perform any number of activities, which can be grouped under the general categories of ''service'', ''end-user'', ''distribution'' and ''other'' activities. Examples of the general categories include:

(1) *Service activities.* Exporting items subject to the EAR as spare and replacement parts for servicing or stocking.

(2) *End-user activities.* Exporting and reexporting items subject to the EAR for use as capital equipment.

(3) *Distribution activities.* Exporting and reexporting items subject to the EAR for the purpose of resale and reexport by consignees.

(4) *Other activities.* Other activities not included in paragraphs (a)(1) through (a)(3) of this section may be authorized by BIS under the SCL on a case-by-case basis.

(b) *Prohibited activities.* The general prohibitions described in § 736.2(b)(4) through (10) of the EAR apply to all exports and reexports by, and conduct of, all parties approved on your SCL, unless you are specifically authorized under the SCL to perform such activities, or the particular activity otherwise qualifies for a License Exception described in part 740 of the EAR.

§752.3 Eligible items.

(a) All items subject to the EAR, including items eligible for License Exceptions described in part 740 of the EAR, are eligible for export and reexport under the SCL, except:

(1) Items controlled for missile technology reasons that are identified by the letters MT in the applicable ''Reason for Control'' paragraph on the Commerce Control List (CCL) (see Supplement No. 1 to part 774 of the EAR);

(2) Items controlled by ECCNs 1C351, 1C352, 1C353, 1C354, 1C991, 1E001, 2B352, 2E001, 2E002, and 2E301 on the CCL controlled for CB reasons;

(3) Items controlled by ECCNs 1C350, 1C995, 1D390, 1E350, 1E351, 2B350, and 2B351 on the CCL that can be used in the production of chemical weapons precursors and chemical warfare agents, to destinations listed in Country Group D:3 (*see* Supplement No. 1 to part 740 of the EAR);

(4) Items controlled for short supply reasons that are identified by the letters ''SS'' in the applicable ''Reason for Control'' paragraph on the CCL;

(5) Items controlled for EI reasons on the CCL;

(6) Maritime (civil) nuclear propulsion systems or associated design or production software and technology identified in §744.5 of the EAR;

(7) Communications intercepting devices controlled by ECCN 5A980 on the CCL;

(8) Hot section technology for the development, production or overhaul of commercial aircraft engines controlled under ECCN 9E003.a.1. through a.12. .f, and related controls;

(9) Items specifically identified as ineligible by BIS on your approved SCL; and

(10) Additional items consistent with international commitments.

(b) Items controlled for nuclear nonproliferation reasons that are identified by the letters NP in the applicable ''Reason for Control'' paragraph on the CCL may be authorized on a case-by-case basis provided controls are in place to screen for proscribed end-users or end-uses.

[61 FR 12835, Mar. 25, 1996, as amended at 61 FR 54543, Oct. 21, 1996; 62 FR 25463, May 9, 1997; 63 FR 42229, Aug. 7, 1998; 63 FR 50525, Sept. 22, 1998; 64 FR 13339, Mar. 18, 1999; 69 FR 5691, Feb. 6, 2004]

§752.4 Eligible countries.

(a) *General provisions.* All countries are eligible under the SCL except:

(1) Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(2) Other countries that BIS may designate on a case-by-case basis as ineligible to receive items under the SCL.

(b) *Servicing prohibitions.* Under the SCL, you may not service any item when you know that the item is owned or controlled by, or under the lease or charter of, entities in countries identified in paragraphs (a)(1) and (a)(2) of this section or any national of such countries.

§752.5 Steps you must follow to apply for an SCL.

(a) *Step One: Establish applicant reliability*—(1) *Pre-application consultation.* To apply for an SCL, BIS must determine your reliability as a potential SCL holder. BIS usually does this through consultation with company officials and a review of the criteria identified in paragraph (a)(2) of this section. To determine whether your company requires a consultation before you apply for an SCL, contact BIS at the address, phone, or telefacsimile numbers included in §752.17 of this part.

(2) *Criteria for determining eligibility.* BIS will review the following criteria to help determine SCL holder eligibility:

(i) Evidence of past licensing history and projected, continuous large volume exports;

(ii) Reliability of all parties relative to their compliance with the EAR;

(iii) Commitment of all parties of the necessary resources to implement and maintain an adequate ICP; and

(iv) Evidence of all parties knowledge of all provisions of the EAR.

(b) *Step Two: Establish consignee reliability*—(1) *Requirements.* You must make an initial determination of the reliability of all consignees that are

listed on your application for an SCL, based upon the criteria described in paragraph (b)(2) of this section.

(2) *Determining reliability*. The criteria that you should take into consideration include, but are not limited to, the following:

(i) *Criteria*. (A) The proposed consignee has a satisfactory record established through BIS pre-license checks, or extensive experience as a consignee under any license issued by BIS;

(B) The proposed consignee is a wholly-owned subsidiary or a controlled-in-fact affiliate of the applicant or of a consignee that is already approved on an SCL. See part 772 of the EAR for a definition of controlled-in-fact; or

(C) You have evidence of an established, on-going business relationship with the proposed consignee.

(ii) *Exception*. The provisions of paragraph (b)(2)(i) of this section do not preclude the authority of BIS to determine the reliability and eligibility of a proposed consignee. BIS may, based upon any negative information on the proposed consignees, deny a proposed consignee.

(c) *Step Three: Prepare your documentation*. Complete Form BIS-748P, Multipurpose Application, Form BIS-748P-A, Item Appendix, Form BIS-748P-B, End-User Appendix, an ICP, a comprehensive narrative statement, Form BIS-752, Statement by Consignee in Support of Special Comprehensive License, Form BIS-752-A, Reexport Territories, and all applicable certifications. Submit this documentation to BIS at one of the addresses included in § 752.17 of this part.

(1) *Form BIS-748P, Multipurpose Application, and Form BIS-748P-A, Item Appendix*. You must complete Form BIS-748P and Form 748P-A according to the instructions found in Supplement Nos. 1 and 2 of this part.

(2) *Form BIS-748P-B, End-User Appendix*. You must identify end-users on Form BIS-748P-B if you are requesting approval to export or reexport items controlled for nuclear nonproliferation or chemical and biological control reasons.

(3) *ICP*. You must provide a copy of your proposed ICP as required by § 752.11 of this part. You must indicate whether any of the elements of the ICP will not be implemented and explain why these elements were deemed inapplicable. Existence of a properly constructed ICP will not relieve you of your responsibility to comply with requirements of all applicable regulations pertaining to your SCL;

(4) *Comprehensive narrative statement*. Prepare a comprehensive narrative statement on your company letterhead that includes the following information:

(i) An overview of the total business activity that will be performed by you and all other parties who will receive items under the authority of your SCL, including consignees, subcontractors, and vessels;

(ii) A description of the nature and anticipated volume of regular and repetitive transactions proposed by consignees under the license;

(iii) An explanation of the relationship between the parties to the application, such as affiliate, subsidiary, or parent, etc;

(iv) A certification that you will implement, upon approval of the application by BIS, an ICP that incorporates all applicable elements listed in § 752.11 of this part and any additional elements as required by BIS upon approval of the SCL; and

(v) Information on whether proposed consignees are end-users or will reexport the items received under your SCL. You must describe the proposed consignee's activities completely to determine the appropriate ICP elements that you and your consignees must implement.

(5) *Form BIS-752, Statement of Consignee in Support of Special Comprehensive License*. This Form is completed by each consignee. You must submit one completed, signed, original Form BIS-752 for each proposed consignee on your SCL application. See Supplement No. 3 to this part for instructions on completing Form BIS-752. Form BIS-752 is not required if the proposed consignee is both an end-user and a ''foreign government agency'' as defined in part 772 of the EAR.

(6) *Form BIS-752–A, Reexport Territories*. You must complete Form BIS-752–A, and attach it to the appropriate Form BIS-752, whenever Blocks 8B, 8C, 8E, and/or 8F are selected on Form BIS-

752. See the instruction found in Supplement No. 3 to this part. Form BIS-752–A is not required if the proposed consignee is both an end-user and a foreign government agency (see part 772 of the EAR for a definition of foreign government agency).

(7) *Consignee certifications.* Each consignee must provide certain certifications on company letterhead that is signed by the consignee. Attach certifications to the appropriate Form BIS-752. Each consignee must certify that:

(i) They will implement, upon approval of the SCL by BIS, an ICP that incorporates all applicable elements listed in § 752.11 of this part and any additional elements as required by BIS upon approval of your SCL. If certain elements of an ICP will not be included, state the reasons for that determination;

(ii) They will comply with all provisions of the EAR, including the recordkeeping provisions of part 762 of the EAR, all applicable system review requirements of § 752.14 of this part, and the reexport restrictions of § 752.6 of this part; and

(iii) They will make available for inspection, upon request by BIS, all records required by § 752.12 of this part and part 762 of the EAR.

(8) *Additional certifications.* (i) *Temporary exports.* Proposed consignees that plan to exhibit or demonstrate items in countries other than those in which they are located or are authorized under an SCL, an approved Form BIS-752, or a License Exception provision described in § 740.8(a)(2)(iii) of the EAR may obtain permission to do so by including the following additional certification on company letterhead, and attaching it to Form BIS-752.

I (We) request authorization to reexport temporarily, for exhibit or demonstration in countries eligible to receive items under the Special Comprehensive License. The items exported will be retained under my (our) ownership and control, and will be returned by me (us) to (name destination) promptly after their exhibit or demonstration abroad, and in no case later than one year after the date of reexport, unless other disposition is authorized in writing by the Bureau of Industry and Security.

(ii) *Chemicals and chemical equipment certification.* If you are requesting authority to export chemicals or chemical equipment eligible for the SCL, you must obtain a signed written statement on company letterhead from the proposed consignee(s) and end-user(s) (except those located in Country Group A:3) (see Supplement No. 1 to part 740 of the EAR) certifying the following:

No chemicals or chemical equipment received under this Special Comprehensive License will be transferred, resold, or reexported to a destination that requires a license, unless the new end-user has been approved by the Bureau of Industry and Security, and in no case will the items be retransferred, resold, or reexported to a party who is not the end-user.

(iii) *Nuclear nonproliferation certification.* If you are requesting the export or reexport under the EAR of items controlled for nuclear nonproliferation reasons described in § 744.2(a) of the EAR, prior to submitting an SCL application, you must obtain a signed written statement on company letterhead from the proposed consignee(s) and end-user(s) certifying the following:

(A) The items to be exported or replicas thereof (''replicas'' refer to items produced abroad based on physical examination of the items originally exported, matching it in all critical design and performance parameters), will not be used in any of the activities described in § 744.2 of the EAR; and

(B) Written authorization will be obtained from BIS prior to transferring or reexporting the items, unless they are destined to Canada or would not require a license to the new country of destination.

[61 FR 12835, Mar. 25, 1996, as amended at 61 FR 64285, Dec. 4, 1996; 62 FR 25463, May 9, 1997]

§ 752.6 Reexports.

(a) *Authorized reexports.* All consignees may reexport items without approval from BIS under any one of the following circumstances, unless otherwise specifically excluded by the provisions of the EAR or by a condition placed on your SCL.

(1) Reexports that qualify for a License Exception authorized by part 740 of the EAR;

(2) Reexports to destinations approved by BIS through validation of Form BIS-752 and/or Form BIS-752–A

according to the terms stated on the Form BIS-752 or BIS-752–A; or

(3) Reexports of items approved under an SCL to and among other consignees approved on the same SCL, provided that the items are eligible to the new destination in accordance with your approved SCL and § 752.3 of this part.

(b) *Prohibitions.* You are prohibited from the following activities without specific authorization from BIS:

(1) Transferring, reselling, or reexporting under your SCL any chemicals or chemical equipment identified with the letters ''CB'' in the applicable ''Reason for Control'' paragraph on the CCL (see Supplement No. 1 to part 774 of the EAR); and

(2) Reexporting under your SCL items identified by the letters NP in the applicable ''Reason for Control'' paragraph on the CCL to destinations not listed in country group A:4 (see Supplement No. 1 to part 740).

(c) *Sourcing.* Consignees who obtain U.S.-origin items abroad that are eligible for the SCL but that are subject to General Prohibitions One, Two, or Three (see part 734 of the EAR) may reexport them under the authority of your SCL, provided that they are reexported in accordance with the ICP required by § 752.11 of this part, and any other applicable conditions or reexport restriction placed on your SCL by BIS. Either the SCL holder or the consignee through the SCL holder must submit the sourcing request for reexport of items on Form BIS-752.

[61 FR 12835, Mar. 25, 1996, as amended at 62 FR 25464, May 9, 1997]

§ 752.7 Direct shipment to customers.

(a) *General authorization.* (1) Upon request by a consignee, an SCL holder or another consignee approved under the same SCL is authorized to deliver products directly to the requesting consignee's customer in either:

(i) The requesting consignee's country; or

(ii) Another country authorized to receive items under the requesting consignee's validated Form BIS-752–A.

(2) The SCL holder or consignee making direct shipments authorized by this section must implement an ICP containing procedures governing such shipments.

(3) SCL holders and consignees using the direct shipment provision may invoice the shipments directly to the requesting consignee's customers if copies of applicable invoices are maintained by both the shipping party and requesting consignee.

(b) *Procedures*—(1) *Exports by an SCL holder.* The SCL holder may make a direct shipment by entering on the Shipper's Export Declaration or Automated Export System record the name and address of the customer as ultimate consignee and adding the notation ''by order of (name and address of consignee requesting the direct shipment).'' The notation must appear below the item description and must cite the SCL number followed by the three digit number of the consignee requesting the ''by order of'' shipment.

(2) *Reexports by a consignee.* An approved consignee may make a direct reexport shipment to a customer of another approved consignee on the same SCL by showing on the commercial invoice the name and address of the customer as ultimate consignee and adding the notation ''by order of (name and address of consignee requesting the direct shipment).''

[61 FR 12835, Mar. 25, 1996, as amended at 68 FR 50473, Aug. 21, 2003]

§ 752.8 SCL application review process.

(a) *Scope.* Under an SCL, you are authorized to make multiple exports and reexports without review and approval of each individual transaction by BIS. To approve an SCL, BIS must be satisfied that the persons benefiting from this license will adhere to the conditions of the license and the EAR, and that approval of the application will not be detrimental to U.S. national security, nonproliferation, or foreign policy interests. In reviewing and approving a specific SCL request, BIS retains the right to limit the eligibility of items or to prohibit the export, reexport, or transfer of items under the SCL to specific firms, individuals, or countries.

(b) *Elements of review.* To permit BIS to make such judgments, BIS will thoroughly analyze your past export and reexport transactions, inspect your export and reexport documents, and

interview company officials of both the applicant and the consignees, as necessary. If BIS cannot verify that an appropriate ICP will be implemented upon approval of the SCL by BIS, or establish the reliability of the proposed parties to the application, it may deny the application, or modify it by eliminating certain consignees, items, countries, or activities.

(c) *order requirement*. You do not need to have in your possession an order from the proposed consignee at the time you apply for an SCL. However, evidence of a consignee's firm intention to place orders on a continuing basis is required.

(d) *Criteria for review*. BIS will consider the following factors during the processing of your SCL application:

(1) The specific nature of proposed end-use and end-uses;

(2) The significance of the export in terms of its contribution to the design, development, production, stockpiling, or use of nuclear or chemical or biological weapons, or missiles;

(3) The types of assurances against design, development, production, stockpiling, or use of nuclear or chemical and biological weapons, or missiles that are included in the ICP;

(4) The nonproliferation credentials of the importing country;

(5) Corporate commitment of the resources necessary to implement and maintain an adequate ICP;

(6) Evidence of past licensing history of the applicant and consignees, and projected, continuous large volume exports and/or reexports;

(7) Reliability of all parties;

(8) Information on all parties' compliance with the provisions of the EAR; and

(9) All parties' knowledge of the EAR.

(e) *Application processing time-frames*. Upon receiving an SCL application, BIS may review the application for up to two weeks to determine whether the SCL application is complete. When all documentation requirements are met, BIS will register the application. After the date of registration, the SCL application will be processed according to the procedures described in part 750 of the EAR.

§752.9 Action on SCL applications.

(a) *Approval of SCL applications*—(1) *Validity period*. SCLs are valid for four years from the date of approval.

(2) *Extension of validity period*. You may request an extension of your valid SCL for an additional four years, but such requests must be received by BIS at least 30 days prior to the expiration of your SCL. If approved, Form BIS-748P and your letter requesting an extension will be validated and returned to you, extending the validity period for four years. No further extensions will be approved. A new application and support documentation is required at the end of that eight-year period. To apply for an extension, complete Form BIS-748P by completing Blocks 1, 2, 3, and 4. In addition, mark ''Special Comprehensive License'' in Block 5, place an ''x'' in ''Letter of Explanation'' in Block 6, and mark ''other'' in Block 8. Include your SCL number in Block 9, and indicate in Block 24 that you are requesting an extension to your SCL. Submit the completed Form BIS-748P and a statement on your company letterhead indicating:

(i) That you continue to abide by the provisions and conditions of the SCL; and

(ii) Any changes to the original SCL that you are requesting (see §752.10 of this part for procedures on changed circumstances).

(3) *Support documentation*—(i) *General information*. BIS will validate all approved support documentation with the Department of Commerce seal and date of validation.

(ii) *Form BIS-752, Form BIS-752-A, and Form BIS-748P-B*. With the approved SCL, you will receive two validated copies of each approved Form BIS-752, Statement by Consignee in Support of Special Comprehensive License and, if applicable, Form BIS-752-A, Reexport Territories, and Form BIS-748P-B, End-User Appendix. You must retain one copy, and send one copy to the approved consignee. You must also attach a letter to each approved Form BIS-752 that includes each of the following elements:

(A) A description of all recordkeeping requirements of the EAR applicable to the activities of the consignee;

(B) Information on any applicable reexport restrictions on items received by the consignee under the SCL;

(C) A description or copy of § 752.16 of this part, listing administrative actions that may be taken for improper use of, or failure to comply with, the SCL and its required procedures;

(D) A description of any special conditions or restrictions on the license applicable to the consignee, including approved lists of customers, countries, and items, when required;

(E) A description of the elements of the SCL holder's ICP relevant to the SCL consignee;

(F) A copy of the high risk customer profile contained in § 752.11(c)(13)(i) of this part, when required;

(G) A copy of your procedures for screening transactions to prevent violations of orders denying export privileges under the EAR:

(H) A notice that the consignee, in addition to other requirements, may not sell or otherwise dispose of any U.S. origin items when it knows that the items will be used in the activities prohibited by part 744 of the EAR;

(I) A requirement that the consignee acknowledge, in writing, receipt of this letter of transmittal outlining their obligations under the SCL, and certify that it will comply with all of the requirements, including implementation of an ICP if required by § 752.11 of this part; and

(J) A description of any special documentation requirements for consignees reexporting items to destinations having such requirements.

(4) *Special license conditions.* BIS may place special conditions on your SCL, such as restrictions on eligible items, countries, end-uses, end-users or activities, or a requirement that certain sales or transfers of items under the SCL are subject to prior reporting to BIS. Such special conditions will be listed on your SCL or in a letter from BIS to the SCL holder. You must inform all relevant consignees of all license conditions prior to making any shipments under the SCL.

(b) *Denial of SCL applications.* (1) If BIS intends to deny your SCL application, you will be notified and have opportunity to respond according to the procedures in § 750.6 of the EAR.

(2) BIS may at any time prohibit the sale or transfer of items under the SCL to specified individuals, companies, or countries. In such cases, the SCL holder must inform all consignees, and apply for a license described in part 748 of the EAR for subsequent transactions with such excluded parties.

(3) If a consignee is not approved, Form BIS-752 will be returned to the SCL holder with a letter explaining the reason for denial.

(4) If a particular destination is not approved, it will be removed from the appropriate Form BIS-752–A.

(c) *Return without action.* BIS may determine to return the SCL application without action. Under such circumstances, the application and all related documents will be returned to you along with a letter stating the reason for return of the license application, explaining the deficiencies or additional information required for reconsideration, or advising you to apply for a license described in part 748 of the EAR. BIS may return your entire application or merely documents pertaining to a specific consignee request.

[61 FR 12835, Mar. 25, 1996, as amended at 62 FR 25464, May 9, 1997; 70 FR 8719, Feb. 23, 2005]

§ 752.10 Changes to the SCL.

(a) *General information.* Certain changed circumstances regarding the SCL require prior approval from BIS before you make such changes, while others require only notification to BIS. Changes and notifications of license holder information must be initiated by submitting Form BIS-748P. Changes and notifications of consignee information must be initiated by submitting Form BIS-752.

(b) *Changes requiring prior written approval from BIS.* The following circumstances require prior written approval by BIS. Such requests must be submitted by the SCL holder, and changes are not effective until BIS approves the request. Upon approval of a change described in this paragraph, BIS will return to the SCL holder a validated copy of the request, indicating any changes that may have been made to your request, or any special conditions that may have been imposed.

(1) *Change of SCL holder company name.* You must submit to BIS Form BIS-748P, Multipurpose Application, for any change in the name of the SCL holder company. Complete Blocks 1, 2, 3, and 4. Mark ''Special Comprehensive License'' in Block 5, and ''other'' in Block 8. In Block 9, include your SCL number. Briefly indicate the purpose of the change in Block 24 (i.e., a change in company name). Enter the new information in the relevant Blocks, and complete Block 25. The SCL holder must send a copy of the validated Form BIS-748P to each approved consignee, and advise them to attach the copy of the validated form to their validated Form BIS-752.

(2) *Change in consignee name or address.* You must submit to BIS Form BIS-752, Statement by Consignee in Support of Special Comprehensive License, when requesting a change in consignee name, or if the consignee moves out of the country. The consignee must complete Block 3, mark ''change an existing consignee'' and provide the new consignee information in Block 4. In Block 9, explain change of address from ''Address A'' to ''Address B''. Also, complete Block 10 and the SCL holder signature Block information.

(3) *Addition of new consignee.* You must submit to BIS Form BIS-752 for requests to add consignees to an SCL. Complete Form BIS-752 in accordance with the instruction in Supplement No. 3 to this part, marking ''Add a New Consignee'' in Block 3. Use Block 9 to describe the proposed consignee's role in the activities authorized by the SCL. Form BIS-752 is not required if the proposed new consignee is a foreign government agency and the items will not be reexported. If Form BIS-752 is not required, the SCL holder may submit the request to add the foreign government agency to the SCL on company letterhead. You must include the proposed consignee's complete street address.

(4) *Change in reexport territories.* You must submit to BIS Form BIS-752 and Form BIS-752–A to add a country to a consignee's approved reexport territory. Upon approval of change in reexport territory, BIS will return to the SCL holder two validated copies of Form BIS-752 and Form BIS-752–A, Reexport Territories, along with any special conditions that may have been imposed.

(i) *Form BIS-752.* Complete Block 3 by marking ''Change an Existing Consignee''. In Block 4, enter the consignee name and consignee number. In Block 5, enter the SCL number. In Block 9, enter ''to add a country to the reexport territory''. Complete Block 10 and the SCL holder signature block information.

(ii) *Form BIS-752-A.* Complete Blocks 2 and 3. Mark each country that you are adding to your reexport territory.

(5) *Adding items to your SCL.* The following procedures apply to requests to add items to your SCL. Upon approval, BIS will send you a validated Form BIS-748P and, if applicable, Form BIS-748P-A. The SCL holder must send a copy of each validated form to all applicable consignees and attach a copy to their Form BIS-752.

(i) *Adding one item.* You must submit to BIS Form BIS-748P to request the addition of a single item to your SCL. Complete Blocks 1, 2, 3, and 4. Mark an ''x'' in the ''Special Comprehensive License'' box in Block 5, and ''other'' in Block 8. Include your SCL number in Block 9. In Block 24, enter ''add ECCN''. Complete items (a) and (j) in Block 22 and in Block 25.

(ii) *More than one item.* You must submit to BIS Form BIS-748P and Form BIS-748P-A to request to add more than one item to your SCL. Complete Form BIS-748P according to the instructions in paragraph (b)(5)(i) of this section. In Block 24, insert the phrase ''add ECCNs on attached Form BIS 748P-A. Complete Block 1 on Form BIS-748P-A by including the ''Application Control Number'' (found on Form BIS-748P). Complete Block 21 and 24, if needed, to describe any special circumstances (i.e., the new item will only be exported to specific consignees and will not be reexported).

(6) *Changes to add end-users.* You must submit to BIS Form BIS-752 and Form BIS-748P-B to add or change end-users to consignee authorizations. When you request multiple ''types of requests'' (i.e., additions or changes) on a single Form BIS-752; you must specify in Block 9, the type of request for

each end-user. Example: end-user XXX is to be ''added'' and end-user AAA is to be ''changed'' from ''end-user AAA'' to ''end-user ABA''.

(i) *Form BIS-752.* On Form BIS-752, complete Block 3.B, ''change an existing consignee''. Include the consignee number in Block 4. Include the SCL number in Block 5. In Block 9 insert the phrase ''To add an end-user'' or the phrase ''To change an end-user''. Complete Block 10 and include the SCL holder signature block information.

(ii) *Form BIS-748P-B.* On Form BIS-748-B, complete Blocks 1 and 19. In Block 21, cite the end-user requirement or condition (i.e., end-user XXX is requested in compliance with § 752.5(c)(8)(ii) of this part, which requires prior authorization to reexport chemicals under the SCL). Also, list the items (by ECCN and by description) that each end-user will receive and for what purpose, if approved by BIS.

(c) *Changes that do not require prior approval from BIS.* The following changes regarding your SCL do not require prior approval from BIS, however, such changes must be submitted on the appropriate forms no later than 30 days after the change has occurred. BIS will validate the forms, and return one copy to you for your records.

(1) *Change of SCL holder address, export contact information, or total value of license.* You must submit to BIS Form BIS-748P, Multipurpose Application, for any change in the SCL holder's address, export contact information, or total value of the license. Complete Blocks 1, 2, 3, and 4. Mark ''Special Comprehensive License'' in Block 5, and ''other'' in Block 8. In Block 9, include your SCL number. Briefly indicate the purpose of the change in Block 24. Enter the new information in the relevant Blocks. Complete Block 25. The SCL holder must send a copy of the validated Form BIS-748P to each approved consignee, and advise each approved consignee to attach the copy of the validated form to their validated Form BIS-752.

(2) *Deletion of consignees.* You must submit to BIS Form BIS-752 if you remove a consignee from your SCL. Complete Block 3.C. Indicate your consignee number in Block 4 and your SCL case number in Block 5. Explain the reason for the action in Block 9. Complete Block 10 and the SCL holder signature information. You must notify all remaining consignees if any consignee is no longer eligible to receive items under the SCL.

(3) *Changes in ownership or control of the SCL holder or consignee*—(i) *SCL holder.* You must notify BIS of changes in ownership or control by submitting to BIS Form BIS-748P. Complete Blocks 1, 2, 3 and 4, mark ''Special Comprehensive License'' in Block 5. Mark and ''x'' in ''other'' in Block 8 and indicate the SCL number in Block 9. Include the SCL holder information number in Block 14, and describe the change in Block 24, indicating the circumstances necessitating the change (i.e., mergers), and changes in persons who have official signing authority. Also complete Block 25.

(ii) *Consignee.* You must notify BIS of changes in ownership or control of the consignee company by submitting to BIS Form BIS-752. Complete Block 1. Mark and ''x'' in ''change an existing consignee'' in Block 3.B, and complete Blocks 4 and 5. In Block 9, describe the change, indicating the circumstances necessitating the change (i.e., mergers), and changes in persons who have official signing authority. Complete Block 10 and the SCL holder signature block information.

(iii) *Transfers and SCLs after control changes.* Note that under § 750.10(a) of the EAR you may not transfer a license—including a Special Comprehensive License—except with the prior written approval of BIS. In addition, BIS reserves the right to modify, revoke, or suspend an SCL in the event of a change in control of the previously approved SCL holder or consignee(s). In reviewing requests to transfer an SCL or consignee authority under an SCL and in reviewing changes in control of an SCL holder or approved consignee, BIS will consider the reliability of the new parties.

(4) *Remove reexport territories.* If you remove a country from a consignee's approved reexport territory, you must submit to BIS Form BIS-752 and Form BIS-752–A. You cannot add and delete countries on the same forms. Upon review of the change in reexport territory, BIS will return to the SCL holder

two validated copies of Form BIS-752 and Form BIS-752–A.

(i) *Form BIS-752.* Complete Block 1. Complete Block 3 by marking ''change an existing consignee''. In Block 4, enter the consignee name and consignee number. In Block 5, enter the SCL number. Complete Block 10 and the SCL holder signature block information.

(ii) *Form BIS-752–A.* Complete Blocks 1, 2, 3, and 5. Mark each country that you are removing from the reexport territory with an ''x''. Mark an ''x'' in ''Other Specify'' and insert ''delete''.

(5) *Remove items from your SCL.* The following procedures apply if you remove an item from your SCL. After review of the change by BIS, BIS will send you a validated Form BIS-748P and Form BIS-748P-A, if applicable. The SCL holder must send a copy of each validated form to all applicable consignees and attach a copy to their BIS-752.

(i) *Removing one item.* You must submit to BIS Form BIS-748P if you remove a single item from your SCL. Complete Blocks 1, 2, 3 and 5. Mark ''Special Comprehensive License'' in Block 5 and mark ''other'' in Block 8. Include your SCL number in Block 9. State ''delete ECCN'' in Block 24. Complete items (a) and (j) in Block 22 and Block 25.

(ii) *Removing more than one item.* You must submit to BIS Form BIS-748P and Form BIS 748P-A if you remove more than one item from your SCL. Complete Form BIS-748P according to the instructions in paragraph (a)(5)(i) of this section, except in Block 24, state ''delete ECCNs on attached BIS-748P-A''. Complete Form BIS 748P-A by including the ''application control number'' (found on Form BIS-748P) in Block 1. Complete items (a) and (j) in Block 22 for each item you are removing from your SCL.

(6) *Remove end-users from your SCL.* You must submit to BIS Form BIS-752 if you remove end-users from consignee authorizations. (Use Form BIS-748P-B, if additional space is needed.) After review by BIS, BIS will return to the SCL holder two validated copies of Form BIS-752 and Form BIS-748P-B, which will include any special instructions that may be necessary. You must send one copy of Forms BIS-752 and BIS-748P to the relevant consignee.

(i) *Form BIS-752.* On Form BIS-752, complete Block 1 and 3.B, ''change an existing consignee''. Include the consignee number in Block 4. Include the SCL case number in Block 5. In Block 9, include the phrase ''to remove an end-user(s)'' followed by the name/address information. Complete Block 10 and the SCL holder signature Block information.

(ii) *Form BIS-748P-B.* If there was not enough space on Form BIS-752, Block 9, you may continue the information on Form BIS-748P-B, in Block 24. Complete the information in Block 1. Do not complete Block 19. Block 19 is only used to add end-users.

(d) *Changes made by BIS.* If BIS revises or adds an ECCN to the CCL, or a country's eligibility already covered by the SCL changes, BIS will publish the change in the FEDERAL REGISTER. The SCL holder is responsible for immediately complying with any changes to the scope of the SCL.

[62 FR 25464, May 9, 1997]

§ 752.11 Internal Control Programs.

(a) *Scope*—(1) *Introduction.* It is through Internal Control Programs (ICPs) that the SCL holder and the consignee assure that exports and reexports are not made contrary to the EAR. The elements of your ICP will reflect the complexity of the activities authorized under the SCL, the countries and items involved, and the relationship between the SCL holder and the approved consignees.

(2) *General requirements.* Prior to making any exports and reexports under an SCL, you and your consignees, when required, must implement an ICP that is designed to ensure compliance with the SCL and the EAR. This section provides an overview of the elements that comprise an ICP. You may obtain from BIS at the address found in § 752.17 of this part guidelines to assist you in developing an adequate ICP. You must submit with your application for an SCL a copy of your proposed ICP, along with any consignee ICPs, when required, incorporating the elements described in this section, as appropriate. BIS may

require you to modify your ICP depending upon the activities, items, and destinations requested on your application for an SCL.

(b) *Requirements.* You may not make any shipments under an SCL until you and your consignees, when appropriate, implement all the elements of the required ICP. If there are elements that you consider inapplicable, you must explain the reasons for this determination at the time of application for an SCL. Existence of a properly constructed ICP will not relieve the SCL holder of liability for improper use or failure to comply with the requirements of the EAR.

(c) *Elements of an ICP.* Following is a list of ICP elements. The specific elements that should be included in your ICP depend upon the complexity of the activities authorized under your SCL, the countries and items involved, and the relationship between the SCL holder and the approved consignees.

(1) A clear statement of corporate policy communicated to all levels of the firm involved in exports and reexports, traffic, and related functions, emphasizing the importance of SCL compliance;

(2) Identification of positions (and maintenance of current list of individuals occupying the positions) in the SCL holder firm and consignee firms responsible for compliance with the requirements of the SCL procedure;

(3) A system for timely distribution to consignees and verification of receipt by consignees of regulatory materials necessary to ensure compliance with the EAR;

(4) A system for screening transactions to prevent violations of orders denying export privileges under the EAR;

(5) A system for assuring compliance with items and destination restrictions, including controls over reexports by consignees and direct exports to consignee customers;

(6) A compliance review program covering the SCL holder and extending to all consignees;

(7) A system for assuring compliance with controls on exports and reexports of nuclear items and to nuclear end-uses described in §§ 742.3 and 744.2 of the EAR;

(8) An on-going program for informing and educating employees responsible for processing transactions involving items received under the SCL about applicable regulations, limits, and restrictions of the SCL;

(9) A program for recordkeeping as required by the EAR;

(10) An order processing system that documents employee clearance of transactions in accordance with applicable elements of the company ICP;

(11) A system for monitoring in-transit shipments and shipments to bonded warehouses and free trade zones;

(12) A system for notifying BIS promptly if the SCL holder knows that a consignee is not in compliance with terms of the SCL;

(13) A system to screen against customers who are known to have, or are suspected of having, unauthorized dealings with specially designated regions and countries for which nonproliferation controls apply;

(i) The signs of potential diversion that you should take into consideration include, but are not limited to, the following:

(A) The customer or purchasing agent is reluctant to offer information about the end-use (or end-user) of a product.

(B) The product's capabilities do not fit the buyer's line of business; for example, a small bakery places an order for several sophisticated lasers.

(C) The product ordered is incompatible with the technical level of the country to which the product is being shipped. For example, semiconductor manufacturing equipment would be of little use in a country without an electronics industry.

(D) The customer has little or no business background. For example, financial information unavailable from normal commercial sources and corporate principals unknown by trade sources.

(E) The customer is willing to pay cash for a very expensive item when the terms of the sale call for financing.

(F) The customer is unfamiliar with the product's performance characteristics but still wants the product.

(G) Routine installation, training or maintenance services are declined by the customer.

(H) Delivery dates are vague, or deliveries are planned for out-of-the-way destinations.

(I) A freight forwarding firm is listed as the product's final destination.

(J) The shipping route is abnormal for the product and destination.

(K) Packaging is inconsistent with the stated method of shipment or destination.

(L) When questioned, the buyer is evasive or unclear about whether the purchased product is for domestic use, export, or reexport.

(M) Customer uses only a ''P.O. Box'' address or has facilities that appear inappropriate for the items ordered.

(N) Customer's order is for parts known to be inappropriate, or for which the customer appears to have no legitimate need (e.g., there is no indication of prior authorized shipment of system for which the parts are sought).

(O) Customer is known to have, or is suspected of having unauthorized dealings with parties and/or destinations in ineligible countries.

(ii) When any of the above characteristics have been identified, but through follow-up inquiries or investigation have not been satisfactorily resolved, the consignee should not transact any business with the customer under the SCL. Apply for a license according to part 748 of the EAR. You should explain the basis for the concern regarding the proposed customer, and state that you are an SCL consignee. Also, cite the SCL number, and your consignee number;

(14) A system for assuring compliance with controls over exports and reexports for missile-related end-uses and end-users described in §744.3 of the EAR;

(15) A system for assuring compliance with control over exports and reexports of chemical precursors and biological agents and related items and end-uses described in §§742.2 and 744.4 of the EAR;

[61 FR 12835, Mar. 25, 1996, as amended at 62 FR 25466, May 9, 1997; 70 FR 8719, Feb. 23, 2005]

§ 752.12 Recordkeeping requirements.

(a) *SCL holder and consignees.* In addition to the recordkeeping requirements of part 762 of the EAR, the SCL holder and each consignee must maintain copies of manuals, guidelines, policy statements, internal audit procedures, reports, and other documents making up the ICP of each party included under an SCL and all regulatory materials necessary to ensure compliance with the SCL, such as relevant changes to the EAR, product classification, additions, deletions, or other administrative changes to the SCL, transmittal letters and consignee's confirmations of receipt of these materials. Each SCL holder and each consignee must maintain a record of its procedures for screening transactions to prevent violations of orders denying export privileges.

(b) *SCL holder.* The SCL holder is responsible for complying with the special reporting requirements for exports of certain commodities, software and technology under the Wassenaar Arrangement as described in §743.1 of the EAR.

(c) *Consignees.* All consignees must retain all records of the types of activities identified in §752.2(a)(3) of this part. Records on such sales or reexports must include the following:

(1) Full name and address of individual or firm to whom sale or reexport was made;

(2) Full description of each item sold or reexported;

(3) Units of quantity and value of each item sold or reexported; and

(4) Date of sale or reexport.

[61 FR 12835, Mar. 25, 1996, as amended at 66 FR 461, Jan. 3, 2002; 70 FR 8719, Feb. 23, 2005]

§ 752.13 Inspection of records.

(a) *Availability of records.* You and all consignees must make available all of the records required by §752.12 of this part and §762.2 of the EAR for inspection, upon request, by BIS or by any other representative of the U.S. Government, in accordance with part 762 of the EAR.

(b) *Relationship of foreign laws.* Foreign law may prohibit inspection of records by a U.S. Government representative in the foreign country where the records are located. In that event, the consignee must submit with the required copies of Form BIS-752 an

alternative arrangement for BIS to review consignee activities and determine whether or not the consignee has complied with U.S. export control laws and regulations, which must be approved by BIS.

(c) *Failure to comply.* Parties failing to comply with requests to inspect documents may be subject to orders denying export privileges described in part 764 of the EAR or to the administrative actions described in part 766 of the EAR.

§ 752.14 System reviews.

(a) *Post-license system reviews.* BIS may conduct system reviews of the SCL holder as well as any consignee. Generally, BIS will give reasonable notice to SCL holders and consignees in advance of a system review. The review will involve interviews with company officials, the inspection of records, and the review of ICPs. BIS may conduct special unannounced system reviews if BIS has reason to believe an SCL holder or consignee has improperly used or has failed to comply with the SCL.

(b) *Other reviews.* BIS may require an SCL holder or consignee to submit to its office a list of all sales made under the SCL during a specified time-frame. Also, BIS may request from any consignee a list of transactions during a specified period involving direct shipments of items received under SCLs to customers of other consignees and sales to customers in reexport territories authorized by BIS on the consignee's validated Form BIS-752.

§ 752.15 Export clearance.

(a) *Shipper's Export Declaration (SED) or Automated Export System (AES) record.* The SED or AES record covering an export made under an SCL must be prepared in accordance with requirements of the Foreign Trade Statistics Regulations (15 CFR part 30) and § 758.1 of the EAR.

(1) *Item descriptions.* Item descriptions on the SED or AES record must indicate specifically the ECCN and item description conforming to the applicable CCL description and incorporating any additional information where required by Schedule B (*e.g.,* type, size, name of specific item, etc.).

(2) *Value of shipments.* There is no value limitation on shipments under the SCL; however, you must indicate the value of each shipment on the respective SED or AES record.

(3) *SCL number.* The SED or AES record must include the SCL number followed by a blank space, and then the consignee number identifying the SCL's approved consignee to whom the shipment is authorized.

(b) *Destination control statement.* The SCL holder and consignees must enter a destination control statement on all copies of the bill of lading or air waybill, and the commercial invoice covering exports under the SCL, in accordance with the provisions of § 758.6 of the EAR. Use of a destination control statement does not preclude the consignee from reexporting to any of the SCL holder's other approved consignees or to other countries for which specific prior approval has been received from BIS. In such instances, reexport is not contrary to U.S. law and, therefore, is not prohibited. Another destination control statement may be required or approved by BIS on a case-by-case basis.

[61 FR 12835, Mar. 25, 1996, as amended at 62 FR 25466, May 9, 1997; 65 FR 42570, July 10, 2000; 68 FR 50473, Aug. 21, 2003]

§ 752.16 Administrative actions.

(a)(1) If BIS is not satisfied that you or other parties to the SCL are complying with all conditions and requirements of the SCL, or that ICPs employed by parties to such licenses are not adequate, BIS may, in addition to any enforcement action pursuant to part 764 of the EAR, take any licensing action it deems appropriate, including the following:

(i) Suspend the privileges under the SCL in whole or in part, or impose other restrictions;

(ii) Revoke the SCL in whole or in part;

(iii) Prohibit consignees from receiving items authorized under the SCL, or otherwise restrict their activities under the SCL;

(iv) Restrict items that may be shipped under the SCL;

(v) Require that certain exports, transfers or reexports be individually authorized by BIS;

(vi) Restrict parties to whom consignees may sell under the SCL; and

(vii) Require that an SCL holder provide an audit report to BIS of selected consignees or overseas operations.

(2) Whenever necessary to protect the national interest of the U.S., BIS may take any licensing action it deems appropriate, without regard to contracts or agreements entered into before such administrative action, including those described in paragraphs (a)(1) (i) through (vii) of this section.

(b) *Appeals.* Actions taken pursuant to paragraph (a) of this section may be appealed under the provisions of part 756 of the EAR.

§ 752.17 BIS mailing addresses.

You should use the following addresses when submitting to BIS applications, reports, documentation, or other requests required in this part 752: Bureau of Industry and Security, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044, ''Attn: Special Licensing and Compliance Division''. If you wish to send the required material via overnight courier, use the following address: Bureau of Industry and Security, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Room 2705, Washington D.C. 20230 ''Attn: Special Licensing and Compliance Division''. You may also reach the Special Licensing and Compliance Division by phone (202)482–0062, or telefacsmile on (202)501–6750.

SUPPLEMENT NO. 1 TO PART 752—INSTRUCTIONS FOR COMPLETING FORM BIS-748P, MULTIPURPOSE APPLICATION FOR REQUESTS FOR SPECIAL COMPREHENSIVE LICENSES

All information must be legibly typed within the lines for each Block or box, except where a signature is required. Where there is a choice of entering a telephone or telefacsimile number, and you chose a telefacsimile number, identify the number with the letter ''F'' immediately following the number.

Complete Blocks 1, 2, 3 and 4 according to the instructions in Supplement No. 1 to part 748 of the EAR.

Block 5: Type of Application. Enter an ''x'' in the Special Comprehensive License box.

Block 6: Documents Submitted with Application. Enter an ''x'' in the appropriate boxes to indicate which forms are attached.

Block 7: Documents on File with Applicant. Leave blank.

Block 8: Special Comprehensive License. Complete by entering an ''x'' in the appropriate boxes to indicate which forms are attached.

Block 9: Special Purpose. This block should only be completed when requesting changes to an approved SCL.

Block 10: Resubmission Application Control Number. Leave blank.

Block 11: Replacement License Number. This Block should be completed by previous special license holders. If you have had a special license in the past, enter that license number (i.e., V #, SS #, DL #, or SF ##). A new SCL number will be assigned upon approval of your SCL application.

Block 12: Items Previously Exported. Leave blank.

Block 13: Import/End-User Certificate. Leave blank.

Block 14: Applicant. Complete according to the instructions in Supplement No. 1 to part 748 of the EAR.

Block 15: Other Party Authorized to Receive License. Complete, if applicable, according to the instructions in Supplement No. 1 to part 748 of the EAR.

Block 16: Purchaser. Leave blank.

Block 17: Intermediate Consignee. Leave blank.

Block 18: Ultimate Consignee. Leave blank.

Block 19: End-User. Leave blank.

Block 20: Original Ultimate Consignee. Leave blank.

Block 21: Specific End-Use. Leave blank.

Block 22: For one item, complete sub-blocks (a) through (j). For multiple items, complete Form BIS 748P–A.

Block 23: Total Application Dollar Value. Enter the projected total dollar value of all transactions you anticipate making throughout the entire validity period of the SCL.

Block 24: Additional Information. Enter additional data pertinent to the transaction.

Block 25: Signature. Complete according to the instructions in Supplement No. 1 to part 748 of the EAR.

[62 FR 25466, May 9, 1997]

SUPPLEMENT NO. 2 TO PART 752—INSTRUCTIONS FOR COMPLETING FORM BIS-748P-B, ''ITEM ANNEX''

All information must be legibly typed within the lines for each block or box.

Block 1: Application Control No. Enter the application control number found on Form BIS-748P.

Block 2: Subtotal. Leave blank.

Block 21: Continuation of Specific End-Use Information. Complete as necessary to fully describe the transaction(s).

Block 22:

(a) ECCN. Enter the Export Control Classification Number that corresponds to the item you wish to export or reexport under the SCL.

(b) CTP. You must complete this block if you intend to export or reexport a digital computer. Instructions on calculating the CTP are contained in a Technical Note at the end of Category 4 in the CCL.

(c)–(i): Leave blank.

(j) Manufacturer's Description. Enter a detailed description of the item proposed for export or reexport. Brochures or product literature may be supplied at the option of the applicant. However, such information may expedite review and processing of your application.

Block 24: Continuation of Additional Information. Enter any identifying information that defines the scope of items you are requesting to export or reexport under the SCL. For example, ''4A004 except items controlled for MT reasons''.

[61 FR 12835, Mar. 25, 1996, as amended at 62 FR 25466, May 9, 1997]

SUPPLEMENT NO. 3 TO PART 752—INSTRUCTIONS ON COMPLETING FORM BIS-752 ''STATEMENT BY CONSIGNEE IN SUPPORT OF SPECIAL COMPREHENSIVE LICENSE''

All information must be legibly typed within the lines for each Block or Box, except where a signature is required.

Block 1: Application Control No. Enter the ''Control No.'' that is pre-printed on Form BIS-748P, Multipurpose Application. You may obtain this information from the applicant.

Block 2: Consignee ID Number. Leave blank.

Block 3: Type of Request. For new applications, leave blank.

Block 4: Consignee Information. Enter the complete address where the consignee is located. A Post Office (P.O.) Box alone is NOT acceptable, but may be included in this Block 4 for mailing purposes, along with a complete address. If records required by §752.12 of this part and part 762 of the EAR are maintained/stored at a separate address, indicate the address in Block 9. In the absence of a complete address, Form BIS-752 will be returned without action.

Block 5: Exporter Information. Enter the complete address of the exporter. Leave the SCL Case No. box blank for new applications and enter the SCL Case No. for ''change'' actions.

Block 6: Description of Items. Provide a summary description of the items proposed for import and reexport under the SCL. Firms that will not receive the entire range of items under a particular ECCN identified on Form BIS-748P-B should describe only the items they will receive under the SCL. In some instances, consignee approval will be contingent on the nature of the item requested.

Block 7: Consignee's Business and Relationships.

(i) Item (a): Identify the nature of your company's principal business as it affects the disposition of items to be imported and reexported under this license by including the appropriate letter choice(s) from the following: (a) manufacturer, (b) distributor, (c) assembler, (d) sales agent, (e) warehouse, (f) service facility, or (g) other. For other, provide an explanation in Block 9.

(ii) Item (b): Indicate the relationship between your company and the applicant's company by providing the appropriate letter choice(s) from the following: (a) wholly-owned subsidiary, (b) independent company, (c) joint venture company, (d) controlled-in-fact affiliate, (e) contractor/subcontractor, or (f) other. For other, provide an explanation in Block 9.

(iii) Item (c): Enter the number of years of relationship between your company and the applicant company.

(iv) Item (d): Enter the estimated dollar volume of sales or other transactions with the SCL holder during the last twelve month period before submission of the application for an SCL.

(v) Item (e): Enter an estimated dollar volume proposed under this application for the validity period of the SCL.

Block 8: Disposition or Use of Items.

(i) Item (a): Complete this Block if your company is requesting involvement in end-user activities that involves importing items for the company's own use (e.g., as capital equipment).

(ii) Item (b): Complete this Block if your company is requesting involvement in end-user activities that incorporates items received under the SCL into a new end-product that results in a change of identity of the U.S.-item (e.g., U.S.-origin semiconductor devices are included in a foreign-origin test instrument). Under Block 9, Additional Information, describe the new end-product more specifically and state how and to what extent the U.S.-origin items will be used. Complete and attach Form BIS-752–A, Reexport Territories.

(iii) Item (c): Complete this Block if your company is requesting authorization to reexport items for service and/or repair. Complete and attach Form BIS-752–A. If you plan to reexport to end-users that require prior approval by BIS, also complete and attach Form BIS-748P-B, End-User Appendix.

(iv) Item (d): Complete this Block if your company plans to retransfer/resell within the country of import. State the end-use of your customers. If you plan to retransfer to end-users that require prior approval by BIS,

complete and attach Form BIS-748P-B, End-User Appendix.

(v) Item (e): Complete this Block if your company plans to reexport. Complete and attach Form BIS-752–A. If you plan to reexport to end-users that require prior approval by BIS, complete and attach Form BIS-748P-B, End-User Appendix.

(vi) Item (f): This item should be completed for ''other'' activities that are not defined in Block 8 paragraphs (a) through (e). Describe the proposed activities fully in Block 9 or in a letter submitted with this Form, and complete and submit Form BIS-752–A, indicating the countries to which the products derived from these activities will be exported.

Block 9: Additional Information. In addition to any information that supports other Blocks, indicate whether your company is an active consignee under any other license issued by BIS. Indicate the license and consignee numbers.

Block 10: Signature of Official of Ultimate Consignee. Include an original signature. The authority to sign Form BIS-752 may not be delegated to any person whose authority to sign is not inherent in his/her official position with the company. The signing official must include their official title with their signature. All copies must be co-signed by the applicant in the SCL holder signature block and submitted with the application to BIS.

[62 FR 25466, May 9, 1997, as amended at 65 FR 42568, July 10, 2000]

SUPPLEMENT NO. 4 TO PART 752—INSTRUCTIONS FOR COMPLETING FORM BIS-752–A, REEXPORT TERRITORIES

All information must be legibly typed within the lines for each Block or Box.

Block 1: Application Control No. Insert the application control No. from the relevant Form BIS-748P.

Block 2: SCL License No. Leave blank for new SCL applications. For changes to existing SCLs, include the original SCL number.

Block 3: Consignee No. Leave blank for new SCL applications. For changes to existing SCLs, include the consignee number that was provided on the original license.

Block 4: Continuation of BIS-752 Question No. Mark an ''x'' in the box next to each country you wish to select. See §752.4 of this part for countries that are not eligible for the SCL. You may request a country that is not included on Form BIS-752-A by marking an ''x'' in the ''other'' box and including the country name.

[62 FR 25467, May 9, 1997]

SUPPLEMENT NO. 5 TO PART 752—INSTRUCTIONS FOR COMPLETING FORM BIS–748–B, END-USER APPENDIX

All information must be legibly typed within the lines for each Block or Box.

Block 1: Application Control No. Insert the application control No. from the relevant Form BIS-748P.

Block 19: End-user. Enter each end-user's complete name, street address, city, country, postal code and telephone or facsimile number. Post Office (P.O.) Boxes are not acceptable.

Block 21: Continuation of Specific End-Use Information. Include any additional information that may help BIS in reviewing and making a determination on your application, such as the special safeguards that will be implemented to prevent diversion.

Block 24: Continuation of Additional Information. Enter additional data pertinent to the transaction as required by part 752. Enter the consignee name and complete address of the consignee responsible for the end-user(s) (i.e., recordkeeping and ICP screening, etc.).

[62 FR 25467, May 9, 1997]

PART 754—SHORT SUPPLY CONTROLS

Sec.
754.1 Introduction.
754.2 Crude oil.
754.3 Petroleum products not including crude oil.
754.4 Unprocessed western red cedar.
754.5 Horses for export by sea.
754.6 Registration of U.S. agricultural commodities for exemption from short supply limitations on export.
754.7 Petitions for the imposition of monitoring or controls on recyclable metallic materials; Public hearings.

SUPPLEMENT NO. 1 TO PART 754—PETROLEUM AND PETROLEUM PRODUCTS
SUPPLEMENT NO. 2 TO PART 754—UNPROCESSED WESTERN RED CEDAR
SUPPLEMENT NO. 3 TO PART 754—STATUTORY PROVISIONS DEALING WITH EXPORTS OF CRUDE OIL

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); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

SOURCE: 61 FR 12844, Mar. 25, 1996, unless otherwise noted.

§ 754.1 Introduction.

(a) *Scope.* In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C. This part implements the provisions of section 7, ''Short Supply Controls,'' of the Export Administration Act (EAA) and similar provisions in other laws that are not based on national security and foreign policy grounds.

(b) *Contents.* Specifically, this part deals with the following:

(1) It sets forth the license requirements and licensing policies for commodities that contain the symbol ''SS'' in the ''Reason for Control'' part of ''License Requirements'' section of the applicable Export Control Classification Number (ECCN) identified on the Commerce Control List (Supplement No. 1 to part 774 of the EAR). In appropriate cases, it also provides for License Exceptions from the short supply licensing requirements described in this part. The license requirements and policies that are described in this part cover the following:

(i) Crude oil described by ECCN 1C981 (Crude petroleum, including reconstituted crude petroleum, tar sands, and crude shale oil listed in Supplement No. 1 to this part). For specific licensing requirements for these items, see § 754.2 of this part.

(ii) Petroleum products other than crude oil listed in Supplement No. 1 to this part, that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR-produced or -derived commodities described by the following ECCNs. For specific licensing requirements for these items, see § 754.3 of this part.

(A) ECCN 1C980 (Inorganic chemicals);

(B) ECCN 1C982 (Other petroleum products);

(C) ECCN 1C983 (Natural gas liquids and other natural gas derivatives); and

(D) ECCN 1C984 (Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy).

(iii) Unprocessed western red cedar described by ECCN 1C988 (Western red cedar (thuja plicata) logs and timber, and rough, dressed and worked lumber containing wane listed in Supplement No. 2 to this part). For specific licensing requirements for these items, see § 754.4 of this part.

(iv) Horses exported by sea for slaughter covered by ECCN 0A980 (Horses for export by sea). For specific licensing requirements, see § 754.5 of this part.

(2) It incorporates statutory provisions for the registration of U.S. agricultural commodities for exemption from short supply limitations on export (see § 754.6 of this part); and

(3) It incorporates statutory provisions for the filing and review of petitions seeking the imposition of monitoring or controls on recyclable metallic materials and procedures for related public hearings (see § 754.7 of this part).

(c) *Reexports.* Reexports of items controlled by this part require a license only if such a requirement is specifically set forth in this part or is set forth on the license authorizing the export from the United States.

(d) *Additional requirements for embargoed destinations.* For exports involving embargoed destinations, you must satisfy the requirements of this part and also of part 746 of the EAR (Embargoes and Other Special Controls).

§ 754.2 Crude oil.

(a) *License requirement.* As indicated by the SS notation in the ''License Requirements'' section of ECCN 1C981 on the CCL (Supplement No. 1 to part 774 of the EAR), a license is required for the export of crude oil to all destinations, including Canada. See paragraph (h) of this section for a License Exception permitting the export of certain oil from the Strategic Petroleum Reserves, paragraph (i) of this section for a License Exception for certain shipments of samples, and paragraph (j) of this section for a License Exception for exports of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652). ''Crude oil'' is defined as a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure

after passing through surface separating facilities and which has not been processed through a crude oil distillation tower. Included are reconstituted crude petroleum, and lease condensate and liquid hydrocarbons produced from tar sands, gilsonite, and oil shale. Drip gases are also included, but topped crude oil, residual oil, and other finished and unfinished oils are excluded.

(b) *License policy*. (1) BIS will approve applications to export crude oil for the following kinds of transactions if BIS determines that the export is consistent with the specific requirements pertinent to that export:

(i) Exports from Alaska's Cook Inlet (see paragraph (d) of this section);

(ii) Exports to Canada for consumption or use therein (see paragraph (e) of this section);

(iii) Exports in connection with refining or exchange of strategic petroleum reserve oil (see paragraph (f) of this section);

(iv) Exports of heavy California crude oil up to an average volume not to exceed 25 MB/D (see paragraph (g) of this section);

(v) Exports that are consistent with international agreements as described in the statutes listed in paragraph (c) of this section;

(vi) Exports that are consistent with findings made by the President under an applicable statute, including the statutes described in paragraph (c) of this section; and

(vii) Exports of foreign origin crude oil where, based on written documentation satisfactory to BIS, the exporter can demonstrate that the oil is not of U.S. origin and has not been commingled with oil of U.S. origin. See paragraph (h) of this section for the provisions of License Exception SPR permitting exports of certain crude oil from the Strategic Petroleum Reserve.

(2) BIS will review other applications to export crude oil on a case-by-case basis and, except as provided in paragraph (c) of this section, generally will approve such applications if BIS determines that the proposed export is consistent with the national interest and the purposes of the Energy Policy and Conservation Act (EPCA). Although BIS will consider all applications for approval, generally, the following kinds of transactions will be among those that BIS will determine to be in the national interest and consistent with the purposes of EPCA.

(i) The export is part of an overall transaction:

(A) That will result directly in the importation into the United States of an equal or greater quantity and an equal or better quality of crude oil or of a quantity and quality of petroleum products listed in Supplement No. 1 to this part that is not less than the quantity and quality of commodities that would be derived from the refining of the crude oil for which an export license is sought;

(B) That will take place only under contracts that may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened; and

(C) In which the applicant can demonstrate that, for compelling economic or technological reasons that are beyond the control of the applicant, the crude oil cannot reasonably be marketed in the United States.

(ii) Exports involving temporary exports or exchanges that are consistent with the exceptions from the restrictions of the statutes listed in paragraph (c) of this section.

(c) *Additional statutory controls.* (1) The following statutes provide controls on the export of domestically produced crude oil based on its place of origin or mode of transport. If such other statutory controls apply, an export may only be approved if the President makes the findings required by the applicable law.

(i) Section 201 of Public Law 104–58, entitled ''Exports of Alaskan North Slope Oil,'' provides for exports of domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (''TAPS crude oil''). The President made a determination on April 28, 1996.

(ii) The Mineral Leasing Act of 1920 restricts exports of domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28(u) of that Act (30 U.S.C. 185(u)) (''MLA'').

(iii) The Outer Continental Shelf Lands Act restricts exports of crude oil produced from the outer Continental Shelf (29 U.S.C. 1354) (''OCSLA'').

(iv) The Naval Petroleum Reserves Production Act restricts the export of crude oil produced from the naval petroleum reserves (10 U.S.C. 7430) (''NPRPA'').

(2) Supplement No. 3 to this part describes the relevant statutory provisions. In cases where a particular statute applies, a Presidential finding is necessary before the export can be authorized. You should note that in certain cases it is possible that more than one statute could apply to a particular export of crude oil.

(d) *Exports from Alaska's Cook Inlet.* The licensing policy is to approve applications for exports of crude oil that was derived from the state-owned submerged lands of Alaska's Cook Inlet and has not been, or will not be, transported by a pipeline over a federal right-of-way subject to the MLA or the Trans-Alaska Pipeline Authorization Act.[1]

(e) *Exports to Canada for consumption or use therein.* (1) Except for TAPS crude oil, the licensing policy is to approve applications for exports of crude oil to Canada for consumption or use therein.

(2) The licensing policy for TAPS crude oil is to approve applications for an average of no more than 50,000 barrels of oil per day for consumption or use in Canada, subject to the following procedures and conditions:

(i) Any ocean transportation of the commodity will be made by vessels documented for United States coastwise trade under 46 U.S.C. 12106. Only barge voyages between the State of Washington and Vancouver, British Columbia, and comparable barge movements across waters between the U.S. and Canada may be excluded from this requirement. The Bureau of Industry and Security will determine, in consultation with the Maritime Administration, whether such transportation is ''ocean'' transportation; and

(ii) Authorization to export TAPS crude oil will be granted on a quarterly basis. Applications will be accepted by BIS no earlier than two months prior to the beginning of the calendar quarter in question, but must be received no later than the 25th day of the second month preceding the calendar quarter. For example, for the calendar quarter beginning April 1 and ending June 30, applications will be accepted beginning February 1, but must be received no later than February 25.

(iii) The quantity stated on each application must be the total number of barrels for the quarter, not a per-day rate. This quantity must not exceed 50,000 barrels times the number of calendar days in the quarter.

(iv) Each application must include support documents providing evidence that the applicant has either:

(A) Title to the quantity of barrels stated in the application; or

(B) A contract to purchase the quantity of barrels stated in the application.

(v) The quantity of barrels authorized on each license for export during the calendar quarter will be determined by the BIS as a prorated amount based on:

(A) The quantity requested on each license application; and

(B) The total number of barrels that may be exported by all license holders during the quarter (50,000 barrels per day multiplied by the number of calendar days during the quarter).

(vi) Applicants may combine their licensed quantities for as many as four consecutive calendar quarters into one or more shipments, provided that the validity period of none of the affected licenses has expired.

(vii) BIS will carry forward any portion of the 50,000 barrels per day quota that has not been allocated during a calendar quarter, except that no un-allocated portions will be carried over to a new calendar year. The un-allocated volume for a calendar quarter will be added, until expended, to the quotas available for each quarter through the end of the calendar year.

(f) *Refining or exchange of Strategic Petroleum Reserve Oil.* (1) Exports of crude

[1] On November 6, 1985, the Secretary of Commerce determined that the export of crude oil derived from State waters in Alaska's Cook Inlet is consistent with the national interest and the purposes of the Energy Policy and Conservation Act.

oil withdrawn from the Strategic Petroleum Reserve (SPR) will be approved if BIS, in consultation with the Department of Energy, determines that such exports will directly result in the importation into the United States of refined petroleum products that are needed in the United States and that otherwise would not be available for importation without the export of the crude oil from the SPR.

(2) Licenses may be granted to export, for refining or exchange outside of the United States, SPR crude oil that will be sold and delivered, pursuant to a drawdown and distribution of the SPR, in connection with an arrangement for importing refined petroleum products into the United States.

(3) BIS will approve license applications subject to the following conditions:

(i) You must provide BIS evidence of the following:

(A) A title to the quantity of barrels of SPR crude stated in the application; or

(B) A contract to purchase, for importation, into the United States the quantity of barrels of SPR crude stated in the application.

(ii) The following documentation must be submitted to BIS no later than fourteen days following the date that the refined petroleum products are imported in the U.S. in exchange for the export of SPR crude:

(A) Evidence that the exporter of the SPR crude has title to or a contract to purchase refined petroleum product;

(B) A copy of the shipping manifest that identifies the refined petroleum products; and

(C) A copy of the entry documentation required by the U.S. Customs Service that show the refined petroleum products were imported into the United States, or a copy of the delivery receipt when the refined petroleum products are for delivery to the U.S. military outside of the United States.

(4) You must complete both the export of the SPR crude and the import of the refined petroleum products no later than 30 days following the issuance of the export license, except in the case of delivery to the U.S. military outside of the United States, in which case the delivery of the refined petroleum products must be completed no later than the end of the term of the contract with the Department of Defense.

(g) *Exports of certain California crude oil.* The export of California heavy crude oil having a gravity of 20.0 degrees API or lower, at an average volume not to exceed 25 MB/D, will be authorized as follows.

(1) Applicants must submit their applications on Form BIS–748 to the following address: Office of Exporter Services, ATTN: Short Supply Program—Petroleum, Bureau of Industry and Security, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

(2) The quantity stated on each application must be the total number of barrels proposed to be exported under the license—not a per-day rate. This quantity must not exceed 25 percent of the annual authorized export quota. Potential applicants may inquire of BIS as to the amount of the annual authorized export quota available.

(3) Each application shall be accompanied by a certification by the applicant that the California heavy crude oil:

(i) Has a gravity of 20.0 degrees API or lower;

(ii) Was produced within the state of California, including its submerged state lands;

(iii) Was not produced or derived from a U.S. Naval Petroleum Reserve; and

(iv) Was not produced from submerged lands of the U.S. Outer Continental Shelf.

(4) Each license application must be based on an order, and be accompanied by documentary evidence of such an order (e.g., a letter of intent).

(5) BIS will adhere to the following procedures for licensing exports of California heavy crude oil:

(i) BIS will issue licenses for approved applications in the order in which the applications are received (date-time stamped upon receipt by BIS), with the total quantity authorized for any one license not to exceed 25 percent of the annual authorized volume of California heavy crude oil.

(ii) BIS will approve only one application per month for each company and its affiliates.

(iii) BIS will consider the following factors (among others) when determining what action should be taken on individual license applications:

(A) The number of licenses to export California heavy crude oil that have been issued to the applicant or its affiliates during the then-current calendar year;

(B) The number of applications pending in BIS that have been submitted by applicants who have not previously been issued licenses under this section to export California heavy crude oil during the then-current calendar year; and

(C) The percentage of the total amount of California heavy crude oil authorized under other export licenses previously issued to the applicant pursuant to this section that has actually been exported by the applicant.

(iv) BIS will approve applications contingent upon the licensee providing documentation meeting the requirements of both paragraphs(g)(5)(iv)(A) and (B) of this section prior to any export under the license:

(A) Documentation showing that the applicant has or will acquire title to the quantity of barrels stated in the application. Such documentation shall be either:

(*1*) An accepted contract or bill of sale for the quantity of barrels stated in the application; *or*

(*2*) A contract to purchase the quantity of barrels stated in the application, which may be contingent upon issuance of an export license to the applicant.

(B) Documentation showing that the applicant has a contract to export the quantity of barrels stated in the application. The contract may be contingent upon issuance of the export license to the applicant.

(v) BIS will carry forward any portion of the 25 MB/D quota that has not been licensed, except that no unallocated portions will be carried forward more than 90 days into a new calendar year. Applications to export against any carry-forward must be filed with BIS by January 15 of the carry-forward year.

(vi) BIS will return to the available authorized export quota any portion of the 25 MB/D per day quota that has been licensed, but not shipped, during the 90-day validity period of the license.

(vii) BIS will not carry over to the next calendar year pending applications from the previous year.

(6) License holders:

(i) Have 90 calendar days from the date the license was issued to export the quantity of California heavy crude oil authorized on the license. Within 30 days of any export under the license, the exporter must provide BIS with a certified statement confirming the date and quantity of California heavy crude oil exported.

(ii) Must submit to BIS, prior to any export under the license, the documentation required by paragraph (g)(5)(iv) of this section.

(iii) May combine authorized quantities into one or more shipments, provided that the validity period of none of the affected licenses has expired.

(iv) Are prohibited from transferring the license to another party without prior written authorization from BIS.

(7) BIS will allow a 10 percent tolerance on the unshipped balance based upon the volume of barrels it has authorized. BIS will allow a 25 percent shipping tolerance on the total dollar value of the license. See § 750.11 of the EAR for an explanation of shipping tolerances.

(h) *License Exception for certain shipments from the Strategic Petroleum Reserves (SPR).* Subject to the requirements set forth in this paragraph, License Exception SPR may be used to export without a license foreign origin crude oil imported and owned by a foreign government or its representative which is imported for storage in, and stored in, the United States Strategic Petroleum Reserves pursuant to an appropriate agreement with the U.S. Government or an agency thereof. If such foreign origin oil is commingled with other oil in the SPR, such export is authorized under License Exception SPR only if the crude oil being exported is of the same quantity and of comparable quality as the foreign origin crude oil that was imported for storage

in the SPR and the Department of Energy certifies this fact to BIS.

(1) The requirements and restrictions described in §§740.1 and 740.2 of the EAR that apply to all License Exceptions also apply to the use of License Exception SPR.

(2) A person exporting crude oil pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the letter code ''SS-SPR'' or the equivalent code as set forth in Appendix C to 15 CFR part 30.

(i) *License Exception for certain sample shipments.* Subject to the requirements set forth in this paragraph, License Exception SS–SAMPLE may be used to export crude oil for analytic and testing purposes.

(1) An exporter may ship up to 10 barrels of crude oil to any one end-user annually, up to an annual cumulative limit of 100 barrels per exporter.

(2) The requirements and restrictions described in §§740.1 and 740.2 of the EAR that apply to all License Exceptions also apply to the use of License Exception SPR.

(3) A person exporting crude oil pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the letter code ''SS–SAMPLE'' or the equivalent code as set forth in Appendix C to 15 CFR part 30.

(j) *License Exception for exports of TAPS Crude Oil.* (1) License Exception TAPS may be used to export oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (TAPS), provided the following conditions are met:

(i) The TAPS oil is transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802));

(ii) All tankers involved in the TAPS export trade use the same route that they do for shipments to Hawaii until they reach a point 300 miles due south of Cape Hinchinbrook Light and then turn toward Asian destinations. After reaching that point, tankers in the TAPS oil export trade must remain outside of the 200 nautical mile Exclusive Economic Zone, as defined in 16 U.S.C. 1802(6). Tankers returning from foreign ports to Valdez, Alaska must abide by the same restrictions, in reverse, on their return route. This condition shall not be construed to limit any statutory, treaty or Common Law rights and duties imposed upon and enjoyed by tankers in the TAPS oil export trade, including, but not limited to, *force majeure* and maritime search and rescue rules; and

(iii) The owner or operator of a tanker exporting TAPS oil shall:

(A) Adopt a mandatory program of deep water ballast exchange (i.e., at least 2,000 meters water depth). Exceptions can be made at the discretion of the captain only in order to ensure the safety of the vessel and crew. Records must be maintained in accordance with paragraph (j)(3) of this section.

(B) Be equipped with satellite-based communications systems that will enable the Coast Guard independently to determine the tanker's location; and

(C) Maintain a Critical Area Inspection Plan for each tanker in the TAPS oil export trade in accordance with the U.S. Coast Guard's Navigation and Inspection Circular No. 15–91 as amended, which shall include an annual internal survey of the vessel's cargo block tanks.

(2) *Shipper's Export Declaration or Automated Export System.* In addition to the requirements of paragraph (j)(1) of this section, for each export under License Exceptions TAPS, the exporter must file with BIS a Shipper's Export Declaration (SED) or Automated Export System (AES) record covering the export not later than 21 days after the export has occurred. The SED or AES record shall be sent to the following address: Director, Deemed Exports and Short Supply Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, PO Box 273, U.S. Department of Commerce, Washington, DC 20044.

(3) *Recordkeeping requirements for deep water ballast exchange.* (i) As required by paragraph (j)(1)(iii)(A) of this section, the master of each vessel carrying TAPS oil under the provisions of this section shall keep records that include

the following information, and provide such information to the Captain of the Port (COTP), U.S. Coast Guard, upon request:

(A) The vessel's name, port of registry, and official number or call sign;

(B) The name of the vessel's owner(s);

(C) Whether ballast water is being carried;

(D) The original location and salinity, if known, of ballast water taken on, before an exchange;

(E) The location, date, and time of any ballast water exchange; and

(F) The signature of the master attesting to the accuracy of the information provided and certifying compliance with the requirements of this paragraph.

(ii) The COTP or other appropriate federal agency representatives may take samples of ballast water to assess the compliance with, and the effectiveness of, the requirements of paragraph (j)(3)(i) of this section.

[61 FR 12844, Mar. 25, 1996, as amended at 61 FR 27257, May 31, 1996; 68 FR 50473; Aug. 21, 2003]

§ 754.3 Petroleum products not including crude oil.

(a) *License requirement.* As indicated by the letters ''SS'' in the ''Reason for Control'' paragraph in the ''License Requirements'' section of ECCNs 1C980, 1C982, 1C983, and 1C984 on the CCL (Supplement No. 1 to part 774 of the EAR), a license is required to all destinations, including Canada, for the export of petroleum products, excluding crude oil, listed in Supplement No. 1 to this part, that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR produced or derived commodities.

(b) *License policy.* (1) Applications for the export of petroleum products listed in Supplement No. 1 to this part that were produced or derived from the Naval Petroleum Reserves, or that became available for export as a result of an exchange for a Naval Petroleum Reserves produced or derived commodity, other than crude oil, will be denied, unless the President makes a finding required by the Naval Petroleum Reserves Production Act (10 U.S.C. 7430).

(2) Applications that involve temporary exports or exchanges excepted from that Act will be approved.

§ 754.4 Unprocessed western red cedar.

(a) *License requirement.* As indicated by the letters ''SS'' in the ''Reason for Control'' paragraph in the ''License Requirements'' section of ECCN 1C988 on the CCL (Supplement No. 1 to part 774 of the EAR), a license is required to all destinations, including Canada, for the export of unprocessed western red cedar covered by ECCN 1C988 (Western red cedar (thuja plicata) logs and timber, and rough, dressed and worked lumber containing wane listed in Supplement No. 2 to this part). See paragraph (c) of this section for License Exceptions for timber harvested from public lands in the State of Alaska, private lands, or Indian lands, and see paragraph (d) of this section for relevant definitions.

(b) *Licensing policy.* (1) BIS will generally deny applications for licenses to export unprocessed western red cedar harvested from Federal or State lands under harvest contracts entered into after September 30, 1979.

(2) BIS will consider, on a case-by-case basis, applications for licenses to export unprocessed western red cedar harvested from Federal or State lands under harvest contracts entered into prior to October 1, 1979.

(3) BIS will approve license applications for unprocessed western red cedar timber harvested from public lands in Alaska, private lands, and Indian lands. Applications must be submitted in accordance with the procedures set forth in paragraph (a) of this section. See paragraph (c) of this section for the availability of a License Exception.

(c) *License Exception for western red cedar (WRC).* (1) Subject to the requirements described in paragraph (c) of this section, License Exception WRC may be used to export without a license unprocessed western red cedar timber harvested from Federal, State and other public lands in Alaska, all private lands, and, lands held in trust for recognized Indian tribes by Federal or State agencies.

(2) Exporters who use License Exception WRC must obtain and retain on file the following documents:

(i) A statement by the exporter (or other appropriate documentation) indicating that the unprocessed western red cedar timber exported under this License Exception was not harvested from State or Federal lands outside the State of Alaska, and did not become available for export through substitution of commodities so harvested or produced. If the exporter did not harvest or produce the timber, the records or statement must identify the harvester or producer and must be accompanied by an identical statement from the harvester or producer. If any intermediate party or parties held title to the timber between harvesting and purchase, the exporter must also obtain such a statement, or equivalent documentation, from the intermediate party or parties and retain it on file.

(ii) A certificate of inspection issued by a third party log scaling and grading organization, approved by the United States Forest Service, that:

(A) Specifies the quantity in cubic meters or board feet, scribner rule, of unprocessed western red cedar timber to be exported; and

(B) Lists each type of brand, tag, and/or paint marking that appears on any log or unprocessed lumber in the export shipment or, alternatively, on the logs from which the unprocessed timber was produced.

(3) The requirements and restrictions described in §§740.1 and 740.2 of the EAR that apply to all License Exceptions also apply to the use of License Exception WRC.

(4) A person exporting any item pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the letter code ''SS-WRC''.

(d) *License Applications.* (1) Applicants requesting to export unprocessed western red cedar must submit a properly completed Form BIS-748P, Multipurpose License Form, other documents as may be required by BIS, and a signed statement from an authorized representative of the exporter, reading as follows:

I, (Name) (Title) of (Exporter) HEREBY CERTIFY that to the best of my knowledge and belief the (Quantity) (cubic meters or board feed scribner) of unprocessed western red cedar timber that (Exporter) proposes to export was not harvested from State or Federal lands under contracts entered into after October 1, 1979,

_____

(Signature)

_____

(Date)

(2) For Items [16] and [18] on Form BIS-748P, ''Various'' may be entered when there is more than one purchaser or ultimate consignee.

(3) For each Form BIS-748P submitted, and for each export shipment made under a license, the exporter must assemble and retain for the period described in part 762 of the EAR, and produce or make available for inspection, the following:

(i) A signed statement(s) by the harvester or producer, and each subsequent party having held title to the commodities, that the commodities in question were harvested under a contract to harvest unprocessed western red cedar from State or Federal lands, entered into before October 1, 1979; and

(ii) A copy of the Shipper's Export Declaration of Automated Export System record.

(4) A shipping tolerance of 5 percent in cubic feet or board feet scribner is allowed on the un-shipped balance of a commodity listed on a license. This tolerance applies only to the final quantity remaining un-shipped on a license against which more than one shipment is made and not to the original quantity authorized by such license. See §750.11 of the EAR for an explanation of shipping tolerances.

(e) *Definitions.* When used in this section, the following terms have the meaning indicated:

(1) *Unprocessed western red cedar* means western red cedar (thuja plicata) timber, logs, cants, flitches, and processed lumber containing wane on one or more sides, as defined in ECCN 1C988, that has not been processed into:

(i) Lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better grades,

with a maximum cross section of 2,000 square centimeters (310 square inches) for any individual piece of processed western red cedar (WRC) being exported, regardless of grade;

(ii) Chips, pulp, and pulp products;

(iii) Veneer and plywood;

(iv) Poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; and

(v) Shakes and shingles.

(2) *Federal and State lands* means Federal and State lands, excluding lands in the State of Alaska and lands held in trust by any Federal or State official or agency for a recognized Indian tribe or for any member of such tribe.

(3) *Contract harvester* means any person who, on October 1, 1979, had an outstanding contractual commitment to harvest western red cedar timber from State and Federal lands and who can show by previous business practice or other means that the contractual commitment was made with the intent of exporting or selling for export in unprocessed form all or part of the commodities to be harvested.

(4) *Producer* means any person engaged in a process that transforms an unprocessed western red cedar commodity (e.g., western red cedar timber) into another unprocessed western red cedar commodity (e.g., cants) primarily through a saw mill.

[61 FR 12844, Mar. 25, 1996, as amended at 68 FR 50473, Aug. 21, 2003]

§ 754.5 Horses for export by sea.

(a) *License requirement.* As indicated by the letters ''SS'' in the ''Reason for Control'' paragraph of the ''License Requirements'' section of ECCN 0A980 on the CCL (Supplement No. 1 to part 774 of the EAR) a license is required for the export of horses exported by sea to all destinations, including Canada.

(b) *License policy.* (1) License applications for the export of horses by sea for the purposes of slaughter will be denied.

(2) Other license applications will be approved if BIS, in consultation with the Department of Agriculture, determines that the horses are not intended for slaughter. You must provide a statement in the additional information section of the Form BIS-748P, certifying that no horse under consignment is being exported for the purpose of slaughter.

(3) Each application for export may cover only one consignment of horses.

§ 754.6 Registration of U.S. agricultural commodities for exemption from short supply limitations on export.

(a) *Scope.* Under the provisions of section 7(g) of the Export Administration Act of 1979 (EAA), agricultural commodities of U.S. origin purchased by or for use in a foreign country and stored in the United States for export at a later date may be registered with BIS for exemption from any quantitative limitations on export that may subsequently be imposed under section 7 of the EAA for reasons of short supply.

(b) *Applications for registration.* Applications to register agricultural commodities must be submitted by a person or firm subject to the jurisdiction of the United States who is acting as a duly authorized agent for the foreign purchaser.

(c) *Mailing address.* Submit applications pursuant to the provisions of section 7(g) of the EAA to: Bureau of Industry and Security, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

[61 FR 12844, Mar. 25, 1996, as amended at 62 FR 25467, May 9, 1997]

§ 754.7 Petitions for the imposition of monitoring or controls on recyclable metallic materials; Public hearings.

(a) *Scope.* Section 7(c) of the Export Administration Act of 1979 (EAA) provides for the filing and review of petitions seeking the imposition of monitoring or controls on recyclable metallic materials.

(b) *Eligibility for filing petitions.* Any entity, including a trade association, firm or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, has or may have a

significant adverse effect on the national economy or any sector thereof, may submit a written petition to BIS requesting the monitoring of exports, or the imposition of export controls, or both, with respect to such materials.

(c) *Public hearings.* The petitioner may also request a public hearing. Public hearings may also be requested by an entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes, produces or exports the metallic materials which are the subject of a petition.

(d) *Mailing address.* Submit petitions pursuant to section 7(c) of the EAA to: Bureau of Industry and Security, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

[61 FR 12844, Mar. 25, 1996, as amended at 62 FR 25467, May 9, 1997]

SUPPLEMENT NO. 1 TO PART 754—PETROLEUM AND PETROLEUM PRODUCTS

This supplement provides relevant Schedule B numbers and a commodity description of the items controlled by ECCNs 1C980, 1C981, 1C982, 1C983, and 1C984.

Schedule B No.	Commodity description [1]
Crude Oil	
2709.0710	Crude petroleum (including reconstituted crude petroleum), tar sands and crude shale oil.
2710.0710	Petroleum, partly refined for further refining.
Petroleum Products	
2804.29.0010	Helium.
2804.10.0000	Hydrogen.
2814.20.0000	Ammonia, aqueous.
2811.21.0000	Carbon dioxide and carbon monoxide.
2710.00.0550	Distillate fuel oils, having a Saybolt Universal viscosity at 100 °F. of less than 45 seconds.
2710.00.1007	Distillate fuel oils (No. 4 type) having a Saybolt Universal viscosity at 100 °F. of 45 seconds or more, but not more than 125 seconds.
2710.00.1050	Fuel oils, having a Saybolt Universal viscosity at 100 °F. of more than 125 seconds.
2711.11.0000	Natural gas, methane and mixtures thereof (including liquefied natural gas and synthetic or substitute natural gas).[2]
2711.14.0000	Ethane with a minimum purity of 95 liquid volume percent.
2711.12.0000	Propane with a minimum purity of 90 liquid volume percent.
2711.13.0000	Butane with a minimum purity of 90 liquid volume percent.
2711.19.0000	Other natural gases (including mixtures), n.s.p.f. and manufactured gas.
2710.00.1510	Gasoline, motor fuel (including aviation).
2710.00.1520	Jet fuel, naphtha-type.
2710.00.1530	Jet fuel, kerosene-type.
2710.00.1550	Other motor fuel (including tractor fuel and stationary turbine fuel).
2710.00.2000	Kerosene derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel).
2710.00.2500	Naphthas derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel).
2710.00.5030	Mineral oil of medicinal grade derived from petroleum, shale oil or both.
3819.00.0000	Hydraulic fluids, including automatic transmission fluids.
2710.00.3010	Aviation engine lubricating oil, except jet engine lubricating oil.
2710.00.3020	Jet engine lubricating oil 475.4520 Automotive, diesel, and marine engine lubricating oil.
2710.00.3030	Turbine lubricating oil, including marine.
2710.00.3040	Automotive gear oils.
2710.00.3050	Steam cylinder oils.
2710.00.5045	Insulating or transformer oils.
2710.00.3070	Quenching or cutting oils.
2710.00.3080	Lubricating oils, n.s.p.f., except white mineral oil.
2710.00.3700	Greases.
2710.00	Carbon black feedstock oil.
2712.10.0000	Petroleum jelly and petrolatum, all grades.
2710.00.5040	White mineral oil, except medicinal grade.
2710.00.5060	Other non-lubricating and non-fuel petroleum oils, n.s.p.f.
2814.10.0000	Ammonia, anhydrous.
2712.20.0000	Paraffin wax, crystalline, fully refined.
2712.90.0000	Paraffin wax, crystalline, except fully refined.
2712.90.0000	Paraffin wax, all others (including microcrystalline wax).
2517.30.0000	Paving mixtures, bituminous, based on asphalt and petroleum.
2713.12.0000	Petroleum coke, calcined.
2714	Petroleum asphalt.

Schedule B No.	Commodity description [1]
2713.11.0000	Petroleum coke, except calcined.

[1] The commodity descriptions provided in this supplement for the most part reflect those found in the U.S. Department of Commerce, Bureau of the Census, (1990 Edition) Statistical Classification of Domestic and Foreign Commodities Exported from the United States (1990 Ed., as revised through Jan. 1994). In some instances the descriptions are expanded or modified to ensure proper identification of products subject to export restriction. The descriptions in this supplement, rather than Schedule B Number, determine the commodity included in the definition of ''Petroleum'' under the Naval Petroleum Reserves Production Act.

[2] Natural gas and liquefied natural gas (LNG), and synthetic natural gas commingled with natural gas (Schedule B Nos. 2711.11.0000, 2711.14.0000, and 2711.19.0000) require export authorization from the U.S. Department of Energy.

SUPPLEMENT NO. 2 TO PART 754—UNPROCESSED WESTERN RED CEDAR

This supplement provides relevant Schedule B numbers and a commodity description of the items controlled by ECCN 1C988.

Schedule B No. 1 [1]	Commodity description	Unit of quantity [2]
200.3516	Western red cedar (Thuja plicata) logs and timber	MBF
202.2820	Western red cedar lumber; rough, containing wane	MBF
202.2840	Western red cedar lumber; dressed or worked, containing wane	MBF

[1] Schedule B Numbers are provided only as a guide to proper completion of the Shipper's Export Declaration, Form No. 7525 V.

[2] For export licensing purposes, report commodities on Form BIS-748P in units of quantity indicated.

SUPPLEMENT NO. 3 TO PART 754—STATUTORY PROVISIONS DEALING WITH EXPORTS OF CRUDE OIL

[The statutory material published in this supplement is for the information of the reader only. See the U.S. Code for the official text of this material.]

Public Law 104–58

SEC. 201. EXPORTS OF ALASKAN NORTH SLOPE OIL.

Section 28 of the Mineral Leasing Act (30 U.S.C. 185(s)) is amended by amending subsection(s) to read as follows:

''EXPORTS OF ALASKAN NORTH SLOPE OIL

(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this Act or any other provision of laws (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of the date of enactment of this subsection. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider—

(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of the date of the enactment of this subsection; and

(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)).

(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act ( ) U.S.C. 1601 et seq.), or Part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271–76) to prohibit exports.

(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortage or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5, United States Code.

MINERAL LANDS LEASING ACT

30 U.S.C. 185(U)

LIMITATIONS ON EXPORT

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following) and, in addition, before any crude oil subject this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: *Provided*, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential finding shall cease.

NAVAL PETROLEUM RESERVES PRODUCTION ACT

10 § 7430(E)

Any petroleum produced from the naval petroleum reserves, except such petroleum which is either exchanged in similar quantities for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and, in addition, before any petroleum subject to this section may be exported under the limitations and licensing requirement and penalty and enforcement provisions of the Export Administration Act of 1979, the President must make and publish an express finding that such exports will not diminish the total quality or quantity of petroleum available to the United States and that such exports are in the national interest and are in accord with the Export Administration Act of 1979.

OUTER CONTINENTAL SHELF LANDS ACT

43 U.S.C. 1354

(a) Application of Export Administration provisions.

Except as provided in subsection (d) of this section, any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969. Note that the Export Administration Act of 1969, referred to in paragraphs (a) and (b) of the Supplement, terminated on September 30, 1979, pursuant to the terms of that Act.

(b) Condition precedent to exportation; express finding by President of no increase in reliance on imported oil or gas.

Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

(c) Report of findings by President to Congress; joint resolution of disagreement with findings of President.

The President shall submit reports to Congress containing findings made under this

section, and after the date of receipt of such reports Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether export under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

(d) Exchange or temporary exportation of oil and gas for convenience or efficiency of transportation.

The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increase efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, or which is exchanged or exported pursuant to an existing international agreement.

PART 756—APPEALS

Sec.
756.1 Introduction.
756.2 Appeal from an administrative action.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

SOURCE: 61 FR 12851, Mar. 25, 1996, unless otherwise noted.

§ 756.1 Introduction.

(a) *Scope.* This part 756 describes the procedures applicable to appeals from administrative actions taken under the Export Administration Act (EAA) or the Export Administration Regulations (EAR). (In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C). Any person directly and adversely affected by an administrative action taken by the Bureau of Industry and Security (BIS) may appeal to the Under Secretary for reconsideration of that administrative action. The following types of administrative actions are not subject to the appeals procedures described in this part 756:

(1) Issuance, amendment, revocation, or appeal of a regulation. (These requests may be submitted to BIS at any time.)

(2) Denial or probation orders, civil penalties, sanctions, or other actions under parts 764 and 766 of the EAR, except that, an appeal from an action taken under § 766.25 shall be subject to the appeals procedures described in this part 756.

(b) *Definitions.* [Reserved]

[61 FR 12851, Mar. 25, 1996, as amended at 62 FR 25467, May 9, 1997; 65 FR 14863, Mar. 20, 2000]

§ 756.2 Appeal from an administrative action.

(a) *Review and appeal officials.* The Under Secretary may delegate to the Deputy Under Secretary for Industry and Security or to another BIS official the authority to review and decide the appeal. In addition, the Under Secretary may designate any BIS official to be an appeals coordinator to assist in the review and processing of an appeal under this part. The responsibilities of an appeals coordinator may include presiding over informal hearings.

(b) *Appeal procedures*—(1) *Filing.* An appeal under this part must be received by the Under Secretary for Industry and Security, Bureau of Industry and Security, U.S. Department of Commerce, Room 3898, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230 not later than 45 days after the date appearing on the written notice of administrative action.

(2) *Content of appeal.* The appeal must include a full written statement in support of appellant's position. The appeal must include a precise statement of why the appellant believes the administrative action has a direct and adverse effect and should be reversed or modified. The Under Secretary may request additional information that would be helpful in resolving the appeal, and may accept additional submissions. The Under Secretary will not ordinarily accept any submission filed more than 30 days after the filing of the appeal or of any requested submission.

(3) *Request for informal hearing.* In addition to the written statement submitted in support of an appeal, an appellant may request, in writing, at the time an appeal is filed, an opportunity for an informal hearing. The Under Secretary may grant or deny a request

for an informal hearing. Any hearings will be held in the District of Columbia unless the Under Secretary determines, based upon good cause shown, that another location would be better.

(4) *Informal hearing procedures*—(i) *Presentations.* The Under Secretary shall provide an opportunity for the appellant to make an oral presentation based on the materials previously submitted by the appellant or made available by the Department in connection with the administrative action. The Under Secretary may require that any facts in controversy be covered by an affidavit or testimony given under oath or affirmation.

(ii) *Evidence.* The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the Under Secretary to be relevant and material to the proceeding, and not unduly repetitious, will be received and considered.

(iii) *Procedural questions.* The Under Secretary has the authority to limit the number of people attending the hearing, to impose any time or other limitations deemed reasonable, and to determine all procedural questions.

(iv) *Transcript.* A transcript of an informal hearing shall not be made, unless the Under Secretary determines that the national interest or other good cause warrants it, or the appellant requests a transcript. If the appellant requests a transcript, the appellant will be responsible for paying all expenses related to production of the transcript.

(v) *Report.* When the Under Secretary designates another BIS official to conduct an informal hearing, that official will submit a written report containing a summary of the hearing and recommended action to the Under Secretary.

(c) *Decisions*—(1) *Determination of appeals.* In addition to the documents specifically submitted in connection with the appeal, the Under Secretary shall consider any recommendations, reports, or relevant documents available to BIS in determining the appeal, but shall not be bound by any such recommendation, nor prevented from considering any other information, or consulting with any other person or groups, in making a determination. The Under Secretary may adopt any other procedures deemed necessary and reasonable for considering an appeal. The Under Secretary shall decide an appeal within a reasonable time after receipt of the appeal. The decision shall be issued to the appellant in writing and contain a statement of the reasons for the action.

(2) *Effect of the determination.* The decision of the Under Secretary shall be final.

(d) *Effect of appeal.* Acceptance and consideration of an appeal shall not affect any administrative action, pending or in effect, unless the Under Secretary, upon request by the appellant and with opportunity for response, grants a stay.

[61 FR 12851, Mar. 25, 1996, as amended at 62 FR 25467, May 9, 1997; 65 FR 14860, Mar. 20, 2000; 70 FR 8250, Feb. 18, 2005]

PART 758—EXPORT CLEARANCE REQUIREMENTS

Sec.

758.1 The Shipper's Export Declaration (SED) or Automated Export System (AES) record.
758.2 Automated Export System (AES).
758.3 Responsibilities of parties to the transaction.
758.4 Use of export license.
758.5 Conformity of documents and unloading of items.
758.6 Destination control statement.
758.7 Authority of the Office of Export Enforcement, the Bureau of Industry and Security, Customs offices and Postmasters in clearing shipments.
758.8 Return or unloading of cargo at direction of BIS, the Office of Export Enforcement or Customs Service.
758.9 Other applicable laws and regulations.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

SOURCE: 61 FR 12852, Mar. 25, 1996, unless otherwise noted.

§ 758.1 The Shipper's Export Declaration (SED) or Automated Export System (AES) record.

(a) *The Shipper's Export Declaration (SED) or Automated Export System (AES) record.* The SED (Form 7525-V, Form 7525-V-Alt, or Automated Export System record) is used by the Bureau of Census to collect trade statistics and

by the Bureau of Industry and Security for export control purposes. The SED or AES record collects basic information such as the names and addresses of the parties to a transaction; the Export Control Classification Number (ECCN) (when required), the Schedule B number or Harmonized Tariff Schedule number, the description, quantity and value of the items exported; and the license authority for the export. The SED or the AES electronic equivalent is a statement to the United States Government that the transaction occurred as described.

(b) *When an SED or AES record is required.* Except when the export of items subject to the EAR is to take place electronically or in an otherwise intangible form, you must file an SED or AES record with the United States Government for items subject to the EAR, including exports by U.S. mail, in the following situations:

(1) For all exports of items subject to the EAR that are destined to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR regardless of value (*see* 15 CFR 30.55);

(2) For all exports subject to the EAR that require a license regardless of value, or destination;

(3) For all exports of commodities and mass market software subject to the EAR when the value of the commodities or mass market software classified under a single Schedule B Number (or Harmonized Tariff Schedule number) is over $2,500, except as exempted by the Foreign Trade Statistics Regulations (FTSR) in 15 CFR part 30 and referenced in paragraph (c) of this section; or

(4) For all exports of items subject to the EAR that will be transshipped through Canada to a third destination, where the export would require an SED or AES record or license if shipped directly to the final destination from the United States (see 15 CFR 30.58(c) of the FTSR).

NOTE TO PARAGRAPH (b): In addition to the Shipper's Export Declaration for exports, the Bureau of Census Foreign Trade Statistics Regulations provide for a specific Shipper's Export Declaration for In-Transit Goods (Form 7513). See 15 CFR 30.3 and 30.8 of the FTSR.

(c) *Exemptions.* A complete list of exemptions from the SED or AES filing requirement is set forth in the FTSR. Some of these FTSR exemptions have elements in common with certain EAR License Exceptions. An FTSR exemption may be narrower than a License Exception. The following references are provided in order to direct you to the FTSR exemptions that relate to EAR License Exceptions:

(1) License Exception Baggage (BAG), as set forth in § 740.14 of the EAR. See 15 CFR 30.56 of the FTSR;

(2) License Exception Gift Parcels and Humanitarian Donations (GFT), as set forth in § 740.12 of the EAR. See 15 CFR 30.55(g) of the FTSR;

(3) License Exception Aircraft and Vessels (AVS), as set forth in § 740.15 of the EAR. See 15 CFR 30.55(l) of the FTSR;

(4) License Exception Governments and International Organizations (GOV), as set forth in § 740.11 of the EAR. See 15 CFR 30.53 of the FTSR;

(5) License Exception Technology and Software Under Restriction (TSR), as set forth in § 740.6 of the EAR. See 15 CFR 30.55(n) of the FTSR; or

(6) License Exception Temporary Imports, Exports, and Reexports (TMP) ''tools of trade'', as set forth in § 740.9(a)(2)(i) of the EAR. See 15 CFR 30.56(b) of the FTSR.

(d) *Notation on export documents for exports exempt from SED or AES record requirements.* When an exemption from filing the Shipper's Export Declaration or Automated Export System record applies, the export authority (License Exception or NLR) of all the items must be entered on the loading document (*e.g.*, Cargo Declaration, manifest, bill of lading, (master) air waybill) by the person responsible for preparing the document. This requirement is intended to parallel the Bureau of Census requirement, so that notations as to the basis for the SED *exemption* and the license authority are entered in the same place and manner (see 15 CFR 30.21 of the FTSR for detailed requirements). The loading document must be available for inspection by government officials, along with the items, prior to lading on the carrier.

(e) *Signing the Shipper's Export Declaration or transmitting data via AES.*

The person who signs the SED must be in the United States at the time of signing. The person who transmits data via AES must be a certified AES participant in accordance with 15 CFR 30.60 of the FTSR. The person who signs the SED or transmits data via AES, whether exporter (U.S. principal party in interest) or agent, is responsible for the truth, accuracy, and completeness of the SED or AES record, except insofar as that person can demonstrate that he or she reasonably relied on information furnished by others.

(f) *The SED or AES record is an export control document.* The SED or AES record is a statement to the U.S. Government. The SED or AES record is an export control document as defined in part 772 of the EAR. False statements made thereon may be a violation of § 764.2(g) of the EAR. When an SED or AES record is presented to the U.S. Government, the signer or filer of the SED or AES record represents the following:

(1) Export of the items described on the SED or AES record is authorized under the terms and conditions of a license issued by BIS; is in accordance with the terms and conditions of a License Exception; is authorized under ''NLR'' as no license is required for the shipment; or is not subject to the EAR;

(2) Statements on the SED or AES record are in conformity with the contents of any license issued by BIS, with the possible exception of the exporter block in routed transactions; and

(3) All information shown on the SED or AES record is true, accurate, and complete.

(g) *Export control information on the SED or AES record.* For *each* item on the SED or AES record, you must show the license authority (License number, License Exception, or No License Required (NLR)), the Export Control Classification Number (ECCN) (when required), and the item description in the designated blocks. The item description must be stated in Commerce Control List terms. If those terms are inadequate to meet Census Bureau requirements, the FTSR requires that you give enough additional detail to permit verification of the Schedule B Number (or Harmonized Tariff Schedule number). The FTSR also requires separate descriptions of items for each Schedule B classification (or Harmonized Tariff Schedule number). See 15 CFR 30.6 (separate SED or AES records), § 30.7(l) (description of items) and § 30.9 (separation of items on the SED) of the FTSR.

(1) *Exports under a license.* When exporting under the authority of a license, you must enter on the SED or AES record the license number and expiration date (the expiration date is only required on paper versions of the SED), the ECCN, and an item description identical to the item description on the license.

(2) *Exports under a License Exception.* You must enter on any required SED or AES record the ECCN and the correct License Exception symbol (*e.g.*, LVS, GBS, CIV) for the License Exception(s) under which you are exporting. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are excepted from this requirement. See also § 740.1(d) of the EAR.

(3) *No License Required (NLR) exports.* You must enter on any required SED or AES record the ''NLR'' designation when the items to be exported are subject to the EAR but not listed on the Commerce Control List (*i.e.*, items are classified as EAR99), and when the items to be exported are listed on the CCL but do not require a license. In addition, you must enter the correct ECCN on any required SED or AES record for all items being exported under the NLR provisions that have a reason for control other than anti-terrorism (AT). The designator ''TSPA'' may be used, but is not required, when the export consists of technology or software outside the scope of the EAR. See § 734.7 through § 734.11 of the EAR for TSPA information.

(h) *Power of attorney or other written authorization.* In a ''power of attorney'' or other written authorization, authority is conferred upon an agent to perform certain specified acts or kinds of acts on behalf of a principal.

(1) An agent must obtain a power of attorney or other written authorization in the following circumstances:

(i) An agent that represents a foreign principal party in interest in a routed

transaction must obtain a power of attorney or other written authorization that sets forth his authority; and

(ii) An agent that applies for a license on behalf of a principal party in interest must obtain a power of attorney or other written authorization that sets forth the agent's authority to apply for the license on behalf of the principal.

NOTE TO PARAGRAPH (h)(1): The Bureau of Census Foreign Trade Statistics Regulations impose additional requirements for a power of attorney or other written authorization. See 15 CFR 30.4(e) of the FTSR.

(2) This requirement for a power of attorney or other written authorization is a legal requirement aimed at ensuring that the parties to a transaction negotiate and understand their responsibilities. The absence of a power of attorney or other written authorization does not prevent BIS from using other evidence to establish the existence of an agency relationship for purposes of imposing liability.

(i) *Submission of the SED or AES record.* The SED or AES record must be submitted to the U.S. Government in the manner prescribed by the Bureau of Census Foreign Trade Statistics Regulations (15 CFR part 30).

[65 FR 42570, July 10, 2000, as amended at 67 FR 70546, Nov. 25, 2002; 68 FR 50473, Aug. 21, 2003; 69 FR 46080, July 30, 2004]

§ 758.2 Automated Export System (AES).

The Census Bureau's Foreign Trade Statistics Regulations (FTSR) (15 CFR Part 30) contain provisions for filing Shipper's Export Declarations (SEDs) electronically using the Automated Export System (AES). In order to use AES, you must apply directly to the Census Bureau for certification and approval through a Letter of Intent (*see* 15 CFR 30.60(b) and Appendix A to part 30 of the FTSR). Three AES filing options are available for transmitting shipper's export data. Option 1 is the standard paper filing of the SED, while the other two options are electronic. Option 2 requires the electronic filing of all information required for export prior to export (15 CFR 30.61(a) and 30.63); Option 4 is available only for approved filers (approval by Census Bureau, Bureau of Customs and Border Protection, BIS and other agencies) and requires no information to be transmitted prior to export, with complete information transmitted within 10 working days of exportation (15 CFR 30.61(b) and 30.62).

(a) *Census' Option 4 application process.* Exporters, or agents applying on behalf of an exporter, may apply for Option 4 filing privileges by submitting a Letter of Intent to the Census Bureau in accordance with 15 CFR 30.60(b) and 30.62 of the FTSR. The Census Bureau will distribute the Letter of Intent to BIS and other agencies participating in the Option 4 approval process. Any agency may notify Census that an applicant has failed to meet its acceptance standards, and the Census Bureau will provide a denial letter to the applicant naming the denying agency. If the Census Bureau receives neither notification of denial, nor a request for an extension from the agency within 30 days of the date of referral of the letter of intent to the agency, the applicant is deemed to be approved by that agency. See 15 CFR 30.62(b) of the FTSR.

(b) *BIS Option 4 application process.* When AES filers wish to use Option 4 for exports of items that require a BIS license, those filers must seek separate approval directly from BIS by completing a questionnaire and certification. (Separate BIS approval is not required for the use of Option 4 in connection with exports that do not require a BIS license.) The questionnaire and certification should be mailed to: U.S. Department of Commerce, Bureau of Industry and Security, The Office of Enforcement Analysis, 14th & Pennsylvania Avenue, N.W., Room 4065, Washington, D.C. 20230.

(1) *Questionnaire.* The following questions must be answered based on your experiences over the past five years. If the answer to either of the questions is ''yes'', it must be followed with a full explanation. Answering ''yes'' to either of the questions will not automatically prevent your participation in Option 4. BIS will consider the facts of each case and any remedial action you have taken to determine whether your reliability is sufficient to participate in this program.

(i) Have you been charged with, convicted of, or penalized for, any violation of the EAR or any statute described in §766.25 of the EAR?

(ii) Have you been notified by any government official of competent authority that you are under investigation for any violation of the EAR or any statute described in §766.25 of the EAR?

(2) *Certification.* Each applicant must submit a signed certification as set forth in this paragraph. The certification will be subject to verification by BIS.

I (We) certify that I (we) have established adequate internal procedures and safeguards to comply with the requirements set forth in the U.S. Department of Commerce Export Administration Regulations (EAR) and Foreign Trade Statistics Regulations (FTSR). These procedures and safeguards include means for:

(i) Making a proper determination as to whether a license is required for a particular export;

(ii) Receipt of notification of approval of the export license, if required, before the export is made;

(iii) Compliance with all the terms and conditions of the license, License Exception, or NLR provisions of the EAR as applicable;

(iv) Return of revoked or suspended licenses to BIS in accordance with §750.8(b) of the EAR, if requested;

(v) Compliance with the destination control statement provisions of §758.6 of the EAR;

(vi) Compliance with the prohibition against export transactions that involve persons who have been denied U.S. export privileges; and

(vii) Compliance with the recordkeeping requirements of part 762 of the EAR.

I (we) agree that my (our) office records and physical space will be made available for inspection by the Bureau of the Census, BIS, or the U.S. Customs Service, upon request.

(c) *BIS Option 4 evaluation criteria.* BIS will consider the grounds for denial of Option 4 filing status set forth in 15 CFR 30.62(b)(2) of the FTSR, as well as the additional grounds for denial set forth in this paragraph.

(1) Applicants have not been approved for Option 4 filing privileges by the Census Bureau or other agency;

(2) Applicants are denied persons; or

(3) Exports are destined to a country in Country Group E:1 (Supplement No.1 to part 740 of the EAR).

(d) *Contacts for assistance.* (1) For additional information on the AES in general, please contact: Chief Foreign Trade Division, U.S. Census Bureau, (301) 457–2255, facsimile: (301) 457–2645.

(2) For information about BIS's Option 4 approval process to use AES Option 4 for items subject to the EAR, contact: Director, Office of Enforcement Analysis, Bureau of Industry and Security, (202) 482–4255, facsimile: (202) 482–0971.

[65 FR 42571, July 10, 2000, as amended at 67 FR 54953, Aug. 27, 2002; 68 FR 50473, Aug. 21, 2003]

§758.3 Responsibilities of parties to the transaction.

All parties that participate in transactions subject to the EAR must comply with the EAR. Parties are free to structure transactions as they wish, and to delegate functions and tasks as they deem necessary, as long as the transaction complies with the EAR. However, acting through a forwarding or other agent, or delegating or redelegating authority, does not in and of itself relieve anyone of responsibility for compliance with the EAR.

(a) *Export transactions.* The U.S. principal party in interest is the exporter, except in certain routed transactions. The exporter must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization. The exporter may hire forwarding or other agents to perform various tasks, but doing so does not necessarily relieve the exporter of compliance responsibilities.

(b) *Routed export transactions.* All provisions of the EAR, including the end-use and end-user controls found in part 744 of the EAR, and the General Prohibitions found in part 736 of the EAR, apply to routed export transactions. The U.S. principal party in interest is the exporter and must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization, *unless* the U.S. principal party in interest obtains from the foreign principal party in interest a writing wherein the foreign principal party in interest expressly assumes responsibility for determining licensing requirements and

obtaining license authority, making the U.S. agent of the foreign principal party in interest the exporter for EAR purposes. One writing may cover multiple transactions between the same principals. See § 748.4(a)(3) of the EAR.

NOTE TO PARAGRAPH (b): For statistical purposes, the Foreign Trade Statistics Regulations (15 CFR part 30) have a different definition of ''exporter'' from the Export Administration Regulations. Under the FTSR the ''exporter'' will always be the U.S. principal party in interest. For purposes of licensing responsibility under the EAR, the U.S. agent of the foreign principal party in interest may be the ''exporter'' in a routed transaction.

(c) *Information sharing requirements.* In routed export transactions where the foreign principal party in interest assumes responsibility for determining and obtaining licensing authority, the U.S. principal party in interest must, upon request, provide the foreign principal party in interest and its forwarding or other agent with the correct Export Control Classification Number (ECCN), or with sufficient technical information to determine classification. In addition, the U.S. principal party in interest must provide the foreign principal party in interest or the foreign principal's agent any information that it knows will affect the determination of license authority, see § 758.1(g) of the EAR.

(d) *Power of attorney or other written authorization.* In routed export transactions, a forwarding or other agent that represents the foreign principal party in interest, or who applies for a license on behalf of the foreign principal party in interest, must obtain a power of attorney or other written authorization from the foreign principal party in interest to act on its behalf. See § 748.4(b)(2) and § 758.1(h) of the EAR.

[65 FR 42572, July 10, 2000]

§ 758.4 Use of export license.

(a) *License valid for shipment from any port.* An export license issued by BIS authorizes exports from any port of export in the United States unless the license states otherwise. Items that leave the United States at one port, cross adjacent foreign territory, and reenter the United States at another port before being exported to a foreign country, are treated as exports from the last U.S. port of export.

(b) *Shipments against expiring license.* Any item requiring a license that has not departed from the final U.S. port of export by midnight of the expiration date on an export license may not be exported under that license unless the shipment meets the requirements of paragraphs (b)(1) or (2) of this section.

(1) BIS grants an extension; or

(2) Prior to midnight on the date of expiration on the license, the items:

(i) Were laden aboard the vessel;

(ii) Were located on a pier ready for loading and not for storage, and were booked for a vessel that was at the pier ready for loading; or

(iii) The vessel was expected to be at the pier for loading before the license expired, but exceptional and unforseen circumstances delayed it, and BIS or the U.S. Customs Service makes a judgment that undue hardship would result if a license extension were required.

(c) *Reshipment of undelivered items.* If the consignee does not receive an export made under a license because the carrier failed to deliver it, the exporter may reship the same or an identical item, subject to the same limitations as to quantity and value as described on the license, to the same consignee and destination under the same license. If an item is to be reshipped to any person other than the original consignee, the shipment is considered a new export and requires a new license. Before reshipping, satisfactory evidence of the original export and of the delivery failure, together with a satisfactory explanation of the delivery failure, must be submitted by the exporter to the following address: Operations Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230.

[65 FR 42572, July 10, 2000]

§ 758.5 Conformity of documents and unloading of items.

(a) *Purpose.* The purpose of this section is to prevent items licensed for export from being diverted while in transit or thereafter. It also sets forth the duties of the parties when the items are unloaded in a country other than

that of the ultimate consignee as stated on the export license.

(b) *Conformity of documents.* When a license is issued by BIS, the information entered on related export control documents (*e.g.,* the SED or AES record, bill of lading or air waybill) must be consistent with the license.

(c) *Issuance of the bill of lading or air waybill*—(1) *Ports in the country of the ultimate consignee.* No person may issue a bill of lading or air waybill that provides for delivery of licensed items to any foreign port located outside the country of the intermediate or the ultimate consignee named on the BIS license and Shipper's Export Declaration (SED) or AES electronic equivalent.

(2) *Optional ports of unloading.* (i) *Licensed items.* No person may issue a bill of lading or air waybill that provides for delivery of licensed items to optional ports of unloading unless all the optional ports are within the country of ultimate destination or are included on the BIS license and SED or AES electronic equivalent.

(ii) *Unlicensed items.* For shipments of items that do not require a license, the exporter may designate optional ports of unloading on the SED or AES electronic equivalent and other export control documents, so long as the optional ports are in countries to which the items could also have been exported without a license. See also 15 CFR 30.7(h) of the FTSR.

(d) *Delivery of items.* No person may deliver items to any country other than the country of the intermediate or ultimate consignee named on the BIS license and SED or AES record without prior written authorization from BIS, except for reasons beyond the control of the carrier (such as acts of God, perils of the sea, damage to the carrier, strikes, war, political disturbances or insurrection).

(e) *Procedures for unscheduled unloading*—(1) *Unloading in country where no license is required.* When items are unloaded in a country to which the items could be exported without a license issued by BIS, no notification to BIS is required. However, any persons disposing of the items must continue to comply with the terms and conditions of any License Exception, and with any other relevant provisions of the EAR.

(2) *Unloading in a country where a license is required.* (i) When items are unloaded in a country to which the items would require a BIS license, no person may effect delivery or entry of the items into the commerce of the country where unloaded without prior written approval from BIS. The carrier, in ensuring that the items do not enter the commerce of the country, may have to place the items in custody, or under bond or other guaranty. In addition, the carrier must inform the exporter and BIS of the unscheduled unloading in a time frame that will enable the exporter to submit its report within 10 days from the date of unscheduled unloading. The exporter must within 10 days of the unscheduled unloading report the facts to and request authorization for disposition from BIS using either: mail, fax, or E-mail. The report to BIS must include:

(A) A copy of the manifest of the diverted cargo;

(B) Identification of the place of unloading;

(C) Statement that explains why the unloading was necessary; and

(D) A proposal for disposition of the items and a request for authorization for such disposition from BIS.

(ii) *Contact information.* U.S. Department of Commerce, Bureau of Industry and Security, Office of Exporter Services, Room 1093, 14th and Pennsylvania Avenue, NW, Washington, DC 20230; phone number 202–482–0436; facsimile number 202–482–3322; and E-Mail address: *RPD@BIS.DOC.GOV.*

[65 FR 42573, July 10, 2000]

§ 758.6 Destination control statement.

The Destination Control Statement (DCS) must be entered on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad. The person responsible for preparation of those documents is responsible for entry of the DCS. The DCS is required for all exports from the United States of items on the Commerce Control List that are not classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR). At a minimum, the DCS

must state: ''These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.''

[65 FR 42573, July 10, 2000]

§ 758.7 Authority of the Office of Export Enforcement, the Bureau of Industry and Security, Customs offices and Postmasters in clearing shipments

(a) *Actions to assure compliance with the EAR.* Officials of BIS, the Office of Export Enforcement, the U.S. Customs Service and postmasters, including post office officials, are authorized and directed to take appropriate action to assure compliance with the EAR. This includes assuring that:

(1) Exports without a license issued by BIS are either outside the scope of the license requirements of the Export Administration Regulations or authorized by a License Exception; and

(2) Exports purporting to be authorized by licenses issued by BIS are, in fact, so authorized and the transaction complies with the terms of the license.

(b) *Types of actions.* The officials designated in paragraph (a) of this section are authorized to take the following types of actions:

(1) *Inspection of items*—

(i) *Purpose of inspection.* All items declared for export are subject to inspection for the purpose of verifying the items specified in the SED or AES record, or if there is no SED or AES record, the bill of lading or other loading document covering the items about to be exported, and the value and quantity thereof, and to assure observance of the other provisions of the Export Administration Regulations. This authority applies to all exports within the scope of the Export Administration Act or Export Administration Regulations whether or not such exports require a license issued by BIS. The inspection may include, but is not limited to, item identification, technical appraisal (analysis), or both.

(ii) *Place of inspection.* Inspection shall be made at the place of lading or where officials authorized to make those inspections are stationed for that purpose.

(iii) *Technical identification.* Where, in the judgment of the official making the inspection, the item cannot be properly identified, a sample may be taken for more detailed examination or for laboratory analysis.

(A) *Obtaining samples.* The sample will be obtained by the official making the inspection in accordance with the provisions for sampling imported merchandise. The size of the sample will be the minimum representative amount necessary for identification or analysis. This will depend on such factors as the physical condition of the material (whether solid, liquid, or gas) and the size and shape of the container.

(B) *Notification to exporter and consignee.* When a sample is taken, the exporter (or the exporter's agent) and the ultimate consignee will be notified by letter from one of the official designated in paragraph (a) of this section, showing the port of export, date of sampling, export license number (if any) or other authorization, invoice number quantity of sample taken, description of item, marks and packing case numbers, and manufacturer's number for the item. The original letter will be sent to the exporter or the exporter's agent, the duplicate will be placed in the container that had been opened, and the triplicate will be retained by the inspecting office.

(C) *Disposal of samples.* Samples will be disposed of in accordance with the U.S. Customs Service procedure for imported commodities.

(2) *Inspection of documents*—(i) *General.* Officials designated in paragraph (a) of this section are authorized to require exporters or their agents, and owners and operators of exporting carriers or their agents, to produce for inspection or copying: invoices, orders, letters of credit, inspection reports, packing lists, shipping documents and instructions, correspondence, and any other relevant documents, as well as furnish other information bearing upon a particular shipment being exported or intended to be exported.

(ii) *Cartridge and shell case scrap.* When cartridge or shell cases are being exported as scrap (whether or not they have been heated, flame-treated, mangled, crushed, or cut) from the United

States, the U.S. Customs Service is authorized to require the exporter to furnish information bearing on the identity and relationships of all parties to the transaction and produce a copy of the bid offer by the armed services in order to assure that the terms of the Export Administration Regulations are being met and that the material being shipped is scrap.

(3) *Questioning of individuals.* Officials designated in paragraph (a) of this section are authorized to question the owner or operator of an exporting carrier and the carrier's agent(s), as well as the exporter and the exporter's agent(s), concerning a particular shipment exported or intended to be exported.

(4) *Prohibiting lading.* Officials designated in paragraph (a) of this section are authorized to prevent the lading of items on an exporting carrier whenever those officials have reasonable cause to believe that the export or removal from the United States is contrary to the Export Administration Regulations.

(5) *Inspection of exporting carrier.* The U.S. Customs Service is authorized to inspect and search any exporting carrier at any time to determine whether items are intended to be, or are being, exported or removed from the United States contrary to the Export Administration Regulations. Officials of the Office of Export Enforcement may conduct such inspections with the concurrence of the U.S. Customs Service.

(6) *Seizure and detention.* Customs officers are authorized, under Title 22 of the United States Code, section 401, *et seq.*, to seize and detain any items whenever an attempt is made to export such items in violation of the Export Administration Regulations, or whenever they know or have probable cause to believe that the items are intended to be, are being, or have been exported in violation of the EAR. Seized items are subject to forfeiture. In addition to the authority of Customs officers to seize and detain items, both Customs officials and officials to the Office of Export Enforcement are authorized to detain any shipment held for review of the SED or AES record, or if there is no SED or AES record, the bill of lading or other loading document covering the items about to be exported, or for physical inspection of the items, whenever such action is deemed to be necessary to assure compliance with the EAR.

(7) *Preventing departure of carrier.* The U.S. Customs Service is authorized under Title 22 of the U. S. Code, section 401, *et seq.*, to seize and detain, either before or after clearance, any vessel or vehicle or air carrier that has been or is being used in exporting or attempting to export any item intended to be, being, or having been exported in violation of the EAR.

(8) *ordering the unloading.* The U.S. Customs Service is authorized to unload, or to order the unloading of, items from any exporting carrier, whenever the U.S. Customs Service has reasonable cause to believe such items are intended to be, or are being, exported or removed from the United States contrary to the EAR.

(9) *ordering the return of items.* If, after notice that an inspection of a shipment is to be made, a carrier departs without affording the U.S. Customs Service, Office of Export Enforcement, or BIS personnel an adequate opportunity to examine the shipment, the owner or operator of the exporting carrier and the exporting carrier's agent(s) may be ordered to return items exported on such exporting carrier and make them available for inspection.

(10) *Designating time and place for clearance.* The U.S. Customs Service is authorized to designate times and places at which U.S. exports may move by land transportation to countries contiguous to the United States.

[61 FR 12852, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997; 68 FR 50474, Aug. 21, 2003]

§758.8 Return or unloading of cargo at direction of BIS, the Office of Export Enforcement or Customs Service.

(a) *Exporting carrier.* As used in this section, the term ''exporting carrier'' includes a connecting or on-forwarding carrier, as well as the owner, charterer, agent, master, or any other person in charge of the vessel, aircraft, or other kind of carrier, whether such person is located in the United States or in a foreign country.

(b) *ordering return or unloading of shipment.* Where there are reasonable grounds to believe that a violation of the Export Administration Regulations has occurred, or will occur, with respect to a particular export from the United States, BIS, the Office of Export Enforcement, or the U.S. Customs Service may order any person in possession or control of such shipment, including the exporting carrier, to return or unload the shipment. Such person must, as ordered, either:

(1) Return the shipment to the United States or cause it to be returned or;

(2) Unload the shipment at a port of call and take steps to assure that it is placed in custody under bond or other guaranty not to enter the commerce of any foreign country without prior approval of BIS. For the purpose of this section, the furnishing of a copy of the order to any person included within the definition of exporting carrier will be sufficient notice of the order to the exporting carrier.

(c) *Requirements regarding shipment to be unloaded.* The provisions of § 758.5(b) and (c) of this part, relating to reporting, notification to BIS, and the prohibition against unauthorized delivery or entry of the item into a foreign country, shall apply also when items are unloaded at a port of call, as provided in paragraph (b)(2) of this section.

(d) *Notification.* Upon discovery by any person included within the term ''exporting carrier,'' as defined in paragraph (a) of this section, that a violation of the EAR has occurred or will occur with respect to a shipment on board, or otherwise in the possession or control of the carrier, such person must immediately notify both:

(1) The Office of Export Enforcement at the following address: Room H–4520, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington D.C. 20230, Telephone: (202) 482 1208, Facsimile: (202) 482–0964; and

(2) The person in actual possession or control of the shipment.

§ 758.9 Other applicable laws and regulations.

The provisions of this part 758 apply only to exports regulated by BIS. Nothing contained in this part 758 shall relieve any person from complying with any other law of the United States or rules and regulations issued thereunder, including those governing SEDs, AES records, and manifests, or any applicable rules and regulations of the Bureau of Customs and Border Protection or Bureau of Immigration and Customs Enforcement.

[68 FR 50474, Aug. 21, 2003]

PART 760—RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

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SOURCE: 61 FR 12862, Mar. 25, 1996, unless otherwise noted.

§760.1 Definitions.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Definition of Person*. For purposes of this part, the term *person* means any individual, or any association or organization, public or private, which is organized, permanently established, resident, or registered to do business, in the United States or any foreign country. This definition of person includes both the singular and plural and, in addition, includes:

(1) Any partnership, corporation, company, branch, or other form of association or organization, whether organized for profit or non-profit purposes;

(2) Any government, or any department, agency, or commission of any government;

(3) Any trade association, chamber of commerce, or labor union;

(4) Any charitable or fraternal organization; and

(5) Any other association or organization not specifically listed in paragraphs (a)(1) through (4) of this section.

(b) *Definition of ''United States Person''*. (1) This part applies to United States persons. For purposes of this part, the term *United States person* means any person who is a United States resident or national, including individuals, domestic concerns, and ''controlled in fact'' foreign subsidiaries, affiliates, or other permanent foreign establishments of domestic concerns. This definition of United States person includes both the singular and plural and, in addition, includes:

(i) The government of the United States or any department, agency, or commission thereof;

(ii) The government of any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any subdivision, department, agency, or commission of any such government;

(iii) Any partnership, corporation, company, association, or other entity organized under the laws of paragraph (b)(1)(i) or (ii) of this section;

(iv) Any foreign concern's subsidiary, partnership, affiliate, branch, office, or other permanent establishment in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and

(v) Any domestic concern's foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment which is controlled in fact by such domestic concern. (See paragraph (c) of this section on ''Definition of 'Controlled in Fact'.'')

(2) The term *domestic concern* means any partnership, corporation, company, association, or other entity of, or organized under the laws of, any jurisdiction named in paragraph (b)(1) (i) or (ii) of this section, or any permanent domestic establishment of a foreign concern.

(3) The term *foreign concern* means any partnership, corporation, company, association, or other entity of, or organized under the laws of, any jurisdiction other than those named in paragraph (b)(1)(i) or (ii) of this section.

(4) The term *United States person* does not include an individual United States national who is resident outside the United States and who is either employed permanently or temporarily by a non-United States person or assigned to work as an employee for, and under the direction and control of, a non-United States person.

EXAMPLES OF ''UNITED STATES PERSON''

The following examples are intended to give guidance in determining whether a person is a ''United States person.'' They are illustrative, not comprehensive.

(i) U.S. bank A has a branch office in foreign country P. Such branch office is a United States person, because it is a permanent foreign establishment of a domestic concern.

(ii) Ten foreign nationals establish a manufacturing plant, A, in the United States, incorporating the plant under New York law.

A is a United States person, because it is a corporation organized under the laws of one of the states of the United States.

(iii) A, a foreign corporation, opens an office in the United States for purposes of soliciting U.S. orders. The office is not separately incorporated.

A's U.S. office is a United States person, because it is a permanent establishment, in the United States, of a foreign concern.

(iv) A, a U.S. individual, owns stock in foreign corporation B.

A is a United States person. However, A is not a ''domestic concern,'' because the term ''domestic concern'' does not include individuals.

(v) A, a foreign national resident in the United States, is employed by B, a foreign corporation.

A is a United States person, because he is resident in the United States.

(vi) A, a foreign national, who is resident in a foreign country and is employed by a foreign corporation, makes occasional visits to the United States, for purposes of exploring business opportunities.

A is not a United States person, because he is not a United States resident or national.

(vii) A is an association of U.S. firms organized under the laws of Pennsylvania for the purpose of expanding trade.

A is a United States person, because it is an association organized under the laws of one of the states of the United States.

(viii) At the request of country Y, A, an individual employed by U.S. company B, is transferred to company C as an employee. C is a foreign company owned and controlled by country Y. A, a U.S. national who will reside in Y, has agreed to the transfer provided he is able to retain his insurance, pension, and other benefits. Accordingly, company B has agreed to keep A as an employee in order to protect his employee benefits, and company C has agreed to pay for A's salary. At all times while he works for C, A will be under C's direction and control.

A is not a United States person while under C's direction and control, because he will be resident outside the United States and assigned as an employee to a non-United States person. The arrangement designed to protect A's insurance, pension, and other benefits does not destroy his status as an employee of C so long as he is under the direction and control of C.

(ix) A, a U.S. citizen, has resided in Europe for three years, where he is a self-employed consultant for United States and foreign companies in the communications industry.

A is a United States person, because he is a U.S. national and because he is not a resident outside the United States who is employed by other than a United States person.

(c) *Definition of ''Controlled in Fact''.* (1) This part applies to any domestic concern's foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment which is *controlled in fact* by such domestic concern. *Control in fact* consists of the authority or ability of a domestic concern to establish the general policies or to control day-to-day operations of its foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment.

(2) A foreign subsidiary or affiliate of a domestic concern will be presumed to be controlled in fact by that domestic concern, subject to rebuttal by competent evidence, when:

(i) The domestic concern beneficially owns or controls (whether directly or indirectly) more than 50 percent of the outstanding voting securities of the foreign subsidiary or affiliate;

(ii) The domestic concern beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the foreign subsidiary or affiliate, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

(iii) The foreign subsidiary or affiliate is operated by the domestic concern pursuant to the provisions of an exclusive management contract;

(iv) A majority of the members of the board of directors of the foreign subsidiary or affiliate are also members of the comparable governing body of the domestic concern;

(v) The domestic concern has authority to appoint the majority of the members of the board of directors of the foreign subsidiary or affiliate; or

(vi) The domestic concern has authority to appoint the chief operating officer of the foreign subsidiary or affiliate.

(3) A brokerage firm or other person which holds simple record ownership of securities for the convenience of clients will not be deemed to control the securities.

(4) A domestic concern which owns, directly or indirectly, securities that are immediately convertible at the option of the holder or owner into voting securities is presumed to own or control those voting securities.

(5) A domestic concern's foreign branch office or other unincorporated permanent foreign establishment is deemed to be controlled in fact by such domestic concern under all circumstances.

EXAMPLES OF ''CONTROLLED IN FACT''

The following examples are intended to give guidance in determining the circumstances in which a foreign subsidiary, affiliate, or other permanent foreign establishment of a domestic concern is ''controlled in fact.'' They are illustrative, not comprehensive.

(i) Company A is incorporated in a foreign country. Fifty-one percent of the voting stock of A is owned by U.S. company B.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(ii) Company A is incorporated in a foreign country. Ten percent of the voting stock of A is owned by U.S. company B. A has an exclusive management contract with B pursuant to which A is operated by B.

As long as such contract is in effect, A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(iii) Company A is incorporated in a foreign country. Ten percent of the voting stock of A is owned by U.S. company B. A has 10 persons on its board of directors. Six of those persons are also members of the board of directors of U.S. company B.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(iv) Company A is incorporated in a foreign country. Thirty percent of the voting securities of A is owned by U.S. company B and no other person owns or controls an equal or larger share.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(v) Company A is incorporated in a foreign country. In A's articles of incorporation, U.S. company B has been given authority to appoint A's board of directors.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(vi) Company A is a joint venture established in a foreign country, with equal participation by U.S. company B and foreign company C. U.S. Company B has authority to appoint A's chief operating officer.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(vii) Same as (vi), except that B has no authority to appoint A's chief operating officer.

B is not presumed to control A, absent other facts giving rise to a presumption of control.

(viii) Company A is incorporated in a foreign country. U.S. companies B, C, and D each own 20 percent of A's voting securities and regularly cast their votes in concert.

A is presumed to be controlled in fact by B, C, and D, because these companies are acting in concert to control A.

(ix) U.S. bank B located in the United States has a branch office, A, in a foreign country. A is not separately incorporated.

A is deemed to be controlled in fact by B, because A is a branch office of a domestic concern.

(x) Company A is incorporated in a foreign country. Fifty-one percent of the voting stock of A is owned by company B, which is incorporated in another foreign country. Fifty-one percent of the voting stock of B is owned by C, a U.S. company.

Both A and B are presumed to be controlled in fact by C. The presumption of C's control over B may be rebutted by competent evidence showing that control over B does not, in fact, lie with C. The presumption of B's control over A (and thus C's control over A) may be rebutted by competent evidence showing that control over A does not, in fact, lie with B.

(xi) B, a U.S. individual, owns 51 percent of the voting securities of A, a manufacturing company incorporated and located in a foreign country.

A is not ''controlled in fact'' under this part, because it is not controlled by a ''domestic concern.''

(d) *Definition of ''Activities in the Interstate or Foreign Commerce of the United States''.*

ACTIVITIES INVOLVING UNITED STATES PERSONS LOCATED IN THE UNITED STATES

(1) For purposes of this part, the activities of a United States person located in the United States are in the interstate or foreign commerce of the United States if they involve the sale, purchase, or transfer of goods or services (including information) between:

(i) Two or more of the several States (including the District of Columbia);

(ii) Any State (including the District of Columbia) and any territory or possession of the United States;

(iii) Two or more of the territories or possessions of the United States; or

(iv) A State (including the District of Columbia), territory or possession of the United States and any foreign country.

(2) For purposes of this part, the export of goods or services from the United States and the import of goods or services into the United States are activities in United States commerce. In addition, the action of a domestic concern in specifically directing the activities of its controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment is an activity in United States commerce.

(3) Activities of a United States person located in the United States may be in United States commerce even if they are part of or ancillary to activities outside United States commerce. However, the fact that an ancillary activity is in United States commerce does not, in and of itself, mean that the underlying or related activity is in United States commerce.

(4) Hence, the action of a United States bank located in the United States in providing financing from the United States for a foreign transaction that is not in United States commerce is nonetheless itself in United States commerce. However, the fact that the financing is in United States commerce does not, in and of itself, make the underlying foreign transaction an activity in United States commerce, even if the underlying transaction involves a foreign company that is a *United States person* within the meaning of this part.

(5) Similarly, the action of a United States person located in the United States in providing financial, accounting, legal, t ransportation, or other ancillary services to its controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment in connection with a foreign transaction is in United States commerce. But the provision of such ancillary services will not, in and of itself, bring the foreign transaction of such subsidiary, affiliate, or permanent foreign establishment into United States commerce.

ACTIVITIES OF CONTROLLED IN FACT FOREIGN SUBSIDIARIES, AFFILIATES, AND OTHER PERMANENT FOREIGN ESTABLISHMENTS

(6) Any transaction between a controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment of a domestic concern and a person located in the United States is an activity in United States commerce.

(7) Whether a transaction between such a foreign subsidiary, affiliate, or other permanent foreign establishment and a person located outside the United States is an activity in United States commerce is governed by the following rules.

ACTIVITIES IN UNITED STATES COMMERCE

(8) A transaction between a domestic concern's controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment and a person outside the United States, involving goods or services (including information but not including ancillary services) acquired from a person in the United States is in United States commerce under any of the following circumstances—

(i) If the goods or services were acquired for the purpose of filling an order from a person outside the United States;

(ii) If the goods or services were acquired for incorporation into, refining into, reprocessing into, or manufacture of another product for the purpose of filling an order from a person outside the United States;

(iii) If the goods or services were acquired for the purpose of fulfilling or engaging in any other transaction with a person outside the United States; or

(iv) If the goods were acquired and are ultimately used, without substantial alteration or modification, in filling an order from, or fulfilling or engaging in any other transaction with, a person outside the United States (whether or not the goods were originally acquired for that purpose). If the goods are indistinguishable as to origin from similar foreign-trade goods with which they have been mingled in a stockpile or inventory, the subsequent transaction involving the goods is presumed to be in United States commerce unless, at the time of filling the order, the foreign-origin inventory on hand was sufficient to fill the order.

(9) For purposes of this section, goods or services are considered to be acquired for the purpose of filling an order from or engaging in any other

transaction with a person outside the United States where:

(i) They are purchased by the foreign subsidiary, affiliate, or other permanent foreign establishment upon the receipt of an order from or on behalf of a customer with the intention that the goods or services are to go to the customer;

(ii) They are purchased by the foreign subsidiary, affiliate, or other permanent foreign establishment to meet the needs of specified customers pursuant to understandings with those customers, although not for immediate delivery; or

(iii) They are purchased by the foreign subsidiary, affiliate, or other permanent foreign establishment based on the anticipated needs of specified customers.

(10) If any non-ancillary part of a transaction between a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment and a person outside the United States is in United States commerce, the entire transaction is in United States commerce. For example, if such a foreign subsidiary is engaged in filling an order from a non-United States customer both with goods acquired from the United States and with goods acquired elsewhere, the entire transaction with that customer is in United States commerce.

ACTIVITIES OUTSIDE UNITED STATES COMMERCE

(11) A transaction between a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment and a person outside the United States, not involving the purchase, sale, or transfer of goods or services (including information) to or from a person in the United States, is not an activity in United States commerce.

(12) The activities of a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment with respect to goods acquired from a person in the United States are not in United States commerce where:

(i) They were acquired without reference to a specific order from or transaction with a person outside the United States; and

(ii) They were further manufactured, incorporated into, refined into, or reprocessed into another product.

(13) The activities of a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment with respect to services acquired from a person in the United States are not in United States commerce where:

(i) They were acquired without reference to a specific order from or transaction with a person outside the United States; or

(ii) They are ancillary to the transaction with the person outside the United States.

(14) For purposes of this section, services are *ancillary services* if they are provided to a controlled foreign subsidiary, affiliate, or other permanent foreign establishment primarily for its own use rather than for the use of a third person. These typically include financial, accounting, legal,transportation, and other services, whether provided by a domestic concern or an unrelated entity.

(15) Thus, the provision of the project financing by a United States bank located in the United States to a controlled foreign subsidiary unrelated to the bank is an ancillary service which will not cause the underlying transaction to be in United States commerce. By contrast, where a domestic concern, on behalf of its controlled foreign subsidiary, gives a guaranty of performance to a foreign country customer, that is a service provided to the customer and, as such, brings that subsidiary's transaction with the customer into United States commerce. Similarly, architectural or engineering services provided by a domestic concern in connection with its controlled foreign subsidiary's construction project in a third country are services passed through to the subsidiary's customer and, as such, bring that subsidiary's foreign transaction into United States commerce.

GENERAL

(16) Regardless of whether the subsequent disposition of goods or services from the United States is in United

States commerce, the original acquisition of goods or services from a person in the United States is an activity in United States commerce subject to this part. Thus, if a domestic concern's controlled foreign subsidiary engages in a prohibited refusal to do business in stocking its inventory with goods from the United States, that action is subject to this part whether or not subsequent sales from that inventory are.

(17) In all the above, goods and services will be considered to have been acquired from a person in the United States whether they were acquired directly or indirectly through a third party, where the person acquiring the goods or services knows or expects, at the time he places the order, that they will be delivered from the United States.

LETTERS OF CREDIT

(18) Implementation of a letter of credit in the United States by a United States person located in the United States, including a permanent United States establishment of a foreign concern, is an activity in United States commerce.

(19) Implementation of a letter of credit outside the United States by a United States person located outside the United States is in United States commerce where the letter of credit (a) specifies a United States address for the beneficiary, (b) calls for documents indicating shipment from the United States, or (c) calls for documents indicating that the goods are of United States origin.

(20) See § 760.2(f) of this part on ''Letters of Credit'' to determine the circumstances in which paying, honoring, confirming, or otherwise implementing a letter of credit is covered by this part.

EXAMPLES OF ACTIVITIES IN THE INTERSTATE OR FOREIGN COMMERCE OF THE UNITED STATES

The following examples are intended to give guidance in determining the circumstances in which an activity is in the interstate or foreign commerce of the United States. They are illustrative, not comprehensive.

UNITED STATES PERSON LOCATED IN THE UNITED STATES

(i) U.S. company A exports goods from the United States to a foreign country. A's activity is in U.S. commerce, because A is exporting goods from the United States.

(ii) U.S. company A imports goods into the United States from a foreign country. A's activity is in U.S. commerce, because A is importing goods into the United States.

(iii) U.S. engineering company A supplies consulting services to its controlled foreign subsidiary, B. A's activity is in U.S. commerce, because A is exporting services from the United States.

(iv) U.S. company A supplies consulting services to foreign company B. B is unrelated to A or any other U.S. person.

A's activity is in U.S. commerce even though B, a foreign-owned company located outside the United States, is not subject to this part, because A is exporting services from the United States.

(v) Same as (iv), except A is a bank located in the United States and provides a construction loan to B.

A's activity is in U.S. commerce even though B is not subject to this part, because A is exporting financial services from the United States.

(vi) U.S. company A issues policy directives from time to time to its controlled foreign subsidiary, B, governing the conduct of B's activities with boycotting countries.

A's activity in directing the activities of its foreign subsidiary, B, is an activity in U.S. commerce.

FOREIGN SUBSIDIARIES, AFFILIATES, AND OTHER PERMANENT FOREIGN ESTABLISHMENTS OF DOMESTIC CONCERNS

(i) A, a controlled foreign subsidiary of U.S. company B, purchases goods from the United States.

A's purchase of goods from the United States is in U.S. commerce, because A is importing goods from the United States. Whether A's subsequent disposition of these goods is in U.S. commerce is irrelevant. Similarly, the fact that A purchased goods from the United States does not, in and of itself, make any subsequent disposition of those goods an activity in U.S. commerce.

(ii) A, a controlled foreign subsidiary of U.S. company B, receives an order from boycotting country Y for construction materials. A places an order with U.S. company B for the materials.

A's transaction with Y is an activity in U.S. commerce, because the materials are purchased from the United States for the purpose of filling the order from Y.

(iii) A, a controlled foreign subsidiary of U.S. company B, receives an order from boycotting country Y for construction materials. A places an order with U.S. company B

for some of the materials, and with U.S. company C, an unrelated company, for the rest of the materials.

A's transaction with Y is an activity in U.S. commerce, because the materials are purchased from the United States for the purpose of filling the order from Y. It makes no difference whether the materials are ordered from B or C.

(iv) A, a controlled foreign subsidiary of U.S. company B, is in the wholesale and retail appliance sales business. A purchases finished air conditioning units from the United States from time to time in order to stock its inventory. A's inventory is also stocked with air conditioning units purchased outside the United States. A receives an order for air conditioning units from Y, a boycotting country. The order is filled with U.S.-origin units in A's inventory.

A's transaction with Y is in U.S. commerce, because its U.S.-origin goods are resold without substantial alteration.

(v) Same as (iv), except that A is in the chemicals distribution business. Its U.S.-origin goods are mingled in inventory with foreign-origin goods.

A's sale to Y of unaltered goods from its general inventory is presumed to be in U.S. commerce unless A can show that at the time of the sale the foreign-origin inventory on hand was sufficient to cover the shipment to Y.

(vi) A, a foreign subsidiary of U.S. company B, receives an order from boycotting country Y for computers. A places an order with U.S. company B for some of the components; with U.S. company C, an unrelated company, for other components; and with foreign company D for the rest of the components. A then assembles the computers and ships them to Y.

A's transaction with Y is an activity in U.S. commerce, because some of the components are acquired from the United States for purposes of filling an order from Y.

(vii) Same as (vi), except A purchases all the components from non-U.S.sources.

A's transaction with Y is not an activity in U.S. commerce, because it involves no export of goods from the United States. It makes no difference whether the technology A uses to manufacture computers was originally acquired from its U.S. parent.

(viii) A, a controlled foreign subsidiary of U.S. company B, manufactures computers. A stocks its general components and parts inventory with purchases made at times from the United States and at times from foreign sources. A receives an order from Y, a boycotting country, for computers. A fills that order by manufacturing the computers using materials from its general inventory.

A's transaction with Y is not in U.S. commerce, because the U.S.-origin components are not acquired for the purpose of meeting the anticipated needs of specified customers in Y. It is irrelevant that A's operations may be based on U.S.-origin technology.

(ix) Same as (viii), except that in anticipation of the order from Y, A orders and receives the necessary materials from the United States.

A's transaction with Y is in U.S. commerce, because the U.S.-origin goods were acquired for the purpose of filling an anticipated order from Y.

(x) A, a controlled foreign subsidiary of U.S. company B, manufactures typewriters. It buys typewriter components both from the United States and from foreign sources. A sells its output in various places throughout the world, including boycotting country Y. Its sales to Y vary from year to year, but have averaged approximately 20 percent of sales for the past five years. A expects that its sales to Y will remain at approximately that level in the years ahead although it has no contracts or orders from Y on hand.

A's sales of typewriters to Y are not in U.S. commerce, because the U.S. components are not acquired for the purpose of filling an order from Y. A general expectancy of future sales is not an ''order'' within the meaning of this section.

(xi) U.S. company A's corporate counsel provides legal advice to B, its controlled foreign subsidiary, on the applicability of this Part to B's transactions.

While provision of this legal advice is itself an activity in U.S. commerce, it does not, in and of itself, bring B's activities into U.S. commerce.

(xii) A, a controlled foreign subsidiary of U.S. company B, is in the general construction business. A enters into a contract with boycotting country Y to construct a power plant in Y. In preparing engineering drawings and specifications, A uses the advice and assistance of B.

A's transaction with Y is in U.S. commerce, because B's services are used for purposes of fulfilling the contract with Y. B's services are not ancillary services, because the engineering services in connection with construction of the power plant are part of the services ultimately provided to Y by A.

(xiii) Same as (xii), except that A gets no engineering advice or assistance from B. However, B's corporate counsel provides legal advice to A regarding the structure of the transaction. In addition, B's corporate counsel draws up the contract documents.

A's transaction with Y is not in U.S. commerce. The legal services provided to A are ancillary services, because they are not part of the services provided to Y by A in fulfillment of its contract with Y.

(xiv) A, a controlled foreign subsidiary of U.S. company B, enters into a contract to construct an apartment complex in boycotting country Y. A will fulfill its contract completely with goods and services from

outside the United States. Pursuant to a provision in the contract, B guarantees A's performance of the contract.

A's transaction with Y is in U.S. commerce, because B's guaranty of A's performance involves the acquisition of services from the United States for purposes of fulfilling the transaction with Y, and those services are part of the services ultimately provided to Y.

(xv) Same as (xiv), except that the guaranty of A's performance is supplied by C, a non-U.S. person located outside the United States. However, unrelated to any particular transaction, B from time to time provides general financial, legal, and technical services to A.

A's transaction with Y is not in U.S. commerce, because the services acquired from the United States are not acquired for purposes of fulfilling the contract with Y.

(xvi) A, a foreign subsidiary of U.S. company B, has a contract with boycotting country Y to conduct oil drilling operations in that country. In conducting these operations, A from time to time seeks certain technical advice from B regarding the operation of the drilling rigs.

A's contract with Y is in U.S. commerce, because B's services are sought for purposes of fulfilling the contract with Y and are part of the services ultimately provided to Y.

(xvii) A, a controlled foreign subsidiary of U.S. company B, enters into a contract to sell typewriters to boycotting country Y. A is located in non-boycotting country P. None of the components are acquired from the United States. A engages C, a U.S. shipping company, to transport the typewriters from P to Y.

A's sales to Y are not in U.S. commerce, because in carrying A's goods, C is providing an ancillary service to A and not a service to Y.

(xviii) Same as (xvii), except that A's contract with Y calls for title to pass to Y in P. In addition, the contract calls for A to engage a carrier to make delivery to Y.

A's sales to Y are in U.S. commerce, because in carrying Y's goods, C is providing a service to A which is ultimately provided to Y.

(xix) A, a controlled foreign subsidiary of U.S. company B, has general product liability insurance with U.S. company C. Foreign-origin goods sold from time to time by A to boycotting country Y are covered by the insurance policy.

A's sales to Y are not in U.S. commerce, because the insurance provided by C is an ancillary service provided to A which is not ultimately provided to Y.

(xx) A, a controlled foreign subsidiary of U.S. company B, manufactures automobiles abroad under a license agreement with B. From time to time, A sells such goods to boycotting country Y.

A's sales to Y are not in U.S. commerce, because the rights conveyed by the license are not acquired for the specific purpose of engaging in transactions with Y.

(e) *''Intent''*. (1) This part prohibits a United States person from taking or knowingly agreeing to take certain specified actions with intent to comply with, further, or support an unsanctioned foreign boycott.

(2) A United States person has the intent to comply with, further, or support an unsanctioned foreign boycott when such a boycott is at least one of the reasons for that person's decision whether to take a particular prohibited action. So long as that is at least one of the reasons for that person's action, a violation occurs regardless of whether the prohibited action is also taken for non-boycott reasons. Stated differently, the fact that such action was taken for legitimate business reasons does not remove that action from the scope of this part if compliance with an unsanctioned foreign boycott was also a reason for the action.

(3) Intent is a necessary element of any violation of any of the prohibitions under § 760.2. It is not sufficient that one take action that is specifically prohibited by this part. It is essential that one take such action with intent to comply with, further,or support an unsanctioned foreign boycott. Accordingly, a person who inadvertently, without boycott intent, takes a prohibited action, does not commit any violation of this part.

(4) Intent in this context means the reason or purpose for one's behavior. It does not mean that one has to agree with the boycott in question or desire that it succeed or that it be furthered or supported. But it does mean that the reason why a particular prohibited action was taken must be established.

(5) Reason or purpose can be proved by circumstantial evidence. For example, if a person receives a request to supply certain boycott information, the furnishing of which is prohibited by this part, and he knowingly supplies that information in response, he clearly intends to comply with that boycott request. It is irrelevant that he may disagree with or object to the boycott itself. Information will be deemed to be furnished with the requisite intent if

the person furnishing the information knows that it was sought for boycott purposes. On the other hand, if a person refuses to do business with someone who happens to be blacklisted, but the reason is because that person produces an inferior product, the requisite intent does not exist.

(6) Actions will be deemed to be taken with intent to comply with an unsanctioned foreign boycott if the person taking such action knew that such action was required or requested for boycott reasons. On the other hand, the mere absence of a business relationship with a blacklisted person or with or in a boycotted country does not indicate the existence of the requisite intent.

(7) In seeking to determine whether the requisite intent exists, all available evidence will be examined.

EXAMPLES OF ''INTENT''

The following examples are intended to illustrate the factors which will be considered in determining whether the required intent exists. They are illustrative, not comprehensive.

(i) U.S. person A does business in boycotting country Y. In selecting firms to supply goods for shipment to Y, A chooses supplier B because B's products are less expensive and of higher quality than the comparable products of supplier C. A knows that C is blacklisted, but that is not a reason for A's selection of B.

A's choice of B rather than C is not action with intent to comply with Y's boycott, because C's blacklist status is not a reason for A's action.

(ii) Same as (i), except that A chooses B rather than C in part because C is blacklisted by Y.

Since C's blacklist status is a reason for A's choice, A's action is taken with intent to comply with Y's boycott.

(iii) U.S. person A bids on a tender issued by boycotting country Y. A inadvertently fails to notice a prohibited certification which appears in the tender document. A's bid is accepted.

A's action in bidding was not taken with intent to comply with Y's boycott, because the boycott was not a reason for A's action.

(iv) U.S. bank A engages in letter of credit transactions, in favor of U.S. beneficiaries, involving the shipments of U.S. goods to boycotting country Y. As A knows, such letters of credit routinely contain conditions requiring prohibited certifications. A fails to take reasonable steps to prevent the implementation of such letters of credit. A receives for implementation a letter of credit which in fact contains a prohibited condition but does not examine the letter of credit to determine whether it contains such a condition.

Although Y's boycott may not be a specific reason for A's action in implementing the letter of credit with a prohibited condition, all available evidence shows that A's action was taken with intent to comply with the boycott, because A knows or should know that its procedures result in compliance with the boycott.

(v) U.S. bank A engages in letter of credit transactions, in favor of U.S. beneficiaries, involving the shipment of U.S. goods to boycotting country Y. As A knows, the documentation accompanying such letters of credit sometimes contains prohibited certifications. In accordance with standard banking practices applicable to A, it does not examine such accompanying documentation. A receives a letter of credit in favor of a U.S. beneficiary. The letter of credit itself contains no prohibited conditions. However, the accompanying documentation, which A does not examine, does contain such a condition.

All available evidence shows that A's action in implementing the letter of credit was not taken with intent to comply with the boycott, because A has no affirmative obligation to go beyond applicable standard banking practices in implementing letters of credit.

(vi) A, a U.S. company, is considering opening a manufacturing facility in boycotted country X. A already has such a facility in boycotting country Y. After exploring the possibilities in X, A concludes that the market does not justify the move. A is aware that if it did open a plant in X, Y might object because of Y's boycott of X. However Y's possible objection is not a reason for A's decision not to open a plant in X.

A's decision not to proceed with the plant in X is not action with intent to comply with Y's boycott, because Y's boycott of X is not a reason for A's decision.

(vii) Same as (vi), except that after exploring the business possibilities in X, A concludes that the market does justify the move to X. However, A does not open the plant because of Y's possible objections due to Y's boycott of X.

A's decision not to proceed with the plant in X is action taken with intent to comply with Y's boycott, because Y's boycott is a reason for A's decision.

(viii) A, a U.S. chemical manufacturer, receives a ''boycott questionnaire'' from boycotting country Y asking, among other things, whether A has any plants located in boycotted country X. A, which has never supported Y's boycott of X, responds to Y's questionnaire, indicating affirmatively that it does have plants in X and that it intends to continue to have plants in X.

A's responding to Y's questionnaire is deemed to be action with intent to comply with Y's boycott because A knows that the questionnaire is boycott-related. It is irrelevant that A does not also wish to support Y's boycott.

(ix) U.S. company A has a manufacturing facility in boycotted country X. A receives an invitation to bid on a construction project in boycotting country Y. The invitation states that all bidders must complete a boycott questionnaire and send it in with the bid. The questionnaire asks for information about A's business relationships with X. Regardless of whether A's bid is successful, A intends to continue its business in X undiminished and in fact is exploring and intends to continue exploring an expansion of its activities in X without regard to Y's boycott.

A may not answer the questionnaire, because, despite A's intentions with regard to its business operations in X, Y's request for completion of the questionnaire is for boycott purposes and by responding, A's action would be taken with intent to comply with Y's boycott.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34945, June 1, 2000]

§ 760.2 Prohibitions.

(a) *Refusals to do business.*

PROHIBITION AGAINST REFUSALS TO DO BUSINESS

(1) No United States person may: refuse, knowingly agree to refuse, require any other person to refuse, or knowingly agree to require any other person to refuse, to do business with or in a boycotted country, with any business concern organized under the laws of a boycotted country, with any national or resident of a boycotted country, or with any other person, when such refusal is pursuant to an agreement with the boycotting country, or a requirement of the boycotting country, or a request from or on behalf of the boycotting country.

(2) Generally, a refusal to do business under this section consists of action that excludes a person or country from a transaction for boycott reasons. This includes a situation in which a United States person chooses or selects one person over another on a boycott basis or takes action to carry out another person's boycott-based selection when he knows or has reason to know that the other person's selection is boycott-based.

(3) Refusals to do business which are prohibited by this section include not only specific refusals, but also refusals implied by a course or pattern of conduct. There need not be a specific offer and refusal to constitute a refusal to do business; a refusal may occur when a United States person has a financial or commercial opportunity and declines for boycott reasons to consider or accept it.

(4) A United States person's use of either a boycott-based list of persons with whom he will not deal (a so-called ''blacklist'') or a boycott-based list of persons with whom he will deal (a so-called ''whitelist'') constitutes a refusal to do business.

(5) An agreement by a United States person to comply generally with the laws of the boycotting country with which it is doing business or an agreement that local laws of the boycotting country shall apply or govern is not, in and of itself, a refusal to do business. Nor, in and of itself, is use of a contractual clause explicitly requiring a person to assume the risk of loss of non-delivery of his products a refusal to do business with any person who will not or cannot comply with such a clause. (But see § 760.4 of this part on ''Evasion.'')

(6) If, for boycott reasons, a United States general manager chooses one supplier over another, or enters into a contract with one supplier over another, or advises its client to do so, then the general manager's actions constitute a refusal to do business under this section. However, it is not a refusal to do business under this section for a United States person to provide management, procurement, or other pre-award services for another person so long as the provision of such pre-award services is customary for that firm (or industry of which the firm is a part), without regard to the boycotting or non-boycotting character of the countries in which they are performed, and the United States person, in providing such services, does not act to exclude a person or country from the transaction for boycott reasons, or otherwise take actions that are boycott-based. For example, a United States person under contract to provide general management services

in connection with a construction project in a boycotting country may compile lists of qualified bidders for the client if that service is a customary one and if persons who are qualified are not excluded from that list because they are blacklisted.

(7) With respect to post-award services, if a client makes a boycott-based selection, actions taken by the United States general manager or contractor to carry out the client's choice are themselves refusals to do business if the United States contractor knows or has reason to know that the client's choice was boycott-based. (It is irrelevant whether the United States contractor also provided pre-award services.) Such actions include entering into a contract with the selected supplier, notifying the supplier of the client's choice, executing a contract on behalf of the client, arranging for inspection and shipment of the supplier's goods, or taking any other action to effect the client's choice. (But see § 760.3(d) on ''Compliance with Unilateral Selection'' as it may apply to post-award services.)

(8) An agreement is not a prerequisite to a violation of this section since the prohibition extends to actions taken pursuant not only to agreements but also to requirements of, and requests from or on behalf of, a boycotting country.

(9) Agreements under this section may be either express or implied by a course or pattern of conduct. There need not be a direct request from a boycotting country for action by a United States person to have been taken pursuant to an agreement with or requirement of a boycotting country.

(10) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott. The mere absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with national(s) or resident(s) of the boycotted country, or with any other person does not indicate the existence of the required intent.

EXAMPLES OF REFUSALS AND AGREEMENTS TO REFUSE TO DO BUSINESS

The following examples are intended to give guidance in determining the circumstances in which, in a boycott situation, a refusal to do business or an agreement to refuse to do business is prohibited. They are illustrative, not comprehensive.

REFUSALS TO DO BUSINESS

(i) A, a U.S. manufacturer, receives an order for its products from boycotting country Y. To fill that order, A solicits bids from U.S. companies B and C, manufacturers of components used in A's products. A does not, however, solicit bids from U.S. companies D or E, which also manufacture such components, because it knows that D and E are restricted from doing business in Y and that their products are, therefore, not importable into that country.

Company A may not refuse to solicit bids from D and E for boycott reasons, because to do so would constitute a refusal to do business with those persons.

(ii) A, a U.S. exporter, uses company B, a U.S. insurer, to insure the shipment of its goods to all its overseas customers. For the first time, A receives an order for its products from boycotting country Y. Knowing that B is on the blacklist of Y, A arranges with company C, a non-blacklisted U.S. insurer, to insure the shipment of its goods to Y.

A's action constitutes a refusal to do business with B.

(iii) A, a U.S. exporter, purchases all its liability insurance from company B, a U.S. company that does business in boycotted country X. A wishes to expand its operations into country Y, the boycotting country. Before doing so, A decides to switch from insurer B to insurer C in anticipation of a request from Y that A sever its relations with B as a condition of doing business in Y.

A may not switch insurers for this reason, because doing so would constitute a refusal to do business with B.

(iv) U.S. company A exports goods to boycotting country Y. In selecting vessels to transport the goods to Y, A chooses only from among carriers which call at ports in Y.

A's action is not a refusal to do business with carriers which do not call at ports in Y.

(v) A, a U.S. bank with a branch office in boycotting country Y, sends representatives to boycotted country X to discuss plans for opening a branch office in X. Upon learning of these discussions, an official of the local boycott office in Y advises A's local branch manager that if A opens an office in X it will no longer be allowed to do business in Y. As

a result of this notification, A decides to abandon its plans to open a branch in X.

Bank A may not abandon its plans to open a branch in X as a result of Y's notification, because doing so would constitute a refusal to do business in boycotted country X.

(vi) A, a U.S. company that manufactures office equipment, has been restricted from doing business in boycotting country Y because of its business dealings with boycotted country X. In an effort to have itself removed from Y's blacklist, A ceases its business in X.

A's action constitutes a refusal to do business in boycotted country X.

(vii) A, a U.S. computer company, does business in boycotting country Y. A decides to explore business opportunities in boycotted country X. After careful analysis of possible business opportunities in X, A decides, solely for business reasons, not to market its products in X.

A's decision not to proceed is not a refusal to do business, because it is not based on boycott considerations. A has no affirmative obligation to do business in X.

(viii) A, a U.S. oil company with operations in boycotting country Y, has regularly purchased equipment from U.S. petroleum equipment suppliers B, C, and D, none of whom is on the blacklist of Y. Because of its satisfactory relationship with B, C, and D, A has not dealt with other suppliers, including supplier E, who is blacklisted by Y.

A's failure affirmatively to seek or secure business with blacklisted supplier E is not a refusal to do business with E.

(ix) Same as (viii), except U.S. petroleum equipment supplier E, a company on boycotting country Y's blacklist, offers to supply U.S. oil company A with goods comparable to those provided by U.S. suppliers B, C, and D. A, because it has satisfactorily, established relationships with suppliers B, C, and D, does not accept supplier E's offer.

A's refusal of supplier E's offer is not a refusal to do business, because it is based solely on non-boycott considerations. A has no affirmative obligation to do business with E.

(x) A, a U.S. construction company, enters into a contract to build an office complex in boycotting country Y. A receives bids from B and C, U.S. companies that are equally qualified suppliers of electrical cable for the project. A knows that B is blacklisted by Y and that C is not. A accepts C's bid, in part because C is as qualified as the other potential supplier and in part because C is not blacklisted.

A's decision to select supplier C instead of blacklisted supplier B is a refusal to do business, because the boycott was one of the reasons for A's decision.

(xi) A, a U.S. general contractor, has been retained to construct a highway in boycotting country Y. A circulates an invitation to bid to U.S. manufacturers of road-building equipment. One of the conditions listed in the invitation to bid is that, in order for A to obtain prompt service, suppliers will be required to maintain a supply of spare parts and a service facility in Y. A includes this condition solely for commercial reasons unrelated to the boycott. Because of this condition, however, those suppliers on Y's blacklist do not bid, since they would be unable to satisfy the parts and services requirements.

A's action is not a refusal to do business, because the contractual condition was included solely for legitimate business reasons and was not boycott-based.

(xii) Company A, a U.S. oil company, purchases drill bits from U.S. suppliers for export to boycotting country Y. In its purchase orders, A includes a provision requiring the supplier to make delivery to A's facilities in Y and providing that title to the goods does not pass until delivery has been made. As is customary under such an arrangement, the supplier bears all risks of loss, including loss from fire, theft, perils of the sea, and inability to clear customs, until title passes.

Insistence on such an arrangement does not constitute a refusal to do business, because this requirement is imposed on all suppliers whether they are blacklisted or not. (But see § 760.4 on ''Evasion''.)

(xiii) A, a U.S. engineering and construction company, contracts with a government agency in boycotting country Y to perform a variety of services in connection with the construction of a large industrial facility in Y. Pursuant to this contract, A analyzes the market of prospective suppliers, compiles a suggested bidders list, analyzes the bids received, and makes recommendations to the client. The client independently selects and awards the contract to supplier C for boycott reasons. All of A's services are performed without regard to Y's blacklist or any other boycott considerations, and are the type of services A provides clients in both boycotting and non-boycotting countries.

A's actions do not constitute a refusal to do business, because, in the provision of pre-award services, A has not excluded the other bidders and because A customarily provides such services to its clients.

(xiv) Same as (xiii), except that in compiling a list of prospective suppliers, A deletes suppliers he knows his client will refuse to select because they are blacklisted. A knows that including the names of blacklisted suppliers will neither enhance their chances of being selected nor provide his client with a useful service, the function for which he has been retained.

A's actions, which amount to furnishing a so-called ''whitelist'', constitute refusals to do business, because A's pre-award services have not been furnished without regard to boycott considerations.

(xv) A, a U.S. construction firm, provides its boycotting country client with a permissible list of prospective suppliers, B, C, D, and E. The client independently selects and awards the contract to C, for boycott reasons, and then requests A to advise C of his selection, negotiate the contract with C, arrange for the shipment, and inspect the goods upon arrival. A knows that C was chosen by the client for boycott reasons.

A's action in complying with his client's direction is a refusal to do business, because A's post-award actions carry out his client's boycott-based decision. (Note: Whether A's action comes within the unilateral selection exception depends upon factors discussed in § 760.3(d) of this part).

(xvi) Same as (xv), except that A is building the project on a turnkey basis and will retain title until completion. The client instructs A to contract only with C.

A's action in contracting with C constitutes a refusal to do business, because it is action that excludes blacklisted persons from the transaction for boycott reasons. (Note: Whether A's action comes within the unilateral selection exception depends upon factors discussed in § 760.3(d) of this part).

(xvii) A, a U.S. exporter of machine tools, receives an order for drill presses from boycotting country Y. The cover letter from Y's procurement official states that A was selected over other U.S. manufacturers in part because A is not on Y's blacklist.

A's action in filling this order is not a refusal to do business, because A has not excluded anyone from the transaction.

(xviii) A, a U.S. engineering firm under contract to construct a dam in boycotting country Y, compiles, on a non-boycott basis, a list of potential heavy equipment suppliers, including information on their qualifications and prior experience. A then solicits bids from the top three firms on its list—B, C, and D—because they are the best qualified. None of them happens to be blacklisted. A does not solicit bids from E, F, or G, the next three firms on the list, one of whom is on Y's blacklist.

A's decision to solicit bids from only B, C, and D, is not a refusal to do business with any person, because the solicited bidders were not selected for boycott reasons.

(xix) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted. B meets all other conditions of the letter of credit but refuses to certify as to his blacklist status. A refuses to pay B on the letter of credit solely because B refuses to certify as to his blacklist status.

A has refused to do business with another person pursuant to a boycott requirement or request.

(xx) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to provide a certification from the steamship line that the vessel carrying the goods is not blacklisted. B seeks payment from A and meets all other conditions of the letter of credit but refuses or is unable to provide the certification from the steamship line about the vessel's blacklist status. A refuses to pay B on the letter of credit solely because B cannot or will not provide the certification.

A has required another person to refuse to do business pursuant to a boycott requirement or request by insisting that B obtain such a certificate. (Either A or B may request an amendment to the letter of credit substituting a certificate of vessel eligibility, however. See Example (xxi) below).

(xxi) U.S. bank A receives a letter of credit from a bank in boycotting country Y in favor of U.S. beneficiary B. The letter of credit requires B to provide a certification from the steamship line that the vessel carrying the goods is eligible to enter the ports in Y. B seeks payment from A and meets all other conditions of the letter of credit. A refuses to pay B solely because B cannot or will not provide the certification.

A has neither refused, nor required another person to refuse, to do business with another person pursuant to a boycott requirement or request because a request for a vessel eligibility certificate to be furnished by the steamship line is not a prohibited condition. (See Supplement No. 1 to this part, paragraph (I)(B), ''Shipping Certificate''.)

(xxii) U.S. bank A confirms a letter of credit in favor of U.S. beneficiary B. The letter of credit contains a requirement that B certify that he is not blacklisted. B presents the letter of credit to U.S. bank C, a correspondent of bank A. B does not present the certificate of blacklist status to bank C, but, in accordance with these rules, bank C pays B, and then presents the letter of credit and documentation to bank A for reimbursement. Bank A refuses to reimburse bank C because the blacklist certification of B is not included in the documentation.

A has required another person to refuse to do business with a person pursuant to a boycott requirement or request by insisting that C obtain the certificate from B.

(xxiii) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted. B fails to provide such a certification when he presents the documents to A for payment. A notifies B that the certification has not been submitted.

A has not refused to do business with another person pursuant to a boycott requirement by notifying B of the omitted certificate. A may not refuse to pay on the letter of credit, however, if B states that B will not provide such a certificate.

(xxiv) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B from the issuing bank for the purpose of confirmation,

negotiation or payment. The letter of credit requires B to certify that he is not blacklisted. A notifies B that it is contrary to the policy of A to handle letters of credit containing this condition and that, unless an amendment is obtained deleting this condition, A will not implement the letter of credit.

A has not refused to do business with another person pursuant to a boycott requirement, because A has indicated its policy against implementing the letter of credit containing the term without regard to B's ability or willingness to furnish such a certificate.

AGREEMENTS TO REFUSE TO DO BUSINESS

(i) A, a U.S. construction firm, is retained by an agency of boycotting country Y to build a primary school. The proposed contract contains a clause stating that A ''may not use goods or services in the project that are produced or provided by any person restricted from having a business relationship with country Y by reason of Y's boycott against country X''.

A's action in entering into such a contract would constitute an agreement to refuse to do business, because it is an agreement to exclude blacklisted persons from the transaction. A may, however, renegotiate this clause so that it does not contain terms prohibited by this part.

(ii) A, a U.S. manufacturer of commercial refrigerators and freezers, receives an invitation to bid from boycotting country Y. The tender states that the bidder must agree not to deal with companies on Y's blacklist. A does not know which companies are on the blacklist; however, A submits a bid without taking exception to the boycott conditions. A's bid makes no commitment regarding not dealing with certain companies.

At the point when A submits its bid without taking exception to the boycott request in Y's tender, A has agreed to refuse to do business with blacklisted persons, because the terms of Y's tender require A to agree to refuse to do business.

(iii) A, a U.S. construction firm, is offered a contract to perform engineering and construction services in connection with a project located in boycotting country Y. The contract contains a clause stating that, in the event of a contract dispute, the laws of Y will apply.

A may enter into the contract. Agreement that the laws of boycotting country Y will control in resolving a contract dispute is not an agreement to refuse to do business.

(iv) Same as (iii), except that the contract contains a clause that A and its employees will comply with the laws of boycotting country Y. A knows that Y has a number of boycott laws.

Such an agreement is not, in and of itself, an agreement to refuse to do business. If, however, A subsequently refuses to do business with someone because of the laws of Y, A's action would be a refusal to do business.

(v) Same as (iv), except that the contract contains a clause that A and its employees will comply with the laws of boycotting country Y, ''including boycott laws.''

A's agreeing, without qualification, to comply with local boycott laws constitutes an agreement to refuse to do business.

(vi) Same as (v), except that A inserts a proviso ''except insofar as Y's laws conflict with U.S. laws,'' or words to that effect.

Such an agreement is not an agreement to refuse to do business.

(vii) A, a U.S. general contractor, is retained to construct a pipeline in boycotting country Y. A provision in the proposed contract stipulates that in purchasing equipment, supplies, and services A must give preference to companies located in host country Y.

A may agree to this contract provision. Agreeing to a ''buy local'' contract provision is not an agreement to refuse to do business, because A's agreement is not made for boycott reasons.

(viii) A, a U.S. exporter planning to sell retail goods to customers in boycotting country Y, enters into a contract to purchase goods wholesale from B, a U.S. appliance manufacturer. A's contract with B includes a provision stipulating that B may not use components or services of blacklisted companies in the manufacture of its appliances.

A's contract constitutes a refusal to do business, because it would require another person, B, to refuse to do business with other persons for boycott reasons. B may not agree to such a contract, because it would be agreeing to refuse to do business with other persons for boycott reasons.

(ix) Same as (viii), except that A and B reach an implicit understanding that B will not use components or services of blacklisted companies in the manufacture of goods to be exported to Y. In the manufacture of appliances to be sold to A for export to non-boycotting countries, B uses components manufactured by blacklisted companies.

The actions of both A and B constitute agreement to refuse to do business. The agreement is implied by their pattern of conduct.

(x) Boycotting country Y orders goods from U.S. company B. Y opens a letter of credit with foreign bank C in favor of B. The letter of credit specifies that negotiation of the letter of credit with a bank that appears on the country X boycott blacklist is prohibited. U.S. bank A, C's correspondent bank, advises B of the letter of credit. B presents documentation to bank A seeking to be paid on the letter of credit, without amending or otherwise taking exception to the boycott condition.

B has agreed to refuse to do business with blacklisted banks because, by presenting the letter of credit for payment, B has accepted all of its terms and conditions.

(b) *Discriminatory actions.*

PROHIBITION AGAINST TAKING DISCRIMINATORY ACTIONS

(1) No United States person may:

(i) Refuse to employ or otherwise discriminate against any individual who is a United States person on the basis of race, religion, sex, or national origin;

(ii) Discriminate against any corporation or other organization which is a United States person on the basis of the race, religion, sex, or national origin of any owner, officer, director, or employee of such corporation or organization;

(iii) Knowingly agree to take any of the actions described in paragraph (b)(1)(i) and (ii) of this section; or

(iv) Require or knowingly agree to require any other person to take any of the actions described in paragraph (b)(1)(i) and (ii) of this section.

(2) This prohibition shall apply whether the discriminatory action is taken by a United States person on its own or in response to an agreement with, request from, or requirement of a boycotting country. This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

(3) The section does not supersede or limit the operation of the civil rights laws of the United States.

EXAMPLES OF DISCRIMINATORY ACTIONS

The following examples are intended to give guidance in determining the circumstances in which the taking of particular discriminatory actions is prohibited. They are illustrative, not comprehensive.

(i) U.S. construction company A is awarded a contract to build an office complex in boycotting country Y. A, believing that employees of a particular religion will not be permitted to work in Y because of Y's boycott against country X, excludes U.S. persons of that religion from consideration for employment on the project.

A's refusal to consider qualified U.S. persons of a particular religion for work on the project in Y constitutes a prohibited boycott-based discriminatory action against U.S. persons on the basis of religion.

(ii) Same as (i), except that a clause in the contract provides that ''no persons of country X origin are to work on this project.''

A's agreement constitutes a prohibited boycott-based agreement to discriminate against U.S. persons, among others, on the basis of national origin.

(iii) Same as (i), except that a clause in the contract provides that ''no persons who are citizens, residents, or nationals of country X are to work on this project.''

A's agreement does not constitute a boycott-based agreement to discriminate against U.S. persons on the basis of race, religion, sex, or national origin, because the clause requires exclusion on the basis of citizenship, residency, and nationality only.

(iv) U.S. construction company A enters into a contract to build a school in boycotting country Y. Y's representative orally tells A that no persons of country X origin are to work on the project.

A may not comply, because to do so would constitute discrimination on the basis of national origin.

It makes no difference that A learned of Y's requirement orally. It makes no difference how A learns about Y's discriminatory requirement.

(v) Boycotting country Y tenders an invitation to bid on a construction project in Y. The tender requires that the successful bidder's personnel will be interviewed and that persons of a particular religious faith will not be permitted to work on the project. Y's requirement is based on its boycott of country X, the majority of whose citizens are of that particular faith.

Agreement to this provision in the tender document by a U.S. person would constitute a prohibited agreement to engage in boycott-based discrimination against U.S. persons of a particular religion.

(vi) Same as (v), except that the tender specifies that ''women will not be allowed to work on this project.''

Agreement to this provision in the tender by a U.S. person does not constitute a prohibited agreement to engage in boycott-based discrimination, because the restriction against employment of women is not boycott-based. Such an agreement may, however, constitute a violation of U.S. civil rights laws.

(vii) A is a U.S. investment banking firm. As a condition of participating in an underwriting of securities to be issued by boycotting country Y, A is required to exclude

investment banks owned by persons of a particular faith from participation in the underwriting. Y's requirement is based on its boycott of country X, the majority of whose citizens are of that particular faith.

A's agreement to such a provision constitutes a prohibited agreement to engage in boycott-based discrimination against U.S. persons on the basis of religion. Further, if A requires others to agree to such a condition, A would be acting to require another person to engage in such discrimination.

(viii) U.S. company A is asked by boycotting country Y to certify that A will not use a six-pointed star on the packaging of its products to be imported into Y. The requirement is part of the enforcement effort by Y of its boycott against country X.

A may not so certify. The six-pointed star is a religious symbol, and the certification by A that it will not use such a symbol constitutes a statement that A will not ship products made or handled by persons of that religion.

(ix) Same as (viii), except that A is asked to certify that no symbol of boycotted country X will appear on the packaging of its products imported into Y.

Such a certification conveys no statement about any person's religion and, thus, does not come within this prohibition.

(c) *Furnishing information about race, religion, sex, or national origin.*

PROHIBITION AGAINST FURNISHING INFORMATION ABOUT RACE, RELIGION, SEX, OR NATIONAL ORIGIN

(1) No United States person may:

(i) Furnish information about the race, religion, sex, or national origin of any United States person;

(ii) Furnish information about the race, religion, sex, or national origin of any owner, officer, director, or employee of any corporation or other organization which is a United States person;

(iii) Knowingly agree to furnish information about the race, religion, sex, or national origin of any United States person; or

(iv) Knowingly agree to furnish information about the race, religion, sex, or national origin of any owner, officer, director, or employee of any corporation or other organization which is a United States person.

(2) This prohibition shall apply whether the information is specifically requested or is offered voluntarily by the United States person. It shall also apply whether the information requested or volunteered is stated in the affirmative or the negative.

(3) Information about the place of birth of or the nationality of the parents of a United States person comes within this prohibition, as does information in the form of code words or symbols which could identify a United States person's race, religion, sex, or national origin.

(4) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

EXAMPLES OF THE PROHIBITION AGAINST FURNISHING DISCRIMINATORY INFORMATION

The following examples are intended to give guidance in determining the circumstances in which the furnishing of discriminatory information is prohibited. They are illustrative, not comprehensive.

(i) U.S. company A receives a boycott questionnaire from boycotting country Y asking whether it is owned or controlled by persons of a particular faith, whether it has any persons on its board of directors who are of that faith, and what the national origin of its president is. The information is sought for purposes of enforcing Y's boycott against country X, and A knows or has reason to know that the information is sought for that reason.

A may not answer the questionnaire, because A would be furnishing information about the religion and national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(ii) U.S. company A, located in the United States, is asked by boycotting country Y to certify that A has no persons of a particular national origin on its board of directors. A knows that Y's purpose in asking for the certification is to enforce its boycott against country X.

A may not make such a certification, because A would be furnishing information about the national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(iii) U.S. company A believes that boycotting country Y will select A's bid over those of other bidders if A volunteers that it has no shareholders, officers, or directors of a particular national origin. A's belief is based on its knowledge that Y generally refuses, as part of its boycott against country X, to do business with companies owned, controlled, or managed by persons of this particular national origin.

A may not volunteer this information, because it would be furnishing information about the national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(iv) U.S. company A has a contract to construct an airport in boycotting country Y. Before A begins work, A is asked by Y to identify the national origin of its employees who will work on the site. A knows or has reason to know that Y is seeking this information in order to enforce its boycott against X.

A may not furnish this information, because A would be providing information about the national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(v) Same as (iv), except that in order to assemble its work force on site in Y, A sends visa forms to its employees and asks that the forms be returned to A for transmittal to Y's consulate or embassy. A, itself, furnishes no information about its employees, but merely transmits the visa forms back and forth.

In performing the ministerial function of transmitting visa forms, A is not furnishing information about any U.S. person's race, religion, sex, or national origin.

(vi) Same as (iv), except that A is asked by Y to certify that none of its employees in Y will be women, because Y's laws prohibit women from working.

Such a certification does not constitute a prohibited furnishing of information about any U.S. person's sex, since the reason the information is sought has nothing to do with Y's boycott of X.

(vii) U.S. company A is considering establishing an office in boycotting country Y. In order to register to do business in Y, A is asked to furnish information concerning the nationalities of its corporate officers and board of directors.

A may furnish the information about the nationalities of its officers and directors, because in so doing A would not be furnishing information about the race, religion, sex, or national origin of any U.S. person.

(d) *Furnishing information about business relationships with boycotted countries or blacklisted persons.*

PROHIBITION AGAINST FURNISHING INFORMATION ABOUT BUSINESS RELATIONSHIPS WITH BOYCOTTED COUNTRIES OR BLACKLISTED PERSONS

(1) No United States person may furnish or knowingly agree to furnish information concerning his or any other person's past, present or proposed business relationships:

(i) With or in a boycotted country;

(ii) With any business concern organized under the laws of a boycotted country;

(iii) With any national or resident of a boycotted country; or

(iv) With any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

(2) This prohibition shall apply:

(i) Whether the information pertains to a business relationship involving a sale, purchase, or supply transaction; legal or commercial representation; shipping or other transportation transaction; insurance; investment; or any other type of business transaction or relationship; and

(ii) Whether the information is directly or indirectly requested or is furnished on the initiative of the United States person.

(3) This prohibition does not apply to the furnishing of normal business information in a commercial context. Normal business information may relate to factors such as financial fitness, technical competence, or professional experience, and may be found in documents normally available to the public such as annual reports, disclosure statements concerning securities, catalogs, promotional brochures, and trade and business handbooks. Such information may also appear in specifications or statements of experience and qualifications.

(4) Normal business information furnished in a commercial context does not cease to be such simply because the party soliciting the information may be a boycotting country or a national or resident thereof. If the information is of a type which is generally sought for a legitimate business purpose (such as determining financial fitness, technical competence, or professional experience), the information may be furnished even if the information could be used, or without the knowledge of the person supplying the information is intended to be used, for boycott purposes. However, no information about business relationships with blacklisted persons or boycotted countries, their residents or nationals, may be furnished in response to a boycott request, even if the information is publicly available. Requests for such information from a

boycott office will be presumed to be boycott-based.

(5) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

EXAMPLES CONCERNING FURNISHING OF INFORMATION

The following examples are intended to give guidance in determining the circumstances in which the furnishing of information is prohibited. They are illustrative, not comprehensive.

(i) U.S. contractor A is considering bidding for a contract to build a dam in boycotting country Y. The invitation to bid, which appears in a trade journal, specifies that each bidder must state that he does not have any offices in boycotted country X. A knows or has reason to know that the requirement is boycott-based.

A may not make this statement, because it constitutes information about A's business relationships with X.

(ii) U.S. contractor A is considering bidding for a contract to construct a school in boycotting country Y. Each bidder is required to submit copies of its annual report with its bid. Since A's annual report describes A's worldwide operations, including the countries in which it does business, it necessarily discloses whether A has business relations with boycotted country X. A has no reason to know that its report is being sought for boycott purposes.

A, in furnishing its annual report, is supplying ordinary business information in a commercial context.

(iii) Same as (ii), except that accompanying the invitation to bid is a questionnaire from country Y's boycott office asking each bidder to supply a copy of its annual report.

A may not furnish the annual report despite its public availability, because it would be furnishing information in response to a questionnaire from a boycott office.

(iv) U.S. company A is on boycotting country Y's blacklist. For reasons unrelated to the boycott, A terminates its business relationships with boycotted country X. In exploring other marketing areas, A determines that boycotting country Y offers great potential. A is requested to complete a questionnaire from a central boycott office which inquires about A's business relations with X.

A may not furnish the information, because it is information about A's business relationships with a boycotted country.

(v) U.S. exporter A is seeking to sell its products to boycotting country Y. A is informed by Y that, as a condition of sale, A must certify that it has no salesmen in boycotted country X. A knows or has reason to know that the condition is boycott-based.

A may not furnish the certification, because it is information about A's business relationships in a boycotted country.

(vi) U.S. engineering company A receives an invitation to bid on the construction of a dam in boycotting country Y. As a condition of the bid, A is asked to certify that it does not have any offices in boycotted country X. A is also asked to furnish plans for other dams it has designed.

A may not certify that it has no office in X, because this is information about its business relationships in a boycotted country. A may submit plans for other dams it has designed, because this is furnishing normal business information, in a commercial context, relating to A's technical competence and professional experience.

(vii) U.S. company A, in seeking to expand its exports to boycotting country Y, sends a sales representative to Y for a one week trip. During a meeting in Y with trade association representatives, A's representative desires to explain that neither A nor any companies with which A deals has any business relationship with boycotted country X. The purpose of supplying such information is to ensure that A does not get blacklisted.

A's representative may not volunteer this information even though A, for reasons unrelated to the boycott, does not deal with X, because A's representative would be volunteering information about A's business relationships with X for boycott reasons.

(viii) U.S. company A is asked by boycotting country Y to furnish information concerning its business relationships with boycotted country X. A, knowing that Y is seeking the information for boycott purposes, refuses to furnish the information asked for directly, but proposes to respond by supplying a copy of its annual report which lists the countries with which A is presently doing business. A does not happen to be doing business with X.

A may not respond to Y's request by supplying its annual report, because A knows that it would be responding to a boycott-based request for information about its business relationships with X.

(ix) U.S. company A receives a letter from a central boycott office asking A to ''clarify'' A's operations in boycotted country X. A intends to continue its operations in X, but fears that not responding to the request will result in its being placed on boycotting country Y's blacklist. A knows or has reason to know that the information is sought for boycott reasons.

A may not respond to this request, because the information concerns its business relationships with a boycotted country.

(x) U.S. company A, in the course of negotiating a sale of its goods to a buyer in boycotting country Y, is asked to certify that its supplier is not on Y's blacklist.

A may not furnish the information about its supplier's blacklist status, because this is information about A's business relationships with another person who is believed to be restricted from having any business relationship with or in a boycotting country.

(xi) U.S. company A has a manufacturing plant in boycotted country X and is on boycotting country Y's blacklist. A is seeking to establish operations in Y, while expanding its operations in X. A applies to Y to be removed from Y's blacklist. A is asked, in response, to indicate whether it has manufacturing facilities in X.

A may not supply the requested information, because A would be furnishing information about its business relationships in a boycotted country.

(xii) U.S. bank A plans to open a branch office in boycotting country Y. In order to do so, A is required to furnish certain information about its business operations, including the location of its other branch offices. Such information is normally sought in other countries where A has opened a branch office, and A does not have reason to know that Y is seeking the information for boycott reasons.

A may furnish this information, even though in furnishing it A would disclose information about its business relationships in a boycotted country, because it is being furnished in a normal business context and A does not have reason to know that it is sought for boycott reasons.

(xiii) U.S. architectural firm A responds to an invitation to submit designs for an office complex in boycotting country Y. The invitation states that all bidders must include information concerning similar types of buildings they have designed. A has not designed such buildings in boycotted country X. Clients frequently seek information of this type before engaging an architect.

A may furnish this information, because this is furnishing normal business information, in a commercial context, relating to A's technical competence and professional experience.

(xiv) U.S. oil company A distributes to potential customers promotional brochures and catalogs which give background information on A's past projects. A does not have business dealings with boycotted country X. The brochures, which are identical to those which A uses throughout the world, list those countries in which A does or has done business. In soliciting potential customers in boycotting country Y, A desires to distribute copies of its brochures.

A may do so, because this is furnishing normal business information, in a commercial context, relating to professional experience.

(xv) U.S. company A is interested in doing business with boycotting country Y. A wants to ask Y's Ministry of Trade whether, and if so why, A is on Y's blacklist or is otherwise restricted for boycott reasons from doing business with Y.

A may make this limited inquiry, because it does not constitute furnishing information.

(xvi) U.S. company A is asked by boycotting country Y to certify that it is not owned by subjects or nationals of boycotted country X and that it is not resident in boycotted country X.

A may not furnish the certification, because it is information about A's business relationships with or in a boycotted country, or with nationals of a boycotted country.

(xvii) U.S. company A, a manufacturer of certain patented products, desires to register its patents in boycotting country Y. A receives a power of attorney form required to register its patents. The form contains a question regarding A's business relationships with or in boycotted country X. A has no business relationships with X and knows or has reason to know that the information is sought for boycott reasons.

A may not answer the question, because A would be furnishing information about its business relationships with or in a boycotted country.

(xviii) U.S. company A is asked by boycotting country Y to certify that it is not the mother company, sister company, subsidiary, or branch of any blacklisted company, and that it is not in any way affiliated with any blacklisted company.

A may not furnish the certification, because it is information about whether A has a business relationship with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

(e) *Information concerning association with charitable and fraternal organizations.*

PROHIBITION AGAINST FURNISHING INFORMATION ABOUT ASSOCIATIONS WITH CHARITABLE AND FRATERNAL ORGANIZATIONS

(1) No United States person may furnish or knowingly agree to furnish information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports a boycotted country.

(2) This prohibition shall apply whether:

(i) The information concerns association with or involvement in any charitable or fraternal organization which (a) has, as one of its stated purposes, the support of a boycotted country through financial contributions or other means, or (b) undertakes, as a major organizational activity, to offer financial or other support to a boycotted country;

(ii) The information is directly or indirectly requested or is furnished on the initiative of the United States person; or

(iii) The information requested or volunteered concerns membership in, financial contributions to, or any other type of association with or involvement in the activities of such charitable or fraternal organization.

(3) This prohibition does not prohibit the furnishing of normal business information in a commercial context as defined in paragraph (d) of this section.

(4) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

EXAMPLES OF PROHIBITION AGAINST FURNISHING INFORMATION ABOUT ASSOCIATIONS WITH CHARITABLE OR FRATERNAL ORGANIZATIONS

The following examples are intended to give guidance in determining the circumstances in which the furnishing of information concerning associations with charitable or fraternal organizations is prohibited. They are illustrative, not comprehensive.

(i) U.S. engineering firm A receives an invitation to bid from boycotting country Y. The invitation includes a request to supply information concerning any association which A's officers have with charitable organization B, an organization which is known by A to contribute financial support to boycotted country X. A knows or has reason to know that the information is sought for boycott reasons.

A may not furnish the information.

(ii) U.S. construction company A, in an effort to establish business dealings with boycotting country Y, proposes to furnish information to Y showing that no members of its board of directors are in any way associated with charitable organizations which support boycotted country X. A's purpose is to avoid any possibility of its being blacklisted by Y.

A may not furnish the information, because A's purpose in doing so is boycott-based. It makes no difference that no specific request for the information has been made by Y.

(iii) A, a citizen of the United States, is applying for a teaching position in a school in boycotting country Y. In connection with his application, A furnishes a resume which happens to disclose his affiliation with charitable organizations. A does so completely without reference to Y's boycott and without knowledge of any boycott requirement of Y that pertains to A's application for employment.

The furnishing of a resume by A is not a boycott-related furnishing of information about his association with charitable organizations which support boycotted country X.

(f) *Letters of credit.*

PROHIBITION AGAINST IMPLEMENTING LETTERS OF CREDIT CONTAINING PROHIBITED CONDITIONS OR REQUIREMENTS

(1) No United States person may pay, honor, confirm, or otherwise implement a letter of credit which contains a condition or requirement compliance with which is prohibited by this part, nor shall any United States person, as a result of the application of this section, be obligated to pay, honor or otherwise implement such a letter of credit.

(2) For purposes of this section, ''implementing'' a letter of credit includes:

(i) Issuing or opening a letter of credit at the request of a customer;

(ii) Honoring, by accepting as being a valid instrument of credit, any letter of credit;

(iii) Paying, under a letter of credit, a draft or other demand for payment by the beneficiary;

(iv) Confirming a letter of credit by agreeing to be responsible for payment to the beneficiary in response to a request by the issuer;

(v) Negotiating a letter of credit by voluntarily purchasing a draft from a beneficiary and presenting such draft for reimbursement to the issuer or the confirmer of the letter of credit; and

(vi) Taking any other action to implement a letter of credit.

(3) In the standard international letter of credit transaction facilitating

payment for the export of goods from the United States, a bank in a foreign country may be requested by its customer to issue a revocable or irrevocable letter of credit in favor of the United States exporter. The customer usually requires, and the letter of credit provides, that the issuing (or a confirming) bank will make payment to the beneficiary against the bank's receipt of the documentation specified in the letter of credit. Such documentation usually includes commercial and consular invoices, a bill of lading, and evidence of insurance, but it may also include other required certifications or documentary assurances such as the origin of the goods and information relating to the carrier or insurer of the shipment.

Banks usually will not accept drafts for payment unless the documents submitted therewith comply with the terms and conditions of the letter of credit.

(4) A United States person is not prohibited under this section from advising a beneficiary of the existence of a letter of credit in his favor, or from taking ministerial actions to dispose of a letter of credit which it is prohibited from implementing.

(5) Compliance with this section shall provide an absolute defense in any action brought to compel payment of, honoring of, or other implementation of a letter of credit, or for damages resulting from failure to pay or otherwise honor or implement the letter of credit. This section shall not otherwise relieve any person from any obligations or other liabilities he may incur under other laws or regulations, except as may be explicitly provided in this section.

LETTERS OF CREDIT TO WHICH THIS SECTION APPLIES

(6) This prohibition, like all others, applies only with respect to a United States person's activities taken with intent to comply with, further, or support an unsanctioned foreign boycott. In addition, it applies only when the transaction to which the letter of credit applies is in United States commerce and the beneficiary is a United States person.

IMPLEMENTATION OF LETTERS OF CREDIT IN THE UNITED STATES

(7) A letter of credit implemented in the United States by a United States person located in the United States, including a permanent United States establishment of a foreign bank, will be presumed to apply to a transaction in United States commerce and to be in favor of a United States beneficiary where the letter of credit specifies a United States address for the beneficiary. These presumptions may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is not a United States person or that the underlying transaction is not in United States commerce.

(8) Where a letter of credit implemented in the United States by a United States person located in the United States does not specify a United States address for the beneficiary, the beneficiary will be presumed to be other than a United States person. This presumption may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is a United States person despite the foreign address.

IMPLEMENTATION OF LETTERS OF CREDIT OUTSIDE THE UNITED STATES

(9) A letter of credit implemented outside the United States by a United States person located outside the United States will be presumed to apply to a transaction in United States commerce and to be in favor of a United States beneficiary where the letter of credit specifies a United States address for the beneficiary and calls for documents indicating shipment from the United States or otherwise indicating that the goods are of United States origin. These presumptions may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is not a United States person or that the underlying transaction is not in United States commerce.

(10) Where a letter of credit implemented outside the United States by a United States person located outside the United States does not specify a

United States address for the beneficiary, the beneficiary will be presumed to be other than a United States person. In addition, where such a letter of credit does not call for documents indicating shipment from the United States or otherwise indicating that the goods are of United States origin, the transaction to which it applies will be presumed to be outside United States commerce. The presumption that the beneficiary is other than a United States person may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is a United States person. The presumption that the transaction to which the letter of credit applies is outside United States commerce may be rebutted by facts which could reasonably lead the bank to conclude that the underlying transaction is in United States commerce.

EXAMPLES OF THE PROHIBITION AGAINST IMPLEMENTING LETTERS OF CREDIT

The following examples are intended to give guidance in determining the circumstances in which this section applies to the implementation of a letter of credit and in which such implementation is prohibited. They are illustrative, not comprehensive.

IMPLEMENTATION OF LETTERS OF CREDIT IN UNITED STATES COMMERCE

(i) A, a U.S. bank located in the United States, opens a letter of credit in the United States in favor of B, a foreign company located outside the United States. The letter of credit specifies a non-U.S. address for the beneficiary.

The beneficiary is presumed to be other than a U.S. person, because it does not have a U.S. address. The presumption may be rebutted by facts showing that A could reasonably conclude that the beneficiary is a U.S. person despite the foreign address.

(ii) A, a branch of a foreign bank located in the United States, opens a letter of credit in favor of B, a foreign company located outside the United States. The letter of credit specifies a non-U.S. address for the beneficiary.

The beneficiary is presumed to be other than a U.S.person, because it does not have a U.S. address. The presumption may be rebutted by facts showing that A could reasonably conclude that the beneficiary is a U.S. person despite the foreign address.

(iii) A, a U.S. bank branch located outside the United States, opens a letter of credit in favor of B, a person with a U.S. address. The letter of credit calls for documents indicating shipment of goods from the United States.

The letter of credit is presumed to apply to a transaction in U.S. commerce and to be in favor of a U.S. beneficiary because the letter of credit specifies a U.S. address for the beneficiary and calls for documents indicating that the goods will be shipped from the United States. These presumptions may be rebutted by facts showing that A could reasonably conclude that the beneficiary is not a U.S. person or that the underlying transaction is not in U.S. commerce.

(iv) A, a U.S. bank branch located outside the United States, opens a letter of credit which specifies a beneficiary, B, with an address outside the United States and calls for documents indicating that the goods are of U.S.-origin. A knows or has reason to know that although B has an address outside the United States, B is a U.S. person.

The letter of credit is presumed to apply to a transaction in U.S. commerce, because the letter of credit calls for shipment of U.S.-origin goods. In addition, the letter of credit is presumed to be in favor of a beneficiary who is a U.S. person, because A knows or has reason to know that the beneficiary is a U.S. person despite the foreign address.

(v) A, a U.S. bank branch located outside the United States, opens a letter of credit which specifies a beneficiary with a U.S. address. The letter of credit calls for documents indicating shipment of foreign-origin goods.

The letter of credit is presumed to be in favor of a U.S. beneficiary but to apply to a transaction outside U.S. commerce, because it calls for documents indicating shipment of foreign-origin goods. The presumption of non-U.S. commerce may be rebutted by facts showing that A could reasonably conclude that the underlying transaction involves shipment of U.S.-origin goods or goods from the United States.

PROHIBITION AGAINST IMPLEMENTING LETTERS OF CREDIT

(i) Boycotting country Y orders goods from U.S. company B. Y opens a letter of credit with foreign bank C in favor of B. The letter of credit specifies as a condition of payment that B certify that it does not do business with boycotted country X. Foreign bank C forwards the letter of credit it has opened to U.S. bank A for confirmation.

A may not confirm or otherwise implement this letter of credit, because it contains a condition with which a U.S. person may not comply.

(ii) Same as (i), except U.S. bank A desires to advise the beneficiary, U.S. company B, of the letter of credit.

A may do so, because advising the beneficiary of the letter of credit (including the term which prevents A from implementing

it) is not implementation of the letter of credit.

(iii) Same as (i), except foreign bank C sends a telegram to U.S. bank A stating the major terms and conditions of the letter of credit. The telegram does not reflect the boycott provision. Subsequently, C mails to A documents setting forth the terms and conditions of the letter of credit, including the prohibited boycott condition.

A may not further implement the letter of credit after it receives the documents, because they reflect the prohibited boycott condition in the letter of credit. A may advise the beneficiary and C of the existence of the letter of credit (including the boycott term), and may perform any essentially ministerial acts necessary to dispose of the letter of credit.

(iv) Same as (iii), except that U.S. company B, based in part on information received from U.S. bank A, desires to obtain an amendment to the letter of credit which would eliminate or nullify the language in the letter of credit which prevents A from paying or otherwise implementing it.

Either company B or bank A may undertake, and the other may cooperate and assist in, this endeavor. A could then pay or otherwise implement the revised letter of credit, so long as the original prohibited boycott condition is of no force or effect.

(v) Boycotting country Y requests a foreign bank in Y to open a letter of credit to effect payment for goods to be shipped by U.S. supplier B, the beneficiary of the letter of credit. The letter of credit contains prohibited boycott clauses. The foreign bank forwards a copy of the letter of credit to its branch office A, in the United States.

A may advise the beneficiary but may not implement the letter of credit, because it contains prohibited boycott conditions.

(vi) Boycotting country Y orders goods from U.S. company B. U.S. bank A is asked to implement, for the benefit of B, a letter of credit which contains a clause requiring documentation that the goods shipped are not of boycotted country X origin.

A may not implement the letter of credit with a prohibited condition, and may accept only a positive certificate of origin as satisfactory documentation. (See § 760.3(c) on ''Import and Shipping Document Requirements.'')

(vii) [Reserved]

(viii) B is a foreign bank located outside the United States. B maintains an account with U.S. bank A, located in the United States. A letter of credit issued by B in favor of a U.S. beneficiary provides that any negotiating bank may obtain reimbursement from A by certifying that all the terms and conditions of the letter of credit have been met and then drawing against B's account. B notifies A by cable of the issuance of a letter of credit and the existence of reimbursement authorization; A does not receive a copy of the letter of credit.

A may reimburse any negotiating bank, even when the underlying letter of credit contains a prohibited boycott condition, because A does not know or have reason to know that the letter of credit contains a prohibited boycott condition.

(ix) Same as (viii), except that foreign bank B forwards a copy of the letter of credit to U.S. bank A, which then becomes aware of the prohibited boycott clause.

A may not thereafter reimburse a negotiating bank or in any way further implement the letter of credit, because it knows of the prohibited boycott condition.

(x) Boycotting country Y orders goods from U.S. exporter B and requests a foreign bank in Y to open a letter of credit in favor of B to cover the cost. The letter of credit contains a prohibited boycott clause. The foreign bank asks U.S. bank A to advise and confirm the letter of credit. Through inadvertence, A does not notice the prohibited clause and confirms the letter of credit. A thereafter notices the clause and then refuses to honor B's draft against the letter of credit. B sues bank A for payment.

A has an absolute defense against the obligation to make payment under this letter of credit. (Note: Examples (ix) and (x) do not alter any other obligations or liabilities of the parties under appropriate law.)

(xi) [Reserved]

(xii) Boycotting country Y orders goods from U.S. company B. A letter of credit which contains a prohibited boycott clause is opened in favor of B by a foreign bank in Y. The foreign bank asks U.S. bank A to advise and confirm the letter of credit, which it forwards to A.

A may advise B that it has received the letter of credit (including the boycott term), but may not confirm the letter of credit with the prohibited clause.

(xiii) Same as (xii), except U.S. bank A fails to tell B that it cannot process the letter of credit. B requests payment.

A may not pay. If the prohibited language is eliminated or nullified as the result of renegotiation, A may then pay or otherwise implement the revised letter of credit.

(xiv) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted.

A may implement such a letter of credit, but it may not insist that the certification be furnished, because by so insisting it would be refusing to do business with a blacklisted person in compliance with a boycott.

(xv) A, a U.S. bank located in the U.S. opens a letter of credit in favor of U.S. beneficiary B for B's sale of goods to boycotting country Y. The letter of credit contains no

boycott conditions, but A knows that Y customarily requires the seller of goods to certify that it has dealt with no blacklisted supplier. A, therefore, instructs B that it will not make payment under the letter of credit unless B makes such a certification.

A's action in requiring the certification from B constitutes action to require another person to refuse to do business with blacklisted persons.

(xvi) A, a U.S. bank located in the U.S., opens a letter of credit in favor of U.S. beneficiary B for B's sale of goods to boycotting country Y. The letter of credit contains no boycott conditions, but A has actual knowledge that B has agreed to supply a certification to Y that it has not dealt with blacklisted firms, as a condition of receiving the letter of credit in its favor.

A may not implement the letter of credit, because it knows that an implicit condition of the credit is a condition with which B may not legally comply.

(xvii) Boycotting country Y orders goods from U.S. company B. Y opens a letter of credit with foreign bank C in favor of B. The letter of credit includes the statement, ''Do not negotiate with blacklisted banks.'' C forwards the letter of credit it has opened to U.S. bank A for confirmation.

A may not confirm or otherwise implement this letter of credit, because it contains a condition with which a U.S. person may not comply.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34945, June 1, 2000]

§ 760.3 Exceptions to prohibitions.

(a) *Import requirements of a boycotting country.*

COMPLIANCE WITH IMPORT REQUIREMENTS OF A BOYCOTTING COUNTRY

(1) A United States person, in supplying goods or services to a boycotting country, or to a national or resident of a boycotting country, may comply or agree to comply with requirements of such boycotting country which prohibit the import of:

(i) Goods or services from the boycotted country;

(ii) Goods produced or services provided by any business concern organized under the laws of the boycotted country; or

(iii) Goods produced or services provided by nationals or residents of the boycotted country.

(2) A United States person may comply or agree to comply with such import requirements whether or not he has received a specific request to comply. By its terms, this exception applies only to transactions involving imports into a boycotting country. A United States person may not, under this exception, refuse on an across-the-board basis to do business with a boycotted country or a national or resident of a boycotted country.

(3) In taking action within the scope of this exception, a United States person is limited in the types of boycott-related information he can supply. (See § 760.2(d) of this part on ''Furnishing Information About Business Relationships with Boycotted Countries or Blacklisted Persons'' and paragraph (c) of this section on ''Import and Shipping Document Requirements.'')

EXAMPLES OF COMPLIANCE WITH IMPORT REQUIREMENTS OF A BOYCOTTING COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with the import requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) A, a U.S. manufacturer, receives an order from boycotting country Y for its products. Country X is boycotted by country Y, and the import laws of Y prohibit the importation of goods produced or manufactured in X. In filling this type of order, A would usually include some component parts produced in X.

For the purpose of filling this order, A may substitute comparable component parts in place of parts produced in X, because the import laws of Y prohibit the importation of goods manufactured in X.

(ii) Same as (i), except that A's contract with Y expressly provides that in fulfilling the contract A ''may not include parts or components produced or manufactured in boycotted country X.''

A may agree to and comply with this contract provision, because Y prohibits the importation of goods from X. However, A may not furnish negative certifications regarding the origin of components in response to import and shipping document requirements.

(iii) A, a U.S. building contractor, is awarded a contract to construct a plant in boycotting country Y. A accepts bids on goods required under the contract, and the lowest bid is made by B, a business concern organized under the laws of X, a country boycotted by Y. Y prohibits the import of goods produced by companies organized under the laws of X.

For purposes of this contract, A may reject B's bid and accept another, because B's goods

would be refused entry into Y because of Y's boycott against X.

(iv) Same as (iii), except that A also rejects the low bid by B for work on a construction project in country M, a country not boycotted by Y.

This exception does not apply, because A's action is not taken in order to comply with Y's requirements prohibiting the import of products from boycotted country X.

(v) A, a U.S. management consulting firm, contracts to provide services to boycotting country Y. Y requests that A not employ residents or nationals of boycotted country X to provide those services.

A may agree, as a condition of the contract, not to have services furnished by nationals or residents of X, because importation of such services is prohibited by Y.

(vi) A, a U.S. company, is negotiating a contract to supply machine tools to boycotting country Y. Y insists that the contract contain a provision whereby A agrees that none of the machine tools will be produced by any business concern owned by nationals of boycotted country X, even if the business concern is organized under the laws of a non-boycotted country.

A may not agree to this provision, because it is a restriction on the import of goods produced by business concerns owned by nationals of a boycotted country even if the business concerns themselves are organized under the laws of a non-boycotted country.

(b) *Shipment of goods to a boycotting country.*

COMPLIANCE WITH REQUIREMENTS REGARDING THE SHIPMENT OF GOODS TO A BOYCOTTING COUNTRY

(1) A United States person, in shipping goods to a boycotting country, may comply or agree to comply with requirements of that country which prohibit the shipment of goods:

(i) On a carrier of the boycotted country; or

(ii) By a route other than that prescribed by the boycotting country or the recipient of the shipment.

(2) A specific request that a United States person comply or agree to comply with requirements concerning the use of carriers of a boycotted country is not necessary if the United States person knows, or has reason to know, that the use of such carriers for shipping goods to the boycotting country is prohibited by requirements of the boycotting country. This exception applies whether a boycotting country or the purchaser of the shipment:

(i) Explicitly states that the shipment should not pass through a port of the boycotted country; or

(ii) Affirmatively describes a route of shipment that does not include a port in the boycotted country.

(3) For purposes of this exception, the term *carrier of a boycotted country* means a carrier which flies the flag of a boycotted country or which is owned, chartered, leased, or operated by a boycotted country or by nationals or residents of a boycotted country.

EXAMPLES OF COMPLIANCE WITH THE SHIPPING REQUIREMENTS OF A BOYCOTTING COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with import and shipping document requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) A is a U.S. exporter from whom boycotting country Y is importing goods. Y directs that the goods not pass through a port of boycotted country X.

A may comply with Y's shipping instructions, because they pertain to the route of shipment of goods being shipped to Y.

(ii) A, a U.S. fertilizer manufacturer, receives an order from boycotting country Y for fertilizer. Y specifies in the order that A may not ship the fertilizer on a carrier of boycotted country X.

A may comply with this request, because it pertains to the carrier of a boycotted country.

(iii) B, a resident of boycotting country Y, orders textile goods from A, a U.S. distributor, specifying that the shipment must not be made on a carrier owned or leased by nationals of boycotted country X and that the carrier must not pass through a port of country X enroute to Y.

A may comply or agree to comply with these requests, because they pertain to the shipment of goods to Y on a carrier of a boycotted country and the route such shipment will take.

(iv) Boycotting country Y orders goods from A, a U.S. retail merchant. The order specifies that the goods shipped by A ''may not be shipped on a carrier registered in or owned by boycotted country X.''

A may agree to this contract provision, because it pertains to the carrier of a boycotted country.

(v) Boycotting country Y orders goods from A, a U.S. pharmaceutical company, and requests that the shipment not pass through a port of country P, which is not a country boycotted by Y.

This exception does not apply in a non-boycotting situation. A may comply with the shipping instructions of Y, because in

doing so he would not violate any prohibition of this part.

(vi) Boycotting country Y orders goods from A, a U.S. manufacturer. The order specifies that goods shipped by A ''must not be shipped on vessels blacklisted by country Y''.

A may not agree to comply with this condition because it is not a restriction limited to the use of carriers of the boycotted country.

(c) *Import and shipping document requirements.*

COMPLIANCE WITH IMPORT AND SHIPPING DOCUMENT REQUIREMENTS OF A BOYCOTTING COUNTRY

(1) A United States person, in shipping goods to a boycotting country, may comply or agree to comply with import and shipping document requirements of that country, with respect to:

(i) The country or origin of the goods;

(ii) The name and nationality of the carrier;

(iii) The route of the shipment;

(iv) The name, residence, or address of the supplier of the shipment;

(v) The name, residence, or address of the provider of other services.

(2) Such information must be stated in positive, non-blacklisting, non-exclusionary terms except for information with respect to the names or nationalities of carriers or routes of shipment, which may continue to be stated in negative terms in conjunction with shipments to a boycotting country, in order to comply with precautionary requirements protecting against war risks or confiscation.

EXAMPLES OF COMPLIANCE WITH IMPORT AND SHIPPING DOCUMENT REQUIREMENTS

The following examples are intended to give guidance in determining the circumstances in which compliance with the import requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) Boycotting country Y contracts with A, a U.S. petroleum equipment manufacturer, for certain equipment. Y requires that goods being imported into Y must be accompanied by a certification that the goods being supplied did not originate in boycotted country X.

A may not supply such a certification in negative terms but may identify instead the country of origin of the goods in positive terms only.

(ii) Same as (i), except that Y requires that the shipping documentation accompanying the goods specify the country of origin of the goods.

A may furnish the information.

(iii) [Reserved]

(iv) A, a U.S. apparel manufacturer, has contracted to sell certain of its products to B, a national of boycotting country Y. The form that must be submitted to customs officials of Y requires the shipper to certify that the goods contained in the shipment have not been supplied by ''blacklisted'' persons.

A may not furnish the information in negative terms but may certify, in positive terms only, the name of the supplier of the goods.

(v) Same as (iv), except the customs form requires certification that the insurer and freight forwarder used are not ''blacklisted.''

A may not comply with the request but may supply a certification stating, in positive terms only, the names of the insurer and freight forwarder.

(vi) A, a U.S. petrochemical manufacturer, executes a sales contract with B, a resident of boycotting country Y. A provision of A's contract with B requires that the bill of lading and other shipping documents contain certifications that the goods have not been shipped on a ''blacklisted'' carrier.

A may not agree to supply a certification that the carrier is not ''blacklisted'' but may certify the name of the carrier in positive terms only.

(vii) Same as (vi), except that the contract requires certification that the goods will not be shipped on a carrier which flies the flag of, or is owned, chartered, leased, or operated by boycotted country X, or by nationals or residents of X.

Such a certification, which is a reasonable requirement to protect against war risks or confiscation, may be furnished at any time.

(viii) Same as (vi), except that the contract requires that the shipping documents certify the name of the carrier being used.

A may, at any time, supply or agree to supply the requested documentation regarding the name of the carrier, either in negative or positive terms.

(ix) Same as (vi), except that the contract requires a certification that the carrier will not call at a port in boycotted country X before making delivery in Y.

Such a certification, which is a reasonable requirement to protect against war risks or confiscation, may be furnished at any time.

(x) Same as (vi), except that the contract requires that the shipping documents indicate the name of the insurer and freight forwarder.

A may comply at any time, because the statement is not required to be made in negative or blacklisting terms.

(xi) A, a U.S. exporter, is negotiating a contract to sell bicycles to boycotting country Y. Y insists that A agree to certify that the goods will not be shipped on a vessel which has ever called at a port in boycotted country X.

As distinguished from a certification that goods will not be shipped on a vessel which will call enroute at a port of boycotted country X, such a certification is not a reasonable requirement to protect against war risks or confiscation, and, hence, may not be supplied.

(xii) Same as (xi), except that Y insists that A agree to certify that the goods will not be shipped on a carrier that is ineligible to enter Y's waters.

Such a certification, which is not a reasonable requirement to protect against war risks or confiscation may not be supplied.

(d) *Unilateral and specific selection.*

COMPLIANCE WITH UNILATERAL AND SPECIFIC SELECTION

(1) A United States person may comply or agree to comply in the normal course of business with the unilateral and specific selection by a boycotting country, a national of a boycotting country, or a resident of a boycotting country (including a United States person who is a bona fide resident of a boycotting country) of carriers, insurers, suppliers of services to be performed within the boycotting country, or specific goods, provided that with respect to services, it is necessary and customary that a not insignificant part of the services be performed within the boycotting country. With respect to goods, the items, in the normal course of business, must be identifiable as to their source or origin at the time of their entry into the boycotting country by (a) uniqueness of design or appearance or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging.

(2) This exception pertains to what is permissible for a United States person who is the recipient of a unilateral and specific selection of goods or services to be furnished by a third person. It does not pertain to whether the act of making such a selection is permitted; that question is covered, with respect to United States persons, in paragraph (g) of this section on ''Compliance with Local Law.'' Nor does it pertain to the United States person who is the recipient of an order to supply its own goods or services. Nothing in this part prohibits or restricts a United States person from filling an order himself, even if he is selected by the buyer on a boycott basis (e.g., because he is not blacklisted), so long as he does not himself take any action prohibited by this part.

UNILATERAL AND SPECIFIC CHARACTER OF THE SELECTION

(3) In order for this exception to apply, the selection with which a United States person wishes to comply must be unilateral and specific.

(4) A ''specific'' selection is one which is stated in the affirmative and which specifies a particular supplier of goods or services.

(5) A ''unilateral'' selection is one in which the discretion in making the selection is exercised by the boycotting country buyer. If the United States person who receives a unilateral selection has provided the buyer with any boycott-based assistance (including information for purposes of helping the buyer select someone on a boycott basis), then the buyer's selection is not unilateral, and compliance with that selection by a United States person does not come within this exception.

(6) The provision of so-called ''pre-selection'' or ''pre-award'' services, such as providing lists of qualified suppliers, subcontractors, or bidders, does not, in and of itself, destroy the unilateral character of a selection, provided such services are not boycott-based. Lists of qualified suppliers, for example, must not exclude anyone because he is blacklisted. Moreover, such services must be of the type customarily provided in similar transactions by the firm (or industry of which the firm is a part) as measured by the practice in non-boycotting as well as boycotting countries. If such services are not customarily provided in similar transactions or such services are provided in such a way as to exclude blacklisted persons from participating in a transaction or diminish their opportunity for such participation, then the services may not be provided without destroying the unilateral character of any subsequent selection.

SELECTION TO BE MADE BY BOYCOTTING COUNTRY RESIDENT

(7) In order for this exception to be available, the unilateral and specific selection must have been made by a boycotting country, or by a national or resident of a boycotting country. Such a resident may be a United States person. For purposes of this exception, a United States person will be considered a resident of a boycotting country only if he is a bona fide resident. A United States person may be a bona fide resident of a boycotting country even if such person's residency is temporary.

(8) Factors that will be considered in determining whether a United States person is a bona fide resident of a boycotting country include:

(i) Physical presence in the country;

(ii) Whether residence is needed for legitimate business reasons;

(iii) Continuity of the residency;

(iv) Intent to maintain the residency;

(v) Prior residence in the country;

(vi) Size and nature of presence in the country;

(vii) Whether the person is registered to do business or incorporated in the country;

(viii) Whether the person has a valid work visa; and

(ix) Whether the person has a similar presence in both boycotting and non-boycotting foreign countries in connection with similar business activities.

NOTE TO PARAGRAPH (d)(8) OF THIS SECTION: No one of the factors is dispositive. All the circumstances will be examined closely to ascertain whether there is, in fact, a bona fide residency. Residency established solely for purposes of avoidance of the application of this part, unrelated to legitimate business needs, does not constitute bona fide residency.

(9) The boycotting country resident must be the one actually making the selection. If a selection is made by a non-resident agent, parent, subsidiary, affiliate, home office or branch office of a boycotting country resident, it is not a selection by a resident within the meaning of this exception.

(10) A selection made solely by a bona fide resident and merely transmitted by another person to a United States person for execution is a selection by a bona fide resident within the meaning of this exception.

DUTY OF INQUIRY

(11) If a United States person receives, from another person located in the United States, what may be a unilateral selection by a boycotting country customer, and knows or has reason to know that the selection is made for boycott reasons, he has a duty to inquire of the transmitting person to determine who actually made the selection. If he knows or has reason to know that the selection was made by other than a boycotting country, or a national or resident of a boycotting country, he may not comply. A course or pattern of conduct which a United States person recognizes or should recognize as consistent with boycott restrictions will create a duty to inquire.

(12) If the United States person does not know or have reason to know that the selection it receives is boycott-based, its compliance with such a selection does not offend any prohibition and this exception is not needed.

SELECTION OF SERVICES

(13) This exception applies only to compliance with selections of certain types of suppliers of services-carriers, insurers, and suppliers of services to be performed ''within the boycotting country.'' Services to be performed wholly within the United States or wholly within any country other than the boycotting country are not covered.

(14) For purposes of this part, services are to be performed ''within the boycotting country'' only if they are of a type which would customarily be performed by suppliers of those services within the country of the recipient of those services, and if the part of the services performed within the boycotting country is a necessary and not insignificant part of the total services performed.

(15) What is ''customary and necessary'' for these purposes depends on the usual practice of the supplier of the services (or the industry of which he is a part) as measured by the practice in non-boycotting as well as boycotting countries, except where such practices are instituted to accommodate this part.

SELECTION OF GOODS

(16) This exception applies only to compliance with selections of certain types of goods—goods that, in the normal course of business, are identifiable as to their source or origin at the time of their entry into the boycotting country. The definition of ''specifically identifiable goods'' is the same under this section as it is in paragraph (g) of this section on ''Compliance with Local Law.''

(17) Goods ''specifically identifiable'' in the normal course of business are those items which at the time of their entry into a boycotting country are identifiable as to source or origin by uniqueness of design or appearance; or trademark, trade name, or other identification normally on the items themselves, including their packaging. Goods are ''specifically identifiable'' in the normal course of business if their source or origin is ascertainable by inspection of the items themselves, including their packaging, regardless of whether inspection takes place. Goods are not considered to be ''specifically identifiable'' in the normal course of business if a trademark, trade name, or other form of identification not normally present is added to the items themselves, including their packaging, to accommodate this part.

GENERAL

(18) If a unilateral selection meets the conditions described in paragraph (d) of this section, the United States person receiving the unilateral selection may comply or agree to comply, even if he knows or has reason to know that the selection was boycott-based. However, no United States person may comply or agree to comply with any unilateral selection if he knows or has reason to know that the purpose of the selection is to effect discrimination against any United States person on the basis of race, religion, sex, or national origin.

EXAMPLES OF COMPLIANCE WITH A UNILATERAL SELECTION

The following examples are intended to give guidance in determining what constitutes a unilateral selection and the circumstances in which compliance with such a selection is permissible. They are illustrative, not comprehensive.

SPECIFIC AND UNILATERAL SELECTION

(i) A, a U.S. manufacturer of road-grading equipment, is asked by boycotting country Y to ship goods to Y on U.S. vessel B, a carrier which is not blacklisted by Y. A knows or has reason to know that Y's selection of B is boycott-based.

A may comply with Y's request, or may agree to comply as a condition of the contract, because the selection is specific and unilateral.

(ii) A, a U.S. contractor building an industrial facility in boycotting country Y is asked by B, a resident of Y, to use C as the supplier of air conditioning equipment to be used in the facility. C is not blacklisted by country Y. A knows or has reason to know that B's request is boycott-based.

A may comply with B's request, or may agree to comply as a condition of the contract, because the selection of C is specific and unilateral.

(iii) A, a U.S. manufacturer of automotive equipment, is asked by boycotting country Y not to ship its goods to Y on U.S. carriers, B, C, or D. Carriers B, C, and D are blacklisted by boycotting country Y. A knows or has reason to know that Y's request is boycott-based.

A may not comply or agree to comply with Y's request, because no specific selection of any particular carrier has been made.

(iv) A, a U.S. exporter shipping goods ordered by boycotting country Y, is provided by Y with a list of eligible U.S. insurers from which A may choose in insuring the shipment of its goods. A knows or has reason to know that the list was compiled on a boycott basis.

A may not comply or agree to comply with Y's request that A choose from among the eligible insurers, because no specific selection of any particular insurer has been made.

(v) A, a U.S. aircraft manufacturer, is negotiating to sell aircraft to boycotting country Y. During the negotiations, Y asks A to identify the company which normally manufactures the engines for the aircraft. A responds that they are normally manufactured by U.S. engine manufacturer B. B is blacklisted by Y. In making the purchase, Y specifies that the engines for the aircraft should be supplied by U.S. engine manufacturer C.

A may comply or agree to comply with Y's selection of C, because Y's selection is unilateral and specific.

(vi) A, a U.S. construction firm, is retained by an agency of boycotting country Y to build a pipeline. Y requests A to suggest qualified engineering firms to be used on-site in the construction of the pipeline. It is customary for A, regardless of where it conducts

its operations, to identify qualified engineering firms to its customers so that its customers may make their own selection of the firm to be engaged. Choice of engineering firm is customarily a prerogative of the customer. A provides a list of five engineering firms, B-F, excluding no firm because it may be blacklisted, and then confers with and gives its recommendations to Y. A recommends C, because C is the best qualified. Y then selects B, because C is blacklisted.

A may comply with Y's selection of B, because the boycott-based decision is made by Y and is unilateral and specific. Since A's pre-award services are of the kind customarily provided in these situations, and since they are provided without reference to the boycott, they do not destroy the unilateral character of Y's selection.

(vii) A, a U.S. aircraft manufacturer, has an order to supply a certain number of planes to boycotting country Y. In connection with the order, Y asks A to supply it with a list of qualified aircraft tire manufacturers so that Y can select the tires to be placed on the planes. This is a highly unusual request, since, in A's worldwide business operations, choice of tires is customarily made by the manufacturer, not the customer. Nonetheless, A supplies a list of tire manufacturers, B, C, D, and E. Y chooses tire manufacturer B because B is not blacklisted. Had A, as is customary, selected the tires, company C would have been chosen. C happens to be blacklisted, and A knows that C's blacklist status was the reason for Y's selection of B.

A's provision of a list of tire manufacturers for Y to choose from destroys the unilateral character of Y's selection, because such a pre-selection service is not customary in A's worldwide business operations.

(viii) A, a U.S. aircraft manufacturer, receives an order from U.S. company C, which is located in the United States, for the sale of aircraft to company D, a U.S. affiliate of C. D is a bona fide resident of boycotting country Y. C instructs A that ''in order to avoid boycott problems,'' A must use engines that are manufactured by company B, a company that is not blacklisted by Y. Engines built by B are unique in design and also bear B's trade name.

Since A has reason to know that the selection is boycott-based, he must inquire of C whether the selection was in fact made by D. If C informs A that the selection was made by D, A may comply.

(ix) Same as (viii), except that C initially states that the designation was unilaterally and specifically made by D.

A may accept C's statement without further investigation and may comply with the selection, because C merely transmitted D's unilateral and specific selection.

(x) Same as (ix), except that C informs A that it, C, has selected B on behalf of or as an agent of its affiliated company resident in the boycotting country.

A may not comply with this selection, because the decision was not made by a resident of the boycotting country.

(xi) A, a U.S. management consulting firm, is advising boycotting country Y on the selection of a contracting firm to construct a plant for the manufacture of agricultural chemicals. As is customary in its business, A compiles a list of potential contractors on the basis of its evaluation of the capabilities of the respective candidates to perform the job. A has knowledge that company B is blacklisted, but provides Y with the names of companies B, C, D, and E, listing them in order of their qualifications. Y instructs A to negotiate with C.

A may comply with Y's instruction, because Y's selection is unilateral and specific.

(xii) A, a U.S. exporter, is asked by boycotting country Y not to ship goods on carriers B, C, or D, which are owned by nationals of and are registered in country P, a country not boycotted by Y.

A may comply or agree to comply with Y's request even though the selection is not specific, because A does not know or have reason to know that the request is boycott-based.

(NOTE: In example (xii), A has violated no prohibition, because it does not know or have reason to know that Y's instruction is boycott-based. Therefore, A could not act with the requisite intent to comply with the boycott.)

(xiii) A, a U.S. construction company, receives a contract to construct a hotel in boycotting country Y. As part of the contract, A is required to furnish Y with lists of qualified suppliers of various specifically identifiable items. A compiles lists of various qualified suppliers wholly without reference to the boycott, and thereafter Y instructs A to negotiate with, enter into contracts with, and arrange for delivery from each of the suppliers which Y designates. A knows that Y's choices are made on a boycott basis.

A may comply with Y's selections and carry out these post-award services for Y, because Y's selections were unilateral and specific and A's pre-award services were provided without reference to Y's boycott.

EXAMPLES OF BOYCOTTING COUNTRY BUYER

(The factors in determining whether a United States person is a ''bona fide resident'' of a boycotting country are the same as in paragraph (g) of this section on ''Compliance with Local Law.'' See also the examples in that section.)

(i) A, a U.S. exporter, is asked by B, a U.S. person who is a bona fide resident of boycotting country Y, to ship goods on U.S. carrier C. C is not blacklisted by Y, and A

knows that B has chosen on a boycott basis in order to comply with Y's boycott laws.

A may comply or agree to comply with B's request, because B is a bona fide resident of Y.

(ii) A is a U.S. computer company whose subsidiary, B, is a bona fide resident of boycotting country Y. A receives an order from B for specific, identifiable products manufactured by company C in connection with a computer which B is installing in Y.

A may comply or agree to comply with B's unilateral and specific selection, so long as the discretion was in fact exercised by B, not A.

(NOTE: Unilateral selection transactions involving related United States persons will be scrutinized carefully to ensure that the selection was in fact made by the bona fide resident of the boycotting country.)

(iii) A, a U.S. engineering firm, has chief engineer B as its resident engineer on a dam construction site in boycotting country Y. B's presence at the site is necessary in order to ensure proper supervision of the project. In order to comply with local law, B selects equipment supplier C rather than D, who is blacklisted, and directs A to purchase certain specific equipment from C for use in the project.

A may comply with this unilateral selection, because the decision was made by a bona fide resident of Y.

(As noted above, unilateral selections involving related United States persons will be scrutinized carefully to ensure that the selection was in fact made by the bona fide resident of the boycotting country.)

(iv) B, a branch of U.S. bank A, is located in boycotting country Y. B is in need of office supplies and asks the home office in New York to make the necessary purchases. A contacts C, a U.S. company in the office supply business, and instructs C to purchase various items from certain specific companies and ship them directly to B. In order to avoid any difficulties for B with respect to Y's boycott laws, A is careful to specify only non-blacklisted companies or suppliers. C knows that that was A's purpose. C may not comply with A's instruction, because the selection of suppliers was not made by a resident of a boycotting country.

(v) Same as (iv), except that A has given standing instructions to B that whenever it needs office supplies, it should specify certain suppliers designated by A. To avoid running afoul of Y's boycott laws, A's designations consist exclusively of non-blacklisted firms. A receives an order from B with the suppliers designated in accordance with A's instructions.

A may not comply with B's selection, because the selection was not in fact made by a bona fide resident of the boycotting country, but by a person located in the United States.

EXAMPLES OF SUPPLIERS OF SERVICES

(i) A, a U.S. manufacturer, is asked by boycotting country Y to ship goods to Y on U.S. vessel B, a carrier which is not blacklisted by Y.

A may comply or agree to comply with Y's request, because compliance with the unilateral and specific selection of carriers is expressly permitted under this exception.

(ii) A, a U.S. exporter shipping goods ordered by C, a national of boycotting country Y, is asked by C to insure the shipment through U.S. insurer B.

A may comply or agree to comply with C's request, because compliance with the unilateral and specific selection of an insurer is expressly permitted under this exception.

(iii) A, a U.S. construction company, is hired by C, an agency of the government of boycotting country Y, to build a power plant in Y. C specifies that A should subcontract the foundation work to U.S. contractor B. Part of the foundation design work will be done by B in the United States.

A may comply or agree to comply with Y's designation, because a necessary and not insignificant part of B's services are to be performed within the boycotting country, and such services are customarily performed on-site.

(iv) A, a U.S. contractor, is engaged by boycotting country Y to build a power plant. Y specifies that U.S. architectural firm B should be retained by A to design the plant. In order to design the plant, it is essential that B's personnel visit and become familiar with the site, although the bulk of the design and drawing work will be done in the United States.

A may comply or agree to comply with Y's unilateral and specific selection of architectural firm B, because a necessary and not insignificant part of B's services are to be performed within Y, and such on-site work is customarily involved in the provision of architectural services. The fact that the bulk of the actual work may be performed in the United States is irrelevant since the part to be performed within Y is necessary to B's effective performance.

(v) Same as (iv), except that Y specifies that the turbine for the power plant should be designed by U.S. engineer C. It is neither customary nor necessary for C to visit the site in order to do any of his work, but C has informed A that he would probably want to visit the site in Y if he were selected for the job.

A may not comply or agree to comply with Y's request, because, in the normal course of business, it is neither customary nor necessary for engineer C's services to be performed in Y.

(vi) A, a U.S. aircraft manufacturer, receives a contract from boycotting country Y to manufacture jet engines for Y's use. Y specifies that the engines should be designed by U.S. industrial engineering firm B.

A may not comply or agree to comply with Y's request, because, in the normal course of business, the services will not be performed in Y.

(vii) U.S. company A has a contract to supply specially designed road graders to boycotting country Y. Y has instructed A that it should engage engineering firm B in the design work rather than engineering firm C, which A normally uses, because C is blacklisted. When A contacts B, B informs A that one of B's personnel customarily visits the location in which any equipment B designs is used after it is in use, in order to determine how good a design job B has done. Such visits are necessary from B's point of view to provide a check on the quality of its work, and they are necessary from Y's point of view because they make it possible for Y to discuss possible design changes should deficiencies be detected.

A may not comply with Y's selection of B, because the services which B would perform in Y are an insignificant part of the total services to be performed by B.

EXAMPLES OF SPECIFICALLY IDENTIFIABLE GOODS

(The test of what constitutes ''specifically identifiable goods'' under this exception also applies to the term ''specifically identifiable goods'' as used in paragraph (g) of this section on ''Compliance with Local Law.'')

(i) A, a U.S. contractor, is constructing an apartment complex, on a turnkey basis, for boycotting country Y. Y instructs A to use only kitchen appliances manufactured by U.S. company B in completing the project. The appliances normally bear the manufacturer's name and trademark.

A may comply with Y's selection of B, because Y's unilateral and specific selection is of goods identifiable as to source or origin in the normal course of business at the time of their entry into Y.

(ii) Same as (i), except that Y directs A to use lumber manufactured only by U.S. company C. In the normal course of business, C neither stamps its name on the lumber nor identifies itself as the manufacturer on the packaging. In addition, normal export packaging does not identify the manufacturer.

A may not comply with Y's selection, because the goods selected are not identifiable by source or origin in the normal course of business at the time of their entry into Y.

(iii) B, a U.S. contractor who is a bona fide resident of boycotting country Y, is engaged in building roads. B retains the services of A, a U.S. engineering firm, to assist it in procuring construction equipment. B directs A to purchase road graders only from manufacturer C because other road grader manufacturers which A might use are blacklisted. C's road graders normally bear C's insignia.

A may comply with B's selection of C, because the goods selected are identifiable by source or origin in the normal course of business at the time of their entry into Y.

(iv) A, a U.S. company, manufactures computer-operated machine tools. The computers are mounted on a separate bracket on the side of the equipment and are readily identifiable by brand name imprinted on the equipment. There are five or six U.S. manufacturers of such computers which will function interchangeably to operate the machine tools manufactured by A. B, a resident of boycotting country Y, contracts to buy the machine tools manufactured by A on the condition that A incorporate, as the computer drive, a computer manufactured by U.S. company C. B's designation of C is made to avoid boycott problems which could be caused if computers manufactured by some other company were used.

A may comply with B's designation of C, because the goods selected are identifiable by source or origin in the normal course of business at the time of their entry into Y.

(v) A, a U.S. wholesaler of electronic equipment, receives an order from B, a U.S. manufacturer of radio equipment, who is a bona fide resident of boycotting country Y. B orders a variety of electrical components and specifies that all transistors must be purchased from company C, which is not blacklisted by Y. The transistors requested by B do not normally bear the name of the manufacturer; however, they are typically shipped in cartons, and C's name and logo appear on the cartons.

A may comply with B's selection, because the goods selected by B are identifiable as to source or origin in the normal course of business at the time of their entry into Y by virtue of the containers or packaging used.

(vi) A, a U.S. computer manufacturer, receives an order for a computer from B, a university in boycotting country Y. B specifies that certain integrated circuits incorporated in the computer must be supplied by U.S. electronics company C. These circuits are incorporated into the computer and are not visible without disassembling the computer.

A may not comply or agree to comply with B's specific selection of these components, because they are not identifiable as to their source or origin in the normal course of business at the time of their entry into Y.

(vii) A, a U.S. clothing manufacturer, receives an order for shirts from B, a retailer resident in boycotting country Y. B specifies that the shirts are to be manufactured from cotton produced by U.S. farming cooperative C. Such shirts will not identify C or the source of the cotton.

A may not comply or agree to comply with B's designation, because the cotton is not identifiable as to source or origin in the normal course of business at the time of entry into Y.

(viii) A, a U.S. contractor, is retained by B, a construction firm located in and wholly-owned by boycotting country Y, to assist B in procuring construction materials. B directs A to purchase a range of materials, including hardware, tools, and trucks, all of which bear the name of the manufacturer stamped on the item. In addition, B directs A to purchase steel beams manufactured by U.S. company C. The name of manufacturer C normally does not appear on the steel itself or on its export packaging.

A may comply with B's selection of the hardware, tools, and trucks, because they are identifiable as to source or origin in the normal course of business at the time of entry into Y. A may not comply with B's selection of steel beams, because the goods are not identifiable as to source or origin by trade name, trademark, uniqueness or packaging at the time of their entry into Y.

EXAMPLE OF DISCRIMINATION ON BASIS OF RACE, RELIGION, SEX, OR NATIONAL ORIGIN

(i) A, a U.S. paper manufacturer, is asked by boycotting country Y to ship goods to Y on U.S. vessel B. Y states that the reason for its choice of B is that, unlike U.S. vessel C, B is not owned by persons of a particular faith.

A may not comply or agree to comply with Y's request, because A has reason to know that the purpose of the selection is to effect religious discrimination against a United States person.

(e) *Shipment and transshipment of exports pursuant to a boycotting country's requirements.*

COMPLIANCE WITH A BOYCOTTING COUNTRY'S REQUIREMENTS REGARDING SHIPMENT AND TRANSSHIPMENT OF EXPORTS

(1) A United States person may comply or agree to comply with the export requirements of a boycotting country with respect to shipments or transshipments of exports to:

(i) A boycotted country;

(ii) Any business concern of a boycotted country;

(iii) Any business concern organized under the laws of a boycotted country; or

(iv) Any national or resident of a boycotted country.

(2) This exception permits compliance with restrictions which a boycotting country may place on direct exports to a boycotted country; on indirect exports to a boycotted country (i.e., those that pass via third parties); and on exports to residents, nationals, or business concerns of, or organized under the laws of, a boycotted country, including those located in third countries.

(3) This exception also permits compliance with restrictions which a boycotting country may place on the route of export shipments when the restrictions are reasonably related to preventing the export shipments from coming into contact with or under the jurisdiction of the boycotted country. This exception applies whether a boycotting country or the vendor of the shipment:

(i) Explicitly states that the shipment should not pass through the boycotted country enroute to its final destination; or

(ii) Affirmatively describes a route of shipment that does not include the boycotted country.

(4) A United States person may not, under this exception, refuse on an across-the-board basis to do business with a boycotted country or a national or resident of a boycotted country.

EXAMPLES OF COMPLIANCE WITH A BOYCOTTING COUNTRY'S REQUIREMENTS REGARDING SHIPMENT OR TRANSSHIPMENT OF EXPORTS

The following examples are intended to give guidance in determining the circumstances in which compliance with the export requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) A, a U.S. petroleum company, exports petroleum products to 20 countries, including the United States, from boycotting country Y. Country Y's export regulations require that products not be exported from Y to boycotted country X.

A may agree to and comply with Y's regulations with respect to the export of goods from Y to X.

(ii) Same as (i), except that Y's export regulations require that goods not be exported from boycotting country Y to any business concern organized under the laws of boycotted country X.

A may agree to and comply with Y's regulations with respect to the export of goods from Y to a business concern organized under the laws of X, even if such concern is located in a country not involved in Y's boycott of X.

(iii) B, the operator of a storage facility in country M, contracts with A, a U.S. carrier, for the shipment of certain goods manufactured in boycotting country Y. A's contract with B contains a provision stating that the goods to be transported may not be shipped or transshipped to boycotted country X. B informs A that this provision is a requirement of C, the manufacturer of goods who is a resident of boycotting country Y. Country M is not boycotted by Y.

A may agree to and comply with this provision, because such a provision is required by the export regulations of boycotting country Y in order to prevent shipment of Y-origin goods to a country boycotted by Y.

(iv) A, a U.S. petroleum refiner located in the United States, purchases crude oil from boycotting country Y. A has a branch operation in boycotted country X. Y requires, as a condition of sale, that A agree not to ship or transship the crude oil or products refined in Y to A's branch in X.

A may agree to and comply with these requirements, because they are export requirements of Y designed to prevent Y-origin products from being shipped to a boycotted country.

(v) A, a U.S. company, has a petrochemical plant in boycotting country Y. As a condition of securing an export license from Y, A must agree that it will not ship or permit transshipment of any of its output from the plant in Y to any companies which Y lists as being owned by nationals of boycotted country X.

A may agree to this condition, because it is a restriction designed to prevent Y-origin products from being exported to a business concern of boycotted country X or to nationals of boycotted country X.

(vi) Same as (v), except that the condition imposed on A is that Y-origin goods may not be shipped or permitted to be transshipped to any companies which Y lists as being owned by persons whose national origin is X.

A may not agree to this condition, because it is a restriction designed to prevent Y-origin goods from being exported to persons of a particular national origin rather than to residents or nationals of a particular boycotted country.

(vii) A, a U.S. petroleum company, exports petroleum products to 20 countries, including the United States, from boycotting country Y. Y requires, as a condition of sale, that A not ship the products to be exported from Y to or through boycotted country X.

A may agree to and comply with this requirement because it is an export requirement of Y designed to prevent Y-origin products from coming into contact with or under the jurisdiction of a boycotted country.

(viii) Same as (vii), except that boycotting country Y's export regulations require that products to be exported from Y not pass through a port of boycotted country X.

A may agree to and comply with Y's regulations prohibiting Y-origin exports from passing through a port at boycotted country X, because they are export requirements of Y designed to prevent Y-origin products from coming into contact with or under the jurisdiction of a boycotted country.

(ix) Same as (vii), except that Y's export regulations require that A not transship the exported products ''in or at'' boycotted country X.

A may agree to and comply with Y's regulations with respect to the transshipment of goods ''in or at'' X, because they are export requirements of Y designed to prevent Y-origin products from coming into contact with or under the jurisdiction of a boycotted country.

(f) *Immigration, passport, visa, or employment requirements of a boycotting country.*

COMPLIANCE WITH IMMIGRATION, PASSPORT, VISA, OR EMPLOYMENT REQUIREMENTS OF A BOYCOTTING COUNTRY

(1) A United States individual may comply or agree to comply with the immigration, passport, visa, or employment requirements of a boycotting country, and with requests for information from a boycotting country made to ascertain whether such individual meets requirements for employment within the boycotting country, provided that he furnishes information only about himself or a member of his family, and not about any other United States individual, including his employees, employers, or co-workers.

(2) For purposes of this section, a *United States individual* means a person who is a resident or national of the United States. *Family* means immediate family members, including parents, siblings, spouse, children, and other dependents living in the individual's home.

(3) A United States person may not furnish information about its employees or executives, but may allow any individual to respond on his own to any request for information relating to immigration, passport, visa, or employment requirements. A United States person may also perform any ministerial acts to expedite processing of applications by individuals. These include informing employees of boycotting country visa requirements at

an appropriate time; typing, translation, messenger and similar services; and assisting in or arranging for the expeditious processing of applications. All such actions must be undertaken on a non-discriminatory basis.

(4) A United States person may proceed with a project in a boycotting country even if certain of its employees or other prospective participants in a transaction are denied entry for boycott reasons. But no employees or other participants may be selected in advance in a manner designed to comply with a boycott.

EXAMPLES OF COMPLIANCE WITH IMMIGRATION, PASSPORT, VISA, OR EMPLOYMENT REQUIREMENTS OF A BOYCOTTING COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with immigration, passport, visa, or employment requirements is permissible. They are illustrative, not comprehensive.

(i) A, a U.S. individual employed by B, a U.S. manufacturer of sporting goods with a plant in boycotting country Y, wishes to obtain a work visa so that he may transfer to the plant in Y. Country Y's immigration laws specify that anyone wishing to enter the country or obtain a visa to work in the country must supply information about his religion. This information is required for boycott purposes.

A may furnish such information, because it is required by Y's immigration laws.

(ii) Same as (i), except that A is asked to supply such information about other employees of B.

A may not supply this information, because it is not information about himself or his family.

(iii) A, a U.S. building contractor, has been awarded a construction contract to be performed in boycotting country Y. Y's immigration laws require that individuals applying for visas must indicate race, religion, and place of birth. The information is sought for boycott purposes. To avoid repeated rejections of applications for work visas by A's employees, A desires to furnish to country Y a list of its prospective and current employees and required information about each so that Y can make an initial screening.

A may not furnish such a list, because A would be furnishing information about the race, religion, and national origin of its employees.

(iv) Same as (iii), except that A selects for work on the project those of its current employees whom it believes will be granted work visas from boycotting country Y.

A may not make a selection from among its employees in a manner designed to comply with the boycott-based visa requirements of Y, but must allow all eligible employees to apply for visas. A may later substitute an employee who obtains the necessary visa for one who has had his application rejected.

(v) Same as (iii), except that A selects employees for the project and then allows each employee individually to apply for his own visa. Two employees' applications are rejected, and A then substitutes two other employees who, in turn, submit their own visa applications.

A may take such action, because in so doing A is not acting in contravention of any prohibition of this part.

(vi) Same as (v), except that A arranges for the translation, typing and processing of its employees' applications, and transmits all the applications to the consulate of boycotting country Y.

A may take such ministerial actions, because in so doing A is not itself furnishing information with respect to race, religion, sex, or national origin, but is merely transmitting information furnished by its individual employees.

(vii) A, a U.S. contractor, selects U.S. subcontractor B to perform certain engineering services in connection with A's project in boycotting country Y. The work visa application submitted by the employee whom B has proposed as chief engineer of this project is rejected by Y because his national origin is of boycotted country X. Subcontractor B thereupon withdraws.

A may continue with the project and select another subcontractor, because A is not acting in contravention of any prohibition of this part.

(g) *Compliance with local law.* (1) This exception contains two parts. The first covers compliance with local law with respect to a United States person's activities exclusively within a foreign country; the second covers compliance with local import laws by United States persons resident in a foreign country. Under both parts of this exception, local laws are laws of the host country, whether derived from statutes, regulations, decrees, or other official sources having the effect of law in the host country. This exception is not available for compliance with presumed policies or understandings of policies unless those policies are reflected in official sources having the effect of law.

(2) Both parts of this exception apply only to United States persons resident in a foreign country. For purposes of this exception, a United States person will be considered to be a resident of a

foreign country only if he is a bona fide resident. A United States person may be a bona fide resident of a foreign country even if such person's residency is temporary.

(3)(i) Factors that will be considered in determining whether a United States person is a bona fide resident of a foreign country include:

(A) Physical presence in the country;

(B) Whether residence is needed for legitimate business reasons;

(C) Continuity of the residency;

(D) Intent to maintain the residency;

(E) Prior residence in the country;

(F) Size and nature of presence in the country;

(G) Whether the person is registered to do business or incorporated in the country;

(H) Whether the person has a valid work visa; and

(I) Whether the person has a similar presence in both boycotting and non-boycotting foreign countries in connection with similar business activities.

(ii) No one of the factors in paragraph (g)(3) of this section is dispositive. All the circumstances involved will be closely examined to ascertain whether there is, in fact, bona fide residency. Residency established solely for purposes of avoidance of the application of this part, unrelated to legitimate business needs, does not constitute bona fide residency.

EXAMPLES OF BONA FIDE RESIDENCY

The following examples are intended to give guidance in determining the circumstances in which a United States person may be a bona fide resident of a foreign country. For purposes of illustration, each example discusses only one or two factors, instead of all relevant factors. They are illustrative, not comprehensive.

(i) A, a U.S. radio manufacturer located in the United States, receives a tender to bid on a contract to supply radios for a hotel to be built in boycotting country Y. After examining the proposal, A sends a bid from its New York office to Y.

A is not a resident of Y, because it is not physically present in Y.

(ii) Same as (i), except that after receiving the tender, A sends its sales representative to Y. A does not usually have sales representatives in countries when it bids from the United States, and this particular person's presence in Y is not necessary to enable A to make the bid.

A is not a bona fide resident of Y, because it has no legitimate business reasons for having its sales representative resident in Y.

(iii) A, a U.S. bank, wishes to establish a branch office in boycotting country Y. In pursuit of that objective, A's personnel visit Y to make the necessary arrangements. A intends to establish a permanent branch office in Y after the necessary arrangements are made.

A's personnel in Y are not bona fide residents of Y, because A does not yet have a permanent business operation in Y.

(iv) Same as (iii), except A's personnel are required by Y's laws to furnish certain non-discriminatory boycott information in order to establish a branch in Y.

In these limited circumstances, A's personnel may furnish the non-discriminatory boycott information necessary to establish residency to the same extent a U.S. person who is a bona fide resident in that country could. If this information could not be furnished in such limited circumstances, the exception would be available only to firms resident in a boycotting country before January 18, 1978.

(v) A, a U.S. construction company, receives an invitation to build a power plant in boycotting country Y. After receipt of the invitation, A's personnel visit Y in order to survey the site and make necessary analyses in preparation for submitting a bid. The invitation requires that otherwise prohibited boycott information be furnished with the bid.

A's personnel in Y are not bona fide residents of Y, because A has no permanent business operation in Y. Therefore, A's personnel may not furnish the prohibited information.

(vi) Same as (v), except that A is considering establishing an office in boycotting country Y. A's personnel visit Y in order to register A to do business in that country. A intends to establish ongoing construction operations in Y. A's personnel are required by Y's laws to furnish certain non-discriminatory boycott information in order to register A to do business or incorporate a subsidiary in Y.

In these limited circumstances, A's personnel may furnish non-discriminatory boycott information necessary to establish residency to the same extent a U.S. person who is a bona fide resident in that country could. If this information could not be furnished in such limited circumstances, the exception would be available only to firms resident in a boycotting country before January 18, 1978.

(vii) A, a subsidiary of U.S. oil company B, is located in boycotting country Y. A has been engaged in oil explorations in Y for a number of years.

A is a bona fide resident of Y, because of its pre-existing continuous presence in Y for legitimate business reasons.

(viii) Same as (vii), except that A has just been established in Y and has not yet begun operations.

A is a bona fide resident of Y, because it is present in Y for legitimate business reasons and it intends to reside continuously.

(ix) U.S. company A is a manufacturer of prefabricated homes. A builds a plant in boycotting country Y for purposes of assembling components made by A in the United States and shipped to Y.

A's personnel in Y are bona fide residents of Y, because A's plant in Y is established for legitimate business reasons, and it intends to reside continuously.

(x) U.S. company A has its principal place of business in the United States. A's sales agent visits boycotting country Y from time to time for purposes of soliciting orders.

A's sales agent is not a bona fide resident of Y, because such periodic visits to Y are insufficient to establish a bona fide residency.

(xi) A, a branch office of U.S. construction company B, is located in boycotting country Y. The branch office has been in existence for a number of years and has been performing various management services in connection with B's construction operations in Y.

A is a bona fide resident of Y, because of its longstanding presence in Y and its conduct of ongoing operations in Y.

(xii) U.S. construction company A has never done any business in boycotting country Y. It is awarded a contract to construct a hospital in Y, and preparatory to beginning construction, sends its personnel to Y to set up operations.

A's personnel are bona fide residents of Y, because they are present in Y for the purposes of carrying out A's legitimate business purposes; they intend to reside continuously; and residency is necessary to conduct their business.

(xiii) U.S. company A manufactures furniture. All its sales in foreign countries are conducted from its offices in the United States. From time to time A has considered opening sales offices abroad, but it has concluded that it is more efficient to conduct sales operations from the United States. Shortly after the effective date of this part, A sends a sales representative to boycotting country Y to open an office in and solicit orders from Y. It is more costly to conduct operations from that office than to sell directly from the United States, but A believes that if it establishes a residence in Y, it will be in a better position to avoid conflicts with U.S. law in its sales to Y.

A's sales representative is not a bona fide resident of Y, because the residency was established to avoid the application of this part and not for legitimate business reasons.

(xiv) Same as (xiii), except that it is in fact more efficient to have a sales office in Y. In fact, without a sales office in Y, A would find it difficult to explore business opportunities in Y. A is aware, however, that residency in Y would permit its sales representative to comply with Y's boycott laws.

A's sales representative is a bona fide resident of Y, because A has a legitimate business reason for establishing a sales office in Y.

(xv) U.S. company B is a computer manufacturer. B sells computers and related programming services tailored to the needs of individual clients. Because of the complex nature of the product, B must have sales representatives in any country where sales are made. B has a sales representative, A, in boycotting country Y. A spends two months of the year in Y, and the rest of the year in other countries. B has a permanent sales office from which A operates while in Y, and the sales office is stocked with brochures and other sales materials.

A is a bona fide resident of Y, because his presence in Y is necessary to carry out B's legitimate business purposes; B maintains a permanent office in Y; and B intends to continue doing business in Y in the future.

(xvi) A, a U.S. construction engineering company, is engaged by B, a U.S. general contracting company, to provide services in connection with B's contract to construct a hospital complex in boycotting country Y. In order to perform those services, A's engineers set up a temporary office in a trailer on the construction site in Y. A's work is expected to be completed within six months.

A's personnel in Y are bona fide residents of Y, because A's on-site office is necessary to the performance of its services for B, and because A's personnel are continuously there.

(xvii) A, a U.S. company, sends one of its representatives to boycotting country Y to explore new sales possibilities for its line of transistor radios. After spending several weeks in Y, A's representative rents a post office box in Y, to which all persons interested in A's products are directed to make inquiry.

A is not a bona fide resident of Y, because rental of a post office box is not a sufficient presence in Y to constitute residency.

(xviii) A, a U.S. computer company, has a patent and trademark registered in the United States. In order to obtain registration of its patent and trademark in boycotting country Y, A is required to furnish certain non-discriminatory boycott information.

A may not furnish the information, because A is not a bona fide resident of Y.

(h) *Activities exclusively within a foreign country.* (1) Any United States person who is a bona fide resident of a foreign country, including a boycotting country, may comply or agree to comply with the laws of that country with

respect to his activities exclusively within that country. These activities include:

(i) Entering into contracts which provide that local law applies or governs, or that the parties will comply with such laws;

(ii) Employing residents of the host country;

(iii) Retaining local contractors to perform work within the host country;

(iv) Purchasing or selling goods or services from or to residents of the host country; and

(v) Furnishing information within the host country.

(2) Activities exclusively within the country do not include importing goods or services from outside the host country, and, therefore, this part of the exception does not apply to compliance with import laws in connection with importing goods or services.

EXAMPLES OF PERMISSIBLE COMPLIANCE WITH LOCAL LAW WITH RESPECT TO ACTIVITIES EXCLUSIVELY WITHIN A FOREIGN COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with local law is permissible. They are illustrative, not comprehensive.

ACTIVITIES EXCLUSIVELY WITHIN A FOREIGN COUNTRY

(i) U.S. construction company A, a bona fide resident of boycotting country Y, has a contract to build a school complex in Y. Pursuant to Y's boycott laws, the contract requires A to refuse to purchase supplies from certain local merchants. While Y permits such merchants to operate within Y, their freedom of action in Y is constrained because of their relationship with boycotted country X.

A may enter into the contract, because dealings with local merchants are activities exclusively within Y.

(ii) A, a banking subsidiary of U.S. bank B, is a bona fide resident of boycotting country Y. From time to time, A purchases office supplies from the United States.

A's purchase of office supplies is not an activity exclusively within Y, because it involves the import of goods from abroad.

(iii) A, a branch of U.S. bank B, is a bona fide resident of boycotting country Y. Under Y's boycott laws, A is required to supply information about whether A has any dealings with boycotted country X. A compiles and furnishes the information within Y and does so of its own knowledge.

A may comply with that requirement, because in compiling and furnishing the information within Y, based on its own knowledge, A is engaging in an activity exclusively within Y.

(iv) Same as (iii), except that A is required to supply information about B's dealings with X. From its own knowledge and without making any inquiry of B, A compiles and furnishes the information.

A may comply with that requirement, because in compiling and furnishing the information within Y, based on its own knowledge, A is engaging in an activity exclusively within Y.

(v) Same as (iv), except that in making its responses, A asks B to compile some of the information.

A may not comply, because the gathering of the necessary information takes place partially outside Y.

(vi) U.S. company A has applied for a license to establish a permanent manufacturing facility in boycotting country Y. Under Y's boycott law, A must agree, as a condition of the license, that it will not sell any of its output to blacklisted foreign firms.

A may not comply, because the agreement would govern activities of A which are not exclusively within Y.

DISCRIMINATION AGAINST UNITED STATES PERSONS

(i) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y. A manufactures air conditioners in its plant in Y. Under Y's boycott laws, A must agree not to hire nationals of boycotted country X.

A may agree to the restriction and may abide by it with respect to its recruitment of individuals within Y, because the recruitment of such individuals is an activity exclusively within Y. However, A cannot abide by this restriction with respect to its recruitment of individuals outside Y, because this is not an activity exclusively within Y.

(ii) Same as (i), except that pursuant to Y's boycott laws, A must agree not to hire anyone who is of a designated religion.

A may not agree to this restriction, because the agreement calls for discrimination against U.S. persons on the basis of religion. It makes no difference whether the recruitment of the U.S. persons occurs within or without Y.

(NOTE: The exception for compliance with local law does not apply to boycott-based refusals to employ U.S. persons on the basis of race, religion, sex, or national origin even if the activity is exclusively within the boycotting country.)

(i) *Compliance with local import law.* (1) Any United States person who is a bona fide resident of a foreign country, including a boycotting country, may,

in importing goods, materials or components into that country, comply or agree to comply with the import laws of that country, provided that:

(i) The items are for his own use or for his use in performing contractual services within that country; and

(ii) In the normal course of business, the items are identifiable as to their source or origin at the time of their entry into the foreign country by:

(a) Uniqueness of design or appearance; or

(b) Trademark, trade name, or other identification normally on the items themselves, including their packaging.

(2) The factors that will be considered in determining whether a United States person is a bona fide resident of a foreign country are those set forth in paragraph (g) of this section. Bona fide residence of a United States company's subsidiary, affiliate, or other permanent establishment in a foreign country does not confer such residence on such United States company. Likewise, bona fide residence of a United States company's employee in a foreign country does not confer such residence on the entire company.

(3) A United States person who is a bona fide resident of a foreign country may take action under this exception through an agent outside the country, but the agent must act at the direction of the resident and not exercise his own discretion. Therefore, if a United States person resident in a boycotting country takes action to comply with a boycotting country's import law with respect to the importation of qualified goods, he may direct his agent in the United States on the action to be taken, but the United States agent himself may not exercise any discretion.

(4) For purposes of this exception, the test that governs whether goods or components of goods are specifically identifiable is identical to the test applied in paragraph (d) of this section on ''Compliance With Unilateral and Specific Selection'' to determine whether they are identifiable as to their source or origin in the normal course of business.

(5) The availability of this exception for the import of goods depends on whether the goods are intended for the United States person's own use at the time they are imported. It does not depend upon who has title to the goods at the time of importation into a foreign country.

(6) Goods are for the United States person's own use (including the performance of contractual services within the foreign country) if:

(i) They are to be consumed by the United States person;

(ii) They are to remain in the United States person's possession and to be used by that person;

(iii) They are to be used by the United States person in performing contractual services for another;

(iv) They are to be further manufactured, incorporated into, refined into, or reprocessed into another product to be manufactured for another; or

(v) They are to be incorporated into, or permanently affixed as a functional part of, a project to be constructed for another.

(7) Goods acquired to fill an order for such goods from another are not for the United States person's own use. Goods procured for another are not for one's own use, even if the furnishing of procurement services is the business in which the United States person is customarily engaged. Nor are goods obtained for simple resale acquired for one's own use, even if the United States person is engaged in the retail business. Likewise, goods obtained for inclusion in a turnkey project are not for one's own use if they are not customarily incorporated into, or do not customarily become permanently affixed as a functional part of the project.

(8) This part of the local law exception does not apply to the import of services, even when the United States person importing such services is a bona fide resident of a boycotting country and is importing them for his own use. In addition, this exception is available for a United States person who is a bona fide resident of a foreign country only when the individual or entity actually present within that country takes action through the exercise of his own discretion.

(9) Use of this exception will be monitored and continually reviewed to determine whether its continued availability is consistent with the national interest. Its availability may be limited or withdrawn as appropriate. In reviewing the continued availability of this exception, the effect that the inability to comply with local import laws would have on the economic and other relations of the United States with boycotting countries will be considered.

(10) A United States person who is a bona fide resident of a foreign country may comply or agree to comply with the host country's import laws even if he knows or has reason to know that particular laws are boycott-related. However, no United States person may comply or agree to comply with any host country law which would require him to discriminate against any United States person on the basis of race, religion, sex, or national origin, or to supply information about any United States person's race, religion, sex, or national origin.

EXAMPLES OF PERMISSIBLE COMPLIANCE WITH LOCAL IMPORT LAW

The following examples are intended to give guidance in determining the circumstances in which compliance with local import law is permissible. They are illustrative, not comprehensive.

COMPLIANCE BY A BONA FIDE RESIDENT

(i) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y and is engaged in oil drilling operations in Y. In acquiring certain large, specifically identifiable products for carrying out its operations in Y, A chooses only from non-blacklisted firms because Y's import laws prohibit the importation of goods from blacklisted firms. However, with respect to smaller items, B makes the selection on behalf of A and sends them to A in Y.

A may choose from non-blacklisted firms, because it is a U.S. person who is a bona fide resident in Y. However, because B is not resident in Y, B cannot make boycott-based selections to conform with Y's import laws prohibiting the importation of goods from blacklisted firms.

(ii) Same as (i), except that after making its choices on the larger items, A directs B to carry out its instructions by entering into appropriate contracts and making necessary shipping arrangements.

B may carry out A's instructions provided that A, a bona fide resident of Y, has in fact made the choice and B is exercising no discretion, but is acting only as A's agent.

(NOTE: Such transactions between related companies will be scrutinized carefully. A must in fact exercise the discretion and make the selections. If the discretion is exercised by B, B would be in violation of this part.)

(iii) U.S. construction company A has a contract to build a school in boycotting country Y. A's employees set up operations in Y for purposes of commencing construction. A's employees in Y advise A's headquarters in the United States that Y's import laws prohibit importation of goods manufactured by blacklisted firms. A's headquarters then issues invitations to bid only to non-blacklisted firms for certain specifically identifiable goods.

A's headquarters' choice of non-blacklisted suppliers is not a choice made by a U.S. person who is a bona fide resident of Y, because the discretion in issuing the bids was exercised in the United States, not in Y.

(iv) Same as (iii), except that A's employees in Y actually make the decision regarding to whom the bids should be issued.

The choices made by A's employees are choices made by U.S. persons who are bona fide residents of Y, because the discretion in choosing was exercised solely in Y.

(NOTE: Choices purportedly made by employees of U.S. companies who are resident in boycotting countries will be carefully scrutinized to ensure that the discretion was exercised entirely in the boycotting country.)

SPECIFICALLY IDENTIFIABLE GOODS

The test and examples as to what constitutes specifically identifiable goods are identical to those applicable under paragraph (d) of this section on ''Compliance With Unilateral Selection.''

IMPORTS FOR U.S. PERSON'S OWN USE WITHIN BOYCOTTING COUNTRY

(i) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y. A plans to import computer operated machine tools to be installed in its automobile plant in boycotting country Y. The computers are mounted on a separate bracket on the side of the equipment and are readily identifiable by brand name. A orders the tools from U.S. supplier C and specifies that C must incorporate computers manufactured by D, a non-blacklisted company. A would have chosen computers manufactured by E, except that E is blacklisted, and Y's import laws prohibit the importation of goods manufactured by blacklisted firms.

A may refuse to purchase E's computers, because A is importing the computers for its own use in its manufacturing operations in Y.

(ii) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y. To meet the needs of its employees in Y, A imports certain specifically identifiable commissary items for sale, such as cosmetics; and canteen items, such as candy. In selecting such items for importation into Y, A chooses items made only by non-blacklisted firms, because Y's import laws prohibit importation of goods from blacklisted firms.

A may import these items only from non-blacklisted firms, because the importation of goods for consumption by A's employees is an importation for A's own use.

(iii) A, a U.S. construction company which is a bona fide resident of boycotting country Y, has a contract to build a hospital complex for the Ministry of Health in Y. Under the contract, A will be general manager of the project with discretion to choose all subcontractors and suppliers. The complex is to be built on a turnkey basis, with A retaining title to the property and bearing all financial risk until the complex is conveyed to Y. In choosing specifically identifiable goods for import, such as central air conditioning units and plate glass, A excludes blacklisted suppliers in order to comply with Y's import laws. These goods are customarily incorporated into, or permanently affixed as a functional part of, the project.

A may refuse to deal with blacklisted suppliers of specifically identifiable goods, because importation of goods by a general contractor to be incorporated into a construction project in Y is an importation of goods for A's own use.

(iv) Same as (iii), except that, in addition, in choosing U.S. architects and engineers to work on the project, A excludes blacklisted firms, because Y's import laws prohibit the use of services rendered by blacklisted persons.

A may not refuse to deal with blacklisted architectural or engineering firms, because this exception does not apply to the import of services. It is irrelevant that, at some stage, the architectural or engineering drawings or plans may be brought to the site in Y. This factor is insufficient to transform such services into ''goods'' for purposes of this exception.

(v) Same as (iii), except that the project is to be completed on a ''cost plus'' basis, with Y making progress payments to A at various stages of completion.

A may refuse to deal with blacklisted suppliers of specifically identifiable goods, because the importation of goods by A to be incorporated in a project A is under contract to complete is an importation of goods for its own use. The terms of payment are irrelevant.

(vi) A, a U.S. construction company which is a bona fide resident of boycotting country Y, has a contract for the construction of an office building in Y on a turnkey basis. In choosing goods to be used or included in the office complex, A orders wallboard, office partitions, and lighting fixtures from non-blacklisted manufacturers. A likewise orders desks, office chairs, typewriters, and office supplies from non-blacklisted manufacturers.

Because they are customarily incorporated into or permanently affixed as a functional part of an office building, the wallboard, office partitions, and lighting fixtures are for A's own use, and A may select non-blacklisted suppliers of these goods in order to comply with Y's import laws. Because they are not customarily incorporated into or permanently affixed to the project, the desks, office chairs, typewriters, and office supplies are not for A's own use, and A may not make boycott-based selections of the suppliers of these goods.

(vii) A, a U.S. company engaged in the business of selling automobiles, is a bona fide resident of boycotting country Y. In ordering automobiles from time to time for purposes of stocking its inventory, A purchases from U.S. manufacturer B, but not U.S. manufacturer C, because C is blacklisted. Retail sales are subsequently made from this inventory.

A's import of automobiles from B is not an import for A's own use, because the importation of items for general inventory in a retail sales operation is not an importation for one's own use.

(viii) A, a U.S. company engaged in the manufacture of pharmaceutical products, is a bona fide resident of boycotting country Y. In importing chemicals for incorporation into the pharmaceutical products, A purchases from U.S. supplier B, but not U.S. supplier C, because C is blacklisted.

A may import chemicals from B rather than C, because the importation of specifically identifiable items for incorporation into another product is an importation for one's own use.

(ix) A, a U.S. management company which is a bona fide resident of boycotting country Y, has a contract with the Ministry of Education in Y to purchase supplies for Y's school system. From time to time, A purchases goods from abroad for delivery to various schools in Y.

A's purchase of goods for Y's school system does not constitute an importation of goods for A's own use, because A is acting as a procurement agent for another. A, therefore, cannot make boycott-based selections of suppliers of such school supplies.

(x) A, a U.S. company which is a bona fide resident of boycotting country Y, has a contract to make purchases for Y in connection with a construction project in Y. A is not engaged in the construction of, or in any other activity in connection with, the project. A's

role is merely to purchase goods for Y and arrange for their delivery to Y.

A is not purchasing goods for its own use, because A is acting as a procurement agent for Y. A, therefore, cannot make boycott selections of suppliers of such goods.

(xi) A, a U.S. company which is a bona fide resident of boycotting country Y, imports specifically identifiable goods into Y for exhibit by A at a trade fair in Y. In selecting goods for exhibit, A excludes items made by blacklisted firms.

A's import of goods for its exhibit at a trade fair constitutes an import for A's own use. However, A may not sell in Y those goods it imported for exhibit.

(xii) A is a bona fide resident of boycotting countries Y and Z. In compliance with Y's boycott laws, A chooses specifically identifiable goods for its oil drilling operations in Y and Z by excluding blacklisted suppliers. The goods are first imported into Y. Those purchased for A's use in Z are then transshipped to Z.

In selecting those goods for importation into Y, A is making an import selection for its own use, even though A may use some of the imported goods in Z. Further, the subsequent shipment from Y to Z of those goods purchased for use in Z is an import into Z for A's own use.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34946, June 1, 2000]

§ 760.4 Evasion.

(a) No United States person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provisions of this part. Nor may any United States person assist another United States person to violate or evade the provisions of this part.

(b) The exceptions set forth in § 760.3(a) through (i) do not permit activities or agreements (express or implied by a course of conduct, including a pattern of responses) which are otherwise prohibited by this part and which are not within the intent of such exceptions. However, activities within the coverage and intent of the exceptions set forth in this part do not constitute evasion regardless of how often such exceptions are utilized.

(c) Use of any artifice, device or scheme which is intended to place a person at a commercial disadvantage or impose on him special burdens because he is blacklisted or otherwise restricted for boycott reasons from having a business relationship with or in a boycotting country will be regarded as evasion for purposes of this part.

(d) Unless permitted under one of the exceptions, use of risk of loss provisions that expressly impose a financial risk on another because of the import laws of a boycotting country may constitute evasion. If they are introduced after January 18, 1978, their use will be presumed to constitute evasion. This presumption may be rebutted by a showing that such a provision is in customary usage without distinction between boycotting and non-boycotting countries and that there is a legitimate non-boycott reason for its use. On the other hand, use of such a provision by a United States person subsequent to January 18, 1978 is presumed not to constitute evasion if the provision had been customarily used by that person prior to January 18, 1978.

(e) Use of dummy corporations or other devices to mask prohibited activity will also be regarded as evasion. Similarly, it is evasion under this part to divert specific boycotting country orders from a United States parent to a foreign subsidiary for purposes of complying with prohibited boycott requirements. However, alteration of a person's structure or method of doing business will not constitute evasion so long as the alteration is based on legitimate business considerations and is not undertaken solely to avoid the application of the prohibitions of this part. The facts and circumstances of an arrangement or transaction will be carefully scrutinized to see whether appearances conform to reality.

EXAMPLES

The following examples are intended to give guidance to persons in determining circumstances in which this section will apply. They are illustrative, not comprehensive.

(i) A, a U.S. insurance company, receives a request from boycotting country Y asking whether it does business in boycotted country X. Because furnishing such information is prohibited, A declines to answer and as a result is placed on Y's blacklist. The following year, A's annual report contains new information about A's worldwide operations, including a list of all countries in which A does business. A then mails a copy of its annual report, which has never before contained such information, to officials of the government of country Y.

Absent some business justification unrelated to the boycott for changing the annual report in this fashion, A's action constitutes evasion of this part.

(ii) A, a U.S. construction firm resident in boycotting country Y, orders lumber from U.S. company B. A unilaterally selects B in part because U.S. lumber producer C is blacklisted by Y and C's products are therefore not importable. In placing its order with B, A requests that B stamp its name or logo on the lumber so that A ''can be certain that it is, in fact, receiving B's products.'' B does not normally so stamp its lumber, and A's purpose in making the request is to appear to fit within the unilateral selection exception of this part.

Absent additional facts justifying A's action, A's action constitutes evasion of this part.

(iii) A, a U.S. company, has been selling sewing machines to boycotting country Y for a number of years. A receives a request for a negative certificate of origin from a new customer. A is aware that furnishing such certificates are prohibited; therefore, A arranges to have all future shipments run through a foreign corporation in a third country which will affix the necessary negative certificate before forwarding the machines on to Y.

A's action constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

(iv) A, a U.S. company, has been selling calculators to distributor B in country C for a number of years and routinely supplies positive certificates of origin. A receives an order from country Y which requires negative certificates of origin. A arranges to make all future sales to distributor B in country C. A knows B will step in and make the sales to Y which A would otherwise have made directly. B will make the necessary negative certifications. A's warranty, which it will continue to honor, runs to the purchaser in Y.

A's action constitutes evasion, because the diverting of orders to B is a device to mask prohibited activity carried out on A's behalf.

(v) A, a U.S. company, is negotiating a long-term contract with boycotting country Y to meet all Y's medical supply needs. Y informs A that before such a contract can be concluded, A must complete Y's boycott questionnaire. A knows that it is prohibited from answering the questionnaire so it arranges for a local agent in Y to supply the necessary information.

A's action constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

(vi) A, a U.S. contractor which has not previously dealt with boycotting country Y, is awarded a construction contract by Y. Because it is customary in the construction industry for a contractor to establish an on-site facility for the duration of the project, A establishes such an office, which satisfies the requirements for bona fide residency. Thereafter, A's office in Y takes a number of actions permitted under the compliance with local law exception.

A's actions do not constitute evasion, because A's facility in Y was established for legitimate business reasons.

(vii) A, a controlled foreign subsidiary of U.S. company B, is located in non-boycotting country M. A and B both make machine tools for sale in their respective marketing regions. B's marketing region includes boycotting country Y. After assessing the requirements of this part, B decides that it can no longer make machines for sale in Y. Instead, A decides to expand its facilities in M in order to service the Y market.

The actions of A and B do not constitute evasion, because there is a legitimate business reason for their actions. It is irrelevant that the effect may be to place sales which would otherwise have been subject to this part beyond the reach of this part.

(viii) A, a U.S. manufacturer, from time to time receives purchase orders from boycotting country Y which A fills from its plant in the United States. A knows that it is about to receive an order from Y which contains a request for a certification which A is prohibited from furnishing under this part. In order to permit the certification to be made, A diverts the purchase order to its foreign subsidiary.

A's diversion of the purchase order constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

(ix) A, a U.S. company, is engaged in assembling drilling rigs for shipment to boycotting country Y. Because of potential difficulties in securing entry into Y of materials supplied by blacklisted firms, A insists that blacklisted firms take a 15 percent discount on all materials which they supply to A. As a result, no blacklisted firms are willing to transact with A.

A's insistence on the discount for materials supplied by blacklisted firms constitutes evasion of this part, because it is a device or scheme which is intended to place a special burden on blacklisted firms because of Y's boycott.

(x) Same as (ix), except that shortly after January 18, 1978, A, a U.S. company, insists that its suppliers sign contracts which provide that even after title passes from the supplier to A, the supplier will bear the risk of loss and indemnify A if goods which the supplier has furnished are denied entry into Y for boycott reasons.

A's action constitutes evasion of this part, because it is a device or scheme which is intended to place a special burden on blacklisted persons because of Y's boycott.

(xi) Same as (x), except that A customarily insisted on such an arrangement with its supplier prior to January 18, 1978.

A's action is presumed not to constitute evasion, because use of this contractual arrangement was customary for A prior to January 18, 1978.

(xii) A, a U.S. company, has a contract to supply automobile sub-assembly units to boycotting country Y. Shortly after January 18, 1978, A insists that its suppliers sign contracts which provide that even after title passes to A, the supplier will bear the risk of loss and indemnify A if goods which the supplier has furnished are denied entry into boycotting country Y for any reason.

A's insistence on this arrangement is presumed to constitute evasion, because it is a device which is intended to place a special burden on blacklisted firms because of Y's boycott. The presumption may be rebutted by competent evidence showing that use of such an arrangement is customary without regard to the boycotting or non-boycotting character of the country to which it relates and that there is a legitimate non-boycott business reason for its use.

(xiii) Same as (vii), except that A requires that all suppliers make in-country delivery.

A's action does not constitute evasion, because it is an ordinary commercial practice to require in-country delivery of goods.

(xiv) Same as (xii), except that A requires that title remain with the supplier until delivery in Y has been made.

A's action does not constitute evasion, because it is ordinary commercial practice to require that title remain with the supplier until delivery has been made. This example is distinguishable from example (xii), because in example (xii) A had insisted on an extraordinary arrangement designed to require that the risk of loss remain with the supplier even after title had passed to A.

(xv) U.S. bank A is contacted by U.S. company B to finance B's transaction with boycotting country Y. Payment will be effected through a letter of credit in favor of B at its U.S. address. A knows that the letter of credit will contain restrictive boycott conditions which would bar its implementation by A if the beneficiary were a U.S. person. A advises B of the boycott condition and suggests to B that the beneficiary should be changed to C, a shell corporation in non-boycotting country M. The beneficiary is changed accordingly.

The actions of both A and B constitute evasion of this part, because the arrangement is a device to mask prohibited activities.

(xvi) Same as (xv), except that U.S. company B, the beneficiary of the letter of credit, arranges to change the beneficiary to B's foreign subsidiary so that A can implement the letter of credit. A knows that this has been done.

A's implementation of the letter of credit in the face of its knowledge of B's action constitutes evasion of this part, because A's action is part of a device to mask prohibited activity by both parties.

(xvii) U.S. bank A, located in the United States, is contacted by foreign company B to finance B's transaction with boycotting country Y. B is a controlled subsidiary of a U.S. company. The transaction which is to be financed with a letter of credit payable to B at its foreign address, requires B to certify that none of its board members are of a particular religious faith. Since B cannot legally furnish the certificate, it asks A to convey the necessary information to Y through A's bank branch in Y. Such information would be furnished wholly outside the letter of credit transaction.

A's action constitutes evasion of this part, because it is undertaken to assist B's violation of this part.

(xviii) U.S. bank A is asked by foreign corporation B to implement a letter of credit in favor of B so that B might perform under its long-term contract with boycotting country Y. Under the terms of the letter of credit, B is required to certify that none of its suppliers is blacklisted. A knows that it cannot implement a letter of credit with this condition, so it tells B to negotiate the elimination of this requirement from the letter of credit and instead supply the certification to Y directly.

A's suggestion to B that it provide the negative certification to Y directly constitutes evasion of this part, because A is taking an action through another person to mask prohibited activity on A's part.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34947, June 1, 2000]

§ 760.5 Reporting requirements.

(a) *Scope of reporting requirements.* (1) A United States person who receives a request to take any action which has the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country against a country friendly to the United States or against any United States person must report such request to the Department of Commerce in accordance with the requirements of this section. Such a request may be either written or oral and may include a request to furnish information or enter into or implement an agreement. It may also include a solicitation, directive, legend or instruction that asks for information or that asks that a United States person take or refrain from taking a particular action. Such a

request shall be reported regardless of whether the action requested is prohibited or permissible under this part, except as otherwise provided by this section.

(2) For purposes of this section, a request received by a United States person is reportable if he knows or has reason to know that the purpose of the request is to enforce, implement, or otherwise further, support, or secure compliance with an unsanctioned foreign boycott or restrictive trade practice.

(i) A request received by a United States person located in the United States is reportable if it is received in connection with a transaction or activity in the interstate or foreign commerce of the United States, as determined under § 760.1(d)(1) through (5) and (18) of this part.

(ii) A request received by a United States person located outside the United States (that is, a foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment which is controlled in fact by any domestic concern, as determined under § 760.1(c) of this part) is reportable if it is received in connection with a transaction or activity in the interstate or foreign commerce of the United States, as determined under § 760.1(d)(6) through (17) and (19) of this part.

(iii) A request such as a boycott questionnaire, unrelated to a particular transaction or activity, received by any United States person is reportable when such person has or anticipates a business relationship with or in a boycotting country involving the sale, purchase or transfer of goods or services (including information) in the interstate or foreign commerce of the United States, as determined under § 760.1(d) of this part.

(3) These reporting requirements apply to all United States persons. They apply whether the United States person receiving the request is an exporter, bank or other financial institution, insurer, freight forwarder, manufacturer, or any other United States person subject to this part.

(4) The acquisition of information about a boycotting country's boycott requirements through the receipt or review of books, pamphlets, legal texts, exporters' guidebooks and other similar publications does not constitute receipt of a reportable request for purposes of this section. In addition, a United States person who receives an unsolicited invitation to bid, or similar proposal, containing a boycott request has not received a reportable request for purposes of this section where he does not respond to the invitation to bid or other proposal.

(5) Because of the use of certain terms for boycott and non-boycott purposes; because of Congressional mandates to provide clear and precise guidelines in areas of inherent uncertainty; and because of the Department's commitment to minimize paperwork and reduce the cost of reporting where it will not impair the Department's ability to continue to monitor foreign boycotts, the following specific requests are not reportable:

(i) A request to refrain from shipping goods on a carrier which flies the flag of a particular country or which is owned, chartered, leased or operated by a particular country or by nationals or residents of a particular country, or a request to certify to that effect.

(ii) A request to ship goods via a prescribed route, or a request to refrain from shipping goods via a proscribed route, or a request to certify to either effect.

(iii) A request to supply an affirmative statement or certification regarding the country of origin of goods.

(iv) A request to supply an affirmative statement or certification regarding the name of the supplier or manufacturer of the goods shipped or the name of the provider of services.

(v) A request to comply with the laws of another country except where the request expressly requires compliance with that country's boycott laws.

(vi) A request to an individual to supply information about himself or a member of his family for immigration, passport, visa, or employment purposes.

(vii) A request to supply an affirmative statement or certification indicating the destination of exports or confirming or otherwise indicating that such cargo will be unloaded or discharged at a particular destination.

(viii) A request to supply a certificate by the owner, master, charterer, or any employee thereof, that a vessel, aircraft, truck or any other mode of transportation is eligible, otherwise eligible, permitted, or allowed to enter, or not restricted from entering, a particular port, country, or group of countries pursuant to the laws, rules, or regulations of that port, country, or group of countries.

(ix) A request to supply a certificate from an insurance company stating that the insurance company has a duly authorized agent or representative within a boycotting country and/or the name and address of such agent.

(x) A request to comply with a term or condition of a transaction that provides that the vendor bear the risk of loss and indemnify the purchaser if the vendor's goods are denied entry into a country for any reason (''risk of loss clause'') if such clause was in use by the purchaser prior to January 18, 1978.

(6) No United States person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provisions of this part.

(7) From time to time the Department will survey domestic concerns for purposes of determining the worldwide scope of boycott requests received by their controlled foreign subsidiaries and affiliates with respect to their activities outside United States commerce. This pertains to requests which would be reportable under this section but for the fact that the activities to which the requests relate are outside United States commerce. The information requested will include the number and nature of non-reportable boycott requests received, the action(s) requested, the actions(s) taken in response and the countries in which the requests originate. The results of such surveys, including the names of those surveyed, will be made public.

(b) *Manner of reporting.* (1) Each reportable request must be reported. However, if more than one document (such as an invitation to bid, purchase order, or letter of credit) containing the same boycott request is received as part of the same transaction, only the first such request need be reported. Individual shipments against the same purchase order or letter of credit are to be treated as part of the same transaction. Each different boycott request associated with a given transaction must be reported, regardless of how or when the request is received.

(2) Each United States person actually receiving a reportable request must report that request. However, such person may designate someone else to report on his behalf. For example, a United States company, if authorized, may report on behalf of its controlled foreign subsidiary or affiliates; a freight forwarder, if authorized, may report on behalf of the exporter; and a bank, if authorized, may report on behalf of the beneficiary of a letter of credit. If a person designated to report a request received by another receives an identical request directed to him in connection with the same transaction, he may file one report on behalf of himself and the other person.

(3) Where a person is designated to report on behalf of another, the person receiving the request remains liable for any failure to report or for any representations made on his behalf. Further, anyone reporting on behalf of another is not relieved of his own responsibility for reporting any boycott request which he receives, even if it is an identical request in connection with the same transaction.

(4) Reports must be submitted in duplicate to: Report Processing Staff, Office of Antiboycott Compliance, U.S. Department of Commerce, Room 6098, Washington, D.C. 20230. Each submission must be made in accordance with the following requirements:

(i) Where the person receiving the request is a United States person located in the United States, each report of requests must be postmarked by the last day of the month following the calendar quarter in which the request was received (e.g., April 30 for the quarter consisting of January, February, and March).

(ii) Where the person receiving the request is a United States person located outside the United States, each report of requests must be postmarked by the last day of the second month following the calendar quarter in which the request was received (e.g., May 31

for the quarter consisting of January, February, and March).

(5) At the reporting person's option, reports may be submitted on either a single transaction form (Form BIS–621P, Report of Restrictive Trade Practice or Boycott Request Single Transaction (revised 10–89)) or on a multiple transaction form (Form BIS–6051P, Report of Request for Restrictive Trade Practice or Boycott Multiple Transactions (revised 10–89)). Use of the multiple transaction form permits the reporting person to provide on one form all required information relating to as many as 75 reportable requests received within any single reporting period.

(6) Reports, whether submitted on the single transaction form or on the multiple transaction form, must contain entries for every applicable item on the form, including whether the reporting person intends to take or has taken the action requested. If the reporting person has not decided what action he will take by the time the report is required to be filed, he must later report the action he decides to take within 10 business days after deciding. In addition, anyone filing a report on behalf of another must so indicate and identify that other person.

(7) Each report of a boycott request must be accompanied by two copies of the relevant page(s) of any document(s) in which the request appears. Reports may also be accompanied by any additional information relating to the request as the reporting person desires to provide concerning his response to the request.

(8) Records containing information relating to a reportable boycott request, including a copy of any document(s) in which the request appears, must be maintained by the recipient for a five-year period after receipt of the request. The Department may require that these materials be submitted to it or that it have access to them at any time within that period. (See part 762 of the EAR for additional recordkeeping requirements.)

(c) *Disclosure of information*. (1) Reports of requests received on or after October 7, 1976, as well as any accompanying documents filed with the reports, have been and will continue to be made available for public inspection and copying, except for certain proprietary information. With respect to reports of requests received on or after August 1, 1978, if the person making the report certifies that a United States person to whom the report relates would be placed at a competitive disadvantage because of the disclosure of information regarding the quantity, description, or value of any articles, materials, and supplies, including related technical data and other information, whether contained in a report or in any accompanying document(s), such information will not be publicly disclosed except upon failure by the reporting entity to edit the public inspection copy of the accompanying document(s) as provided by paragraph (c)(2) of this section, unless the Secretary of Commerce determines that the disclosure would not place the United States person involved at a competitive disadvantage or that it would be contrary to the national interest to withhold the information. In the event the Secretary of Commerce considers making such a determination concerning competitive disadvantage, appropriate notice and an opportunity for comment will be given before any such proprietary information is publicly disclosed. In no event will requests of reporting persons to withhold any information contained in the report other than that specified in this paragraph be honored.

(2) Because a copy of any document(s) accompanying the report will be made available for public inspection and copying, one copy must be submitted intact and another copy must be edited by the reporting entity to delete the same information which it certified in the report would place a United States person at a competitive disadvantage if disclosed. In addition, the reporting entity may delete from this copy information that is considered confidential and that is not required to be contained in the report (e.g., information related to foreign consignee). This copy should be conspicuously marked with the legend ''Public Inspection Copy.'' With respect to documents accompanying reports received by the Department on or after July 1, 1979, the public inspection copy will be made available as submitted

whether or not it has been appropriately edited by the reporting entity as provided by this paragraph.

(3) Reports and accompanying documents which are available to the public for inspection and copying are located in the BIS Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Requests to inspect such documents should be addressed to that facility.

(4) The Secretary of Commerce will periodically transmit summaries of the information contained in the reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary of Commerce, may deem appropriate for carrying out the policies in section 8(b)(2) of the Export Administration Act of 1979.

EXAMPLES

The following examples are intended to give guidance in determining what is reportable. They are illustrative, not comprehensive.

(i) A, a U.S. manufacturer, is shipping goods to boycotting country Y and is asked by Y to certify that it is not blacklisted by Y's boycott office.

The request to A is reportable, because it is a request to A to comply with Y's boycott requirements.

(ii) A, a U.S. manufacturing company, receives an order for tractors from boycotting country Y. Y's order specifies that the tires on the tractors be made by B, another U.S. company. A believes Y has specified B as the tire supplier because otherwise A would have used tires made by C, a blacklisted company, and Y will not take shipment of tractors containing tires made by blacklisted companies.

A must report Y's request for tires made by B, because A has reason to know that B was chosen for boycott reasons.

(iii) Same as (ii), except A knows that Y's request has nothing to do with the boycott but simply reflects Y's preference for tires made by B.

Y's request is not reportable, because it is unrelated to Y's boycott.

(iv) Same as (ii), except A neither knows nor has reason to know why Y has chosen B.

Y's request is not reportable, because A neither knows nor has reason to know that Y's request is based on Y's boycott.

(v) A, a controlled foreign subsidiary of U.S. company B, is a resident of boycotting country Y. A is a general contractor. After being supplied by A with a list of competent subcontractors, A's customer instructs A to use subcontractor C on the project. A believes that C was chosen because, among other things, the other listed subcontractors are blacklisted.

The instruction to A by its customer that C be used on the project is reportable, because it is a request to comply with Y's boycott requirements.

(vi) A, a controlled foreign subsidiary of U.S. company B, is located in non-boycotting country P. A receives an order for washing machines from boycotting country Y. Y instructs A that a negative certificate of origin must accompany the shipment. The washing machines are made wholly in P, without U.S. components.

Y's instruction to A regarding the negative certificate of origin is not reportable, because the transaction to which it relates is not in U.S. commerce.

(vii) Same as (vi), except that A obtains components from the United States for the purpose of filling the order from Y. Y's instruction to A regarding the negative certificate of origin is reportable, because the transaction to which it relates is in U.S. commerce.

(viii) A, a U.S. construction company, receives in the mail an unsolicited invitation to bid on a construction project in boycotting country Y. The invitation to bid requires those who respond to certify that they do not have any plants or branch offices in boycotted country X. A does not respond.

A's receipt of the unsolicited invitation to bid is not reportable, because the request does not relate to any present or anticipated business of A with or in Y.

(ix) Same as (viii), except that A receives a boycott questionnaire from a central boycott office. A does not do business in any of the boycotting countries involved, and does not anticipate doing any business in those countries. A does not respond.

A's receipt of the boycott questionnaire is not reportable, because it does not relate to any present or anticipated business by A with or in a boycotting country.

(x) A, a U.S. manufacturer, is seeking markets in which to expand its exports. A sends a representative to boycotting country Y to explore Y's potential as a market for A's products. A's representative discusses its products but does not enter into any contracts on that trip. A does, however, hope that sales will materialize in the future. Subsequently, A receives a boycott questionnaire from Y.

A's receipt of the boycott questionnaire is reportable, because the request relates to A's anticipated business with or in a boycotting country. For purposes of determining whether a report is required, it makes no difference whether A responds to the questionnaire, and it makes no difference that actual sales contracts are not in existence or do not materialize.

(xi) Same as (x), except that A's representative enters into a contract to sell A's products to a buyer in boycotting country Y. Subsequently, A receives a boycott questionnaire from Y.

A's receipt of the boycott questionnaire is reportable, because it relates to A's present business with or in a boycotting country. For purposes of determining whether a report is required, it makes no difference whether A responds to the questionnaire.

(xii) A, a U.S. freight forwarder, purchases an exporter's guidebook which includes the import requirements of boycotting country Y. The guidebook contains descriptions of actions which U.S. exporters must take in order to make delivery of goods to Y.

A's acquisition of the guidebook is not reportable, because he has not received a request from anyone.

(xiii) A, a U.S. freight forwarder, is arranging for the shipment of goods to boycotting country Y at the request of B, a U.S. exporter. B asks A to assume responsibility to assure that the documentation accompanying the shipment is in compliance with Y's import requirements. A examines an exporters' guidebook, determines that Y's import regulations require a certification that the insurer of the goods is not blacklisted and asks U.S. insurer C for such a certification.

B's request to A is reportable by A, because it constitutes a request to comply with Y's boycott as of the time A takes action to comply with Y's boycott requirements in response to the request. A's request to C is reportable by C.

(xiv) A, a U.S. freight forwarder, is arranging for the shipment of U.S. goods to boycotting country Y. The manufacturer supplies A with all the necessary documentation to accompany the shipment. Among the documents supplied by the manufacturer is his certificate that he himself is not blacklisted. A transmits the documentation supplied by the manufacturer.

A's action in merely transmitting documents received from the manufacturer is not reportable, because A has received no request to comply with Y's boycott.

(xv) Same as (xiv), except that A is asked by U.S. exporter B to assume the responsibility to assure that the necessary documentation accompanies the shipment whatever that documentation might be. B forwards to A a letter of credit which requires that a negative certificate of origin accompany the bill of lading. A supplies a positive certificate of origin.

Both A and B must report receipt of the letter of credit, because it contains a request to both of them to comply with Y's boycott.

(xvi) Same as (xiv), except that the manufacturer fails to supply a required negative certificate of origin, and A is subsequently asked by a consular official of Y to see to it that the certificate is supplied. A supplies a positive certificate of origin.

The consular official's request to A is reportable by A, because A was asked to comply with Y's boycott requirements by supplying the negative certificate of origin.

(xvii) A, a U.S. manufacturer, is shipping goods to boycotting country Y. Arrangements have been made for freight forwarder B to handle the shipment and secure all necessary shipping certifications. B notes that the letter of credit requires that the manufacturer supply a negative certificate of origin and B asks A to do so. A supplies a positive certificate of origin.

B's request to A is reportable by A, because A is asked to comply with Y's boycott requirements by providing the negative certificate.

(xviii) A, a controlled foreign subsidiary of U.S. company B, is a resident of boycotting country Y. A is engaged in oil exploration and drilling operations in Y. In placing orders for drilling equipment to be shipped from the United States, A, in compliance with Y's laws, selects only those suppliers who are not blacklisted.

A's action in choosing non-blacklisted suppliers is not reportable, because A has not received a request to comply with Y's boycott in making these selections.

(xix) A, a controlled foreign subsidiary of U.S. company B, is seeking permission to do business in boycotting country Y. Before being granted such permission, A is asked to sign an agreement to comply with Y's boycott laws.

The request to A is reportable, because it is a request that expressly requires compliance with Y's boycott law and is received in connection with A's anticipated business in Y.

(xx) A, a U.S. bank, is asked by a firm in boycotting country Y to confirm a letter of credit in favor of B, a U.S. company. The letter of credit calls for a certificate from B that the goods to be supplied are not produced by a firm blacklisted by Y. A informs B of the letter of credit, including its certification condition, and sends B a copy.

B must report the certification request contained in the letter of credit, and A must report the request to confirm the letter of credit containing the boycott condition, because both are being asked to comply with Y's boycott.

(xxi) Same as (xx), except that the letter of credit calls for a certificate from the beneficiary that the goods will not be shipped on a vessel that will call at a port in boycotted country X before making delivery in Y.

The request is not reportable, because it is a request of a type deemed by this section to be in common use for non-boycott purposes.

(xxii) A, a U.S. company, receives a letter of credit from boycotting country Y stating

that on no condition may a bank blacklisted by Y be permitted to negotiate the credit.

A's receipt of the letter of credit is reportable, because it contains a request to A to comply with Y's boycott requirements.

(xxiii) A, a U.S. bank, receives a demand draft from B, a U.S. company, in connection with B's shipment of goods to boycotting country Y. The draft contains a directive that it is valid in all countries except boycotted country X.

A's receipt of the demand draft is reportable, because it contains a request to A to comply with Y's boycott requirements.

(xxiv) A, a U.S. exporter, receives an order from boycotting country Y. On the order is a legend that A's goods, invoices, and packaging must not bear a six-pointed star or other symbol of boycotted country X.

A's receipt of the order is reportable, because it contains a request to comply with Y's boycott requirements.

(xxv) Same as (xxiv), except the order contains a statement that goods exported must not represent part of war reparations to boycotted country X.

A's receipt of the order is reportable, because it contains a request to A to comply with Y's boycott requirements.

(xxvi) A, a U.S. contractor, is negotiating with boycotting country Y to build a school in Y. During the course of the negotiations, Y suggests that one of the terms of the construction contract be that A agree not to import materials produced in boycotted country X. It is A's company policy not to agree to such a contractual clause, and A suggests that instead it agree that all of the necessary materials will be obtained from U.S. suppliers. Y agrees to A's suggestion and a contract is executed.

A has received a reportable request, but, for purposes of reporting, the request is deemed to be received when the contract is executed.

(xxvii) Same as (xxvi), except Y does not accept A's suggested alternative clause and negotiations break off.

A's receipt of Y's request is reportable. For purposes of reporting, it makes no difference that A was not successful in the negotiations. The request is deemed to be received at the time the negotiations break off.

(xxviii) A, a U.S. insurance company, is insuring the shipment of drilling equipment to boycotting country Y. The transaction is being financed by a letter of credit which requires that A certify that it is not blacklisted by Y. Freight forwarder B asks A to supply the certification in order to satisfy the requirements of the letter of credit.

The request to A is reportable by A, because it is a request to comply with Y's boycott requirements.

(xxix) A, a U.S. manufacturer, is engaged from time-to-time in supplying drilling rigs to company B in boycotting country Y. B insists that its suppliers sign contracts which provide that, even after title passes from the supplier to B, the supplier will bear the risk of loss and indemnify B if goods which the supplier has furnished are denied entry into Y for whatever reason. A knows or has reason to know that this contractual provision is required by B because of Y's boycott, and that B has been using the provision since 1977. A receives an order from B which contains such a clause.

B's request is not reportable by A, because the request is deemed to be not reportable by these regulations if the provision was in use by B prior to January 18, 1978.

(xxx) Same as (xxix), except that A does not know when B began using the provision.

Unless A receives information from B that B introduced the term prior to January 18, 1978, A must report receipt of the request.

(xxxi) A, a U.S. citizen, is a shipping clerk for B, a U.S. manufacturing company. In the course of his employment, A receives an order for goods from boycotting country Y. The order specifies that none of the components of the goods is to be furnished by blacklisted firms.

B must report the request received by its employee, A, acting in the scope of his employment. Although A is a U.S. person, such an individual does not have a separate obligation to report requests received by him in his capacity as an employee of B.

(xxxii) U.S. exporter A is negotiating a transaction with boycotting country Y. A knows that at the conclusion of the negotiations he will be asked by Y to supply certain boycott-related information and that such a request is reportable. In an effort to forestall the request and thereby avoid having to file a report, A supplies the information in advance.

A is deemed to have received a reportable request.

(xxxiii) A, a controlled foreign affiliate of U.S. company B, receives an order for computers from boycotting country Y and obtains components from the United States for the purpose of filling the order. Y instructs A that a negative certificate of origin must accompany the shipment.

Y's instruction to A regarding the negative certificate of origin is reportable by A. Moreover, A may designate B or any other person to report on its behalf. However, A remains liable for any failure to report or for any representations made on its behalf.

(xxxiv) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to state on the bill of lading that the vessel is allowed to enter Y's ports. The request further states that a certificate from the owner or master of the vessel to that effect is acceptable.

The request A received from his customer in Y is not reportable because it is a request of a type deemed to be not reportable by

these regulations. (A may not make such a statement on the bill of lading himself, if he knows or has reason to know it is requested for a boycott purpose.)

(xxxv) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to furnish a certificate from the owner of the vessel that the vessel is permitted to call at Y's ports.

The request A received from his customer in Y is not reportable because it is a request of a type deemed to be not reportable by these regulations.

(xxxvi) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to furnish a certificate from the insurance company indicating that the company has a duly authorized representative in country Y and giving the name of that representative.

The request A received from his customer in Y is not reportable if it was received after the effective date of these rules, because it is a request of a type deemed to be not reportable by these regulations.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34948, June 1, 2000]

SUPPLEMENT NO. 1 TO PART 760—INTERPRETATIONS

It has come to the Department's attention that some U.S. persons are being or may be asked to comply with new boycotting country requirements with respect to shipping and insurance certifications and certificates of origin. It has also come to the Department's attention that some U.S. persons are being or may be asked to agree to new contractual provisions in connection with certain foreign government or foreign government agency contracts. In order to maximize its guidance with respect to section 8 of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2407) and part 760 of the EAR, the Department hereby sets forth its views on these certifications and contractual clauses.[1]

I. CERTIFICATIONS

§760.2(d) of this part prohibits a U.S. person from furnishing or knowingly agreeing to furnish:

''Information concerning his or any other person's past, present or proposed business relationships:

(i) With or in a boycotted country;

(ii) With any business concern organized under the laws of a boycotted country;

(iii) With any national or resident of a boycotted country; or

(iv) With any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country.''

This prohibition, like all others under part 760, applies only with respect to a U.S. person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott. (§760.2(d)(5) of this part.)

This prohibition does not apply to the furnishing of normal business information in a commercial context. (§760.2(d)(3) of this part). Normal business information furnished in a commercial context does not cease to be such simply because the party soliciting the information may be a boycotting country or a national or resident thereof. If the information is of a type which is generally sought for a legitimate business purpose (such as determining financial fitness, technical competence, or professional experience), the information may be furnished even if the information could be used, or without the knowledge of the person supplying the information is intended to be used, for boycott purposes. (§760.2(d)(4) of this part).

The new certification requirements and the Department's interpretation of the applicability of part 760 thereto are as follows:

A. *Certificate of origin*. A certificate of origin is to be issued by the supplier or exporting company and authenticated by the exporting country, attesting that the goods exported to the boycotting country are of purely indigenous origin, and stating the name of the factory or the manufacturing company. To the extent that the goods as described on the certificate of origin are not solely and exclusively products of their country of origin indicated thereon, a declaration must be appended to the certificate of origin giving the name of the supplier/manufacturer and declaring:

''The undersigned, _____, does hereby declare on behalf of the above-named supplier/manufacturer, that certain parts or components of the goods described in the attached certificate of origin are the products of such country or countries, other than the country named therein as specifically indicated hereunder:

Country of Origin and Percentage of Value of Parts or Components Relative to Total Shipment

1. _____
2. _____
3. _____

Dated: _____

Signature _____

[1] The Department originally issued this interpretation pursuant to the Export Administration Amendments Act of 1979 (Public Law 95–52) and the regulations on restrictive trade practices and boycotts (15 CFR part 369) published on January 25, 1978 (43 FR 3508) and contained in the 15 CFR edition revised as of January 1, 1979.

Sworn to before me, this _____ day of _____, 19 ___. Notary Seal.''

INTERPRETATION

It is the Department's position that furnishing a positive certificate of origin, such as the one set out above, falls within the exception contained in §760.3(c) of this part for compliance with the import and shipping document requirements of a boycotting country. See §760.3(c) of this part and examples (i) and (ii) thereunder.

B. *Shipping certificate.* A certificate must be appended to the bill of lading stating: (1) Name of vessel; (2) Nationality of vessel; and (3) Owner of vessel, and declaring:

''The undersigned does hereby declare on behalf of the owner, master, or agent of the above-named vessel that said vessel is not registered in the boycotted country or owned by nationals or residents of the boycotted country and will not call at or pass through any boycotted country port enroute to its boycotting country destination.

''The undersigned further declares that said vessel is otherwise eligible to enter into the ports of the boycotting country in conformity with its laws and regulations.

Sworn to before me, this _____ day of _____, 19 ___. Notary Seal.''

INTERPRETATION

It is the Department's position that furnishing a certificate, such as the one set out above, stating: (1) The name of the vessel, (2) The nationality of the vessel, and (3) The owner of the vessel and further declaring that the vessel: (a) Is not registered in a boycotted country, (b) Is not owned by nationals or residents of a boycotted country, and (c) Will not call at or pass through a boycotted country port enroute to its destination in a boycotting country falls within the exception contained in §760.3(c) for compliance with the import and shipping document requirements of a boycotting country. See §760.3(c) and examples (vii), (viii), and (ix) thereunder.

It is also the Department's position that the owner, charterer, or master of a vessel may certify that the vessel is ''eligible'' or ''otherwise eligible'' to enter into the ports of a boycotting country in conformity with its laws and regulations. Furnishing such a statement pertaining to one's own eligibility offends no prohibition under this part 760. See §760.2(f), example (xiv).

On the other hand, where a boycott is in force, a declaration that a vessel is ''eligible'' or ''otherwise eligible'' to enter the ports of the boycotting country necessarily conveys the information that the vessel is not blacklisted or otherwise restricted from having a business relationship with the boycotting country. See §760.3(c) examples (vi), (xi), and (xii). Where a person other than the vessel's owner, charterer, or master furnishes such a statement, that is tantamount to his furnishing a statement that he is not doing business with a blacklisted person or is doing business only with non-blacklisted persons. Therefore, it is the Department's position that furnishing such a certification (which does not reflect customary international commercial practice) by anyone other than the owner, charterer, or master of a vessel would fall within the prohibition set forth in §760.2(d) unless it is clear from all the facts and circumstances that the certification is not required for a boycott reason. See §760.2(d)(3) and (4). See also part A., ''Permissible Furnishing of Information,'' of Supplement No. 5 to this part.

C. *Insurance certificate.* A certificate must be appended to the insurance policy stating: (1) Name of insurance company; (2) Address of its principal office; and (3) Country of its incorporation, and declaring:

''The undersigned, _____, does hereby certify on behalf of the above-named insurance company that the said company has a duly qualified and appointed agent or representative in the boycotting country whose name and address appear below:

Name of agent/representative and address in the boycotting country.

Sworn to before me this _____ day of _____, 19___. Notary Seal.''

INTERPRETATION

It is the Department's position that furnishing the name of the insurance company falls within the exception contained in §760.3(c) for compliance with the import and shipping document requirements of a boycotting country. See §760.3(c)(1)(v) and examples (v) and (x) thereunder. In addition, it is the Department's position that furnishing a certificate, such as the one set out above, stating the address of the insurance company's principal office and its country of incorporation offends no prohibition under this part 760 unless the U.S. person furnishing the certificate knows or has reason to know that the information is sought for the purpose of determining that the insurance company is neither headquartered nor incorporated in a boycotted country. See §760.2(d)(1)(i).

It is also the Department's position that the insurer, himself, may certify that he has a duly qualified and appointed agent or representative in the boycotting country and may furnish the name and address of his agent or representative. Furnishing such a statement pertaining to one's own status offends no prohibition under this part 760. See §760.2(f), example (xiv).

On the other hand, where a boycott is in force, a declaration that an insurer ''has a

duly qualified and appointed agent or representative'' in the boycotting country necessarily conveys the information that the insurer is not blacklisted or otherwise restricted from having a business relationship with the boycotting country. See §760.3(c), example (v). Therefore, it is the Department's position that furnishing such a certification by anyone other than the insurer would fall within the prohibition set forth in §760.2(d) unless it is clear from all the facts and circumstances that the certification is not required for a boycott reason. See §760.2(d)(3) and (4).

II. CONTRACTUAL CLAUSES

The new contractual requirements and the Department's interpretation of the applicability of part 760 thereto are as follows:

A. *Contractual clause regarding import laws of boycotting country*. ''In connection with the performance of this contract the Contractor/Supplier acknowledges that the import and customs laws and regulations of the boycotting country shall apply to the furnishing and shipment of any products or components thereof to the boycotting country. The Contractor/Supplier specifically acknowledges that the aforementioned import and customs laws and regulations of the boycotting country prohibit, among other things, the importation into the boycotting country of products or components thereof: (1) Originating in the boycotted country; (2) Manufactured, produced, or furnished by companies organized under the laws of the boycotted country; and (3) Manufactured, produced, or furnished by nationals or residents of the boycotted country.''

INTERPRETATION

It is the Department's position that an agreement, such as the one set out in the first sentence above, that the import and customs requirements of a boycotting country shall apply to the performance of a contract does not, in and of itself, offend any prohibition under this part 760. See §760.2(a)(5) and example (iii) under ''Examples of Agreements To Refuse To Do Business.'' It is also the Department's position that an agreement to comply generally with the import and customs requirements of a boycotting country does not, in and of itself, offend any prohibition under this part 760. See §760.2(a)(5) and examples (iv) and (v) under ''Examples of Agreements To Refuse To Do Business.'' In addition, it is the Department's position that an agreement, such as the one set out in the second sentence above, to comply with the boycotting country's import and customs requirements prohibiting the importation of products or components: (1) Originating in the boycotted country; (2) Manufactured, produced, or furnished by companies organized under the laws of the boycotted country; or (3) Manufactured, produced, or furnished by nationals or residents of the boycotted country falls within the exception contained in §760.3(a) for compliance with the import requirements of a boycotting country. See §760.3(a) and example (ii) thereunder.

The Department notes that a United States person may not furnish a negative certification regarding the origin of goods or their components even though the certification is furnished in response to the import and shipping document requirements of the boycotting country. See §760.3(c) and examples (i) and (ii) thereunder, and §760.3(a) and example (ii) thereunder.

B. *Contractual clause regarding unilateral and specific selection*. ''The Government of the boycotting country (or the First Party), in its exclusive power, reserves its right to make the final unilateral and specific selection of any proposed carriers, insurers, suppliers of services to be performed within the boycotting country, or of specific goods to be furnished in accordance with the terms and conditions of this contract.''

INTERPRETATION

It is the Department's position that an agreement, such as the one set out above, falls within the exception contained in §760.3(d) of this part for compliance with unilateral selections. However, the Department notes that whether a U.S. person may subsequently comply or agree to comply with any particular selection depends upon whether that selection meets all the requirements contained in §760.3(d) of this part for compliance with unilateral selections. For example, the particular selection must be unilateral and specific, particular goods must be specifically identifiable as to their source or origin at the time of their entry into the boycotting country, and all other requirements contained in §760.3(d) of this part must be observed.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34948, June 1, 2000]

SUPPLEMENT NO. 2 TO PART 760—INTERPRETATION

The Department hereby sets forth its views on whether the furnishing of certain shipping and insurance certificates in compliance with boycotting country requirements violates the provisions of section 8 of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2407) and part 760 of the EAR,[1] as follows:

[1] The Department originally issued this interpretation on April 21, 1978 (43 FR 16969) pursuant to the Export Administration Amendments Act of 1977 (Public Law 95–52)

Continued

(i) ''The owner, charterer or master of a vessel may certify that the vessel is 'eligible' or 'otherwise eligible' to enter into the ports of a boycotting country in conformity with its laws and regulations;''

(ii) ''The insurer, himself, may certify that he has a duly qualified and appointed agent or representative in the boycotting country and may furnish the name and address of his agent or representative.''

Furnishing such certifications by anyone other than:

(i) The owner, charterer or master of a vessel, or

(ii) The insurer would fall within the prohibition set forth in §760.2(d) of this part, ''unless it is clear from all the facts and circumstances that these certifications are not required for a boycott reason.'' See §760.2(d)(3) and (4) of this part.

The Department has received from the Kingdom of Saudi Arabia a clarification that the shipping and insurance certifications are required by Saudi Arabia in order to:

(i) Demonstrate that there are no applicable restrictions under Saudi laws or regulations pertaining to maritime matters such as the age of the ship, the condition of the ship, and similar matters that would bar entry of the vessel into Saudi ports; and

(ii) Facilitate dealings with insurers by Saudi Arabian importers whose ability to secure expeditious payments in the event of damage to insured goods may be adversely affected by the absence of a qualified agent or representative of the insurer in Saudi Arabia. In the Department's judgment, this clarification constitutes sufficient facts and circumstances to demonstrate that the certifications are not required by Saudi Arabia for boycott reasons.

On the basis of this clarification, it is the Department's position that any United States person may furnish such shipping and insurance certificates required by Saudi Arabia without violating §760.2(d) of this part. Moreover, under these circumstances, receipts of requests for such shipping and insurance certificates from Saudi Arabia are not reportable.

It is still the Department's position that furnishing such a certificate pertaining to one's own eligibility offends no prohibition under part 760. See §760.2(f) of this part, example (xiv). However, absent facts and circumstances clearly indicating that the certifications are required for ordinary commercial reasons as demonstrated by the Saudi clarification, furnishing certifications about the eligibility or blacklist status of any other person would fall within the prohibition set forth in §760.2(d) of this part, and receipts of requests for such certifications are reportable.

It also remains the Department's position that where a United States person asks an insurer or carrier of the exporter's goods to self-certify, such request offends no prohibition under this part. However, where a United States person asks anyone other than an insurer or carrier of the exporter's goods to self-certify, such requests will be considered by the Department as evidence of the requesting person's refusal to do business with those persons who cannot or will not furnish such a self-certification. For example, if an exporter-beneficiary of a letter of credit asks his component suppliers to self-certify, such a request will be considered as evidence of his refusal to do business with those component suppliers who cannot or will not furnish such a self-certification.

The Department wishes to emphasize that notwithstanding the fact that self-certifications are permissible, it will closely scrutinize the activities of all United States persons who provide such self-certifications, including insurers and carriers, to determine that such persons have not taken any prohibited actions or entered into any prohibited agreements in order to be able to furnish such certifications.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34949, June 1, 2000]

SUPPLEMENT NO. 3 TO PART 760—INTERPRETATION

Pursuant to Article 2, Annex II of the Peace Treaty between Egypt and Israel, Egypt's participation in the Arab economic boycott of Israel was formally terminated on January 25, 1980. On the basis of this action, it is the Department's position that certain requests for information, action or agreement which were considered boycott-related by implication now cannot be presumed boycott-related and thus would not be prohibited or reportable under the Regulations. For example, a request that an exporter certify that the vessel on which it is shipping its goods is eligible to enter Arab Republic of Egypt ports has been considered a boycott-related request that the exporter could not comply with because Egypt has a boycott in force against Israel (see 43 FR 16969, April 21, 1978 or the 15 CFR edition revised as of January 1, 1979). Such a request after January 25, 1980 would not be presumed boycott-related because the underlying boycott requirement/basis for the certification has been eliminated. Similarly, a U.S. company would not be prohibited from complying with a request received from Egyptian government officials to furnish the place of birth of employees the

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and the regulations on restrictive trade practices and boycotts (15 CFR part 369) published on January 25, 1978 (43 FR 3508) and contained in the 15 CFR edition revised as of January 1, 1979.

company is seeking to take to Egypt, because there is no underlying boycott law or policy that would give rise to a presumption that the request was boycott-related.

U.S. persons are reminded that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to the Regulations, irrespective of the country or origin. For example, requests containing references to ''blacklisted companies'', ''Israel boycott list'', ''non-Israeli goods'' or other phrases or words indicating boycott purpose would be subject to the appropriate provisions of the Department's antiboycott regulations.

SUPPLEMENT NO. 4 TO PART 760—INTERPRETATION

The question has arisen how the definition of U.S. commerce in the antiboycott regulations (15 CFR part 760) applies to a shipment of foreign-made goods when U.S.-origin spare parts are included in the shipment. Specifically, if the shipment of foreign goods falls outside the definition of U.S. commerce, will the inclusion of U.S.-origin spare parts bring the entire transaction into U.S. commerce?

Section 760.1(d)(12) provides the general guidelines for determining when U.S.-origin goods shipped from a controlled in fact foreign subsidiary are outside U.S. commerce. The two key tests of that provision are that the goods were ''(i) * * * acquired without reference to a specific order from or transaction with a person outside the United States; and (ii) * * * further manufactured, incorporated into, refined into, or reprocessed into another product.'' Because the application of these two tests to spare parts does not conclusively answer the U.S. commerce question, the Department is presenting this clarification.

In the cases brought to the Department's attention, an order for foreign-origin goods was placed with a controlled in fact foreign subsidiary of a United States company. The foreign goods contained components manufactured in the United States and in other countries, and the order included a request for extras of the U.S. manufactured components (spare parts) to allow the customer to repair the item. Both the foreign manufactured product and the U.S. spare parts were to be shipped from the general inventory of the foreign subsidiary. Since the spare parts, if shipped by themselves, would be in U.S. commerce as that term is defined in the Regulations, the question was whether including them with the foreign manufactured item would bring the entire shipment into U.S. commerce. The Department has decided that it will not and presents the following specific guidance.

As used above, the term ''spare parts'' refers to parts of the quantities and types normally and customarily ordered with a product and kept on hand in the event they are needed to assure prompt repair of the product. Parts, components or accessories that improve or change the basic operations or design characteristics, for example, as to accuracy, capability or productivity, are not spare parts under this definition.

Inclusion of U.S.-origin spare parts in a shipment of products which is otherwise outside U.S. commerce will not bring the transaction into U.S. commerce if the following conditions are met:

(I) The parts included in the shipment are acquired from the United States by the controlled in fact foreign subsidiary without reference to a specific order from or transaction with a person outside the United States;

(II) The parts are identical to the corresponding United States-origin parts which have been manufactured, incorporated into or reprocessed into the completed product;

(III) The parts are of the quantity and type normally and customarily ordered with the completed product and kept on hand by the firm or industry of which the firm is a part to assure prompt repair of the product; and

(IV) The parts are covered by the same order as the completed product and are shipped with or at the same time as the original product.

The Department emphasizes that unless each of the above conditions is met, the inclusion of United States-origin spare parts in an order for a foreign-manufactured or assembled product will bring the entire transaction into the interstate or foreign commerce of the United States for purposes of part 760.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34949, June 1, 2000]

SUPPLEMENT NO. 5 TO PART 760—INTERPRETATION

A. Permissible Furnishing of Information

The information outlined below may be furnished in response to boycott-related requests from boycotting countries or others. This information is, in the view of the Department, not prohibited by the Regulations. Thus, a person does not have to qualify under any of the exceptions to be able to make the following statements. Such statements can be made, however, only by the person indicated and under the circumstances described. These statements should not be used as a point of departure or analogy for determining the permissibility of other types of statements. The Department's view that these statements are not contrary to the prohibitions contained in antiboycott provisions of the Regulations is limited to the specific statement in the specific context indicated.

1. A U.S. person may always provide its own name, address, place of incorporation (''nationality''), and nature of business.

2. A U.S. person may state that it is not on a blacklist, or restricted from doing business in a boycotting country. A company may not make that statement about its subsidiaries or affiliates—only about itself. A U.S. person may not say that there is no reason for it to be blacklisted. To make that statement would provide directly or by implication information that may not be provided. A U.S. person may inquire about the reasons it is blacklisted if it learns that it is on a blacklist (see §760.2(d) of this part example (xv)).

3. A U.S. person may describe in detail its past dealings with boycotting countries; may state in which boycotting countries its trademarks are registered; and may specify in which boycotting countries it is registered or qualified to do business. In general, a U.S. person is free to furnish any information it wishes about the nature and extent of its commercial dealings with boycotting countries.

4. A U.S. person may state that many U.S. firms or individuals have similar names and that it believes that it may be confused with a similarly named entity. A U.S. person may not state that it does or does not have an affiliation or relationship with such similarly named entity.

5. A U.S. person may state that the information requested is a matter of public record in the United States. However, the person may not direct the inquirer to the location of that information, nor may the U.S. person provide or cause to be provided such information.

B. Availability of the Compliance With Local Law Exception to Establish a Foreign Branch

Section 760.3(g), the Compliance With Local Law exception, permits U.S. persons, who are bona fide residents of a boycotting country, to take certain limited, but otherwise prohibited, actions, if they are required to do so in order to comply with local law.

Among these actions is the furnishing of non-discriminatory information. Examples (iv) through (vi) under ''Examples of Bona Fide Residency'' indicate that a company seeking to become a bona fide resident within a boycotting country may take advantage of the exception for the limited purpose of furnishing information required by local law to obtain resident status. Exactly when and how this exception is available has been the subject of a number of inquiries. It is the Department's view that the following conditions must be met for a non-resident company to be permitted to furnish otherwise prohibited information for the limited purpose of seeking to become a bona fide resident:

1. The company must have a legitimate business reason for seeking to establish a branch or other resident operation in the boycotting country. (Removal from the blacklist does not constitute such a reason.)

2. The local operation it seeks to establish must be similar or comparable in nature and operation to ones the company operates in other parts of the world, unless local law or custom dictates a significantly different form.

3. The person who visits the boycotting country to furnish the information must be the official whose responsibility ordinarily includes the creation and registration of foreign operations (i.e., the chairman of the board cannot be flown in to answer boycott questions unless the chairman of the board is the corporate official who ordinarily goes into a country to handle foreign registrations).

4. The information provided must be that which is ordinarily known to the person establishing the foreign branch. Obviously, at the time of establishment, the foreign branch will have no information of its own knowledge. Rather, the information should be that which the responsible person has of his own knowledge, or that he would have with him as incidental and necessary to the registration and establishment process. As a general rule, such information would not include such things as copies of agreements with boycotted country concerns or detailed information about the person's dealings with blacklisted concerns.

5. It is not necessary that documents prepared in compliance with this exception be drafted or executed within the boycotting country. The restrictions on the type of information which may be provided and on who may provide it apply regardless of where the papers are prepared or signed.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34949, June 1, 2000]

SUPPLEMENT NO. 6 TO PART 760—INTERPRETATION

The antiboycott regulations prohibit knowing agreements to comply with certain prohibited requests and requirements of boycotting countries, regardless of how these terms are stated. Similarly, the reporting rules require that a boycott related ''solicitation, directive, legend or instruction that asks for information or that asks that a United States person take or refrain from taking a particular action'' be reported. Questions have frequently arisen about how particular requirements in the form of directive or instructions are viewed under the antiboycott regulations, and we believe that it will add clarity to the regulations to provide a written interpretation of how three of these terms are treated under the law. The

terms in question appear frequently in letters of credit, but may also be found on purchase orders or other shipping or sale documents. They have been brought to the attention of the Department by numerous persons. The terms are, or are similar to, the following: (1) Goods of boycotted country origin are prohibited; (2) No six-pointed stars may be used on the goods, packing or cases; (3) Neither goods nor packing shall bear any symbols prohibited in the boycotting country.

(a) *Goods of boycotted country origin prohibited.* This term is very common in letters of credit from Kuwait and may also appear from time-to-time in invitations to bid, contracts, or other trade documents. It imposes a condition or requirement compliance with which is prohibited, but permitted by an exception under the Regulations (see §760.2(a) and §760.3(a)). It is reportable by those parties to the letter of credit or other transaction that are required to take or refrain from taking some boycott related action by the request. Thus the bank must report the request because it is a term or condition of the letter of credit that it is handling, and the exporter-beneficiary must report the request because the exporter determines the origin of the goods. The freight forwarder does not have to report this request because the forwarder has no role or obligation in selecting the goods. However, the freight forwarder would have to report a request to furnish a certificate that the goods do not originate in or contain components from a boycotted country. See §760.5, examples (xii)–(xvii).

(b) *No six-pointed stars may be used on the goods, packing or cases.* This term appears from time-to-time on documents from a variety of countries. The Department has taken the position that the six-pointed star is a religious symbol. See §760.2(b), example (viii) of this part. Agreeing to this term is prohibited by the Regulations and not excepted because it constitutes an agreement to furnish information about the religion of a U.S. person. See §760.2(c) of this part. If a person proceeds with a transaction in which this is a condition at any stage of the transaction, that person has agreed to the condition in violation of the Regulations. It is not enough to ignore the condition. Exception must affirmatively be taken to this term or it must be stricken from the documents of the transaction. It is reportable by all parties to the transaction that are restricted by it. For example, unlike the situation described in (a) above, the freight forwarder would have to report this request because his role in the transaction would involve preparation of the packing and cases. The bank and exporter would both have to report, of course, if it were a term in a letter of credit. Each party would be obligated affirmatively to seek an amendment or deletion of the term.

(c) *Neither goods nor packaging shall bear any symbols prohibited in the boycotting country.* This term appears from time-to-time in letters of credit and shipping documents from Saudi Arabia. In our view, it is neither prohibited, nor reportable because it is not boycott-related. There is a wide range of symbols that are prohibited in Saudi Arabia for a variety of reasons, many having to do with that nation's cultural and religious beliefs. On this basis, we do not interpret the term to be boycott related. See §760.2(a)(5) and §760.5(a)(5)(v) of this part.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34949, June 1, 2000]

SUPPLEMENT NO. 7 TO PART 760—INTERPRETATION

Prohibited Refusal To Do Business

When a boycotting country rejects for boycott-related reasons a shipment of goods sold by a United States person, the United States person selling the goods may return them to its inventory or may re-ship them to other markets (the United States person may not return them to the original supplier and demand restitution). The U.S. person may then make a non-boycott based selection of another supplier and provide the goods necessary to meet its obligations to the boycotting customer in that particular transaction without violating §760.2(a) of this part. If the United States person receives another order from the same boycotting country for similar goods, the Department has determined that a boycott-based refusal by a United States person to ship goods from the supplier whose goods were previously rejected would constitute a prohibited refusal to do business under §760.2(a) of this part. The Department will presume that filling such an order with alternative goods is evidence of the person's refusal to deal with the original supplier.

The Department recognizes the limitations this places on future transactions with a boycotting country once a shipment of goods has been rejected. Because of this, the Department wishes to point out that, when faced with a boycotting country's refusal to permit entry of the particular goods, a United States person may state its obligation to abide by the requirements of United States law and indicate its readiness to comply with the unilateral and specific selection of goods by the boycotting country in accordance with §760.3(d). That section provides, in pertinent part, as follows:

''A United States person may comply or agree to comply in the normal course of business with the unilateral and specific selection by a boycotting country * * * of * * * specific goods, * * * provided that * * * with respect to goods, the items, in the normal course of business, are identifiable as to

their source or origin at the time of their entry into the boycotting country by (a) uniqueness of design or appearance or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging.''

The Department wishes to emphasize that the unilateral selection exception in §760.3(d) of this part will be construed narrowly, and that all its requirements and conditions must be met, including the following:

—Discretion for the selection must be exercised by a boycotting country; or by a national or resident of a boycotting country;
—The selection must be stated in the affirmative specifying a particular supplier of goods;
—While a permissible selection may be boycott based, if the United States person knows or has reason to know that the purpose of the selection is to effect discrimination against any United States person on the basis of race, religion, sex, or national origin, the person may not comply under any circumstances.

The Department cautions United States persons confronted with the problem or concern over the boycott-based rejection of goods shipped to a boycotting country that the adoption of devices such as ''risk of loss'' clauses, or conditions that make the supplier financially liable if his or her goods are rejected by the boycotting country for boycott reasons are presumed by the Department to be evasion of the statute and regulations, and as such are prohibited by §760.4 of this part, unless adopted prior to January 18, 1978. See §760.4(d) of this part.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34949, June 1, 2000]

SUPPLEMENT NO. 8 TO PART 760—INTERPRETATION

Definition of Interstate or Foreign Commerce of the United States

When United States persons (as defined by the antiboycott regulations) located within the United States purchase or sell goods or services located outside the United States, they have engaged in an activity within the foreign commerce of the United States. Although the goods or services may never physically come within the geographic boundaries of the several states or territories of the United States, legal ownership or title is transferred from a foreign nation to the United States person who is located in the United States. In the case of a purchase, subsequent resale would also be within United States commerce.

It is the Department's view that the terms ''sale'' and ''purchase'' as used in the regulations are not limited to those circumstances where the goods or services are physically transferred to the person who acquires title. The EAR define the activities that serve as the transactional basis for U.S. commerce as those involving the ''sale, purchase, or transfer'' of goods or services. In the Department's view, as used in the antiboycott regulations, ''transfer'' contemplates physical movement of the goods or services between the several states or territories and a foreign country, while ''sale'' and ''purchase'' relate to the movement of ownership or title.

This interpretation applies only to those circumstances in which the person located within the United States buys or sells goods or services for its own account. Where the United States person is engaged in the brokerage of foreign goods, i.e., bringing foreign buyers and sellers together and assisting in the transfer of the goods, the sale or purchase itself would not ordinarily be considered to be within U.S. commerce. The brokerage service, however, would be a service provided from the United States to the parties and thus an activity within U.S. commerce and subject to the antiboycott laws. See §760.1(d)(3).

The Department cautions that United States persons who alter their normal pattern of dealing to eliminate the passage of ownership of the goods or services to or from the several states or territories of the United States in order to avoid the application of the antiboycott regulations would be in violation of §760.4 of this part.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34950, June 1, 2000]

SUPPLEMENT NO. 9 TO PART 760—INTERPRETATION

Activities Exclusively Within a Boycotting Country—Furnishing Information

§760.3(h) of this part provides that a United States person who is a bona fide resident of a boycotting country may comply with the laws of that country with respect to his or her activities exclusively within the boycotting country. Among the types of conduct permitted by this exception is ''furnishing information within the host country'' §760.3(h)(1)(v) of this part. For purposes of the discussion which follows, the Department is assuming that the person in question is a bona fide resident of the boycotting country as defined in §760.3(g), and that the information to be provided is required by the laws or regulations of the boycotting country, as also defined in §760.3(g) of this part. The only issue this interpretation addresses is under what circumstances the provision of information is ''an activity exclusively within the boycotting country.''

The activity of ''furnishing information'' consists of two parts, the acquisition of the information and its subsequent transmittal.

Under the terms of this exception, the information may not be acquired outside the country for the purpose of responding to the requirement for information imposed by the boycotting country. Thus, if an American company which is a bona fide resident of a boycotting country is required to provide information about its dealings with other U.S. firms, the company may not ask its parent corporation in the United States for that information, or make any other inquiry outside the boundaries of the boycotting country. The information must be provided to the boycotting country authorities based on information or knowledge available to the company and its personnel located within the boycotting country at the time the inquiry is received. See §760.3, (h) of this part, examples (iii), (iv), and (v). Much of the information in the company's possession (transaction and corporate records) may have actually originated outside the boycotting country, and much of the information known to the employees may have been acquired outside the boycotting country. This will not cause the information to fall outside the coverage of this exception, if the information was sent to the boycotting country or acquired by the individuals in normal commercial context prior to and unrelated to a boycott inquiry or purpose. It should be noted that if prohibited information (about business relations with a boycotted country, for example) has been forwarded to the affiliate in the boycotting country in anticipation of a possible boycott inquiry from the boycotting country government, the Department will not regard this as information within the knowledge of the bona fide resident under the terms of the exception. However, if the bona fide resident possesses the information prior to receipt of a boycott-related inquiry and obtained it in a normal commercial context, the information can be provided pursuant to this exception notwithstanding the fact that, at some point, the information came into the boycotting country from the outside.

The second part of the analysis of ''furnishing information'' deals with the limitation on the transmittal of the information. It can only be provided within the boundaries of the boycotting country. The bona fide resident may only provide the information to the party that the boycotting country law requires (directly or through an agent or representative within the country) so long as that party is located within the boycotting country. This application of the exception is somewhat easier, since it is relatively simple to determine if the information is to be given to somebody within the country.

Note that in discussing what constitutes furnishing information ''exclusively within'' the boycotting country, the Department does not address the nature of the transaction or activity that the information relates to. It is the Department's position that the nature of the transaction, including the inception or completion of the transaction, is not material in analyzing the availability of this exception.

For example, if a shipment of goods imported into a boycotting country is held up at the time of entry, and information from the bona fide resident within that country is legally required to free those goods, the fact that the information may relate to a transaction that began outside the boycotting country is not material. The availability of the exception will be judged based on the activity of the bona fide resident within the country. If the resident provides that information of his or her own knowledge, and provides it to appropriate parties located exclusively within the country, the exception permits the information to be furnished.

Factual variations may raise questions about the application of this exception and the effect of this interpretation. In an effort to anticipate some of these, the Department has set forth below a number of questions and answers. They are incorporated as a part of this interpretation.

1. Q. Under this exception, can a company which is a U.S. person and a bona fide resident of the boycotting country provide information to the local boycott office?

A. Yes, if local law requires the company to provide this information to the boycott office and all the other requirements are met.

2. Q. If the company knows that the local boycott office will forward the information to the Central Boycott Office, may it still provide the information to the local boycott office?

A. Yes, if it is required by local law to furnish the information to the local boycott office and all the other requirements are met. The company has no control over what happens to the information after it is provided to the proper authorities. (There is obvious potential for evasion here, and the Department will examine such occurrences closely.)

3. Q. Can a U.S. person who is a bona fide resident of Syria furnish information to the Central Boycott Office in Damascus?

A. No, unless the law in Syria specifically requires information to be provided to the Central Boycott Office the exception will not apply. Syria has a local boycott office responsible for enforcing the boycott in that country.

4. Q. If a company which is a U.S. person and a bona fide resident of the boycotting country has an import shipment held up in customs of the boycotting country, and is required to provide information about the shipment to get it out of customs, may the company do so?

A. Yes, assuming all other requirements are met. The act of furnishing the information is the activity taking place exclusively within the boycotting country. The fact that the information is provided corollary to a transaction that originates or terminates outside the boycotting country is not material.

5. Q. If the U.S. person and bona fide resident of the boycotting country is shipping goods out of the boycotting country, and is required to certify to customs officials of the country at the time of export that the goods are not of Israeli origin, may he do so even though the certification relates to an export transaction?

A. Yes, assuming all other requirements are met. See number 4 above.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34950, June 1, 2000]

SUPPLEMENT NO. 10 TO PART 760—INTERPRETATION

(a) The words ''Persian Gulf'' cannot appear on the document.

This term is common in letters of credit from Kuwait and may be found in letters of credit from Bahrain. Although more commonly appearing in letters of credit, the term may also appear in other trade documents.

It is the Department's view that this term reflects a historical dispute between the Arabs and the Iranians over geographic place names which in no way relates to existing economic boycotts. Thus, the term is neither prohibited nor reportable under the Regulations.

(b) Certify that goods are of U.S.A. origin and *contain no foreign parts.*

This term appears periodically on documents from a number of Arab countries. It is the Department's position that the statement is a positive certification of origin and, as such, falls within the exception contained in §760.3(c) of this part for compliance with the import and shipping document requirements of a boycotting country. Even though a negative phrase is contained within the positive clause, the phrase is a non-exclusionary, non-blacklisting statement. In the Department's view, the additional phrase does not affect the permissible status of the positive certificate, nor does it make the request reportable §760.5(a)(5)(iii) of this part.

(c) Legalization of documents by any Arab consulate except Egyptian Consulate permitted.

This term appears from time to time in letters of credit but also may appear in various other trade documents requiring legalization and thus is not prohibited, and a request to comply with the statement is not reportable. Because a number of Arab states do not have formal diplomatic relations with Egypt, they do not recognize Egyptian embassy actions. The absence of diplomatic relations is the reason for the requirement. In the Department's view this does not constitute an unsanctioned foreign boycott or embargo against Egypt under the terms of the Export Administration Act. Thus the term is not prohibited, and a request to comply with the statement is not reportable.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34950, June 1, 2000]

SUPPLEMENT NO. 11 TO PART 760—INTERPRETATION

Definition of Unsolicited Invitation to Bid

§760.5(a)(4) of this part states in part:

''In addition, a United States person who receives an unsolicited invitation to bid, or similar proposal, containing a boycott request has not received a reportable request for purposes of this section where he does not respond to the invitation to bid or other proposal.''

The Regulations do not define ''unsolicited'' in this context. Based on review of numerous situations, the Department has developed certain criteria that it applies in determining if an invitation to bid or other proposal received by a U.S. person is in fact unsolicited.

The invitation is not unsolicited if, during a commercially reasonable period of time preceding the issuance of the invitation, a representative of the U.S. person contacted the company or agency involved for the purpose of promoting business on behalf of the company.

The invitation is not unsolicited if the U.S. person has advertised the product or line of products that are the subject of the invitation in periodicals or publications that ordinarily circulate to the country issuing the invitation during a commercially reasonable period of time preceding the issuance of the invitation.

The invitation is not unsolicited if the U.S. person has sold the same or similar products to the company or agency issuing the invitation within a commercially reasonable period of time before the issuance of the current invitation.

The invitation is not unsolicited if the U.S. person has participated in a trade mission to or trade fair in the country issuing the invitation within a commercially reasonable period of time before the issuance of the invitation.

Under §760.5(a)(4) of this part, the invitation is regarded as not reportable if the U.S. person receiving it does not respond. The Department has determined that a simple acknowledgment of the invitation does not constitute a response for purposes of this rule. However, an acknowledgment that requests inclusion for future invitations will

be considered a response, and a report is required.

Where the person in receipt of an invitation containing a boycott term or condition is undecided about a response by the time a report would be required to be filed under the regulations, it is the Department's view that the person must file a report as called for in the Regulations. The person filing the report may indicate at the time of filing that he has not made a decision on the boycott request but must file a supplemental report as called for in the regulations at the time a decision is made (§760.5(b)(6)).

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34950, June 1, 2000]

SUPPLEMENT NO. 12 TO PART 760—INTERPRETATION

The Department has taken the position that a U.S. person as defined by §760.1(b) of this part may not make use of an agent to furnish information that the U.S. person is prohibited from furnishing pursuant to §760.2(d) of this part.

Example (v) under §760.4 of this part (Evasion) provides:

''A, a U.S. company, is negotiating a long-term contract with boycotting country Y to meet all of Y's medical supply needs. Y informs A that before such a contract can be concluded, A must complete Y's boycott questionnaire. A knows that it is prohibited from answering the questionnaire so it arranges for a local agent in Y to supply the necessary information.''

''A's action constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.''

This interpretation deals with the application of the Regulations to a commercial agent registration requirement imposed by the government of Saudi Arabia. The requirement provides that nationals of Saudi Arabia seeking to register in Saudi Arabia as commercial agents or representatives of foreign concerns must furnish certain boycott-related information about the foreign concern prior to obtaining approval of the registration.

The requirement has been imposed by the Ministry of Commerce of Saudi Arabia, which is the government agency responsible for regulation of commercial agents and foreign commercial registrations. The Ministry requires the agent or representative to state the following:

''Declaration: I, the undersigned, hereby declare, in my capacity as (blank) that (name and address of foreign principal) is not presently on the blacklist of the Office for the Boycott of Israel and that it and all its branches, if any, are bound by the decisions issued by the Boycott Office and do not (1) participate in the capital of, (2) license the manufacture of any products or grant trademarks or tradeware license to, (3) give experience or technical advice to, or (4) have any other relationship with other companies which are prohibited to be dealt with by the Boycott Office. Signed (name of commercial agent/representative/distributor).''

It is the Department's view that under the circumstances specifically outlined in this interpretation relating to the nature of the requirement, a U.S. person will not be held responsible for a violation of this part when such statements are provided by its commercial agent or representative, even when such statements are made with the full knowledge of the U.S. person.

Nature of the requirement. For a boycott-related commercial registration requirement to fall within the coverage of this interpretation it must have the following characteristics:

1. The requirement for information imposed by the boycotting country applies to a national or other subject of the boycotting country qualified under the local laws of that country to function as a commercial representative within that country;
2. The registration requirement relates to the registration of the commercial agent's or representative's authority to sell or distribute goods within the boycotting country acquired from the foreign concern;
3. The requirement is a routine part of the registration process and is not applied selectively based on boycott-related criteria;
4. The requirement applies only to a commercial agent or representative in the boycotting country and does not apply to the foreign concern itself; and
5. The requirement is imposed by the agency of the boycotting country responsible for regulating commercial agencies.

The U.S. person whose agent is complying with the registration requirement continues to be subject to all the terms of the Regulations, and may not provide any prohibited information to the agent for purposes of the agent's compliance with the requirement.

In addition, the authority granted to the commercial agent or representative by the U.S. person must be consistent with standard commercial practices and not involve any grants of authority beyond those incidental to the commercial sales and distributorship responsibilities of the agent.

Because the requirement does not apply to the U.S. person, no reporting obligation under §760.5 of this part would arise.

This interpretation, like all others issued by the Department discussing applications of the antiboycott provisions of the Export Administration Regulations, should be read narrowly. Circumstances that differ in any material way from those discussed in this notice will be considered under the applicable provisions of the Regulations. Persons are particularly advised not to seek to apply

this interpretation to circumstances in which U.S. principals seek to use agents to deal with boycott-related or potential blacklisting situations.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34950, June 1, 2000]

SUPPLEMENT NO. 13 TO PART 760—INTERPRETATION

SUMMARY

This interpretation considers boycott-based contractual language dealing with the selection of suppliers and subcontractors. While this language borrows terms from the ''unilateral and specific selection'' exception contained in §760.3(d), it fails to meet the requirements of that exception. Compliance with the requirements of the language constitutes a violation of the regulatory prohibition of boycott-based refusals to do business.

REGULATORY BACKGROUND

Section 760.2(a) of this part prohibits U.S. persons from refusing or knowingly agreeing to refuse to do business with other persons when such refusal is pursuant to an agreement with, requirement of, or request of a boycotting country. That prohibition does not extend to the performance of management, procurement or other pre-award services, however, notwithstanding knowledge that the ultimate selection may be boycott-based. To be permissible such services: (1) Must be customary for the firm or industry involved and (2) must not exclude others from the transaction or involve other actions based on the boycott. See §760.2(a)(6) of this part, ''Refusals to Do Business'', and example (xiii).

A specific exception is also made in the Regulations for compliance (and agreements to comply) with a unilateral and specific selection of suppliers or subcontractors by a boycotting country buyer. See §760.3(d) of this part. In Supplement No. 1 to part 760, the following form of contractual language was said to fall within that exception for compliance with unilateral and specific selection:

''The Government of the boycotting country (or the First Party), in its exclusive power, reserves its right to make the final unilateral and specific selection of any proposed carriers, insurers, suppliers of services to be performed within the boycotting country, or of specific goods to be furnished in accordance with the terms and conditions of this contract.''

The Department noted that the actual steps necessary to comply with any selection made under this agreement would also have to meet the requirements of §760.3(d) to claim the benefit of that exception. In other words, the discretion in selecting would have to be exercised exclusively by the boycotting country customer and the selection would have to be stated in the affirmative, naming a particular supplier. See §760.3(d) (4) and (5) of this part.

ANALYSIS OF ADDITIONAL CONTRACTUAL LANGUAGE

The Office of Antiboycott Compliance has learned of the introduction of a contractual clause into tender documents issued by boycotting country governments. This clause is, in many respects, similar to that dealt with in Supplement No. 1 to part 760, but several critical differences exist.

The clause states:

BOYCOTT OF [NAME OF BOYCOTTED COUNTRY]

In connection with the performance of this Agreement, Contractor acknowledges that the import and customs laws and regulations of boycotting country apply to the furnishing and shipment of any products or components thereof to boycotting country. The Contractor specifically acknowledges that the aforementioned import and customs laws and regulations of boycotting country prohibit, among other things, the importation into boycotting country of products or components thereof: (A) Originating in boycotted country; (B) Manufactured, produced and furnish by companies organized under the laws of boycotted country; and (C) Manufactured, produced or furnished by Nationals or Residents of boycotted country.

The Government, in its exclusive power, reserves its right to make the final unilateral and specific selection of any proposed Carriers, Insurers, Suppliers of Services to be performed within boycotting country or of specific goods to be furnished in accordance with the terms and conditions of this Contract.

To assist the Government in exercising its right under the preceding paragraph, Contractor further agrees to provide a complete list of names and addresses of all his Sub-Contractors, Suppliers, Vendors and Consultants and any other suppliers of the service for the project.

The title of this clause makes clear that its provisions are intended to be boycott-related. The first paragraph acknowledges the applicability of certain boycott-related requirements of the boycotting country's laws in language reviewed in part 760, Supplement No. 1, Part II.B. and found to constitute a permissible agreement under the exception contained in §760.3(a) of this part for compliance with the import requirements of a boycotting country. The second and third paragraphs together deal with the procedure for selecting subcontractors and suppliers of services and goods and, in the context of the

clause as a whole, must be regarded as motivated by boycott considerations and intended to enable the boycotting country government to make boycott-based selections, including the elimination of blacklisted subcontractors and suppliers.

The question is whether the incorporation into these paragraphs of some language from the ''unilateral and specific selection'' clause approved in Supplement No. 1 to part 760 suffices to take the language outside §760.2(a) of this part's prohibition on boycott-based agreements to refuse to do business. While the first sentence of this clause is consistent with the language discussed in Supplement No. 1 to part 760, the second sentence significantly alters the effect of this clause. The effect is to draw the contractor into the decision-making process, thereby destroying the unilateral character of the selection by the buyer. By agreeing to submit the names of the suppliers it plans to use, the contractor is agreeing to give the boycotting country buyer, who has retained the right of final selection, the ability to reject, for boycott-related reasons, any supplier the contractor has already chosen. Because the requirement appears in the contractual provision dealing with the boycott, the buyer's rejection of any supplier whose name is given to the buyer pursuant to this provision would be presumed to be boycott-based. By signing the contract, and thereby agreeing to comply with all of its provisions, the contractor must either accept the buyer's rejection of any supplier, which is presumed to be boycott-based because of the context of this provision, or breach the contract.

In these circumstances, the contractor's method of choosing its subcontractors and suppliers, in anticipation of the buyer's boycott-based review, cannot be considered a permissible pre-award service because of the presumed intrusion of boycott-based criteria into the selection process. Thus, assuming all other jurisdictional requirements necessary to establish a violation of part 760 are met, the signing of the contract by the contractor constitutes a violation of §760.2(a) of this part because he is agreeing to refuse to do business for boycott reasons.

The apparent attempt to bring this language within the exception for compliance with unilateral and specific selections is ineffective. The language does not place the discretion to choose suppliers in the hands of the boycotting country buyer but divides this discretion between the buyer and his principal contractor. Knowing that the buyer will not accept a boycotted company as supplier or subcontractor, the contractor is asked to use his discretion in selecting a single supplier or subcontractor for each element of the contract. The boycotting country buyer exercises discretion only through accepting or rejecting the selected supplier or contractor as its boycott policies require. In these circumstances it cannot be said that the buyer is exercising right of unilateral and specific selection which meets the criteria of §760.3(d). For this reason, agreement to the contractual language discussed here would constitute an agreement to refuse to do business with any person rejected by the buyer and would violate §760.2(a) of this part.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34950, June 1, 2000]

SUPPLEMENT NO. 14 TO PART 760—INTERPRETATION

(a) *Contractual clause concerning import, customs and boycott laws of a boycotting country*.

The following language has appeared in tender documents issued by a boycotting country:

''Supplier declares his knowledge of the fact that the import, Customs and boycott laws, rules and regulations of [name of boycotting country] apply in importing to [name of boycotting country].''

''Supplier declares his knowledge of the fact that under these laws, rules and regulations, it is prohibited to import into [name of the boycotting country] any products or parts thereof that originated in [name of boycotted country]; were manufactured, produced or imported by companies formed under the laws of [name of boycotted country]; or were manufactured, produced or imported by nationals or residents of [name of boycotted country].''

Agreeing to the above contractual language is a prohibited agreement to refuse to do business, under §760.2(a) of this part. The first paragraph requires broad acknowledgment of the application of the boycotting country's boycott laws, rules and regulations. Unless this language is qualified to apply only to boycott restrictions with which U.S. persons may comply, agreement to it is prohibited. See §760.2(a) of this part, examples (v) and (vi) under ''Agreements to Refuse to Do Business.''

The second paragraph does not limit the scope of the boycott restrictions referenced in the first paragraph. It states that the boycott laws include restrictions on goods originating in the boycotted country; manufactured, produced or supplied by companies organized under the laws of the boycotted country; or manufactured, produced or supplied by nationals or residents of the boycotted country. Each of these restrictions is within the exception for compliance with the import requirements of the boycotting country (§760.3(a) of this part). However, the second paragraph's list of restrictions is not exclusive. Since the boycott laws generally include more than what is listed and permissible under the antiboycott law, U.S. persons

may not agree to the quoted clause. For example, a country's boycott laws may prohibit imports of goods manufactured by blacklisted firms. Except as provided by §760.3(g) of this part, agreement to and compliance with this boycott restriction would be prohibited under the antiboycott law.

The above contractual language is distinguished from the contract clause determined to be permissible in supplement 1, Part II, A, by its acknowledgment that the boycott requirements of the boycotting country apply. Although the first sentence of the Supplement 1 clause does not exclude the possible application of boycott laws, it refers only to the import and customs laws of the boycotting country without mentioning the boycott laws as well. As discussed fully in Supplement No. 1 to part 760, compliance with or agreement to the clause quoted there is, therefore, permissible.

The contract clause quoted above, as well as the clause dealt with in Supplement No. 1 to part 760, part II, A, is reportable under §760.5(a)(1) of this part.

(b) *Letter of credit terms removing blacklist certificate requirement if specified vessels used.*

The following terms frequently appear on letters of credit covering shipment to Iraq:

''Shipment to be effected by Iraqi State Enterprise for Maritime Transport Vessels or by United Arab Shipping Company (SAB) vessels, if available.''

''If shipment is effected by any of the above company's [sic] vessels, black list certificate or evidence to that effect is not required.''

These terms are not reportable and compliance with them is permissible.

The first sentence, a directive to use Iraqi State Enterprise for Maritime Transport or United Arab Shipping vessels, is neither reportable nor prohibited because it is not considered by the Department to be boycott-related. The apparent reason for the directive is Iraq's preference to have cargo shipped on its own vessels (or, as in the case of United Arab Shipping, on vessels owned by a company in part established and owned by the Iraqi government). Such ''cargo preference'' requirements, calling for the use of an importing or exporting country's own ships, are common throughout the world and are imposed for non-boycott reasons. (See §760.2(a) of this part, example (vii) AGREEMENTS TO REFUSE TO DO BUSINESS.)

In contrast, if the letter of credit contains a list of vessels or carriers that appears to constitute a boycott-related whitelist, a directive to select a vessel from that list would be both reportable and prohibited. When such a directive appears in conjunction with a term removing the blacklist certificate requirement if these vessels are used, the Department will presume that beneficiaries, banks and any other U.S. person receiving the letter of credit know that there is a boycott-related purpose for the directive.

The second sentence of the letter of credit language quoted above does not, by itself, call for a blacklist certificate and is not therefore, reportable. If a term elsewhere on the letter of credit imposes a blacklist certificate requirement, then that other term would be reportable.

(c) *Information not related to a particular transaction in U.S. commerce.*

Under §760.2 (c), (d) and (e), of this part U.S. persons are prohibited, with respect to their activities in U.S. commerce, from furnishing certain information. It is the Department's position that the required nexus with U.S. commerce is established when the furnishing of information itself occurs in U.S. commerce. Even when the furnishing of information is not itself in U.S. commerce, however, the necessary relationship to U.S. commerce will be established if the furnishing of information relates to particular transactions in U.S. commerce or to anticipated transactions in U.S. commerce. See, e.g. §760.2(d), examples (vii), (ix) and (xii) of this part.

The simplest situation occurs where a U.S. person located in the United States furnishes information to a boycotting country. The transfer of information from the United States to a foreign country is itself an activity in U.S. commerce. See §760.1(d)(1)(iv) of this part. In some circumstances, the furnishing of information by a U.S. person located outside the United States may also be an activity in U.S. commerce. For example, the controlled foreign subsidiary of a domestic concern might furnish to a boycotting country information the subsidiary obtained from the U.S.-located parent for that purpose. The subsidiary's furnishing would, in these circumstances, constitute an activity in U.S. commerce. See §760.1(d)(8) of this part.

Where the furnishing of information is not itself in U.S. commerce, the U.S. commerce requirement may be satisfied by the fact that the furnishing is related to an activity in U.S. foreign or domestic commerce. For example, if a shipment of goods by a controlled-in-fact foreign subsidiary of a U.S. company to a boycotting country gives rise to an inquiry from the boycotting country concerning the subsidiary's relationship with another firm, the Department regards any responsive furnishing of information by the subsidiary as related to the shipment giving rise to the inquiry. If the shipment is in U.S. foreign or domestic commerce, as defined by the regulations, then the Department regards the furnishing to be related to an activity in U.S. commerce and subject to the antiboycott regulations, whether or not the furnishing itself is in U.S. commerce.

In some circumstances, the Department may regard a furnishing of information as

related to a broader category of present and prospective transactions. For example, if a controlled-in-fact foreign subsidiary of a U.S. company is requested to furnish information about its commercial dealings and it appears that failure to respond will result in its blacklisting, any responsive furnishing of information will be regarded by the Department as relating to all of the subsidiary's present and anticipated business activities with the inquiring boycotting country. Accordingly, if any of these present or anticipated business activities are in U.S. commerce, the Department will regard the furnishing as related to an activity in U.S. commerce and subject to the antiboycott regulations.

In deciding whether anticipated business activities will be in U.S. commerce, the Department will consider all of the surrounding circumstances. Particular attention will be given to the history of the U.S. person's business activities with the boycotting country and others, the nature of any activities occurring after a furnishing of information occurs and any relevant economic or commercial factors which may affect these activities.

For example, if a U.S. person has no activities with the boycotting country at present but all of its other international activities are in U.S. commerce, as defined by the Regulations, then the Department is likely to regard any furnishing of information by that person for the purpose of securing entry into the boycotting country's market as relating to anticipated activities in U.S. commerce and subject to the antiboycott regulations. Similarly, if subsequent to the furnishing of information to the boycotting country for the purpose of securing entry into its markets, the U.S. person engages in transactions with that country which are in U.S. commerce, the Department is likely to regard the furnishing as related to an activity in U.S. commerce and subject to the antiboycott regulations.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34950, June 1, 2000]

SUPPLEMENT NO. 15 TO PART 760—INTERPRETATION

Section 760.2 (c), (d), and (e) of this part prohibits United States persons from furnishing certain types of information with intent to comply with, further, or support an unsanctioned foreign boycott against a country friendly to the United States. The Department has been asked whether prohibited information may be transmitted—that is, passed to others by a United States person who has not directly or indirectly authored the information—without such transmission constituting a furnishing of information in violation of §760.2 (c), (d), and (e) of this part. Throughout this interpretation, ''transmission'' is defined as the passing on by one person of information initially authored by another. The Department believes that there is no distinction in the EAR between transmitting (as defined above) and furnishing prohibited information under the EAR and that the transmission of prohibited information with the requisite boycott intent is a furnishing of information violative of the EAR. At the same time, however, the circumstances relating to the transmitting party's involvement will be carefully considered in determining whether that party intended to comply with, further, or support an unsanctioned foreign boycott.

The EAR does not deal specifically with the relationship between transmitting and furnishing. However, the restrictions in the EAR on responses to boycott-related conditions, both by direct and indirect actions and whether by primary parties or intermediaries, indicate that U.S. persons who simply transmit prohibited information are to be treated the same under the EAR as those who both author and furnish prohibited information. This has been the Department's position in enforcement actions it has brought.

The few references in the EAR to the transmission of information by third parties are consistent with this position. Two examples, both relating to the prohibition against the furnishing of information about U.S. persons' race, religion, sex, or national origin (§760.2(c) of this part), deal explicitly with transmitting information. These examples (§760.2(c) of this part, example (v), and §760.3(f) of this part, example (vi)) show that, in certain cases, when furnishing certain information is permissible, either because it is not within a prohibition or is excepted from a prohibition, transmitting it is also permissible. These examples concern information that may be furnished by individuals about themselves or their families. The examples show that employers may transmit to a boycotting country visa applications or forms containing information about an employee's race, religion, sex, or national origin if that employee is the source of the information and authorizes its transmission. In other words, within the limits of ministerial action set forth in these examples, employees' actions in transmitting information are protected by the exception available to the employee. The distinction between permissible and prohibited behavior rests not on the definitional distinction between furnishing and transmitting, but on the excepted nature of the information furnished by the employee. The information originating from the employee does not lose its excepted character because it is transmitted by the employer.

The Department's position regarding the furnishing and transmission of certificates of one's own blacklist status rests on a similar

basis and does not support the contention that third parties may transmit prohibited information authored by another. Such self-certifications do not violate any prohibitions in the EAR (see Supplement Nos. 1(I)(B), 2, and 5(A)(2); §760.2(f), example (xiv)). It is the Department's position that it is not prohibited for U.S. persons to transmit such self-certifications completed by others. Once again, because furnishing the self-certification is not prohibited, third parties who transmit the self-certifications offend no prohibition. On the other hand, if a third party authored information about another's blacklist status, the act of transmitting that information would be prohibited.

A third example in the EAR (§760.5, example (xiv) of this part), which also concerns a permissible transmission of boycott-related information, does not support the theory that one may transmit prohibited information authored by another. This example deals with the reporting requirements in §760.5 of this part—not the prohibitions—and merely illustrates that a person who receives and transmits a self-certification has not received a reportable request.

It is also the Department's position that a U.S. person violates the prohibitions against furnishing information by transmitting prohibited information even if that person has received no reportable request in the transaction. For example, where documents accompanying a letter of credit contain prohibited information, a negotiating bank that transmits the documents, with the requisite boycott intent, to an issuing bank has not received a reportable request, but has furnished prohibited information.

While the Department does not regard the suggested distinction between transmitting and furnishing information as meaningful, the facts relating to the third party's involvement may be important in determining whether that party furnished information with the required intent to comply with, further, or support an unsanctioned foreign boycott. For example, if it is a standard business practice for one participant in a transaction to obtain and pass on, without examination, documents prepared by another party, it might be difficult to maintain that the first participant intended to comply with a boycott by passing on information contained in the unexamined documents. Resolution of such intent questions, however, depends upon an analysis of the individual facts and circumstances of the transaction and the Department will continue to engage in such analysis on a case-by-case basis.

This interpretation, like all others issued by the Department discussing applications of the antiboycott provisions of the EAR, should be read narrowly. Circumstances that differ in any material way from those discussed in this interpretation will be considered under the applicable provisions of the Regulations.

SUPPLEMENT NO. 16 TO PART 760—INTERPRETATION

Pursuant to Articles 5, 7, and 26 of the Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan and implementing legislation enacted by Jordan, Jordan's participation in the Arab economic boycott of Israel was formally terminated on August 16, 1995.

On the basis of this action, it is the Department's position that certain requests for information, action or agreement from Jordan which were considered boycott-related by implication now cannot be presumed boycott-related and thus would not be prohibited or reportable under the regulations. For example, a request that an exporter certify that the vessel on which it is shipping its goods is eligible to enter Hashemite Kingdom of Jordan ports has been considered a boycott-related request that the exporter could not comply with because Jordan has had a boycott in force against Israel. Such a request from Jordan after August 16, 1995 would not be presumed boycott-related because the underlying boycott requirement/basis for the certification has been eliminated. Similarly, a U.S. company would not be prohibited from complying with a request received from Jordanian government officials to furnish the place of birth of employees the company is seeking to take to Jordan because there is no underlying boycott law or policy that would give rise to a presumption that the request was boycott-related.

U.S. persons are reminded that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to the regulations, irrespective of the country of origin. For example, requests containing references to ''blacklisted companies'', ''Israel boycott list'', ''non-Israeli goods'' or other phrases or words indicating boycott purpose would be subject to the appropriate provisions of the Department's antiboycott regulations.

PART 762—RECORDKEEPING

Sec.
762.1 Scope.
762.2 Records to be retained.
762.3 Records exempt from recordkeeping requirements.
762.4 Original records required.
762.5 Reproduction of original records.
762.6 Period of retention.
762.7 Producing and inspecting records.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3

CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

SOURCE: 61 FR 12900, Mar. 25, 1996, unless otherwise noted.

§762.1 Scope.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Transactions subject to this part.* The recordkeeping provisions of this part apply to the following transactions:

(1) Transactions involving restrictive trade practices or boycotts described in part 760 of the EAR;

(2) Exports of commodities, software, or technology from the United States and any known reexports, transshipment, or diversions of items exported from the United States;

(3) Exports to Canada, if, at any stage in the transaction, it appears that a person in a country other than the United States or Canada has an interest therein, or that the item involved is to be reexported, transshipped, or diverted from Canada to another foreign country; or

(4) Any other transactions subject to the EAR, including, but not limited to, the prohibitions against servicing, forwarding and other actions for or on behalf of end-users of proliferation concern contained in §§736.2(b)(7) and 744.6 of the EAR. This part also applies to all negotiations connected with those transactions, except that for export control matters a mere preliminary inquiry or offer to do business and negative response thereto shall not constitute negotiations, unless the inquiry or offer to do business proposes a transaction that a reasonably prudent exporter would believe likely to lead to a violation of the EAA, the EAR or any order, license or authorization issued thereunder.

(b) *Persons subject to this part.* Any person subject to the jurisdiction of the United States who, as principal or agent (including a forwarding agent), participates in any transaction described in paragraph (a) of this section, and any person in the United States or abroad who is required to make and maintain records under any provision of the EAR, shall keep and maintain all records described in §762.2 of this part that are made or obtained by that person and shall produce them in a manner provided by §762.6 of this part.

[61 FR 12900, Mar. 25, 1996, as amended at 70 FR 22249, Apr. 29, 2005]

§762.2 Records to be retained.

(a) *Records required to be retained.* The records required to be retained under this part 762 include the following:

(1) Export control documents, as defined in part 772 of the EAR;

(2) Memoranda;

(3) Notes;

(4) Correspondence;

(5) Contracts;

(6) Invitations to bid;

(7) Books of account;

(8) Financial records;

(9) Restrictive trade practice or boycott documents and reports, and

(10) Other records pertaining to the types of transactions described in §762.1(a) of this part, which are made or obtained by a person described in §762.1(b) of this part.

(b) *Records retention references.* Paragraph (a) of this section describes records that are required to be retained. Other parts, sections, or supplements of the EAR which require the retention of records or contain recordkeeping provisions, include, but are not limited to the following:

(1) Part 736, General Prohibitions;

(2) §732.6, Steps for other requirements;

(3) §740.1, Introduction (to License Exceptions);

(4) §740.10(c), Servicing and replacement of parts and equipment (RPL);

(5) §740.13(f), Technology and software—unrestricted (TSU);

(6) §742.12(a)(3), High Performance Computers;

(7) Supplement No. 3 to part 742 High Performance Computers, Safeguards and Related Information;

(8) §742.15;

(9) §740.7, Humanitarian donations (NEED);

(10) §746.3 Iraq.

(11) Part 747, Special Iraq Reconstruction License.

(12) §748.4(a), Disclosure and substantiation of facts on license applications;

(13) §748.6, General instructions for license applications;

(14) § 748.9, Support documents for license applications;

(15) § 748.10, Import and End-user Certificates;

(16) § 748.11, Statement by Ultimate Consignee and Purchaser;

(17) § 748.13, Delivery Verification (DV);

(18) § 748.2(c), Obtaining forms; mailing addresses;

(19) § 750.7, Issuance of license and acknowledgment of conditions;

(20) § 750.8, Revocation or suspension of license;

(21) § 750.9, Duplicate licenses;

(22) § 750.10, Transfer of licenses for export;

(23) § 752.7, Direct shipment to customers;

(24) § 752.9, Action on SCL applications;

(25) § 752.10, Changes to the SCL;

(26) § 752.11, Internal Control Programs;

(27) § 752.12, Recordkeeping requirements;

(28) § 752.13, Inspection of records;

(29) § 752.14, System reviews;

(30) § 752.15, Export clearance;

(31) § 754.2(j)(3), Recordkeeping requirements for deep water ballast exchange.

(32) § 754.4, Unprocessed western red cedar;

(33) § 758.1(h), Record and proof of agent's authority;

(34) § 758.1 and § 758.2, Shipper's Export Declaration or Automated Export System record;

(35) § 758.6, Destination control statements;

(36) § 760.6, Restrictive Trade Practices and Boycotts;

(37) § 762.2, Records to be retained;

(38) § 764.2, Violations;

(39) § 764.5, Voluntary self-disclosure; and

(40) § 766.10, Subpoenas;

(41) § 743.1, Wassenaar reports;

(42) § 748.14, Exports of firearms;

(43) § 745.1, Annual reports;

(44) § 745.2, End-use certificates; and

(45) § 758.2(c), Assumption writing.

(c) *Special recordkeeping requirement*—(1) *Libya*. Persons in receipt of a specific license granted by the Department of the Treasury's Office of Foreign Assets Control (OFAC) for the export to Libya of any item subject to the EAR must maintain a record of those items transferred to Libya pursuant to such specific license and record when the items are consumed or destroyed in the normal course of their use in Libya, reexported to a third country not requiring further authorization from BIS, or returned to the United States. This requirement applies only to items subject to a license requirement under the EAR for export to Libya as of April 29, 2004. These records must include the following information:

(i) Date of export or reexport and related details (including means of transport);

(ii) Description of items (including ECCN) and value of items in U.S. Dollars;

(iii) Description of proposed end-use and locations in Libya where items are intended to be used;

(iv) Parties other than specific OFAC licensee who may be given temporary access to the items; and

(v) Date of consumption or destruction, if the items are consumed or destroyed in the normal course of their use in Libya, or the date of reexport to a third country not requiring further authorization from BIS, or return to the United States.

(2) [Reserved]

[61 FR 12900, Mar. 25, 1996, as amended at 61 FR 27258, May 31, 1996; 61 FR 65466, Dec. 13, 1996; 64 FR 17974, Apr. 13, 1999; 65 FR 14860, Mar. 20, 2000; 65 FR 42573, July 10, 2000; 68 FR 16213, Apr. 3, 2003; 69 FR 23638, Apr. 29, 2004; 69 FR 46080, July 30, 2004]

§ 762.3 Records exempt from recordkeeping requirements.

(a) The following types of records have been determined to be exempt from the recordkeeping requirement procedures:

(1) Export information page;

(2) Special export file list;

(3) Vessel log from freight forwarder;

(4) Inspection certificate;

(5) Warranty certificate;

(6) Guarantee certificate;

(7) Packing material certificate;

(8) Goods quality certificate;

(9) Notification to customer of advance meeting;

(10) Letter of indemnity;

(11) Financial release form;

(12) Financial hold form;
(13) Export parts shipping problem form;
(14) Draft number log;
(15) Expense invoice mailing log;
(16) Financial status report;
(17) Bank release of guarantees;
(18) Cash sheet;
(19) Commission payment back-up;
(20) Commissions payable worksheet;
(21) Commissions payable control;
(22) Check request forms;
(23) Accounts receivable correction form;
(24) Check request register;
(25) Commission payment printout;
(26) Engineering fees invoice;
(27) Foreign tax receipt;
(28) Individual customer credit status;
(29) Request for export customers code forms;
(30) Acknowledgement for receipt of funds;
(31) Escalation development form;
(32) Summary quote;
(33) Purchase order review form;
(34) Proposal extensions;
(35) Financial proposal to export customers;
and
(36) Sales summaries.
(b) [Reserved]

[61 FR 12900, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997]

§762.4 Original records required.

The regulated person must maintain the original records in the form in which that person receives or creates them unless that person meets all of the conditions of §762.5 of this part relating to reproduction of records. If the original record does not meet the standards of legibility and readability described in §762.5 of this part and the regulated person intends to rely on that record to meet the recordkeeping requirements of the EAR, that person must retain the original record.

§762.5 Reproduction of original records.

(a) The regulated person may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(b) In order to maintain the records required by §762.2 of this part, the regulated persons defined in §762.1 of this part may use any photographic, photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(1) The system must be capable of reproducing all records on paper.

(2) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides of paper documents in legible form.

(3) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. (For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.)

(4) The system must preserve the initial image (including both obverse and reverse sides of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(5) The regulated person must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(6) The regulated person must establish written procedures for inspection and quality assurance of records in the system and document the implementation of those procedures.

(7) The system must be complete and contain all records required to be kept by this part or the regulated person must provide a method for correlating,

identifying and locating records relating to the same transaction(s) that are kept in other record keeping systems.

(8) The regulated person must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(9) Upon request by the Office of Export Enforcement, the Office of Antiboycott Compliance, or any other agency of competent jurisdiction, the regulated person must furnish, at the examination site, the records, the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record in the system.

(c) *Requirements applicable to systems based on the storage of digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. With respect to records of transactions, including those involving restrictive trade practices or boycott requirements or requests. The system must be able to locate and reproduce all records relating to a particular transaction based on any one of the following criteria:

(1) The name(s) of the parties to the transaction;

(2) Any country(ies) connected with the transaction; or

(3) A document reference number that was on any original document.

(d) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the regulated person must maintain a detailed index of all records in the system that is arranged in such a manner as to allow immediate location of any particular record in the system.

§ 762.6 Period of retention.

(a) *Five year retention period.* All records required to be kept by the EAR must be retained for five years from the latest of the following times:

(1) The export from the United States of the item involved in the transaction to which the records pertain or the provision of financing, transporting or other service for or on behalf of end-users of proliferation concern as described in §§ 736.2(b)(7) and 744.6 of the EAR;

(2) Any known reexport, transshipment, or diversion of such item;

(3) Any other termination of the transaction, whether formally in writing or by any other means; or

(4) In the case of records of pertaining to transactions involving restrictive trade practices or boycotts described in part 760 of the EAR, the date the regulated person receives the boycott-related request or requirement.

(b) *Destruction or disposal of records.* If the Bureau of Industry and Security or any other government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned. This prohibition applies to records pertaining to voluntary disclosures made to BIS in accordance with § 765.5(c)(4)(ii) and other records even if such records have been retained for a period of time exceeding that required by paragraph (a) of this section.

§ 762.7 Producing and inspecting records.

(a) *Persons located in the United States.* Persons located in the United States may be asked to produce records that are required to be kept by any provision of the EAR, or any license, order, or authorization issued thereunder and to make them available for inspection and copying by any authorized agent, official, or employee of the Bureau of Industry and Security, the U.S. Customs Service, or any other agency of the U.S. Government, without any charge or expense to such agent, official, or employee. The Office of Export Enforcement and the Office of Antiboycott Compliance encourage voluntary cooperation with such requests. When voluntary cooperation is not forthcoming, the Office of Export Enforcement and the Office of Antiboycott Compliance are authorized to issue subpoenas requiring persons to appear and testify, or produce books, records, and other writings. In instances where a person does not comply with a subpoena, the Department of

Commerce may petition a district court to have a subpoena enforced.

(b) *Persons located outside of the United States.* Persons located outside of the United States that are required to keep records by any provision of the EAR or by any license, order, or authorization issued thereunder shall produce all records or reproductions of records required to be kept, and make them available for inspection and copying upon request by an authorized agent, official, or employee of the Bureau of Industry and Security, the U.S. Customs Service, or a Foreign Service post, or by any other accredited representative of the U.S. Government, without any charge or expense to such agent, official or employee.

[61 FR 12900, Mar. 25, 1996, as amended at 65 FR 42573, July 10, 2000]

PART 764—ENFORCEMENT AND PROTECTIVE MEASURES

Sec.

764.1 Introduction.
764.2 Violations.
764.3 Sanctions.
764.4 Reporting of violations.
764.5 Voluntary self-disclosure.
764.6 Protective administrative measures.
764.7 Activities involving items that may have been illegally exported or reexported to Libya.
SUPPLEMENT NO. 1 TO PART 764—STANDARD TERMS OF ORDERS DENYING EXPORT PRIVILEGES

AUTHORITY: 50 U.S.C. app. 2401 et. seq.; 50 U.S.C. 1701 et. seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

SOURCE: 61 FR 12902, Mar. 25, 1996, unless otherwise noted.

§764.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part specifies conduct that constitutes a violation of the Export Administration Act (EAA) and/or the Export Administration Regulations (EAR) and the sanctions that may be imposed for such violations. Antiboycott violations are described in part 760 of the EAR, and the violations and sanctions specified in part 764 also apply to conduct relating to part 760, unless otherwise stated. This part describes administrative sanctions that may be imposed by the Bureau of Industry and Security (BIS). This part also describes criminal sanctions that may be imposed by a United States court and other sanctions that are neither administrative nor criminal. Information is provided on how to report and disclose violations. Finally, this part identifies protective administrative measures that BIS may take in the exercise of its regulatory authority.

§764.2 Violations.

(a) *Engaging in prohibited conduct.* No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.

(b) *Causing, aiding, or abetting a violation.* No person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder.

(c) *Solicitation and attempt.* No person may solicit or attempt a violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(d) *Conspiracy.* No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(e) *Acting with knowledge of a violation.* No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item.

(f) *Possession with intent to export illegally.* No person may possess any item

controlled for national security or foreign policy reasons under sections 5 or 6 of the EAA:

(1) With intent to export or reexport such item in violation of the EAA, the EAR, or any order, license or authorization issued thereunder; or

(2) With knowledge or reason to believe that the item would be so exported or reexported.

(g) *Misrepresentation and concealment of facts.* (1) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to BIS, the United States Customs Service, or an official of any other United States agency, or indirectly through any other person:

(i) In the course of an investigation or other action subject to the EAR; or

(ii) In connection with the preparation, submission, issuance, use, or maintenance of any export control document as defined in § 772.1, or any report filed or required to be filed pursuant to § 760.5 of the EAR; or

(iii) For the purpose of or in connection with effecting an export, reexport or other activity subject to the EAR.

(2) All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify BIS and any other relevant agency, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention has occurred or may occur in the future.

(h) *Evasion.* No person may engage in any transaction or take any other action with intent to evade the provisions of the EAA, the EAR, or any order, license or authorization issued thereunder.

(i) *Failure to comply with reporting, recordkeeping requirements.* No person may fail or refuse to comply with any reporting or recordkeeping requirement of the EAR or of any order, license or authorization issued thereunder.

(j) *License alteration.* Except as specifically authorized in the EAR or in writing by BIS, no person may alter any license, authorization, export control document, or order issued under the EAR.

(k) *Acting contrary to the terms of a denial order.* No person may take any action that is prohibited by a denial order. See § 764.3(a)(2) of this part.

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997; 70 FR 8250, Feb. 18, 2005]

§ 764.3 Sanctions.

(a) *Administrative.*[1] Violations of the EAA, the EAR, or any order, license or authorization issued thereunder are subject to the administrative sanctions described in this section and to any other liability, sanction, or penalty available under law. The protective administrative measures that are described in § 764.6 of this part are distinct from administrative sanctions.

(1) *Civil penalty.* (i) A civil penalty not to exceed $10,000 may be imposed for each violation, except that a civil penalty not to exceed $100,000 may be imposed for each violation involving national security controls imposed under section 5 of the EAA.

(ii) The payment of any civil penalty may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed.

(iii) The payment of any civil penalty may be deferred or suspended in whole or in part during any probation period that may be imposed. Such deferral or suspension shall not bar the collection of the penalty if the conditions of the deferral, suspension, or probation are not fulfilled.

(2) *Denial of export privileges.* An order may be issued that restricts the ability

[1] In the event that any part of the EAR is not under the authority of the EAA, sanctions shall be limited to those provided for by such other authority, but the provisions of this part and of part 766 of the EAR shall apply insofar as not inconsistent with that other authority.

of the named persons to engage in export and reexport transactions involving items subject to the EAR, or that restricts access by named persons to items subject to the EAR. An order denying export privileges may be imposed either as a sanction for a violation specified in this part or as a protective administrative measure described in § 764.6(c) or (d) of this part. An order denying export privileges may suspend or revoke any or all outstanding licenses issued under the EAR to a person named in the denial order or in which such person has an interest, may deny or restrict exports and reexports by or to such person of any item subject to the EAR, and may restrict dealings in which that person may benefit from any export or reexport of such items. The standard terms of a denial order are set forth in Supplement No. 1 to this part. A nonstandard denial order, narrower in scope, may be issued. Authorization to engage in actions otherwise prohibited by a denial order may be given by the Office of Exporter Services, in consultation with the Office of Export Enforcement, following application by a person named in the denial order or by a person seeking permission to deal with a named person.

(3) *Exclusion from practice.* Any person acting as an attorney, accountant, consultant, freight forwarder, or in any other representative capacity for any license application or other matter before BIS may be excluded by order from any or all such activities before BIS.

(b) *Criminal.*[2] (1) *General.* Except as provided in paragraph (b)(2) of this section, whoever knowingly violates or conspires to or attempts to violate the EAA, EAR, or any order or license issued thereunder, shall be fined not more than five times the value of the exports or reexports involved or $50,000, whichever is greater, or imprisoned not more than five years, or both.

(2) *Willful violations.* (i) Whoever willfully violates or conspires to or attempts to violate any provision of the EAA, the EAR, or any order or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of items involved is, any controlled country or any country to which exports or reexports are controlled for foreign policy purposes, except in the case of an individual, shall be fined not more than five times the value of the export or reexport involved or $1,000,000, whichever is greater; and, in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(ii) Any person who is issued a license under the EAA or the EAR for the export or reexport of any items to a controlled country and who, with knowledge that such export or reexport is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, except in the case of an individual, shall be fined not more than five times the value of the exports or reexports involved or $1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than five years or both.

(iii) Any person who possesses any item with the intent to export or reexport such item in violation of an export control imposed under sections 5 or 6 of the EAA, the EAR, or any order or license issued thereunder, or knowing or having reason to believe that the item would be so exported or reexported, shall, in the case of a violation of an export control imposed under section 5 of the EAA (or the EAR, or any order or license issued thereunder with respect to such control), be subject to the penalties set forth in paragraph (b)(2)(i) of this section and shall in the case of a violation of an export control imposed under section 6 of the EAA (or the EAR, or any order or license issued

[2] In the event that any part of the EAR is not under the authority of the EAA, sanctions shall be limited to those provided for by such other authority or by 18 U.S.C. 3571, a criminal code provision that establishes a maximum criminal fine for a felony that is the greater of the amount provided by the statute that was violated, or an amount not more than $500,000 for an organization. The Federal Sentencing Guidelines found in § 2M5.1 of Appendix 4 to Title 18 of the United States Code apply, to the extent followed by the court, to sentencing for convictions for violating the EAA.

thereunder with respect to such control), be subject to the penalties set forth in paragraph (b)(1) of this section.

(iv) Any person who takes any action with intent to evade the provisions of the EAA, the EAR, or any order or license issued thereunder, shall be subject to the penalties set forth in paragraph (b)(1) of this section, except that in the case of an evasion of an export control imposed under sections 5 or 6 of the EAA (or the EAR, or any order or license issued thereunder with respect to such control), such person shall be subject to the penalties set forth in paragraph (b)(2)(i) of this section.

(3) *Other criminal sanctions.* Conduct that constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, or that occurs in connection with such a violation, may also be prosecuted under other provisions of law, including 18 U.S.C. 371 (conspiracy), 18 U.S.C. 1001 (false statements), 18 U.S.C. 1341, 1343, and 1346 (mail and wire fraud), and 18 U.S.C. 1956 and 1957 (money laundering).

(c) *Other sanctions.* Conduct that violates the EAA, the EAR, or any order, license or authorization issued thereunder, and other conduct specified in the EAA may be subject to sanctions or other measures in addition to criminal and administrative sanctions under the EAA or EAR. These include, but are not limited to, the following:

(1) *Statutory sanctions.* Statutorily-mandated sanctions may be imposed on account of specified conduct related to weapons proliferation. Such statutory sanctions are not civil or criminal penalties, but restrict imports and procurement (See section 11A of the EAA, Multilateral Export Control Violations, and section 11C of the EAA, Chemical and Biological Weapons Proliferation), or restrict export licenses (See section 11B of the EAA, Missile Proliferation Violations, and the Iran-Iraq Arms Non-Proliferation Act of 1992).

(2) *Other sanctions and measures*—(i) *Seizure and forfeiture.* Items that have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the EAA, the EAR, or any order, license or authorization issued thereunder, are subject to being seized and detained as are the vessels, vehicles, and aircraft carrying such items. Seized items are subject to forfeiture. (50 U.S.C. app. 2411(g); 22 U.S.C. 401.)

(ii) *Cross-debarment.* (A) The Department of State may deny licenses or approvals for the export or reexport of defense articles and defense services controlled under the Arms Export Control Act to persons indicted or convicted of specified criminal offenses, including violations of the EAA, or to persons denied export privileges by BIS or another agency. (22 CFR 126.7(a) and 127.11(a).)

(B) The Department of Defense, among other agencies, may suspend the right of any person to contract with the United States Government based on export control violations. (Federal Acquisition Regulations 9.407–2.)

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997]

§ 764.4 Reporting of violations.

(a) *Where to report.* If a person learns that an export control violation of the EAR has occurred or may occur, that person may notify:

Office of Export Enforcement, Bureau of Industry and Security,U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–4520, Washington, D.C. 20230, Tel: (202) 482–1208, Facsimile: (202) 482–0964

or, for violations of part 760 of the EAR:

Office of Antiboycott Compliance, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–6099C, Washington, D.C. 20230, Tel: (202) 482–2381, Facsimile: (202) 482–0913.

(b) *Failure to report violations.* Failure to report potential violations may result in the unwarranted issuance of licenses or exports without the required licenses to the detriment of the interests of the United States.

(c) *Reporting requirement distinguished.* The reporting provisions in paragraph (a) of this section are not ''reporting requirements'' within the meaning of § 764.2(i) of this part.

(d) *Formerly embargoed destinations.* Reporting requirements for activities

within the scope of §764.2(e) that involve items subject to the EAR which may have been illegally exported or re-exported to Libya prior to the lifting of the comprehensive embargo on Libya are found in §764.7 of the EAR.

[61 FR 12902, Mar. 25, 1996, as amended at 70 FR 14391, Mar. 22, 2005]

§764.5 Voluntary self-disclosure.

(a) *General policy.* BIS strongly encourages disclosure to OEE if you believe that you may have violated the EAR, or any order, license or authorization issued thereunder. Voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE.

(b) *Limitations.* (1) The provisions of this section do not apply to disclosures of violations relating to part 760 of the EAR.

(2) The provisions of this section apply only when information is provided to OEE for its review in determining whether to take administrative action under part 766 of the EAR for violations of the export control provisions of the EAR.

(3) The provisions of this section apply only when information is received by OEE for review prior to the time that OEE, or any other agency of the United States Government, has learned the same or substantially similar information from another source and has commenced an investigation or inquiry in connection with that information.

(4) While voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is solely within the discretion of OEE, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Voluntary self-disclosure does not prevent transactions from being referred to the Department of Justice for criminal prosecution. In such a case, OEE would notify the Department of Justice of the voluntary self-disclosure, but the consideration of that factor is within the discretion of the Department of Justice.

(5) A firm will not be deemed to have made a disclosure under this section unless the individual making the disclosure did so with the full knowledge and authorization of the firm's senior management.

(6) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) *Information to be provided*—(1) *General.* Any person wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify OEE as soon as possible after violations are discovered, and then conduct a thorough review of all export-related transactions where violations are suspected.

(2) *Initial notification.* (i) The initial notification should be in writing and be sent to one of the addresses in §764.5(c)(7) of this part. The notification should include the name of the person making the disclosure and a brief description of the suspected violations. The notification should describe the general nature and extent of the violations. If the person making the disclosure subsequently completes the narrative account required by §764.5(c)(3) of this part, the disclosure will be deemed to have been made on the date of the initial notification for purposes of §764.5(b)(3) of this part.

(ii) OEE recognizes that there may be situations where it will not be practical to make an initial notification in writing. For example, written notification may not be practical if a shipment leaves the United States without the required license, yet there is still an opportunity to prevent acquisition of the items by unauthorized persons. In such situations, OEE should be contacted promptly at one of the offices listed in §764.5(c)(7) of this part.

(3) *Narrative account.* After the initial notification, a thorough review should be conducted of all export-related transactions where possible violations are suspected. OEE recommends that the review cover a period of five years prior to the date of the initial notification. If your review goes back less than five years, you risk failing to discover

violations that may later become the subject of an investigation. Any violations not voluntarily disclosed do not receive consideration under this section. However, the failure to make such disclosures will not be treated as a separate violation unless some other section of the EAR or other provision of law requires disclosure. Upon completion of the review, OEE should be furnished with a narrative account that sufficiently describes the suspected violations so that their nature and gravity can be assessed. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood that violations will occur in the future. The narrative account should include:

(i) The kind of violation involved, for example, a shipment without the required license or dealing with a party denied export privileges;

(ii) An explanation of when and how the violations occurred;

(iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations;

(iv) License numbers;

(v) The description, quantity, value in U.S. dollars and ECCN or other classification of the items involved; and

(vi) A description of any mitigating circumstances.

(4) *Supporting documentation.* (i) The narrative account should be accompanied by copies of documents that explain and support it, including:

(A) Licensing documents such as licenses, license applications, import certificates and end-user statements;

(B) Shipping documents such as Shipper's Export Declarations, air waybills and bills of lading; and

(C) Other documents such as letters, facsimiles, telexes and other evidence of written or oral communications, internal memoranda, purchase orders, invoices, letters of credit and brochures.

(ii) Any relevant documents not attached to the narrative account must be retained by the person making the disclosure until OEE requests them, or until a final decision on the disclosed information has been made. After a final decision, the documents should be maintained in accordance with the recordkeeping rules in part 762 of the EAR.

(5) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a corporation or other organization should be signed by an official of the corporation or other organization with the authority to do so. Section 764.2(g) of this part, relating to false or misleading representations, applies in connection with the disclosure of information under this section.

(6) *oral presentations.* OEE believes that oral presentations are generally not necessary to augment the written narrative account and supporting documentation. If the person making the disclosure believes otherwise, a request for a meeting should be included with the disclosure.

(7) *Where to make voluntary self-disclosures.* The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure may be submitted to: Director, Office of Export Enforcement, 1401 Constitution Ave., Room H4514, Washington, DC 20230, Tel: (202) 482–5036, Facsimile: (202) 482–5889.

(d) *Action by the Office of Export Enforcement.* After OEE has been provided with the required narrative and supporting documentation, it will acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact, and take whatever additional action, including further investigation, it deems appropriate. As quickly as the facts and circumstances of a given case permit, OEE may take any of the following actions:

(1) Inform the person making the disclosure that, based on the facts disclosed, it plans to take no action;

(2) Issue a warning letter;

(3) Issue a proposed charging letter pursuant to § 766.18 of the EAR and attempt to settle the matter;

(4) Issue a charging letter pursuant to § 766.3 of the EAR if a settlement is not reached; and/or

(5) Refer the matter to the Department of Justice for criminal prosecution.

(e) *Criteria.* Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case under part 766 and what administrative sanctions to seek in settling such a case.

(f) *Treatment of unlawfully exported items after voluntary self-disclosure.* (1) Any person taking certain actions with knowledge that a violation of the EAA or the EAR has occurred has violated §764.2(e) of this part. Any person who has made a voluntary self-disclosure knows that a violation may have occurred. Therefore, at the time that a voluntary self-disclosure is made, the person making the disclosure may request permission from BIS to engage in the activities described in §764.2(e) of this part that would otherwise be prohibited. If the request is granted by the Office of Exporter Services in consultation with OEE, future activities with respect to those items that would otherwise violate §764.2(e) of this part will not constitute violations. However, even if permission is granted, the person making the voluntary self-disclosure is not absolved from liability for any violations disclosed nor relieved of the obligation to obtain any required reexport authorizations.

(2) A license to reexport items that are the subject of a voluntary self-disclosure, and that have been exported contrary to the provisions of the EAA or the EAR, may be requested from BIS in accordance with the provisions of part 748 of the EAR. If the applicant for reexport authorization knows that the items are the subject of a voluntary self-disclosure, the request should state that a voluntary self-disclosure was made in connection with the export of the commodities for which reexport authorization is sought.

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997; 69 FR 7870, Feb. 20, 2004; 70 FR 22250, Apr. 29, 2005]

§764.6 Protective administrative measures.

(a) *License Exception limitation.* As provided in §740.2(b) of the EAR , all License Exceptions are subject to revision, suspension, or revocation.

(b) *Revocation or suspension of licenses.* As provided in §750.8 of the EAR, all licenses are subject to revision, suspension, or revocation.

(c) *Temporary denial orders.* BIS may, in accordance with §766.24 of the EAR, issue an order temporarily denying export privileges when such an order is necessary in the public interest to prevent the occurrence of an imminent violation.

(d) *Denial based on criminal conviction.* BIS may, in accordance with §766.25 of the EAR, issue an order denying the export privileges of any person who has been convicted of an offense specified in §11(h) of the EAA.

§764.7 Activities involving items that may have been illegally exported or reexported to Libya.

(a) *Introduction.* As set forth in §764.2(e) of this part, and restated in General Prohibition Ten at §736.2(b)(10) of the EAR, no person (including a non-U.S. Third Party) may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, finance, forward, or otherwise service, in whole or in part, any item subject to the EAR with knowledge that a violation has occurred, or will occur, in connection with the item. This section addresses the application of §764.2(e) of this part to activities involving items subject to the EAR that may have been illegally exported or reexported to Libya before the comprehensive embargo on Libya ended (April 29, 2004) (''installed base'' items).

(b) *Libya*—(1) *Activities involving installed base items in Libya for which no license is required.* Subject to the reporting requirement set forth in paragraph (b)(1)(ii) of this section, activities within the scope of §764.2(e) of this part involving installed base items described in paragraph (b)(1)(i) of this section that are located in Libya and that were exported or reexported before April 29, 2004 do not require a license from BIS.

(i) *Scope.* An installed base item is within the scope of paragraph (b)(1) of this section if:

(A) It is not on the Commerce Control List in Supplement No.1 to Part 774 of the EAR;

(B) It is on the Commerce Control List, but is authorized for export or reexport pursuant to a License Exception to Libya; or

(C) It is on the Commerce Control List and controlled only for AT reasons or for NS and AT reasons only, and is not listed on the Wassenaar Arrangement's Sensitive List (Annex 1) or Very Sensitive List (Annex 2) posted on the Wassenaar Arrangement's Web site (*www.wassenaar.org*) at the Control Lists web page.

NOTE 1 TO PARAGRAPH (b)(1)(i): An item being exported or reexported to Libya may require a license based on the classification of the item to be exported or reexported regardless of whether the item will be used in connection with an installed base item. See paragraph (b)(4) of this section.

NOTE 2 TO PARAGRAPH (b)(1)(i): Not all items listed on the Wassenaar Arrangement's Annex 1, Sensitive List, and Annex 2, Very Sensitive List, fall under the export licensing jurisdiction of the Department of Commerce. Please refer to the Commerce Control List for additional jurisdictional information related to those items. Also, if you do not have access to the internet to review the Wassenaar Arrangement's Sensitive List and Very Sensitive List, please contact the Office of Exporter Services, Division of Exporter Counseling for assistance at telephone number (202) 482–4811.

(ii) *Reporting requirement.* Any person engaging in activity described in paragraph (b)(1) of this section must submit to BIS's Office of Export Enforcement (OEE) a report including all known material facts with respect to how the installed base item arrived in Libya. The report must be submitted to OEE at the address identified in § 764.4(a) of the EAR within ninety (90) days of the first activity relating to the installed base item in Libya. A report may address more than one activity and/or more than one installed base item. An additional report must be submitted if any new material information regarding the export or reexport to Libya of the installed base item is discovered.

(2) *Licensing procedure for activities involving installed base items in Libya*—(i) *License requirement.* Any person seeking to undertake activities within the scope of § 764.2(e) of the EAR with respect to any installed base item located in Libya and not described in paragraph (b)(1)(i) of this section must obtain a license from BIS prior to engaging in any such activities. License applications should be submitted on standard form BIS 748-P or the electronic equivalent, and should fully describe the relevant activity within the scope of § 764.2(e) of this part which is the basis of the application. License applications should include all known material facts as to how the installed base item originally was exported or reexported to Libya. This section also applies if you know that an item to be exported or reexported to a third party will be used on an installed base item not described in paragraph (b)(1)(i) of this section.

(ii) *Licensing policy.* BIS will review license applications submitted pursuant to paragraph (b)(2)(i) of this section on a case-by-case basis. Favorable consideration will be given for those applications related to civil end-uses in Libya. Applications related to military, police, intelligence, or other sensitive end-uses in Libya will be subject to a general policy of denial.

(3) *Exclusion.* The provisions of this section are not applicable to any activities within the scope of § 764.2(e) of the EAR undertaken with respect to an installed base item in Libya by a person who was party to the original illegal export or reexport of the related installed base item to Libya. Such persons should voluntarily self-disclose violations pursuant to the procedures set forth in § 764.5 of this part, which in some cases may allow activities related to unlawfully exported or reexported items to be undertaken based on permission from BIS.

(4) *Relationship to other Libya license requirements.* Notwithstanding this section, a license may be required pursuant to another provision of the EAR (*e.g.*, § 742.20 of the EAR) to engage in activity involving Libya. If a license is required pursuant to another section of the EAR, and the transaction also involves activity within the scope of § 764.2(e) of this part related to an installed base item in Libya, this information should be specified on the license application. Such applications must also include all known information as to how the installed base item

originally arrived in Libya. If granted, the license for the proposed transaction will also authorize the related activity within the scope of §764.2(e) of this part.

[70 FR 14391, Mar. 22, 2005]

SUPPLEMENT NO. 1 TO PART 764—STANDARD TERMS OF ORDERS DENYING EXPORT PRIVILEGES

(a) *General.* (1) Orders denying export privileges may be ''standard'' or ''non-standard.'' This Supplement specifies terms of the standard order denying export privilege with respect to denial orders issued after March 25, 1996. Denial orders issued prior to March 25, 1996 are to be construed, insofar as possible, as having the same scope and effect as the standard denial order. All denial orders are published in the FEDERAL REGISTER. The failure by any person to comply with any denial order is a violation of the Export Administration Regulations (EAR) (*see* §764.2(k) of this part). BIS provides a list of persons currently subject to denial orders on its Web site at *http://www.bis.doc.gov*.

(2) Each denial order shall include:

(i) The name and address of any denied persons and any related persons subject to the denial order;

(ii) The basis for the denial order, such as final decision following charges of violation, settlement agreement, section 11(h) of the EAA, or temporary denial order request;

(iii) The period of denial, the effective date of the order, whether and for how long any portion of the denial of export privileges is suspended, and any conditions of probation; and

(iv) Whether any or all outstanding licenses issued under the EAR to the person(s) named in the denial order or in which such person(s) has an interest, are suspended or revoked.

Denial orders issued prior to March 25, 1996, are to be construed, insofar as possible, as having the same scope and effect as the standard denial order.

The introduction to each denial order shall be specific to that order, and shall include: (1) The name and address of any denied persons and any related persons subject to the denial order; (2) the basis for the denial order, such as final decision following charges of violation, settlement agreement, §11(h) of the EAA, or temporary denial order request; (3) the period of denial, the effective date of the order, whether and for how long any portion of the denial of export privileges is suspended, and any conditions of probation; and (4) whether any or all outstanding licenses issued under the EAR to the person(s) named in the denial order or in which such person(s) has an interest, are suspended or revoked.

(b) *Standard denial order terms.* The following are the standard terms for imposing periods of export denial. Some orders also contain other terms, such as those that impose civil penalties, or that suspend all or part of the penalties or period of denial.

''It is therefore ordered:

First, that [the denied person(s)] may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (EAR), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a denied person if such service involves the use of any item subject to the EAR that has been or will be exported from

the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in §766.23 of the EAR, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this order.

Fourth, that this order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

This order, which constitutes the final agency action in this matter, is effective [DATE].''

[61 FR 12902, Mar. 25, 1996, as amended at 67 FR 54953, Aug. 27, 2002; 70 FR 8720, Feb. 23, 2005]

PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

Sec.
766.1 Scope.
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SUPPLEMENT NO. 1 TO PART 766—GUIDANCE ON CHARGING AND PENALTY DETERMINATIONS IN SETTLEMENT OF ADMINISTRATIVE ENFORCEMENT CASES

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

SOURCE: 61 FR 12907, Mar. 25, 1996, unless otherwise noted.

§766.1 Scope.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part describes the procedures for imposing administrative sanctions for violations of the Export Administration Act of 1979, as amended (the EAA), the Export Administration Regulations (EAR), or any order, license or authorization issued thereunder. Parts 760 and 764 of the EAR specify those actions that constitute violations, and part 764 describes the sanctions that apply. In addition to describing the procedures for imposing sanctions, this part describes the procedures for imposing temporary denial orders to prevent imminent violations of the EAA, the EAR, or any order, license or authorization issued thereunder. This part also describes the procedures for taking the discretionary protective administrative action of denying the export privileges of persons who have been convicted of violating any of the statutes, including the EAA, listed in section 11(h) of the EAA. Nothing in this part shall be construed as applying to or limiting other administrative or enforcement action relating to the EAA or the EAR, including the exercise of any investigative authorities conferred by the EAA. This part does not confer any procedural rights or impose any requirements based on the Administrative Procedure Act for proceedings charging violations under the EAA, except as expressly provided for in this part.

§766.2 Definitions.

As used in this part, the following definitions apply:

Administrative law judge. The person authorized to conduct hearings in administrative enforcement proceedings brought under the EAA or to hear appeals from the imposition of temporary denial orders. The term ''judge'' may be used for brevity when it is clear that the reference is to the administrative law judge.

Assistant Secretary. The Assistant Secretary for Export Enforcement, Bureau of Industry and Security.

Bureau of Industry and Security (BIS). Bureau of Industry and Security, U.S. Department of Commerce (formerly the Bureau of Export Administration) and all of its component units, including, in particular for purposes of this part, the Office of Antiboycott Compliance, the Office of Export Enforcement, and the Office of Exporter Services.

Final decision. A decision or order assessing a civil penalty, denial of export privileges or other sanction, or otherwise disposing of or dismissing a case, which is not subject to further review under this part, but which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

Initial decision. A decision of the administrative law judge in proceedings involving violations relating to part 760 of the EAR, which is subject to appellate review by the Under Secretary of Commerce for Industry and Security, but which becomes the final decision in the absence of such an appeal.

Party. BIS and any person named as a respondent under this part.

Recommended decision. A decision of the administrative law judge in proceedings involving violations other than those relating to part 760 of the EAR, which is subject to review by the Under Secretary of Commerce for Industry and Security, who issues a written order affirming, modifying or vacating the recommended decision.

Respondent. Any person named as the subject of a charging letter, proposed charging letter, temporary denial order, or other order proposed or issued under this part.

Under Secretary. The Under Secretary for Industry and Security, United States Department of Commerce.

[61 FR 12907, Mar. 25, 1996, as amended at 67 FR 20631, Apr. 26, 2002; 70 FR 8250, Feb. 18, 2005]

§766.3 Institution of administrative enforcement proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement (OEE) or the Director of the Office of Antiboycott Compliance (OAC), as appropriate, or such other Department of Commerce official as may be designated by the Assistant Secretary of Commerce for Export Enforcement, may begin administrative enforcement proceedings under this part by issuing a charging letter in the name of BIS. Supplement No. 1 to this part describes how BIS typically exercises its discretion regarding the issuance of charging letters, other than in antiboycott matters under part 760 of the EAR. The charging letter shall constitute the formal complaint and will state that there is reason to believe that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred. It will set forth the essential facts about the alleged violation, refer to the specific regulatory or other provisions involved, and give notice of the sanctions available under part 764 of the EAR. The charging letter will inform the respondent that failure to answer the charges as provided in §766.6 of this part will be treated as a default under §766.7 of this part, that the respondent is entitled to a hearing if a written demand for one is requested with the answer, and that the respondent may be represented by counsel, or by other authorized representative who has a power of attorney to represent the respondent. A copy of the charging letter shall be filed with the administrative law judge, which filing shall toll the running of the applicable statute of limitations. Charging letters may be amended or supplemented at any time before an answer is filed, or, with permission of the administrative law judge, afterwards. BIS may unilaterally withdraw charging letters at any time, by notifying the respondent and the administrative law judge.

(b) *Notice of issuance of charging letter instituting administrative enforcement proceeding.* A respondent shall be notified of the issuance of a charging letter, or any amendment or supplement thereto:

(1) By mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address;

(2) By leaving a copy with the respondent or with an officer, a managing or general agent, or any other

agent authorized by appointment or by law to receive service of process for the respondent; or

(3) By leaving a copy with a person of suitable age and discretion who resides at the respondent's last known dwelling.

(4) Delivery of a copy of the charging letter, if made in the manner described in paragraph (b)(2) or (3) of this section, shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left. The certificate of service shall be filed with the administrative law judge.

(c) *Date.* The date of service of notice of the issuance of a charging letter instituting an administrative enforcement proceeding, or service of notice of the issuance of a supplement or amendment to a charging letter, is the date of its delivery, or of its attempted delivery if delivery is refused.

[61 FR 12907, Mar. 25, 1996, as amended at 69 FR 7870, Feb. 20, 2004]

§ 766.4 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee, and a partnership by a partner. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides if not the United States. A respondent personally, or through counsel or other representative, shall file a notice of appearance with the administrative law judge. BIS will be represented by the Office of Chief Counsel for Industry and Security, U.S. Department of Commerce.

[61 FR 12907, Mar. 25, 1996, as amended at 67 FR 45633, July 10, 2002]

§ 766.5 Filing and service of papers other than charging letter.

(a) *Filing.* All papers to be filed shall be addressed to EAR Administrative Enforcement Proceedings, U.S. Coast Guard, ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland, 21202–4022, or such other place as the administrative law judge may designate. Filing by United States mail, first class postage prepaid, by express or equivalent parcel delivery service, or by hand delivery, is acceptable. Filing by mail from a foreign country shall be by airmail. In addition, the administrative law judge may authorize filing of papers by facsimile or other electronic means, provided that a hard copy of any such paper is subsequently filed. A copy of each paper filed shall be simultaneously served on each party.

(b) *Service.* Service shall be made by personal delivery or by mailing one copy of each paper to each party in the proceeding. Service by delivery service or facsimile, in the manner set forth in paragraph (a) of this section, is acceptable. Service on BIS shall be addressed to the Chief Counsel for Industry and Security, Room H–3839, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Service on a respondent shall be to the address to which the charging letter was sent or to such other address as respondent may provide. When a party has appeared by counsel or other representative, service on counsel or other representative shall constitute service on that party.

(c) *Date.* The date of filing or service is the day when the papers are deposited in the mail or are delivered in person, by delivery service, or by facsimile.

(d) *Certificate of service.* A certificate of service signed by the party making service, stating the date and manner of service, shall accompany every paper, other than the charging letter, filed and served on parties.

(e) *Computing period of time.* In computing any period of time prescribed or allowed by this part or by order of the administrative law judge or the Under Secretary, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which

case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is seven days or less.

[61 FR 12907, Mar. 25, 1996, as amended at 67 FR 45633, July 10, 2002; 70 FR 8250, Feb. 18, 2005]

§766.6 Answer and demand for hearing.

(a) *When to answer.* The respondent must answer the charging letter within 30 days after being served with notice of the issuance of a charging letter instituting an administrative enforcement proceeding, or within 30 days of notice of any supplement or amendment to a charging letter, unless time is extended under §766.16 of this part.

(b) *Contents of answer.* The answer must be responsive to the charging letter and must fully set forth the nature of the respondent's defense or defenses. The answer must admit or deny specifically each separate allegation of the charging letter; if the respondent is without knowledge, the answer must so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(c) *Demand for hearing.* If the respondent desires a hearing, a written demand for one must be submitted with the answer. Any demand by BIS for a hearing must be filed with the administrative law judge within 30 days after service of the answer. Failure to make a timely written demand for a hearing shall be deemed a waiver of the party's right to a hearing, except for good cause shown. If no party demands a hearing, the matter will go forward in accordance with the procedures set forth in §766.15 of this part.

(d) *English language required.* The answer, all other papers, and all documentary evidence must be submitted in English, or translations into English must be filed and served at the same time.

§766.7 Default.

(a) *General.* Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions. The decision and order shall be subject to review by the Under Secretary in accordance with the applicable procedures set forth in §766.21 or §766.22 of this part.

(b) *Petition to set aside default*—(1) *Procedure.* Upon petition filed by a respondent against whom a default order has been issued, which petition is accompanied by an answer meeting the requirements of §766.6(b) of this part, the Under Secretary may, after giving all parties an opportunity to comment, and for good cause shown, set aside the default and vacate the order entered thereon and remand the matter to the administrative law judge for further proceedings.

(2) *Time limits.* A petition under this section must be made within one year of the date of entry of the order which the petition seeks to have vacated.

§766.8 Summary decision.

At any time after a proceeding has been initiated, a party may move for a summary decision disposing of some or all of the issues. The administrative law judge may render an initial or recommended decision and issue or recommend an order if the entire record shows, as to the issue(s) under consideration:

(a) That there is no genuine issue as to any material fact; and

(b) That the moving party is entitled to a summary decision as a matter of law.

§ 766.9 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery apply to the extent consistent with this part and except as otherwise provided by the administrative law judge or by waiver or agreement of the parties. The administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve on any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may apply to the administrative law judge for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 20 days before the scheduled date of the hearing unless the administrative law judge specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties, and a copy of the certificate of service shall be filed with the administrative law judge. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such additional time as the administrative law judge may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the administrative law judge may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The administrative law judge may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the administrative law judge may make a determination or enter any order in the proceeding as the judge deems reasonable and appropriate. The judge may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In addition, enforcement by a district court of the United States may be sought under section 12(a) of the EAA.

§ 766.10 Subpoenas.

(a) *Issuance.* Upon the application of any party, supported by a satisfactory showing that there is substantial reason to believe that the evidence would not otherwise be available, the administrative law judge will issue subpoenas requiring the attendance and testimony of witnesses and the production of such books, records or other documentary or physical evidence for the purpose of the hearing, as the judge deems relevant and material to the proceedings, and reasonable in scope.

(b) *Service.* Subpoenas issued by the administrative law judge may be served in any of the methods set forth in § 766.5(b) of this part.

(c) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition, unless the administrative law judge determines, for good cause shown, that extraordinary circumstances warrant a shorter time.

§766.11 Matter protected against disclosure.

(a) *Protective measures.* It is often necessary for BIS to receive and consider information and documents that are sensitive from the standpoint of national security, foreign policy, business confidentiality, or investigative concern, and that are to be protected against disclosure. Accordingly, and without limiting the discretion of the administrative law judge to give effect to any other applicable privilege, it is proper for the administrative law judge to limit discovery or introduction of evidence or to issue such protective or other orders as in the judge's judgment may be consistent with the objective of preventing undue disclosure of the sensitive documents or information. Where the administrative law judge determines that documents containing the sensitive matter need to be made available to a respondent to avoid prejudice, the judge may direct BIS to prepare an unclassified and nonsensitive summary or extract of the documents. The administrative law judge may compare the extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain classified or undisclosed. The summary or extract may be admitted as evidence in the record.

(b) *Arrangements for access.* If the administrative law judge determines that this procedure is unsatisfactory and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the judge may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive information. Such arrangements may include obtaining security clearances, obtaining a national interest determination under section 12(c) of the EAA, or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§766.12 Prehearing conference.

(a) The administrative law judge, on the judge's own motion or on request of a party, may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

(1) Simplification of issues;

(2) The necessity or desirability of amendments to pleadings;

(3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(4) Such other matters as may expedite the disposition of the proceedings.

(b) The administrative law judge may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the judge.

(c) If a prehearing conference is impracticable, the administrative law judge may direct the parties to correspond with the judge to achieve the purposes of such a conference.

(d) The administrative law judge will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

§766.13 Hearings.

(a) *Scheduling.* The administrative law judge, by agreement with the parties or upon notice to all parties of not less than 30 days, will schedule a hearing. All hearings will be held in Washington, D.C., unless the administrative law judge determines, for good cause shown, that another location would better serve the interests of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the administrative law judge, who may limit attendance at any hearing or portion thereof to the parties, their representatives and witnesses if the judge deems this necessary or advisable in order to protect sensitive matter (see §766.11 of this part) from improper disclosure. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the administrative law judge to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight.

(c) *Testimony and record.* Witnesses will testify under oath or affirmation. A verbatim record of the hearing and of any other oral proceedings will be

taken by reporter or by electronic recording, transcribed and filed with the administrative law judge. A respondent may examine the transcript and may obtain a copy by paying any applicable costs. Upon such terms as the administrative law judge deems just, the judge may direct that the testimony of any person be taken by deposition and may admit an affidavit or declaration as evidence, provided that any affidavits or declarations have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed, and that party's failure to appear will not affect the validity of the hearing or any proceedings or action taken thereafter.

§ 766.14 Interlocutory review of rulings.

(a) At the request of a party, or on the judge's own initiative, the administrative law judge may certify to the Under Secretary for review a ruling that does not finally dispose of a proceeding, if the administrative law judge determines that immediate review may hasten or facilitate the final disposition of the matter.

(b) Upon certification to the Under Secretary of the interlocutory ruling for review, the parties will have 10 days to file and serve briefs stating their positions, and five days to file and serve replies, following which the Under Secretary will decide the matter promptly.

§ 766.15 Proceeding without a hearing.

If the parties have waived a hearing, the case will be decided on the record by the administrative law judge. Proceeding without a hearing does not relieve the parties from the necessity of proving the facts supporting their charges or defenses. Affidavits or declarations, depositions, admissions, answers to interrogatories and stipulations may supplement other documentary evidence in the record. The administrative law judge will give each party reasonable opportunity to file rebuttal evidence.

§ 766.16 Procedural stipulations; extension of time.

(a) *Procedural stipulations.* Unless otherwise ordered, a written stipulation agreed to by all parties and filed with the administrative law judge will modify any procedures established by this part.

(b) *Extension of time.* (1) The parties may extend any applicable time limitation, by stipulation filed with the administrative law judge before the time limitation expires.

(2) The administrative law judge may, on the judge's own initiative or upon application by any party, either before or after the expiration of any applicable time limitation, extend the time within which to file and serve an answer to a charging letter or do any other act required by this part.

§ 766.17 Decision of the administrative law judge.

(a) *Predecisional matters.* Except for default proceedings under § 766.7 of this part, the administrative law judge will give the parties reasonable opportunity to submit the following, which will be made a part of the record:

(1) Exceptions to any ruling by the judge or to the admissibility of evidence proffered at the hearing;

(2) Proposed findings of fact and conclusions of law;

(3) Supporting legal arguments for the exceptions and proposed findings and conclusions submitted; and

(4) A proposed order.

(b) *Decision and order.* After considering the entire record in the proceeding, the administrative law judge will issue a written decision.

(1) *Initial decision.* For proceedings charging violations relating to part 760 of the EAR, the decision rendered shall be an initial decision. The decision will include findings of fact, conclusions of law, and findings as to whether there has been a violation of the EAA, the EAR, or any order, license or authorization issued thereunder. If the administrative law judge finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more

charges, the judge shall order dismissal of the charges in whole or in part, as appropriate. If the administrative law judge finds that one or more violations have been committed, the judge may issue an order imposing administrative sanctions, as provided in part 764 of the EAR. The decision and order shall be served on each party, and shall become effective as the final decision of the Department 30 days after service, unless an appeal is filed in accordance with §766.21 of this part.

(2) *Recommended decision.* For proceedings not involving violations relating to part 760 of the EAR, the decision rendered shall be a recommended decision. The decision will include recommended findings of fact, conclusions of law, and findings as to whether there has been a violation of the EAA, the EAR or any order, license or authorization issued thereunder. If the administrative law judge finds that the evidence of record is insufficient to sustain a recommended finding that a violation has occurred with respect to one or more charges, the judge shall recommend dismissal of any such charge. If the administrative law judge finds that one or more violations have been committed, the judge shall recommend an order imposing administrative sanctions, as provided in part 764 of the EAR, or such other action as the judge deems appropriate. The administrative law judge shall immediately certify the record, including the original copy of the recommended decision and order, to the Under Secretary for review in accordance with §766.22 of this part. The administrative law judge shall also immediately serve the recommended decision on all parties. Because of the time limits established in the EAA for review by the Under Secretary, service upon parties shall be by personal delivery, express mail or other overnight carrier.

(c) *Suspension of sanctions.* Any order imposing administrative sanctions may provide for the suspension of the sanction imposed, in whole or in part and on such terms of probation or other conditions as the administrative law judge or the Under Secretary may specify. Any suspension order may be modified or revoked by the signing official upon application of BIS showing a violation of the probationary terms or other conditions, after service on the respondent of notice of the application in accordance with the service provisions of §766.3 of this part, and with such opportunity for response as the responsible signing official in his/her discretion may allow. A copy of any order modifying or revoking the suspension shall also be served on the respondent in accordance with the provisions of §766.3 of this part.

(d) *Time for decision.* Administrative enforcement proceedings not involving violations relating to part 760 of the EAR shall be concluded, including review by the Under Secretary under §766.22 of this part, within one year of the submission of a charging letter, unless the administrative law judge, for good cause shown, extends such period. The charging letter will be deemed to have been submitted to the administrative law judge on the date the respondent files an answer or on the date BIS files a motion for a default order pursuant to §766.7(a) of this part, whichever occurs first.

§766.18 Settlement.

(a) *Cases may be settled before service of a charging letter.* In cases in which settlement is reached before service of a charging letter, a proposed charging letter will be prepared, and a settlement proposal consisting of a settlement agreement and order will be submitted to the Assistant Secretary for approval and signature. If the Assistant Secretary does not approve the proposal, he/she will notify the parties and the case will proceed as though no settlement proposal had been made. If the Assistant Secretary approves the proposal, he/she will issue an appropriate order, and no action will be required by the administrative law judge.

(b) *Cases may also be settled after service of a charging letter.* (1) If the case is pending before the administrative law judge, the judge shall stay the proceedings for a reasonable period of time, usually not to exceed 30 days, upon notification by the parties that

they have entered into good faith settlement negotiations. The administrative law judge may, in his/her discretion, grant additional stays. If settlement is reached, a proposal will be submitted to the Assistant Secretary for approval and signature. If the Assistant Secretary approves the proposal, he/she will issue an appropriate order, and notify the administrative law judge that the case is withdrawn from adjudication. If the Assistant Secretary does not approve the proposal, he/she will notify the parties and the case will proceed to adjudication by the administrative law judge as though no settlement proposal had been made.

(2) If the case is pending before the Under Secretary under § 766.21 or § 766.22 of this part, the parties may submit a settlement proposal to the Under Secretary for approval and signature. If the Under Secretary approves the proposal, he/she will issue an appropriate order. If the Under Secretary does not approve the proposal, the case will proceed to final decision in accordance with § 766.21 or § 766.22 of this part, as appropriate.

(c) Any order disposing of a case by settlement may suspend the administrative sanction imposed, in whole or in part, on such terms of probation or other conditions as the signing official may specify. Any such suspension may be modified or revoked by the signing official, in accordance with the procedures set forth in § 766.17(c) of this part.

(d) Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this part. This reflects the fact that BIS has neither the authority nor the responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(e) Cases that are settled may not be reopened or appealed.

(f) Supplement No. 1 to this part describes how BIS typically exercises its discretion regarding the terms under which it is willing to settle particular cases, other than antiboycott matters under part 760 of the EAR.

[61 FR 12907, Mar. 25, 1996, as amended at 69 FR 7870, Feb. 20, 2004]

§ 766.19 Reopening.

The respondent may petition the administrative law judge within one year of the date of the final decision, except where the decision arises from a default judgment or from a settlement, to reopen an administrative enforcement proceeding to receive any relevant and material evidence which was unknown or unobtainable at the time the proceeding was held. The petition must include a summary of such evidence, the reasons why it is deemed relevant and material, and the reasons why it could not have been presented at the time the proceedings were held. The administrative law judge will grant or deny the petition after providing other parties reasonable opportunity to comment. If the proceeding is reopened, the administrative law judge may make such arrangements as the judge deems appropriate for receiving the new evidence and completing the record. The administrative law judge will then issue a new initial or recommended decision and order, and the case will proceed to final decision and order in accordance with § 766.21 or § 766.22 of this part, as appropriate.

§ 766.20 Record for decision and availability of documents.

(a) *General.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings and, for purposes of any appeal under § 766.21 of this part or review under § 766.22 of this part, the decision of the administrative law judge and such submissions as are provided for by §§ 766.21 and 766.22 of this part, will constitute the record and the exclusive basis for decision. When a case is settled after the service of a charging letter, the record will consist of any and all of the foregoing, as well as the settlement agreement and the order. When a case is settled before service of a charging letter, the record will consist of the proposed charging letter, the settlement agreement and the order.

(b) *Restricted access.* On the judge's own motion, or on the motion of any

party, the administrative law judge may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible for submitting, at the time specified in §766.20(c)(2) of this part, a version of the document proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The administrative law judge may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents*—(1) *Scope.* (i) For proceedings started on or after October 12, 1979, all charging letters, answers, initial and recommended decisions, and orders disposing of a case will be made available for public inspection in the BIS Freedom of Information Records Inspection Facility, U.S. Department of Commerce, Room H–6624, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request. In addition, all decisions of the Under Secretary on appeal pursuant to §766.22 of this part and those final orders providing for denial, suspension or revocation of export privileges shall be published in the FEDERAL REGISTER.

(ii) For proceedings started before October 12, 1979, the public availability of the record for decision will be governed by the applicable regulations in effect when the proceedings were begun.

(2) *Timing*—(i) *Antiboycott cases.* For matters relating to part 760 of the EAR, documents are available immediately upon filing, except for any portion of the record for which a request for segregation is made. Parties that seek to restrict access to any portion of the record under paragraph (b) of this section must make such a request, together with the reasons supporting the claim of confidentiality, simultaneously with the submission of material for the record.

(ii) *Other cases.* In all other cases, documents will be available only after the final administrative disposition of the case. In these cases, parties desiring to restrict access to any portion of the record under paragraph (b) of this section must assert their claim of confidentiality, together with the reasons for supporting the claim, before the close of the proceeding.

§766.21 Appeals.

(a) *Grounds.* For proceedings charging violations relating to part 760 of the EAR, a party may appeal to the Under Secretary from an order disposing of a proceeding or an order denying a petition to set aside a default or a petition for reopening, on the grounds:

(1) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(2) That a necessary legal conclusion or finding is contrary to law;

(3) That prejudicial procedural error occurred, or

(4) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion. The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal is taken.

(b) *Filing of appeal.* An appeal from an order must be filed with the Office of the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room H–3898, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within 30 days after service of the order appealed from. If the Under Secretary cannot act on an appeal for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the appeal.

(c) *Effect of appeal.* The filing of an appeal shall not stay the operation of any order, unless the order by its express terms so provides or unless the Under Secretary, upon application by a party and with opportunity for response, grants a stay.

(d) *Appeal procedure.* The Under Secretary normally will not hold hearings

or entertain oral argument on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The decision will be in writing and will be accompanied by an order signed by the Under Secretary giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the administrative law judge or may refer the case back to the administrative law judge for further proceedings.

§ 766.22 Review by Under Secretary.

(a) *Recommended decision.* For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) *Submissions by parties.* Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) *Final decision.* Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) *Delivery.* The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 766.20 of this part.

(e) *Appeals.* The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. § 2412(c)(3).

§ 766.23 Related persons.

(a) *General.* In order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders, and those that exclude a respondent from practice before BIS.

(b) *Procedures.* If BIS has reason to believe that a person is related to the respondent and that an order that is being sought or that has been issued should be made applicable to that person in order to prevent evasion of the order, BIS shall, except in an *ex parte* proceeding under § 766.24(a) of this part, give that person notice in accordance with § 766.5(b) of this part and an opportunity to oppose such action. If the official authorized to issue the order against the respondent finds that the order should be made applicable to that person in order to prevent evasion of the order that official shall issue or amend the order accordingly.

(c) *Appeals.* Any person named by BIS in an order as related to the respondent

may file an appeal with the administrative law judge. The sole issues to be raised and ruled on in any such appeal are whether the person so named is related to the respondent and whether the order is justified in order to prevent evasion. The recommended decision and order of the administrative law judge shall be reviewed by the Under Secretary in accordance with the procedures set forth in §766.22 of this part.

§766.24 Temporary denials.

(a) *General.* The procedures in this section apply to temporary denial orders issued on or after July 12, 1985. For temporary denial orders issued on or before July 11, 1985, the proceedings will be governed by the applicable regulations in effect at the time the temporary denial orders were issued. Without limiting any other action BIS may take under the EAR with respect to any application, order, license or authorization issued under the EAA, BIS may ask the Assistant Secretary to issue a temporary denial order on an *ex parte* basis to prevent an imminent violation, as defined in this section, of the EAA, the EAR, or any order, license or authorization issued thereunder. The temporary denial order will deny export privileges to any person named in the order as provided for in §764.3(a)(2) of the EAR.

(b) *Issuance.* (1) The Assistant Secretary may issue an order temporarily denying to a person any or all of the export privileges described in part 764 of the EAR upon a showing by BIS that the order is necessary in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(2) The temporary denial order shall define the imminent violation and state why it was issued without a hearing. Because all denial orders are public, the description of the imminent violation and the reasons for proceeding on an *ex parte* basis set forth therein shall be stated in a manner that is consistent with national security, foreign policy, business confidentiality, and investigative concerns.

(3) A violation may be ''imminent'' either in time or in degree of likelihood. To establish grounds for the temporary denial order, BIS may show either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations. To indicate the likelihood of future violations, BIS may show that the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent, and that it is appropriate to give notice to companies in the United States and abroad to cease dealing with the person in U.S.-origin items in order to reduce the likelihood that a person under investigation or charges continues to export or acquire abroad such items, risking subsequent disposition contrary to export control requirements. Lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.

(4) The temporary denial order will be issued for a period not exceeding 180 days.

(5) Notice of the issuance of a temporary denial order on an *ex parte* basis shall be given in accordance with §766.5(b) of this part upon issuance.

(c) *Related persons.* A temporary denial order may be made applicable to related persons in accordance with §766.23 of this part.

(d) *Renewal.* (1) If, no later than 20 days before the expiration date of a temporary denial order, BIS believes that renewal of the denial order is necessary in the public interest to prevent an imminent violation, BIS may file a written request setting forth the basis for its belief, including any additional or changed circumstances, asking that the Assistant Secretary renew the temporary denial order, with modifications, if any are appropriate, for an additional period not exceeding 180 days. BIS's request shall be delivered to the respondent, or any agent designated for this purpose, in accordance with §766.5(b) of this part, which will constitute notice of the renewal application.

(2) *Non-resident respondents.* To facilitate timely notice of renewal requests, a respondent not a resident of the United States may designate a local agent for this purpose and provide written notification of such designation to BIS in the manner set forth in § 766.5(b) of this part.

(3) *Hearing.* (i) A respondent may oppose renewal of a temporary denial order by filing with the Assistant Secretary a written submission, supported by appropriate evidence, to be received not later than seven days before the expiration date of such order. For good cause shown, the Assistant Secretary may consider submissions received not later than five days before the expiration date. The Assistant Secretary ordinarily will not allow discovery; however, for good cause shown in respondent's submission, he/she may allow the parties to take limited discovery, consisting of a request for production of documents. If requested by the respondent in the written submission, the Assistant Secretary shall hold a hearing on the renewal application. The hearing shall be on the record and ordinarily will consist only of oral argument. The only issue to be considered on BIS's request for renewal is whether the temporary denial order should be continued to prevent an imminent violation as defined herein.

(ii) Any person designated as a related person may not oppose issuance or renewal of the temporary denial order, but may file an appeal in accordance with § 766.2(3)(c) of this part.

(iii) If no written opposition to BIS's renewal request is received within the specified time, the Assistant Secretary may issue the order renewing the temporary denial order without a hearing.

(4) A temporary denial order may be renewed more than once.

(e) *Appeals*—(1) *Filing.* (i) A respondent may, at any time, file an appeal of the initial or renewed temporary denial order with the administrative law judge.

(ii) The filing of an appeal shall stay neither the effectiveness of the temporary denial order nor any application for renewal, nor will it operate to bar the Assistant Secretary's consideration of any renewal application.

(2) *Grounds.* A respondent may appeal on the grounds that the finding that the order is necessary in the public interest to prevent an imminent violation is unsupported.

(3) *Appeal procedure.* A full written statement in support of the appeal must be filed with the appeal together with appropriate evidence, and be simultaneously served on BIS, which shall have seven days from receipt to file a reply. Service on the administrative law judge shall be addressed to the Office of the Administrative Law Judge, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Service on BIS shall be as set forth in § 766.5(b) of this part. The administrative law judge normally will not hold hearings or entertain oral argument on appeals.

(4) *Recommended Decision.* Within 10 working days after an appeal is filed, the administrative law judge shall submit a recommended decision to the Under Secretary, and serve copies on the parties, recommending whether the issuance or the renewal of the temporary denial order should be affirmed, modified or vacated.

(5) *Final decision.* Within five working days after receipt of the recommended decision, the Under Secretary shall issue a written order accepting, rejecting or modifying the recommended decision. Because of the time constraints, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing. The issuance or renewal of the temporary denial order shall be affirmed only if there is reason to believe that the temporary denial order is required in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or other authorization issued under the EAA. The Under Secretary's written order is final and is not subject to judicial review, except as provided in paragraph (g) of this section.

(f) *Delivery.* A copy of any temporary denial order issued or renewed and any final decision on appeal shall be published in the FEDERAL REGISTER and shall be delivered to BIS and to the respondent, or any agent designated for this purpose, and to any related person

in the same manner as provided in § 766.5 of this part for filing for papers other than a charging letter.

(g) *Judicial review.* A respondent temporarily denied export privileges by order of the Under Secretary may appeal to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. § 2412(d)(3).

§ 766.25 Administrative action denying export privileges.

(a) *General.* The Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA, the EAR, or any order, license, or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(b) *Procedure.* Upon notification that a person has been convicted of a violation of one or more of the provisions specified in paragraph (a) of this section, the Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, will determine whether to deny such person export privileges, including but not limited to applying for, obtaining, or using any license, License Exception, or export control document; or participating in or benefiting in any way from any export or export-related transaction subject to the EAR. Before taking action to deny a person export privileges under this section, the Director of the Office of Exporter Services will provide the person written notice of the proposed action and an opportunity to comment through a written submission, unless exceptional circumstances exist. In reviewing the response, the Director of the Office of Exporter Services will consider any relevant or mitigating evidence why these privileges should not be denied. Upon final determination, the Director of the Office of Exporter Services will notify by letter each person denied export privileges under this section.

(c) *Criteria.* In determining whether and for how long to deny U.S. export privileges to a person previously convicted of one or more of the statutes set forth in paragraph (a) of this section, the Director of the Office of Exporter Services may take into consideration any relevant information, including, but not limited to, the seriousness of the offense involved in the criminal prosecution, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures.

(d) *Duration.* Any denial of export privileges under this section shall not exceed 10 years from the date of the conviction of the person who is subject to the denial.

(e) *Effect.* Any person denied export privileges under this section will be considered a ''person denied export privileges'' for purposes of § 736.2(b)(4) (General Prohibition 4—Engage in actions prohibited by a denial order) and § 764.2(k) of the EAR.

(f) *Publication.* The orders denying export privileges under this section are published in the FEDERAL REGISTER when issued, and, for the convenience of the public, information about those orders may be included in compilations maintained by BIS on a Web site and as a supplement to the unofficial edition of the EAR available by subscription from the Government Printing Office.

(g) *Appeal.* An appeal of an action under this section will be pursuant to part 756 of the EAR.

(h) *Applicability to related person.* The Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may take action in accordance with § 766.23 of this part to make applicable to related persons an order that is being sought or that has been issued under this section.

[61 FR 12907, Mar. 25, 1996, as amended at 65 FR 14863, Mar. 20, 2000; 67 FR 54953, Aug. 27, 2002]

SUPPLEMENT NO. 1 TO PART 766—GUIDANCE ON CHARGING AND PENALTY DETERMINATIONS IN SETTLEMENT OF ADMINISTRATIVE ENFORCEMENT CASES

INTRODUCTION

This Supplement describes how BIS responds to violations of the Export Administration Regulations (EAR) and, specifically, how BIS makes penalty determinations in the settlement of civil administrative enforcement cases under part 764 of the EAR. This guidance does not apply to enforcement cases for antiboycott violations under part 760 of the EAR.

Because many administrative enforcement cases are resolved through settlement, the process of settling such cases is integral to the enforcement program. BIS carefully considers each settlement offer in light of the facts and circumstances of the case, relevant precedent, and BIS's objective to achieve in each case an appropriate level of penalty and deterrent effect. In settlement negotiations, BIS encourages parties to provide, and will give serious consideration to, information and evidence that parties believe are relevant to the application of this guidance to their cases, to whether a violation has in fact occurred, or to whether they have an affirmative defense to potential charges.

This guidance does not confer any right or impose any obligation regarding what penalties BIS may seek in litigating a case or what posture BIS may take toward settling a case. Parties do not have a right to a settlement offer, or particular settlement terms, from BIS, regardless of settlement postures BIS has taken in other cases.

I. RESPONDING TO VIOLATIONS

The Office of Export Enforcement (OEE), among other responsibilities, investigates possible violations of the Export Administration Act of 1979, as amended, the EAR, or any order, license or authorization issued thereunder. When it appears that such a violation has occurred, OEE investigations may lead to a warning letter or a civil enforcement proceeding. A violation may also be referred to the Department of Justice for criminal prosecution. The type of enforcement action initiated by OEE will depend primarily on the nature of the violation.

A. *Issuing a warning letter:* Warning letters represent OEE's conclusion that an apparent violation has occurred. In the exercise of its discretion, OEE may determine in certain instances that issuing a warning letter, instead of bringing an administrative enforcement proceeding, will achieve the appropriate enforcement result. A warning letter will fully explain the apparent violation and urge compliance. OEE often issues warning letters for an apparent violation of a technical nature, where good faith efforts to comply with the law and cooperate with the investigation are present, or where the investigation commenced as a result of a voluntary self-disclosure satisfying the requirements of §764.5 of the EAR, provided that no aggravating factors exist.

OEE will not issue a warning letter if it concludes, based on available information, that a violation did not occur. A warning letter does not constitute a final agency determination that a violation has occurred.

B. *Pursuing an administrative enforcement case:* The issuance of a charging letter under §766.3 of the EAR initiates an administrative enforcement proceeding. Charging letters may be issued when there is reason to believe that a violation has occurred. Cases may be settled before or after the issuance of a charging letter. *See* §766.18 of the EAR. BIS prepares a proposed charging letter when a case is settled before issuance of an actual charging letter. *See* section 766.18(a). In some cases, BIS also sends a proposed charging letter to a party in the absence of a settlement agreement, thereby informing the party of the violations that BIS has reason to believe occurred and how BIS expects that those violations would be charged.

C. *Referring for criminal prosecution:* In appropriate cases, BIS may refer a case to the Department of Justice for criminal prosecution, in addition to pursuing an administrative enforcement action.

II. TYPES OF ADMINISTRATIVE SANCTIONS

There are three types of administrative sanctions under §764.3(a) of the EAR: a civil penalty, a denial of export privileges, and an exclusion from practice before BIS. Administrative enforcement cases are generally settled on terms that include one or more of these sanctions.

A. *Civil penalty:* A monetary penalty may be assessed for each violation. The maximum amount of such a penalty per violation is stated in §764.3(a)(1), subject to adjustments under the Federal Civil Penalties Adjustment Act of 1990 (28 U.S.C. 2461, note (2000)), which are codified at 15 CFR 6.4.

B. *Denial of export privileges:* An order denying a party's export privileges may be issued, as described in §764.3(a)(2) of the EAR. Such a denial may extend to all export privileges, as set out in the standard terms for denial orders in Supplement No. 1 to part 764, or may be narrower in scope (*e.g.*, limited to exports of specified items or to specified destinations or customers).

C. *Exclusion from practice:* Under §764.3(a)(3) of the EAR, any person acting as an attorney, accountant, consultant, freight forwarder or other person who acts in a representative capacity in any matter before BIS may be excluded from practicing before BIS.

III. HOW BIS DETERMINES WHAT SANCTIONS ARE APPROPRIATE IN A SETTLEMENT

A. *General Factors:* BIS usually looks to the following basic factors in determining what administrative sanctions are appropriate in each settlement:

Degree of Willfulness: Many violations involve no more than simple negligence or carelessness. In most such cases, BIS typically will seek a settlement for payment of a civil penalty (unless the matter is resolved with a warning letter). In cases involving gross negligence, willful blindness to the requirements of the EAR, or knowing or willful violations, BIS is more likely to seek a denial of export privileges or an exclusion from practice, and/or a greater monetary penalty than BIS would otherwise typically seek. While some violations of the EAR have a degree of knowledge or intent as an element of the offense, *see, e.g.,* §764.2(e) of the EAR (acting with knowledge of a violation) and §764.2(f) (possession with intent to export illegally), BIS may regard a violation of any provision of the EAR as knowing or willful if the facts and circumstances of the case support that conclusion. In deciding whether a knowing violation has occurred, BIS will consider, in accordance with Supplement No. 3 to part 732 of the EAR, the presence of any red flags and the nature and result of any inquiry made by the party. A denial or exclusion order may also be considered even in matters involving simple negligence or carelessness, particularly if the violations(s) involved harm to national security or other essential interests protected by the export control system, if the violations are of such a nature and extent that a monetary fine alone represents an insufficient penalty or if the nature and extent of the violation(s) indicate that a denial or exclusion order is necessary to prevent future violations of the EAR.

Destination Involved: BIS is more likely to seek a greater monetary penalty and/or denial of export privileges or exclusion from practice in cases involving:

(1) Exports or reexports to countries subject to anti-terrorism controls, as described at §742.1(d) of the EAR.

(2) Exports or reexports to destinations particularly implicated by the type of control that applies to the item in question—for example, export of items subject to nuclear controls to a country with a poor record of nuclear non-proliferation.

Violations involving exports or reexports to other destinations may also warrant consideration of such sanctions, depending on factors such as the degree of willfulness involved, the nature and extent of harm to national security or other essential interests protected by the export control system, and what level of sanctions are determined to be necessary to deter or prevent future violations of the EAR.

Related Violations: Frequently, a single export transaction can give rise to multiple violations. For example, an exporter who mis-classifies an item on the Commerce Control List may, as a result of that error, export the item without the required export license and submit a Shipper's Export Declaration (SED) that both misstates the applicable Export Control Classification Number (ECCN) and erroneously identifies the export as qualifying for the designation ''NLR'' (no license required). In so doing, the exporter committed three violations: one violation of §764.2(a) of the EAR for the unauthorized export and two violations of §764.2(g) for the two false statements on the SED. It is within the discretion of BIS to charge three separate violations and settle the case for a penalty that is less than would be appropriate for three unrelated violations under otherwise similar circumstances, or to charge fewer than three violations and pursue settlement in accordance with that charging decision. In exercising such discretion, BIS typically looks to factors such as whether the violations resulted from knowing or willful conduct, willful blindness to the requirements of the EAR, or gross negligence; whether they stemmed from the same underlying error or omission; and whether they resulted in distinguishable or separate harm.

Multiple Unrelated Violations: In cases involving multiple unrelated violations, BIS is more likely to seek a denial of export privileges, an exclusion from practice, and/or a greater monetary penalty than BIS would otherwise typically seek. For example, repeated unauthorized exports could warrant a denial order, even if a single export of the same item to the same destination under similar circumstances might warrant just a monetary penalty. BIS takes this approach because multiple violations may indicate serious compliance problems and a resulting risk of future violations. BIS may consider whether a party has taken effective steps to address compliance concerns in determining whether multiple violations warrant a denial or exclusion order in a particular case.

Timing of Settlement: Under §766.18, settlement can occur before a charging letter is served, while a case is before an administrative law judge, or while a case is before the Under Secretary for Industry and Security under §766.22. However, early settlement—for example, before a charging letter has been served—has the benefit of freeing resources for BIS to deploy in other matters. In contrast, for example, the BIS resources saved by settlement on the eve of an adversary hearing under §766.13 are fewer, insofar as BIS has already expended significant resources on discovery, motions practice, and

trial preparation. Because the effective implementation of the U.S. export control system depends on the efficient use of BIS resources, BIS has an interest in encouraging early settlement and may take this interest into account in determining settlement terms.

Related Criminal or Civil Violations: Where an administrative enforcement matter under the EAR involves conduct giving rise to related criminal or civil charges, BIS may take into account the related violations, and their resolution, in determining what administrative sanctions are appropriate under part 766. A criminal conviction indicates serious, willful misconduct and an accordingly high risk of future violations, absent effective administrative sanctions. However, entry of a guilty plea can be a sign that a party accepts responsibility for complying with the EAR and will take greater care to do so in the future. In appropriate cases where a party is receiving substantial criminal penalties, BIS may find that sufficient deterrence may be achieved by lesser administrative sanctions than would be appropriate in the absence of criminal penalties. Conversely, BIS might seek greater administrative sanctions in an otherwise similar case where a party is not subjected to criminal penalties. The presence of a related criminal or civil disposition may distinguish settlements among civil penalty cases that appear otherwise to be similar. As a result, the factors set forth for consideration in civil penalty settlements will often be applied differently in the context of a ''global settlement'' of both civil and criminal cases, or multiple civil cases, and may therefore be of limited utility as precedent for future cases, particularly those not involving a global settlement.

B. Specific Mitigating and Aggravating Factors: In addition to the general factors described in Section III.A. of this Supplement, BIS also generally looks to the presence or absence of the following mitigating and aggravating factors in determining what sanctions should apply in a given settlement. These factors describe circumstances that, in BIS's experience, are commonly relevant to penalty determinations in settled cases. However, this listing of factors is not exhaustive and, in particular cases, BIS may consider other factors that may indicate the blameworthiness of a party's conduct, the actual or potential harm associated with a violation, the likelihood of future violations, and/or other considerations relevant to determining what sanctions are appropriate.

Where a factor admits of degrees, it should accordingly be given more or less weight. Thus, for example, one prior violation should be given less weight than a history of multiple violations, and a previous violation reported in a voluntary self disclosure by an exporter whose overall export compliance efforts are of high quality should be given less weight than previous violation(s) not involving such mitigating factors.

Some of the mitigating factors listed in this section are designated as having ''great weight.'' When present, such a factor should ordinarily be given considerably more weight than a factor that is not so designated.

Mitigating Factors

1. The party made a voluntary self-disclosure of the violation, satisfying the requirements of §764.5 of the EAR. All voluntary self-disclosures meeting the requirements of §764.5 will be afforded ''great weight,'' relative to other mitigating factors not designated as having ''great weight.'' Voluntary self-disclosures receiving the greatest mitigating effect will typically be those concerning violations that no BIS investigation in existence at the time of the self-disclosure would have been reasonably likely to discover without the self-disclosure. (GREAT WEIGHT)

2. The party has an effective export compliance program and its overall export compliance efforts have been of high quality. In determining the presence of this factor, BIS will take account of the extent to which a party complies with the principles set forth in BIS's Export Management System (EMS) Guidelines. Information about the EMS Guidelines can be accessed through the BIS Web site at *www.bis.doc.gov*. In this context, BIS will also consider whether a party's export compliance program uncovered a problem, thereby preventing further violations, and whether the party has taken steps to address compliance concerns raised by the violation, including steps to prevent reoccurrence of the violation, that are reasonably calculated to be effective. (GREAT WEIGHT)

3. The violation was an isolated occurrence or the result of a good-faith misinterpretation.

4. Based on the facts of a case and under the applicable licensing policy, required authorization for the export transaction in question would likely have been granted upon request.

5. Other than with respect to antiboycott matters under part 760 of the EAR:

(a) The party has never been convicted of an export-related criminal violation;

(b) In the past five years, the party has not entered into a settlement of an export-related administrative enforcement case with BIS or another U.S. Government agency or been found liable in an export-related administrative enforcement case brought by BIS or another U.S. Government agency;

(c) In the past three years, the party has not received a warning letter from BIS; and

(d) In the past five years, the party has not otherwise violated the EAR.

Where necessary to effective enforcement, the prior involvement in export violation(s) of a party's owners, directors, officers, partners, or other related persons may be imputed to a party in determining whether these criteria are satisfied. When an acquiring firm takes reasonable steps to uncover, correct, and disclose to BIS conduct that gave rise to violations by an acquired business before the acquisition, BIS typically will not take such violations into account in applying this factor in settling other violations by the acquiring firm.

6. The party has cooperated to an exceptional degree with BIS efforts to investigate the party's conduct.

7. The party has provided substantial assistance in BIS investigation of another person who may have violated the EAR.

8. The violation was not likely to involve harm of the nature that the applicable provisions of the EAA, EAR or other authority (*e.g.,* a license condition) were intended to protect against; for example, a false statement on an SED that an export was ''NLR,'' when in fact a license requirement was applicable, but a license exception was available.

9. At the time of the violation, the party: (1) Had little or no previous export experience; and (2) Was not familiar with export practices and requirements. (Note: The presence of only one of these elements will not generally be considered a mitigating factor.)

Aggravating Factors

1. The party made a deliberate effort to hide or conceal the violation(s). (GREAT WEIGHT)

2. The party's conduct demonstrated a serious disregard for export compliance responsibilities. (GREAT WEIGHT)

3. The violation was significant in view of the sensitivity of the items involved and/or the reason for controlling them to the destination in question. This factor would be present where the conduct in question, in purpose or effect, substantially implicated national security or other essential interests protected by the U.S. export control system, in view of such factors as the destination and sensitivity of the items involved. Such conduct might include, for example, violations of controls based on nuclear, biological, and chemical weapon proliferation, missile technology proliferation, and national security concerns, and exports proscribed in part 744 of the EAR. (GREAT WEIGHT)

4. The violation was likely to involve harm of the nature that the applicable provisions of the EAA, EAR or other authority (*e.g.,* a license condition) are principally intended to protect against, *e.g.,* a false statement on an SED that an export was destined for a non-embargoed country, when in fact it was destined for an embargoed country.

5. The quantity and/or value of the exports was high, such that a greater penalty may be necessary to serve as an adequate penalty for the violation or deterrence of future violations, or to make the penalty proportionate to those for otherwise comparable violations involving exports of lower quantity or value.

6. The presence in the same transaction of concurrent violations of laws and regulations, other than those enforced by BIS.

7. Other than with respect to antiboycott matters under part 760 of the EAR:

(a) The party has been convicted of an export-related criminal violation;

(b) In the past five years, the party has entered into a settlement of an export-related administrative enforcement case with BIS or another U.S. Government agency or has been found liable in an export-related administrative enforcement case brought by BIS or another U.S. Government agency;

(c) In the past three years, the party has received a warning letter from BIS; or

(d) In the past five years, the party otherwise violated the EAR.

Where necessary to effective enforcement, the prior involvement in export violation(s) of a party's owners, directors, officers, partners, or other related persons may be imputed to a party in determining whether these criteria are satisfied. When an acquiring firm takes reasonable steps to uncover, correct, and disclose to BIS conduct that gave rise to violations by an acquired business before the acquisition, BIS typically will not take such violations into account in applying this factor in settling other violations by the acquiring firm.

8. The party exports as a regular part of the party's business, but lacked a systematic export compliance effort.

In deciding whether and what scope of denial or exclusion order is appropriate, the following factors are particularly relevant: the presence of mitigating or aggravating factors of great weight; the degree of willfulness involved; in a business context, the extent to which senior management participated in or was aware of the conduct in question; the number of violations; the existence and seriousness of prior violations; the likelihood of future violations (taking into account relevant export compliance efforts); and whether a monetary penalty can be expected to have a sufficient deterrent effect.

IV. How BIS Makes Suspension and Deferral Decisions

A. *Civil Penalties:* In appropriate cases, payment of a civil monetary penalty may be deferred or suspended. *See* §764.3(a)(1)(iii) of the EAR. In determining whether suspension or deferral is appropriate, BIS may consider, for example, whether the party has demonstrated a limited ability to pay a penalty that would be appropriate for such violations, so that suspended or deferred payment can be expected to have sufficient deterrent

value, and whether, in light of all of the circumstances, such suspension or deferral is necessary to make the impact of the penalty consistent with the impact of BIS penalties on other parties who committed similar violations.

B. *Denial of Export Privileges and Exclusion from Practice:* In deciding whether a denial or exclusion order should be suspended, BIS may consider, for example, the adverse economic consequences of the order on the respondent, its employees, and other parties, as well as on the national interest in the competitiveness of U.S. businesses. An otherwise appropriate denial or exclusion order will be suspended on the basis of adverse economic consequences only if it is found that future export control violations are unlikely and if there are adequate measures (usually a substantial civil penalty) to achieve the necessary deterrent effect.

[69 FR 7870, Feb. 20, 2004]

PART 768—FOREIGN AVAILABILITY DETERMINATION PROCEDURES AND CRITERIA

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SUPPLEMENT NO. 1 TO PART 768—EVIDENCE OF FOREIGN AVAILABILITY
SUPPLEMENT NO. 2 TO PART 768—ITEMS ELIGIBLE FOR EXPEDITED LICENSING PROCEDURES [RESERVED]

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 12915, Mar. 25, 1996, unless otherwise noted.

§ 768.1 Introduction.

In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C.

(a) *Authority.* Pursuant to sections 5(f) and 5(h) of the Export Administration Act (EAA), the Under Secretary of Commerce for Export Administration directs the Bureau of Industry and Security (BIS) in gathering and analyzing all the evidence necessary for the Secretary to determine foreign availability.

(b) *Scope.* This part applies only to the extent that items are controlled for national security purposes. This part does not apply to encryption items that were formerly controlled on the U.S. Munitions List and that were transferred to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date, which shall not be subject to any mandatory foreign availability review procedures.

(c) *Types of programs.* There are two general programs of foreign availability:

(1) *Foreign availability to controlled countries.* In this category are denied license assessments (see §§768.4(b) and 768.7 of this part) and decontrol assessments (see §§768.4(c) and 768.7 of this part).

(2) *Foreign availability to non-controlled countries.* In this category are denied license assessments, decontrol assessments, and evaluations of eligibility for expedited licensing (see §768.8 of this part).

(d) *Definitions.* The following are definitions of terms used in this part 768:

Allegation. See foreign availability submission.

Assessment. An evidentiary analysis that BIS conducts concerning the foreign availability of a given item based on the assessment criteria, data gathered by BIS, and the data and recommendations submitted by the Departments of Defense and State and other relevant departments and agencies, TAC committees, and industry.

Assessment criteria. Statutorily established criteria that must be assessed for the Secretary to make a determination with respect to foreign availability. They are, available-in-fact, from a non-U.S. source, in sufficient quantity so as to render the control ineffective, and of comparable quality. (See §768.6 of this part).

Available-in-fact. An item is available-in-fact to a country if it is produced within the country or if it may be obtained by that country from a third country. Ordinarily, items will not be considered available-in-fact to non-controlled countries if the items are available only under a validated national security license or a comparable authorization from a country that maintains export controls on such items cooperatively with the United States.

Claimant. Any party who makes a foreign availability submission, excluding TACs.

Comparable quality. An item is of comparable quality to an item controlled under the EAR if it possesses the characteristics specified in the Commerce Control List (CCL) for that item and is alike in key characteristics that include, but are not limited to: (1) Function; (2) technological approach; (3) performance thresholds; (4) maintainability and service life; and (5) any other attribute relevant to the purpose for which the control was placed on the item.

Controlled countries. Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lithuania, Moldova, Mongolia, North Korea, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam and the People's Republic of China.

Decontrol. Removal of license requirements under the EAR.

Decontrol assessment. An assessment of the foreign availability of an item to a country or countries for purposes of determining whether decontrol is warranted. Such assessments may be conducted after BIS receives a foreign availability submission or a TAC certification, or by the Secretary's own initiative.

Denied license assessment. A foreign availability assessment conducted as a result of a claimant's allegation of foreign availability for an item (or items) that BIS has denied or has issued a letter of intent to deny a license. If the Secretary determines that foreign availability exists, BIS's approval of a license will be limited to the items, countries, and quantities in the allegation.

Determination. The Secretary's decision that foreign availability within the meaning of the EAA does or does not exist. (See § 768.7 of this part).

Expedited licensing procedure eligibility evaluation. An evaluation that BIS initiates for the purpose of determining whether an item is eligible for the expedited licensing procedure. (See § 768.8 of this part).

Expedited licensing procedures. Under expedited licensing procedures, BIS reviews and processes a license application for the export of an eligible item to a non-controlled country within statutory time limits. Licenses are deemed approved unless BIS denies within the statutory time limits (See § 768.8 of this part).

Foreign availability submission (FAS). An allegation of foreign availability a claimant makes, supported by reasonable evidence, and submits to BIS. (See § 768.5 of this part).

Item. Any commodity, software, or technology.

Items eligible for non-controlled country expedited licensing procedures. The items described in Supplement No. 2 to this part 768 are eligible for the expedited license procedures (See § 768.8 of this part).

National Security Override (NSO). A Presidential decision to maintain export controls on an item notwithstanding its foreign availability as determined under the EAA. The President's decision is based on his/her determination that the absence of the controls would prove detrimental to the national security of the United States. Once the President makes such a decision, the President must actively pursue negotiations to eliminate foreign availability with the governments of the sources of foreign availability. (See § 768.7 of this part).

Non-controlled countries. Any country not defined as a controlled country by this section.

Non-U.S. source/foreign source. A person located outside the jurisdiction of the United States (as defined in part 772 of the EAR).

Reasonable evidence. Relevant information that is credible.

Reliable evidence. Relevant information that is credible and dependable.

Secretary. As used in this part, the Secretary refers to the Secretary of Commerce or his/her designee.

Similar quality. An item is of similar quality to an item that is controlled under the EAR if it is substantially alike in key characteristics that may include, but are not limited to: (1) Function; (2) technological approach; (3) performance thresholds; (4) maintainability and service life; and (5) any other attribute relevant to the purpose for which the control was placed on the item.

Sufficient quantity. The amount of an item that would render the U.S. export control, or the denial of the license in question, ineffective in achieving its purpose. For a controlled country, it is the quantity that meets the military needs of that country so that U.S. exports of the item to that country would not make a significant contribution to its military potential.

Technical Advisory Committee (TAC). A Committee created under section 5(h) of the EAA that advises and assists the Secretary of Commerce, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under the EAA on export control matters related to specific areas of controlled items.

TAC certification. A statement that a TAC submits to BIS, supported by reasonable evidence, documented as in a FAS, that foreign availability to a controlled country exists for an item that falls within the TAC's area of technical expertise.

[61 FR 12915, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996; 62 FR 25469, May 9, 1997]

§ 768.2 Foreign availability described.

(a) *Foreign availability.* Foreign availability exists when the Secretary determines that an item is comparable in quality to an item subject to U.S. national security export controls, and is available-in-fact to a country, from a non-U.S. source, in sufficient quantities to render the U.S. export control of that item or the denial of a license ineffective. For a controlled country, such control or denial is ''ineffective'' when maintaining such control or denying a specific license would not restrict the availability of items that would make a significant contribution to the military potential of the controlled country or combination of countries detrimental to the national security of the United States (see sections 5(a) and 3(2)(A) of the EAA.)

(b) *Types of foreign availability.* There are two types of foreign availability:

(1) Foreign availability to a controlled country; and

(2) Foreign availability to a non-controlled country.

(NOTE TO PARAGRAPH (b) OF THIS SECTION: See § 768.7 of this part for delineation of the foreign availability assessment procedures, and § 768.6 of this part for the criteria used in determining foreign availability)

§ 768.3 Foreign availability assessment.

(a) *Foreign availability assessment.* A foreign availability assessment is an evidentiary analysis that BIS conducts to assess the foreign availability of a given item according to the assessment criteria, based on data submitted by a claimant, the data gathered by BIS, and the data and recommendations submitted by the Departments of Defense and State and other relevant departments and agencies, TAC committees, and industry. BIS uses the results of the analysis in formulating its recommendation to the Secretary on whether foreign availability exists for a given item. If the Secretary determines that foreign availability exists, the Secretary will decontrol the item for national security reasons or approve the license in question if there is no foreign policy reason to deny the license, unless the President exercises a National Security Override (see § 768.7 of this part). The effect of any such determination on the effectiveness of foreign policy controls may be considered independent of this part.

(b) *Types of assessments.* There are two types of foreign availability assessments:

(1) Denied license assessment; and

(2) Decontrol assessment.

(c) *Expedited licensing procedures.* See § 768.8 of this part for the evaluation of

eligibility of an item for the expedited licensing procedures.

[61 FR 12915, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996]

§768.4 Initiation of an assessment.

(a) *Assessment request.* To initiate an assessment, each claimant or TAC must submit a FAS or a TAC Certification to BIS. TACs are authorized to certify foreign availability only to controlled countries. Claimants can allege foreign availability for either controlled or non-controlled countries.

(b) *Denied license assessment.* A claimant whose license application BIS has denied, or for which it has issued a letter of intent to deny on national security grounds, may request that BIS initiate a denied license assessment by submitting a Foreign Availability Submission (FAS) within 90 days after denial of the license. As part of its submission, the claimant must request that the specified license application be approved on the grounds of foreign availability. The evidence must relate to the particular export as described on the license application and to the alleged comparable item. If foreign availability is found, the Secretary will approve the license for the specific items, countries, and quantities listed on the application. The denied license assessment procedure, however, is not intended to result in the removal of the U.S. export control on an item by incrementally providing a country with amounts that, taken together, would constitute a sufficient quantity of an item. The Secretary will not approve on foreign availability grounds a denied license if the approval of such license would itself render the U.S. export control ineffective in achieving its purpose. In the case of a positive determination, the Secretary will determine whether a decontrol assessment is warranted. If so, then BIS will initiate a decontrol assessment.

(c) *Decontrol assessment.* (1) Any claimant may at any time request that BIS initiate a decontrol assessment by a FAS to BIS alleging foreign availability to any country or countries.

(2) A TAC may request that BIS initiate a decontrol assessment at any time by submitting a TAC Certification to BIS that there is foreign availability to a controlled country for items that fall within the area of the TAC's technical expertise.

(3) The Secretary, on his/her own initiative, may initiate a decontrol assessment.

(d) *BIS mailing address.* All foreign availability submissions and TAC certifications should be submitted to: Department of Commerce, Bureau of Industry and Security, 14th Street and Pennsylvania Avenue, NW, Room 3877, Washington, DC 20230.

§768.5 Contents of foreign availability submissions and Technical Advisory Committee certifications.

(a) All foreign availability submissions must contain, in addition to information on product or technology alleged to be available from foreign sources, at least:

(1) The name of the claimant;

(2) The claimant's mailing and business address;

(3) The claimant's telephone number; and

(4) A contact point and telephone number.

(b) Foreign availability submissions and TAC certifications should contain as much evidence as is available to support the claim, including, but not limited to:

(1) Product names and model designations of the items alleged to be comparable;

(2) Extent to which the alleged comparable item is based on U.S. technology;

(3) Names and locations of the non-U.S. sources and the basis for claiming that the item is a non-U.S. source item;

(4) Key performance elements, attributes, and characteristics of the items on which a qualitative comparison may be made;

(5) Non-U.S. source's production quantities and/or sales of the alleged comparable items and marketing efforts;

(6) Estimated market demand and the economic impact of the control;

(7) Product names, model designations, and value of U.S. controlled parts and components incorporated in the items alleged to be comparable; and

(8) The basis for the claim that the item is available-in-fact to the country or countries for which foreign availability is alleged.

(c) Supporting evidence of foreign availability may include, but is not limited to, the following:

(1) Foreign manufacturers' catalogs, brochures, operation or maintenance manuals;

(2) Articles from reputable trade and technical publications;

(3) Photographs;

(4) Depositions based on eyewitness accounts; and

(5) Other credible evidence.

NOTE TO PARAGRAPH (c) OF THIS SECTION: See Supplement No. 1 to part 768 for additional examples of supporting evidence.

(d) Upon receipt of a FAS or TAC certification, BIS will review it to determine whether there is sufficient evidence to support the belief that foreign availability may exist. If BIS determines the FAS or TAC certification is lacking in supporting evidence, BIS will seek additional evidence from appropriate sources, including the claimant or TAC. BIS will initiate the assessment when it determines that it has sufficient evidence that foreign availability may exist. Claimant and TAC certified assessments will be deemed to be initiated as of the date of such determination.

(e) Claimants and TACs are advised to review the foreign availability assessment criteria described in § 768.6 of this part and the examples of evidence described in Supplement No. 1 to part 768 when assembling supporting evidence for inclusion in the FAS or TAC certification.

§ 768.6 Criteria.

BIS will evaluate the evidence contained in a FAS or TAC certification and all other evidence gathered in the assessment process in accordance with certain criteria that must be met before BIS can recommend a positive determination to the Secretary. The criteria are defined in § 768.1(d) of this part. In order to initiate an assessment, each FAS and TAC certification should address each of these criteria. The criteria are statutorily prescribed and are:

(a) Available-in-fact;

(b) Non-U.S. source;

(c) Sufficient quantity; and

(d) Comparable quality.

§ 768.7 Procedures.

(a) *Initiation of an assessment.* (1) Once BIS accepts a FAS or TAC certification of foreign availability, BIS will notify the claimant or TAC that it is initiating the assessment.

(2) BIS will publish a FEDERAL REGISTER notice of the initiation of any assessment.

(3) BIS will notify the Departments of Defense and State, the intelligence community, and any other departments, agencies and their contractors that may have information concerning the item on which BIS has initiated an assessment. Each such department, agency, and contractor shall provide BIS all relevant information concerning the item. BIS will invite interested departments and agencies to participate in the assessment process (See paragraph (e) of this section).

(b) *Data gathering.* BIS will seek and consider all available information that bears upon the presence or absence of foreign availability, including but not limited to that evidence described in § 768.5 (b) and (c) of this part. As soon as BIS initiates the assessment, it will seek evidence relevant to the assessment, including an analysis of the military needs of a selected country or countries, technical analysis, and intelligence information from the Departments of Defense and State, and other U.S. agencies. Evidence is particularly sought from: industry sources worldwide; other U.S. organizations; foreign governments; commercial, academic and classified data bases; scientific and engineering research and development organizations; and international trade fairs.

(c) *Analysis.* BIS will conduct its analysis by evaluating whether the reasonable and reliable evidence that is relevant to each of the foreign availability criteria provides a sufficient basis to recommend a determination that foreign availability does or does not exist.

(d) *Recommendation and determination.* (1) Upon completion of each assessment, BIS, on the basis of its analysis,

will recommend that the Secretary make a determination either that there is or that there is not foreign availability, whichever the evidence supports. The assessment upon which BIS bases its recommendation will accompany the recommendation to the Secretary.

(2) BIS will recommend on the basis of its analysis that the Secretary determine that foreign availability exists to a country when the available evidence demonstrates that an item of comparable quality is available-in-fact to the country, from non-U.S. sources, in sufficient quantity so that continuation of the existing national security export control, or denial of the license application in question on national security grounds, would be ineffective in achieving its purpose. For a controlled country, such control or denial is ''ineffective'' when comparable items are available-in-fact from foreign sources in sufficient quantities so that maintaining such control or denying a license would not be effective in restricting the availability of items that would make a significant contribution to the military potential of any country or combination of countries detrimental to the national security of the United States.

(3) The Secretary will make the determination of foreign availability on the basis of the BIS assessment and recommendation; the Secretary's determination will take into account the evidence provided to BIS, the recommendations of the Secretaries of Defense and State and any other interested agencies, and any other information that the Secretary considers relevant.

(4) For all decontrol and denied license assessments (under section 5(f)(3) of the EAA) initiated by a FAS, the Secretary will make a determination within 4 months of the initiation of the assessment and will notify the claimant. The Secretary will submit positive determinations for review to the appropriate departments and agencies.

(5) The deadlines for determinations based on self-initiated and TAC-initiated assessments are different from the deadlines for claimant-initiated assessments (see paragraphs (f)(2) and (f)(3) of this section).

(e) *Interagency review*. BIS will notify all appropriate U.S. agencies and Departments upon the initiation of an assessment and will invite their participation in the assessment process. BIS will provide all interested agencies and departments an opportunity to review source material, draft analyses and draft assessments immediately upon their receipt or production. For claimant-initiated assessments, BIS will provide a copy of all positive recommendations and assessments to interested agencies and departments for their review following the Secretary's determination of foreign availability. For self-initiated and TAC-initiated assessments, BIS will provide all interested agencies an opportunity to review and comment on the assessment.

(f) *Notification*. (1) No later than 5 months after the initiation of an assessment based on a FAS (claimant assessments), the Secretary will inform the claimant in writing and will submit for publication in the FEDERAL REGISTER a notice that:

(i) Foreign availability exists, and

(A) The requirement of a license has been removed or the license application in question has been approved; or

(B) The President has determined that for national security purposes the export controls must be maintained or the license application must be denied, notwithstanding foreign availability, and that appropriate steps to eliminate the foreign availability are being initiated; or

(C) In the case of an item controlled multilaterally under the former COCOM regime, the U.S. Government will conduct any necessary consultations concerning the proposed decontrol or approval of the license with the former COCOM regime for a period of up to 4 months from the date of the publication of the determination in the FEDERAL REGISTER (the U.S. Government may remove the license requirement for exports to non-controlled countries pending completion of the former COCOM regime review process); or

(ii) Foreign availability does not exist.

(2) For all TAC certification assessments, the Secretary will make a foreign availability determination within

90 days following initiation of the assessment. BIS will prepare and submit a report to the TAC and to the Congress stating that:

(i) The Secretary has found foreign availability and has removed the license requirement; or

(ii) The Secretary has found foreign availability, but has recommended to the President that negotiations be undertaken to eliminate the foreign availability; or

(iii) The Secretary has not found foreign availability.

(3) There is no statutory deadline for assessments self-initiated by the Secretary or for the resulting determination. However, BIS will make every effort to complete such assessments and determinations promptly.

(g) *Foreign availability to controlled countries.* When the Secretary determines that an item controlled for national security reasons is available to a controlled country and the President does not issue a National Security Override (NSO), BIS will submit the determination to the Department of State, along with a draft proposal for the multilateral decontrol of the item or for the former COCOM regime approval of the license. The Department of State will submit the proposal or the license for former COCOM regime review. The former COCOM regime will have up to 4 months for review of the proposal.

(h) *Foreign availability to non-controlled countries.* If the Secretary determines that foreign availability to non-controlled countries exists, the Secretary will decontrol the item for export to all non-controlled countries where it is found to be available, or approve the license in question, unless the President exercises a National Security Override.

(i) *Negotiations to eliminate foreign availability.* (1) The President may determine that an export control must be maintained notwithstanding the existence of foreign availability. Such a determination is called a National Security Override (NSO) and is based on the President's decision that the absence of the control would prove detrimental to the United States national security. Unless extended (as described in paragraph (i)(7) of this section), an NSO is effective for 6 months. Where the President invokes an NSO, the U.S. Government will actively pursue negotiations with the government of any source country during the 6 month period to eliminate the availability.

(2) There are two types of National Security Overrides:

(i) An NSO of a determination of foreign availability resulting from an assessment initiated pursuant to section 5(f) of the EAA (claimant and self-initiated assessments); and

(ii) An NSO of a determination of foreign availability resulting from an assessment initiated pursuant to section 5(h) of the EAA (TAC-certification assessments).

(3) For an NSO resulting from an assessment initiated under section 5(f) of the EAA, the Secretary of any agency may recommend that the President exercise the authority under the EAA to retain the controls or deny the license notwithstanding the finding of foreign availability.

(4) For an NSO resulting from an assessment initiated under section 5(h) of the EAA, the Secretary of Commerce may recommend that the President exercise the authority under the EAA to retain the controls notwithstanding the finding of foreign availability.

(5) Under an NSO resulting from an assessment initiated under section 5(f) of the EAA, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives will be notified of the initiation of the required negotiations. The notice will include an explanation of the national security interest that necessitates the retention of controls.

(6) Under an NSO resulting from an assessment initiated under section 5(f) of the EAA, BIS will publish notices in the FEDERAL REGISTER consisting of:

(i) The Secretary's determination of foreign availability;

(ii) The President's decision to exercise the NSO;

(iii) A concise statement of the basis for the President's decision; and

(iv) An estimate of the economic impact of the decision.

(7) The 6 month effective period for an NSO may be extended up to an additional 12 months if, prior to the end of

the 6 months, the President certifies to Congress that the negotiations are progressing, and determines that the absence of the controls would continue to be detrimental to the United States national security.

(8) After the conclusion of negotiations, BIS will retain the control only to the extent that foreign availability is eliminated. If foreign availability is not eliminated, BIS will decontrol the item by removing the requirement for a license for the export of the item to the destinations covered by the assessment. To the extent that the negotiations are successful and the foreign availability is eliminated, BIS will remove the license requirement for the export of the item to any country that has agreed to eliminate foreign availability.

(j) *Changes in foreign availability*. If BIS becomes aware of conditions, including new evidence, that affect a previous determination that foreign availability exists or does not exist, BIS may review the conditions. If BIS finds that the foreign availability previously determined no longer exists, or that foreign availability not earlier found now does exist, BIS will make a recommendation to the Secretary of Commerce for the appropriate changes in the control. The Secretary of Commerce will make a determination, and BIS will publish a FEDERAL REGISTER notice of the determination.

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

(a) BIS determines the eligibility of an item for expedited licensing procedures on the basis of an evaluation of the foreign availability of the item. Eligibility is specific to the items and the countries to which they are found to be available.

(b) BIS will initiate an eligibility evaluation:

(1) On its own initiative;

(2) On receipt of a FAS; or

(3) On receipt of a TAC certification.

(c) Upon initiation of an eligibility evaluation following receipt of either a FAS or TAC certification, BIS will notify the claimant or TAC of the receipt and initiation of an evaluation and publish a FEDERAL REGISTER notice of the initiation of the evaluation.

(d) The criteria for determining eligibility for expedited licensing procedures are:

(1) The item must be available-in-fact to the specified

non-controlled country from a foreign source;

(2) The item must be of a quality similar to that of the U.S.-controlled item; and

(3) The item must be available-in-fact to the specified non-controlled country without effective restrictions.

(e) Within 30 days of initiation of the evaluation, the Secretary of Commerce will make a determination of foreign availability on the basis of the BIS evaluation and recommendation, taking into consideration the evidence the Secretaries of Defense, State, and other interested agencies provide to BIS and any other information that the Secretary considers relevant.

(f) Within 30 days of the receipt of the FAS or TAC certification, BIS will publish the Secretary's determination in the FEDERAL REGISTER, that the item will or will not be eligible for expedited licensing procedures to the stated countries and, where appropriate, amend Supplement No. 2 to part 768.

(g) Following completion of a self-initiated evaluation, BIS will be notified of the Secretary's determination and, where appropriate, Supplement No. 2 to part 768 will be amended.

(h) Foreign availability submissions and TAC certifications to initiate an expedited licensing procedure evaluation must be clearly designated on their face as a request for expedited licensing procedure and must specify the items, quantities and countries alleged eligible. Submissions and certifications should be sent to: Department of Commerce, Bureau of Industry and Security, 14th Street and Pennsylvania Avenue, NW., Room 3877, Washington, DC 20230.

§768.9 Appeals of negative foreign availability determinations.

Appeals of negative determinations will be conducted according to the standards and procedures described in

part 756 of the EAR. A Presidential decision (NSO) to deny a license or continue controls notwithstanding a determination of foreign availability is not subject to appeal.

§ 768.10 Removal of controls on less sophisticated items.

Where the Secretary has removed national security controls on an item for foreign availability reasons, the Secretary will also remove controls on similar items that are controlled for national security reasons and whose functions, technological approach, performance thresholds, and other attributes that form the basis for national security export controls do not exceed the technical parameters of the item that BIS has decontrolled for foreign availability reasons.

SUPPLEMENT NO. 1 TO PART 768—EVIDENCE OF FOREIGN AVAILABILITY

This supplement provides a list of examples of evidence that the Bureau of Industry and Security (BIS) has found to be useful in conducting assessments of foreign availability. A claimant submitting evidence supporting a claim of foreign availability should review this list for suggestions as evidence is collected. Acceptable evidence indicating possible foreign availability is not limited to these examples, nor is any one of these examples, usually, in and of itself, necessarily sufficient to meet a foreign availability criterion. A combination of several types of evidence for each criterion usually is required. A Foreign Availability Submission (FAS) should include as much evidence as possible on all four of the criteria listed below. BIS combines the submitted evidence with the evidence that it collects from other sources. BIS evaluates all evidence, taking into account factors that may include, but are not limited to: Information concerning the source of the evidence, corroborative or contradictory indications, and experience concerning the reliability or reasonableness of such evidence. BIS will assess all relevant evidence to determine whether each of the four criteria has been met. Where possible, all information should be in writing. If information is based on third party documentation, the submitter should provide such documentation to BIS. If information is based on oral statements a third party made, the submitter should provide a memorandum of the conversation to BIS if the submitter cannot obtain a written memorandum from the source. BIS will amend this informational list as it identifies new examples of evidence.

(a) Examples of evidence of foreign availability:

The following are intended as examples of evidence that BIS will consider in evaluating foreign availability. BIS will evaluate all evidence according to the provisions in § 768.7(c) of this part in order for it to be used in support of a foreign availability determination. This list is illustrative only.

(1) *Available-in-fact:*

(i) Evidence of marketing of an item in a foreign country (e.g., an advertisement in the media of the foreign country that the item is for sale there);

(ii) Copies of sales receipts demonstrating sales to foreign countries;

(iii) The terms of a contract under which the item has been or is being sold to a foreign country;

(iv) Information, preferably in writing, from an appropriate foreign government official that the government will not deny the sale of an item it produces to another country in accordance with its laws and regulations;

(v) Information, preferably in writing, from a named company official that the company legally can and would sell an item it produces to a foreign country;

(vi) Evidence of actual shipments of the item to foreign countries (e.g., shipping documents, photographs, news reports);

(vii) An eyewitness report of such an item in operation in a foreign country, providing as much information as available, including where possible the make and model of the item and its observed operating characteristics;

(viii) Evidence of the presence of sales personnel or technical service personnel in a foreign country;

(ix) Evidence of production within a foreign country;

(x) Evidence of the item being exhibited at a trade fair in a foreign country, particularly for the purpose of inducing sales of the item to the foreign country;

(xi) A copy of the export control laws or regulations of the source country, showing that the item is not controlled; or

(xii) A catalog or brochure indicating the item is for sale in a specific country.

(2) *Foreign (non-U.S.) source:*

(i) Names of foreign manufacturers of the item including, if possible, addresses and telephone numbers;

(ii) A report from a reputable source of information on commercial relationships that a foreign manufacturer is not linked financially or administratively with a U.S. company;

(iii) A list of the components in the U.S. item and foreign item indicating model numbers and their sources;

(iv) A schematic of the foreign item identifying its components and their sources;

(v) Evidence that the item is a direct product of foreign technology (e.g., a patent law suit lost by a U.S. producer, a foreign patent);

(vi) Evidence of indigenous technology, production facilities, and the capabilities at those facilities; or

(vii) Evidence that the parts and components of the item are of foreign origin or are exempt from U.S. licensing requirements by the parts and components provision §732.4 of the EAR.

(3) *Sufficient quantity:*

(i) Evidence that foreign sources have the item in serial production;

(ii) Evidence that the item or its product is used in civilian applications in foreign countries;

(iii) Evidence that a foreign country is marketing in the specific country an item of its indigenous manufacture;

(iv) Evidence of foreign inventories of the item;

(v) Evidence of excess capacity in a foreign country's production facility;

(vi) Evidence that foreign countries have not targeted the item or are not seeking to purchase it in the West;

(vii) An estimate by a knowledgeable source of the foreign country's needs; or

(viii) An authoritative analysis of the worldwide market (i.e., demand, production rate for the item for various manufacturers, plant capacities, installed tooling, monthly production rates, orders, sales and cumulative sales over 5–6 years).

(4) *Comparable quality:*

(i) A sample of the foreign item;

(ii) Operation or maintenance manuals of the U.S. and foreign items;

(iii) Records or a statement from a user of the foreign item;

(iv) A comparative evaluation, preferably in writing, of the U.S. and foreign items by, for example, a western producer or purchaser of the item, a recognized expert, a reputable trade publication, or independent laboratory;

(v) A comparative list identifying, by manufacturers and model numbers, the key performance components and the materials used in the item that qualitatively affect the performance of the U.S. and foreign items;

(vi) Evidence of the interchangeability of U.S. and foreign items;

(vii) Patent descriptions for the U.S. and foreign items;

(viii) Evidence that the U.S. and foreign items meet a published industry, national, or international standard;

(ix) A report or eyewitness account, by deposition or otherwise, of the foreign item's operation;

(x) Evidence concerning the foreign manufacturers' corporate reputation;

(xi) Comparison of the U.S. and foreign end item(s) made from a specific commodity, tool(s), device(s), or technical data; or

(xii) Evidence of the reputation of the foreign item including, if possible, information on maintenance, repair, performance, and other pertinent factors.

SUPPLEMENT NO. 2 TO PART 768—ITEMS ELIGIBLE FOR EXPEDITED LICENSING PROCEDURES [RESERVED]

PART 770—INTERPRETATIONS

Sec.
770.1 Introduction.
770.2 Item interpretations.
770.3 Interpretations related to exports of technology and software to destinations in Country Group D:1.

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

§770.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part provides commodity, technology, and software interpretations. These interpretations clarify the scope of controls where such scope is not readily apparent from the Commerce Control List (CCL) (see Supplement No. 1 to part 774 of the EAR) and other provisions of the Export Administration Regulations.

§770.2 Item interpretations.

(a) *Interpretation 1: Anti-friction bearing or bearing systems and specially designed parts.* (1) Anti-friction bearings or bearing systems shipped as spares or replacements are classified under 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) or Automated Export System (AES) record, 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 or AES record in sufficient detail to be identified under the proper ECCN. When commodities declared as parts, accessories, or equipment are shipped in bulk, or are otherwise not packaged, packed, or sorted in accordance with normal trade practices, the Customs Officer may require evidence that the shipment is not scrap. Such evidence may include, but is not limited to, bills of sale, orders

and correspondence indicating whether the commodities are scrap or are being exported for use as parts, accessories, or equipment.

(g) *Interpretation 7: Scrap arms, ammunition, and implements of war.* Arms, ammunition, and implements of war, as defined in the U.S. Munitions List, and are under the jurisdiction of the U.S. Department of State (22 CFR parts 120 through 130), except for the following, which are under the jurisdiction of the Department of Commerce:

(1) Cartridge and shell cases that have been rendered useless beyond the possibility of restoration to their original identity by means of excessive heating, flame treatment, mangling, crushing, cutting, or by any other method are ''scrap''.

(2) Cartridge and shell cases that have been sold by the armed services as ''scrap'', whether or not they have been heated, flame-treated, mangled, crushed, cut, or reduced to scrap by any other method.

(3) Other commodities that may have been on the U.S. Munitions List are ''scrap'', and therefore under the jurisdiction of the Department of Commerce, if they have been rendered useless beyond the possibility of restoration to their original identity only by means of mangling, crushing, or cutting. When in doubt as to whether a commodity covered by the Munitions List has been rendered useless, exporters should consult the Directorate of Defense Trade Controls, U.S. Department of State, Washington, DC 20520, or the Exporter Counseling Division, Office of Exporter Services, Room 1099A, U.S. Department of Commerce, Washington, DC 20230, before reporting a shipment as metal scrap.

(h) *Interpretation 8: Ground vehicles.* (1) The U.S. Department of Commerce, Bureau of Industry and Security has export licensing jurisdiction over ground transport vehicles (including trailers), parts, and components therefor specially designed or modified for non-combat military use. Vehicles in this category are primarily transport vehicles designed or modified for transporting cargo, personnel and/or equipment, or to move other vehicles and equipment over land and roads in close support of fighting vehicles and troops. The U.S. Department of Commerce, Bureau of Industry and Security also has export licensing jurisdiction over unarmed all-wheel drive vehicles capable of off-road use which have been manufactured or fitted with materials to provide ballistic protection, including protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better if they do not have armor described in 22 CFR part 121, Category XIII. In this section, and in ECCN 9A018, the word ''unarmed'' means not having weapons installed, not having mountings for weapons installed, and not having special reinforcements for mountings for weapons.

(2) Modification of a ground vehicle for military use entails a structural, electrical or mechanical change involving one or more specially designed military components. Such components include, but are not limited to:

(i) Pneumatic tire casings of a kind designed to be bullet-proof or to run when deflated;

(ii) Tire inflation pressure control systems, operated from inside a moving vehicle;

(iii) Armored protection of vital parts, (*e.g.*, fuel tanks or vehicle cabs); and

(iv) Special reinforcements for mountings for weapons.

(3) *Scope of ECCN 9A018.b.* Ground transport vehicles (including trailers) and parts and components therefor specially designed or modified for non-combat military use are controlled by ECCN 9A018.b. Unarmed all-wheel drive vehicles capable of off-road use that are not described in paragraph (h)(4) of this section and which have been manufactured or fitted with materials to provide ballistic protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better are controlled by ECCN 9A018.b. ECCN 9A018.b. does not cover civil automobiles, or trucks designed or modified for transporting money or valuables, having armored or ballistic protection, even if the automobiles or trucks incorporate items described in paragraphs (h)(2) (i), (ii), or (iii) of this section. In this section, the term ''civil automobile'' means a passenger car, limousine, van or sport utility vehicle

designed for the transportation of passengers and marketed through civilian channels in the United States, but does not include any all-wheel drive vehicle capable of off-road use which has been manufactured or fitted with materials to provide ballistic protection at level III (National Institute of Justice Standard 0108.01, September 1985) or better, nor does it include any vehicle described in paragraph (h)(4) of this section. Ground vehicles that are not described in paragraph (h)(4) of this section and that are not covered by either ECCN 9A018.b or 9A990 are EAR99, meaning that they are subject to the EAR, but not listed in any specific ECCN.

(4) *Related control.* The Department of State, Directorate of Defense Trade Controls has export licensing jurisdiction for all military ground armed or armored vehicles and parts and components specific thereto as described in 22 CFR part 121, Category VII. The Department of State, Directorate of Defense Trade Controls also has export licensing jurisdiction for all-wheel drive vehicles capable of off-road use that have been armed or armored with articles described in 22 CFR part 121 or that have been manufactured or fitted with special reinforcements for mounting arms or other specialized military equipment described in 22 CFR part 121.

(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 or not your chemicals are controlled by this entry.

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

Ammonium difluoride
Ammonium hydrofluoride
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-diisopropylethanamine
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-cholorethane
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) [Reserved]

(21) (C.A.S. #1498–40–4) Ethylphosphonous dichloride
Dichloroethylphosphine
Ethyl phosphonous dichloride
Ethyldichlorophosphine

(22) (C.A.S. #430–78–4) Ethylphosphonus difluoride
Ethyldifluorophosphine

(23) (C.A.S. #1066–50–8) Ethylphosphonyl dichloride
Dichloroethylphosphine oxide
Ethanephosphonyl chloride
Ethylphosphinic dichloride
Ethylphosphonic acid dichloride
Ethylphosphonic dichloride

(24) [Reserved]

(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-Hydroxyl-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)—(31) [Reserved]

(32) (C.A.S. #10025–87–3) Phosphorus oxychloride
Phosphonyl trichloride
Phosphoric chloride
Phosphoric trichloride
Phosphoroxychloride
Phosphoroxytrichloride
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 dicholoride
(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

(l) *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 regardles 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.

(3) Computer systems with ''non-uniform memory access'' (NUMA) architecture should use the non-shared memory method in determining the CTP value for the system. In determining the aggregate performance of Computing Elements (CEs) for NUMA systems, exporters should follow the instructions for groups of CEs not sharing memory, interconnected by one or more data channels.

NOTE TO PARAGRAPH (l)(3): Non-Uniform Memory Access (NUMA): A multiprocessing architecture in which memory is separated into local and distant banks. NUMA is characterized by memory on the same processor board as the processor (local memory) is accessed faster than memory on other processor boards (distant memory).

(m) *Interpretation 13: Encryption commodities and software controlled for EI reasons.* Encryption commodities and software controlled for EI reasons

under ECCNs 5A002 and 5D002 may be pre-loaded on a laptop, handheld device or other computer or equipment and exported under the tools of trade provision of License Exception TMP or the personal use exemption under License Exception BAG, subject to the terms and conditions of such License Exceptions. This provision replaces the personal use exemption of the International Traffic and Arms Regulations (ITAR) that existed for such software prior to December 30, 1996. Neither License Exception TMP nor License Exception BAG contains a reporting requirement. Like other ''information security'' ''software'', components, ''electronic assemblies'' or modules, the control status of encryption commodities and software is determined in Category 5, part 2 even if they are bundled, commingled or incorporated in a computer or other equipment. However, commodities and software specially designed for medical end-use that incorporate an item in Category 5, part 2 are not controlled in Category 5, part 2. *See* Note 1 to Category 5, part 2 (''Information Security'') of Supplement No. 1 to Part 774 (the Commerce Control List) of the EAR.

(n) *Interpretation 14:* Encryption commodity and software reviews. Review of encryption commodities or software is required to determine the eligibility of certain encryption items under License Exception ENC (see § 740.17 of the EAR) or to release certain encryption items from ''EI'' controls (see § 742.15(b)(2) of the EAR). Note that subsequent bundling, patches, upgrades or releases, including name changes, may be exported or reexported under the applicable provisions of the EAR without further review as long as the functional encryption capacity of the originally reviewed product has not been modified or enhanced. This interpretation does not extend to products controlled under a different category on the CCL.

[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; 63 FR 50525, Sept. 22, 1998; 65 FR 62609, Oct. 19, 2000; 66 FR 49525, Sept. 28, 2001; 67 FR 38868, June 6, 2002; 68 FR 35786, June 17, 2003; 68 FR 50474, Aug. 21, 2003; 69 FR 23601, Apr. 29, 2004; 69 FR 42865, July 19, 2004; 69 FR 52992, Aug. 31, 2004]

§ 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 § 740.13(a) of the EAR; sales technology described in § 740.13(b) of the EAR; and software updates described in § 740.13(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 is 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; 65 FR 14860, Mar. 20, 2000]

PART 772—DEFINITIONS OF TERMS

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

SOURCE: 61 FR 12925, Mar. 25, 1996, unless otherwise noted.

§772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

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. If a term is used in only one Export Control Classification Number (ECCN) on the CCL, then that term will *not* appear in this part, but will be defined in the Related Definitions paragraph in the List of Items Controlled Section of that ECCN.

AES. See ''Automated Export System.''

''*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 minimum (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.

AES. See ''Automated Export System.''

Agricultural commodities. Agricultural commodities include food (including processed food); feed; fish; shellfish and fish products; beer, wine and spirits; livestock; fiber including cotton, wool and other fibers; tobacco and tobacco products; wood and wood products; seeds; fertilizer and organic fertilizer; reproductive materials such as fertilized eggs, embryos and semen. For the purposes of the EAR, agricultural commodities do not include furniture made from wood; clothing manufactured from plant or animal materials; agricultural equipment (whether hand tools or motorized equipment); pesticides, insecticides, or herbicides; or cosmetics (unless derived entirely from plant materials).

NOTE 1: This definition of agricultural commodities includes fertilizer and organic fertilizer, as listed in section 775 of the 2001 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (Act) (Public Law 106–387) and commodities listed in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602) as incorporated in section 902 of the Act, as well as commodities determined by the Department of Agriculture to fall within the scope of section 102 of the 1978 Agricultural Trade Act.

NOTE 2: For purposes of License Exception AGR (see §740.18 of the EAR), agricultural commodities also include vitamins, minerals, food additives and dietary supplements, and bottled water. These items do not fall within the scope of section 102 of the 1978 Agricultural Trade Act, but are treated as agricultural commodities for the purposes of License Exception AGR.

NOTE 3: For purposes of License Exception AGR and export license applications to Iran and Sudan under the licensing procedures set forth in the appropriate regulations promulgated and administered by Treasury's Office of Foreign Assets Control, agricultural commodities only include those that are classified as EAR99.

''*Aircraft*.'' (Cat 1, 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.

''*All compensations available*.'' (Cat 2) means after all feasible measures available to the manufacturer to minimize all systematic positioning errors for

the particular machine-tool model are considered.

Allocated by the ITU. (Cat 3 and Cat 5 part 1)—The allocation of frequency bands according to the current edition of the ITU Radio Regulations for primary, permitted and secondary services.

N.B. Additional and alternative allocations are not included.

''*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. The person who applies for an export or reexport license, and who has the authority of a principal party in interest to determine and control the export or reexport of items. See § 748.4 of the EAR and definition for ''exporter'' in this part of the EAR.

''*Asymmetric algorithm.*'' (Cat 5) means a cryptographic algorithm using different, mathematically-related keys for encryption and decryption.

Technical Note: A common use of ''asymmetric algorithms'' is key management.

''*Asynchronous transfer mode*''. (''ATM'') (Cat 5)—A transfer mode in which the information is organized into cells; it is asynchronous in the sense that the recurrence of cells depends on the required or instantaneous bit rate.

Australia Group. The countries participating in the Australia Group have agreed to adopt harmonized controls on certain dual-use chemicals (*i.e.,* precursor chemicals), biological agents, related manufacturing facilities and equipment, and related technology in order to ensure that exports of these items do not contribute to the proliferation of chemical or biological weapons. Countries participating in the Australia Group as of August 1, 2005, include: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (South), Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States. See also § 742.2 of the EAR.

Automated Export System (AES). AES is a nationwide system operational at all ports and for all methods of transportation through which export shipment data required by multiple agencies is filed electronically to Customs, using the efficiencies of Electronic Data Interchange (EDI). AES provides an alternative to filing paper Shipper's Export Declarations (SEDs), so that export information is collected electronically and edited immediately. For more information about AES, visit the Bureau of Census website at: *http://www.customs.ustreas.gov/impoexpo/abaesint.htm.*

''*Automatic target tracking*''. (Cat 6)—A processing technique that automatically determines and provides as output an extrapolated value of the most probable position of the target in real time.

Bank. Means any of the following:

(a) Bank, savings association, credit union, bank holding company, bank or savings association service corporation, Edge Act corporation, Agreement corporation, or any insured depository institution, which is organized under the laws of the United States or any State and regulated or supervised by a Federal banking agency or a State bank supervisor; or

(b) A company organized under the laws of a foreign country and regulated or supervised by a foreign bank regulatory or supervisory authority which engages in the business of banking, including without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating; or

(c) An entity engaged in the business of providing clearing or settlement services, that is, or whose members are, regulated or supervised by a Federal banking agency, a State bank supervisor, or a foreign bank regulatory or supervisory authority; or

(d) A branch or affiliate of any of the entities listed in paragraphs (a), (b), or (c) of this definition, regulated or supervised by a Federal banking agency, a State bank supervisor or a foreign bank regulatory or supervisory authority; or

(e) An affiliate of any of the entities listed in paragraph (a), (b), (c), or (d) of this definition, engaged solely in the business of providing data processing services to a bank or financial institution, or a branch of such an affiliate.

''*Basic gate propagation delay time.*'' (Cat 3) The propagation delay time value corresponding to the basic gate used in a ''monolithic integrated circuit.'' For a 'family' of ''monolithic integrated circuits'', this may be specified either as the propagation delay time per typical gate within the given 'family' or as the typical propagation delay time per gate within the given 'family'.

Technical Notes: 1. ''Basic gate propagation delay time'' is not to be confused with the input/output delay time of a complex ''monolithic integrated circuit.''

2. 'Family' consists of all integrated circuits to which all of the following are applied as their manufacturing methodology and specifications except their respective functions:

a. The common hardware and software architecture;

b. The common design and process technology; *and*

c. The common basic characteristics.

''*Basic Scientific Research*''. (GTN)—Experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.

''*Bias*''. (accelerometer) (Cat 7)—An accelerometer output when no acceleration is applied.

Bill of Lading. The contract of carriage and receipt for items, issued by the carrier. It includes an air waybill, but does not include an inland bill of lading or a domestic air waybill covering movement to port only.

Business Unit. As applied to encryption items, means a unit of a business which, whether or not separately incorporated, has:

(a) A distinct organizational structure which does not overlap with other business units of the same business;

(b) A distinct set of accounts; and

(c) Separate facilities for purchase, sale, delivery, and production of goods and services.

CCL. See Commerce Control List.

CCL Group. The Commerce Control List (CCL) is divided into 10 categories. Each category is subdivided into five groups, designated by the letters A through E: (A) Equipment, assemblies and components; (B) Test, inspection and production equipment; (C) Materials; (D) Software; and (E) Technology. See § 738.2(b) of the EAR.

''*CE*'' See ''Computing Element.''

''*CTP*'' See ''Composite theoretical performance.'' This term may also appear without quotation marks.

''*Camming*''. (axial displacement) (Cat 2)—Axial displacement in one revolution of the main spindle measured in a plane perpendicular to the spindle faceplate, at a point next to the circumference of the spindle faceplate (Ref.: ISO 230 Part 1–1986, paragraph 5.63).

Canadian airline. Any citizen of Canada who is authorized by the Canadian Government to engage in business as an airline. For purposes of this definition, a Canadian citizen is:

(a) A natural person who is a citizen of Canada; or

(b) A partnership of which each member is such an individual; or

(c) A Canadian firm incorporated or otherwise organized under the laws of Canada or any Canadian province, having a total foreign stock interest not greater than 40 percent and having the Chairman or Acting Chairman and at least two-thirds of the Directors thereof Canadian citizens.

''*Capable of*''. (MTCR context)—See ''usable in''.

''*Carbon fiber preforms.*'' (Cat 1) means an ordered arrangement of uncoated or coated fibers intended to constitute a framework of a part before the ''matrix'' is introduced to form a ''composite.''

Category. The Commerce Control List (CCL) is divided into ten categories: (0) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (1) Materials, Chemicals, ''Microorganisms'',

and Toxins; (2) Materials Processing; (3) Electronics Design, Development and Production; (4) Computers; (5) Telecommunications and Information Security; (6) Sensors; (7) Navigation and Avionics; (8) Marine; (9) Propulsion Systems, Space Vehicles, and Related Equipment. See § 738.2(a) of the EAR.

''*Chemical laser*''. (Cat 6)—A ''laser'' in which the excited species is produced by the output energy from a chemical reaction.

Chemical Weapons Convention (CWC). Means ''The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction'', opened for signature on January 13, 1993.

''*Circulation-controlled, anti-torque or circulation-controlled direction control systems*'' (Cat 7)—Control systems using air blown over aerodynamic surfaces to increase or control the forces generated by the surfaces.

''*Civil aircraft*''. (Cat 1, 7, and 9)—those ''aircraft'' listed by designation in published airworthiness certification lists by the civil aviation authorities to fly commercial civil internal and external routes or for legitimate civil, private or business use. (See also ''aircraft'')

COCOM (Coordinating Committee on Multilateral Export Controls). A multilateral organization that cooperated in restricting strategic exports to controlled countries. COCOM was officially disbanded on March 31, 1994. COCOM members included: Australia, Belgium, Canada, Denmark, France, Germany, Greece, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Turkey, United Kingdom, and United States.

Commerce Control List (CCL). A list of items under the export control jurisdiction of the Bureau of Industry and Security, U.S. Department of Commerce. Note that certain additional items described in part 732 of the EAR are also subject to the EAR. The CCL is found in Supplement No. 1 to part 774 of the EAR.

''*Commingled*''. (Cat 1)—Filament to filament blending of thermoplastic fibers and reinforcement fibers in order to produce a fiber reinforcement/matrix mix in total fiber form.

''*Comminution*''. (Cat 1)—A process to reduce a material to particles by crushing or grinding.

Commodity. Any article, material, or supply except technology and software. Note that the provisions of the EAR applicable to the control of software (e.g. publicly available provisions) are not applicable to encryption software. Encryption software is controlled because, like the items controlled under ECCN 5A002, it has a functional capacity to encrypt information on a computer system, and not because of any informational or theoretical value that such software may reflect, contain or represent, or that its export may convey to others abroad.

''*Common channel signalling*''. (Cat 5)—A signalling method in which a single channel between exchanges conveys, by means of labelled messages, signalling information relating to a multiplicity of circuits or calls and other information such as that used for network management.

''*Composite*''. (Cat 1, 2, 6, 8, and 9)—A ''matrix'' and an additional phase or additional phases consisting of particles, whiskers, fibers or any combination thereof, present for a specific purpose or purposes.

''*Composite theoretical performance*''. (CTP) (Cat 3 and 4)—A measure of computational performance given in millions of theoretical operations per second (Mtops), calculated using the aggregation of ''computing elements (CE)''. (See Category 4, Technical Note.) This term may also appear without quotation marks. The formula to calculate the CTP is contained in a technical note titled ''Information on How to Calculate ''Composite Theoretical Performance'' at the end of Category 4 of the CCL.

''*Compound rotary table*''. (Cat 2)—A table allowing the workpiece to rotate and tilt about two non-parallel axis that can be coordinated simultaneously for ''contouring control''.

''*Computing element*''. (CE) (Cat 4)—The smallest computational unit that produces an arithmetic or logic result.

''*Contouring control*''. (Cat 2)—Two or more ''numerically controlled'' motions operating in accordance with instructions that specify the next required position and the required feed

rates to that position. These feed rates are varied in relation to each other so that a desired contour is generated (Ref. ISO/DIS 2806—1980).

Controlled country. Countries designated controlled for national security purposes under authority delegated to the Secretary of Commerce by Executive Order 12214 of May 2, 1980 pursuant to section 5(b) of the EAA. The controlled countries are: Albania, Armenia, Azerbaijan, Belarus, Cambodia, Cuba, the People's Republic of China, Georgia, Iraq, Kazakstan, Kyrgyzstan, Laos, Macau, Moldova, Mongolia, North Korea, Russia, Tajikstan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam. All of the controlled countries except Cuba are listed in Country Group D:1 of the EAR. Cuba is listed in Country Group E:2. This definition does not apply to part 768 of the EAR (Foreign Availability), which provides a dedicated definition.

Controlled in fact. For purposes of the Special Comprehensive License (part 752 of the EAR), controlled in fact is defined as it is under the Restrictive Trade Practices or Boycotts (§ 760.1(c) of the EAR).

Cooperating country. A country that cooperated with the former COCOM member countries in restricting strategic exports in accordance with COCOM standards. The ''Cooperating Countries'' are: Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Sweden, and Switzerland.

Countries supporting international terrorism. In accordance with section 6(j) of the Export Administration Act of 1979, as amended (EAA), the Secretary of State has determined that the following countries' governments have repeatedly provided support for acts of international terrorism: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

Country Chart. A chart, found in Supplement No. 1 to part 738 of the EAR, that contains certain licensing requirements based on destination and reason for control. In combination with the CCL, the Country Chart indicates when a license is required for any item on the CCL to any country in the world under General Prohibition One (Exports and Reexports in the Form Received), General Prohibition Two (Parts and Components Reexports), and General Prohibition Three (Foreign Produced Direct Product Reexports). See part 736 of the EAR.

Country Groups. For export control purposes, foreign countries are separated into five country groups designated by the symbols A, B, C, D, and E. (See Supplement No. 1 to part 740 of the EAR for a list of countries in each Country Group.)

''*Critical temperature*''. (Cat 1, 3, and 6)—The ''critical temperature'' (sometimes referred to as the transition temperature) of a specific ''superconductive'' material is the temperature at which the material loses all resistance to the flow of direct electrical current.

''*Cryptanalytic items*''. Systems, equipment, applications, specific electronic assemblies, modules and integrated circuits designed or modified to perform cryptanalytic functions, software having the characteristics of cryptanalytic hardware or performing cryptanalytic functions, or technology for the development, production or use of cryptanalytic commodities or software.

NOTES: 1. Cryptanalytic functions may include cryptanalysis, which is the analysis of a cryptographic system or its inputs and outputs to derive confidential variables or sensitive data including clear text. (ISO 7498–2–1988(E), paragraph 3.3.18).

2. Functions specially designed and limited to protect against malicious computer damage or unauthorized system intrusion (e.g., viruses, worms and trojan horses) are not construed to be cryptanalytic functions.

''*Cryptography*''. (Cat 5)—The discipline that embodies principles, means and methods for the transformation of data in order to hide its information content, prevent its undetected modification or prevent its unauthorized use. ''Cryptography'' is limited to the transformation of information using one or more ''secret parameters'' (e.g., crypto variables) and/or associated key management.

NOTE: ''Secret parameter'': a constant or key kept from the knowledge of others or shared only within a group.

Customs officer. The Customs officers in the U.S. Customs Service and postmasters unless the context indicates otherwise.

''*Data signalling rate.*'' (Cat 5) means the rate, as defined in ITU Recommendation 53–36, taking into account that, for non-binary modulation, baud and bit per second are not equal. Bits for coding, checking and synchronization functions are to be included.

NOTE: When determining the ''data signalling rate'', servicing and administrative channels shall be excluded.

Technical Note: It is the maximum one-way rate, i.e., the maximum rate in either transmission or reception.

''*Deformable mirrors.*'' (Cat 6) (also known as adaptive optic mirrors) means mirrors having:

a. A single continuous optical reflecting surface which is dynamically deformed by the application of individual torques or forces to compensate for distortions in the optical waveform incident upon the mirror; *or*

b. Multiple optical reflecting elements that can be individually and dynamically repositioned by the application of torques or forces to compensate for distortions in the optical waveform incident upon the mirror.

''*Depleted uranium.*'' (Cat 0) means uranium depleted in the isotope 235 below that occurring in nature.

''*Designed or modified.*'' (MTCR context)—Equipment, parts, components, or ''software'' that, as a result of ''development'', or modification, have specified properties that make them fit for a particular application. ''Designed or modified'' equipment, parts, components or ''software'' can be used for other applications. For example, a titanium coated pump designed for a ''missile'' may be used with corrosive fluids other than propellants.

''*Development*''. (General Technology Note)—''Development'' is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.

''*Diffusion bonding*''. (Cat 1, 2, and 9)—A solid-state molecular joining of at least two separate metals into a single piece with a joint strength equivalent to that of the weakest material.

''*Digital computer*''. (Cat 4 and 5)—Equipment that can, in the form of one or more discrete variables, perform all of the following:

(a) Accept data;

(b) Store data or instructions in fixed or alterable (writable) storage devices;

(c) Process data by means of a stored sequence of instructions that is modifiable; and

(d) Provide output of data.

NOTE: Modifications of a stored sequence of instructions include replacement of fixed storage devices, but not a physical change in wiring or interconnections.

''*Digital transfer rate*''. (Cat 5)—The total bit rate of the information that is directly transferred on any type of medium. (See also ''total digital transfer rate'')

''*Direct-acting hydraulic pressing*''. (Cat 2)—A deformation process that uses a fluid-filled flexible bladder in direct contact with the workpiece.

Directorate of Defense Trade Controls (DDTC). The office at the Department of State, formerly known as the Office of Defense Trade Controls and before that as the Office of Munitions Control, responsible for reviewing applications to export and reexport items on the U.S. Munitions List. (See 22 CFR parts 120 through 130.)

''*Drift rate*''. (gyro) (Cat 7)—The time rate of output deviation from the desired output. It consists of random and systematic components and is expressed as an equivalent input angular displacement per unit time with respect to inertial space.

Dual use. Items that have both commercial and military or proliferation applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items are also subject to the EAR (see § 734.2(a) of the EAR).

''*Dynamic adaptive routing*''. (Cat 5)—Automatic rerouting of traffic based on sensing and analysis of current actual network conditions.

NOTE: This does not include cases of routing decisions taken on predefined information.

''*Dynamic signal analyzers*''. (Cat 3)—''Signal analyzers'' that use digital sampling and transformation techniques to form a Fourier spectrum display of the given waveform including amplitude and phase information.

Effective control. You maintain effective control over an item when you either retain physical possession of the item, or secure the item in such an environment as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility. Retention of effective control over an item is a condition of certain temporary exports and reexports.

''*Effective Gram.*'' (of ''special fissile material'') (Cat 0 and 1) means:

a. For plutonium isotopes and uranium-233, the isotope weight in grams;

b. For uranium enriched 1 percent or greater in the isotope uranium-235, the element weight in grams multiplied by the square of its enrichment expressed as a decimal weight fraction;

c. For uranium enriched below 1 percent in the isotope uranium-235, the element weight in grams multiplied by 0.0001.

''*Electronic assembly.*'' (Cat 3, 4, and 5) means a number of electronic components (i.e., 'circuit elements', 'discrete components', integrated circuits, etc.) connected together to perform (a) specific function(s), replaceable as an entity and normally capable of being disassembled.

Technical Notes: 1. 'Circuit element': a single active or passive functional part of an electronic circuit, such as one diode, one transistor, one resistor, one capacitor, etc.

2. 'Discrete component': a separately packaged 'circuit element' with its own external connections.

''*Electronically steerable phased array antenna''.* (Cat 6)—An antenna that forms a beam by means of phase coupling (*i.e.,* the beam direction is controlled by the complex excitation coefficients of the radiating elements) and the direction of that beam can be varied (both in transmission and reception) in azimuth or in elevation, or both, by application of an electrical signal.

''*Encryption component*''. Any encryption commodity or software (except source code), including encryption chips, integrated circuits, application specific encryption toolkits, or executable or linkable modules that alone are incapable of performing complete cryptographic functions, and is designed or intended for use in or the production of another encryption item.

Encryption items. The phrase encryption items includes all encryption commodities, software, and technology that contain encryption features and are subject to the EAR. This does not include encryption items specifically designed, developed, configured, adapted or modified for military applications (including command, control and intelligence applications) which are controlled by the Department of State on the U.S. Munitions List.

Encryption licensing arrangement. A license that allows the export of specified products to specified destinations in unlimited quantities. In certain cases, exports are limited to specified end-users for specified end-uses. Generally, reporting of all sales of the specified products is required at six month intervals. This includes sales made under distribution arrangements and distribution and warehousing agreements that were previously issued by the Department of State for encryption items.

Encryption object code. Computer programs containing an encryption source code that has been compiled into a form of code that can be directly executed by a computer to perform an encryption function.

Encryption software. Computer programs that provide capability of encryption functions or confidentiality of information or information systems. Such software includes source code, object code, applications software, or system software.

Encryption source code. A precise set of operating instructions to a computer that, when compiled, allows for the execution of an encryption function on a computer.

''*End-effectors*''. (Cat 2)—''Grippers, ''active tooling units'' and any other tooling that is attached to the baseplate on the end of a ''robot'' manipulator arm.

NOTE: ''Active tooling unit'': a device for applying motive power, process energy or sensing to the workpiece.

End-user. The person abroad that receives and ultimately uses the exported or reexported items. The end-user is

not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.

''*Equivalent Density*''. (Cat 6)—The mass of an optic per unit optical area projected onto the optical surface.

''*Expert systems*''. (Cat 4 and 7)—Systems providing results by application of rules to data that are stored independently of the ''program'' and capable of any of the following:

(a) Modifying automatically the ''source code'' introduced by the user;

(b) Providing knowledge linked to a class of problems in quasi-natural language; or

(c) Acquiring the knowledge required for their development (symbolic training).

Export. Export means an actual shipment or transmission of items out of the United States. (See § 734.2(b) of the EAR.)

Export Administration Act (EAA). Export Administration Act of 1979, as amended, effective October 1, 1979.

Export Administration Regulations (EAR). Regulations set forth in parts 730–774, inclusive, of Title 15 of the Code of Federal Regulations.

Export Administration Review Board (EARB). EARB voting members are the Secretary of Commerce, the Secretary of State, the Secretary of Defense, the Secretary of Energy, the Attorney General (for encryption exports), and the Director of the Arms Control and Disarmament Agency. The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence are non-voting members. The Secretary of Commerce is the Chair of the EARB. No alternate EARB members may be designated, but the acting head or deputy head of any agency or department may serve in lieu of the head of the concerned agency or department. The EARB may invite the heads of other Government agencies or departments (other than those identified in this definition) to participate in the activities of the EARB when matters of interest to such agencies or departments are under consideration. Decisions are made by majority vote.

Export Control Classification Number (ECCN). The numbers used in Supplement No. 1 to part 774 of the EAR and throughout the EAR. The Export Control Classification Number consists of a set of digits and a letter. Reference § 738.2(c) of the EAR for a complete description of each ECCN's composition.

Export control document. A license; application for license; any and all documents submitted in accordance with the requirements of the EAR in support of, or in relation to, a license application; application for International Import Certificate; Delivery Verification Certificate or similar evidence of delivery; Shipper's Export Declaration (SED) or Automated Export System (AES) record presented in connection with shipments to any country; a Dock Receipt or bill of lading issued by any carrier in connection with any export subject to the EAR and any and all documents prepared and submitted by exporters and agents pursuant to the export clearance requirements of part 758 of the EAR; a U.S. exporter's report of request received for information, certification, or other action indicating a restrictive trade practice or boycott imposed by a foreign country against a country friendly to the United States, submitted to the U.S. Department of Commerce in accordance with the provisions of part 760 of the EAR; Customs Form 7512, Transportation Entry and Manifest of Goods, Subject to Customs Inspection and Permit, when used for Transportation and Exportation (T.& E.) or Immediate Exportation (I.E.); and any other document issued by a U.S. Government agency as evidence of the existence of a license for the purpose of loading onto an exporting carrier or otherwise facilitating or effecting an export from the United States or any reexport of any item requiring a license.

Exporter. The person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States. Note that the Foreign Trade Statistics Regulations have a different definition for the term ''exporter''. Under the FTSR, the ''exporter'' is the U.S. principal party in interest (see Foreign Trade Statistics Regulations title 15 part 30).

Exporting carrier. Any instrumentality of water, land, or air transportation by which an export is effected,

including any domestic air carrier on which any cargo for export is laden or carried.

''*FADEC.*'' See ''full authority digital engine control.''

''*FMU*''—See ''flexible manufacturing unit''

''*Fault tolerance*''. (Cat 4)—The capability of a computer system, after any malfunction of any of its hardware or ''software'' components, to continue to operate without human intervention, at a given level of service that provides: continuity of operation, data integrity, and recovery of service within a given time.

''*Fibrous or filamentary materials*''. (Cat 1 and 8)—The term ''fibrous and filamentary materials'' includes:

(a) Continuous monofilaments;

(b) Continuous yarns and rovings;

(c) Tapes, fabrics, random mats and braids;

(d) Chopped fibers, staple fibers and coherent fiber blankets;

(e) Whiskers, either monocrystalline or polycrystalline, of any length;

(f) Aromatic polyimide pulp.

''*Film type integrated circuit*''. (Cat 3)—An array of ''circuit elements'' and metallic interconnections formed by deposition of a thick or thin film on an insulating ''substrate''.

NOTE: ''Circuit element'': a single active or passive functional part of an electronic circuit, such as one diode, one transistor, one resistor, one capacitor, etc.

Financial Institution. As applied to encryption items, means any of the following:

(a) A broker, dealer, government securities broker or dealer, self-regulatory organization, investment company or investment adviser, which is regulated or supervised by the Securities and Exchange Commission or a self-regulatory organization that is registered with the Securities and Exchange Commission; or

(b) A broker, dealer, government securities broker or dealer, investment company, investment adviser, or entity that engages in securities activities that, if conducted in the United States, would be described by the definition of the term ''self-regulatory organization'' in the Securities Exchange Act of 1934, which is organized under the laws of a foreign country and regulated or supervised by a foreign securities authority; or

(c) A U.S. board of trade that is designated as a contract market by the Commodity Futures Trading Commission or a futures commission merchant that is regulated or supervised by the Commodity Futures Trading Commission; or

(d) A U.S. entity engaged primarily in the business of issuing a general purpose charge, debit, or stored value card, or a branch of, or affiliate controlled by, such an entity; or

(e) A branch or affiliate of any of the entities listed in paragraphs (a), (b), or (c) of this definition regulated or supervised by the Securities and Exchange Commission, the Commodity Futures Trading Commission, or a foreign securities authority; or

(f) An affiliate of any of the entities listed in paragraph (a), (b), (c), or (e), of this definition engaged solely in the business of providing data processing services to one or more bank or financial institutions, or a branch of such an affiliate; or

(g) A company organized and regulated under the laws of any of the United States and its branches and affiliates whose primary and predominant business activity is the writing of insurance or the reinsuring of risks; or a company organized and regulated under the laws of a foreign country and its branches and affiliates whose primary and predominant business activity is the writing of insurance or the reinsuring of risks.

Firm. A corporation, partnership, limited partnership, association, company, trust, or any other kind of organization or body corporate, situated, residing, or doing business in the United States or any foreign country, including any government or agency thereof.

''*Fixed*''. (Cat 5)—The coding or compression algorithm cannot accept externally supplied parameters (e.g., cryptographic or key variables) and cannot be modified by the user.

''*Flexible manufacturing unit*''. (FMU), (sometimes also referred to as 'flexible manufacturing system' (FMS) or 'flexible manufacturing cell' (FMC)) (Cat 2)—An entity that includes a combination of at least:

(a) A ''digital computer'' including its own ''main storage'' and its own ''related equipment''; and

(b) Two or more of the following:

(1) A machine tool described in 2B001.c;

(2) A dimensional inspection machine described in Category 2, or another digitally controlled measuring machine controlled by an entry in Category 2;

(3) A ''robot'' controlled by an entry in Category 2 or 8;

(4) Digitally controlled equipment controlled by 1B003, 2B003, or 9B001;

(5) ''Stored program controlled'' equipment controlled by 3B001;

(6) Digitally controlled equipment controlled by 1B001;

(7) Digitally controlled electronic equipment controlled by 3A002.

''*Flight control optical sensor array*.'' (Cat 7) is a network of distributed optical sensors, using ''laser'' beams, to provide real-time flight control data for on-board processing.

''*Flight path optimization*.'' (Cat 7) is a procedure that minimizes deviations from a four-dimensional (space and time) desired trajectory based on maximizing performance or effectiveness for mission tasks.

''*Focal plane array*''. (Cat 6)—A linear or two-dimensional planar layer, or combination of planar layers, of individual detector elements, with or without readout electronics, that work in the focal plane.

N.B. This definition does not include a stack of single detector elements or any two, three, or four element detectors provided time delay and integration is not performed within the element.

Foreign government agency. For the purposes of exemption from support documentation (see § 748.9 of the EAR), a foreign government agency is defined as follows:

(a) National governmental departments operated by government-paid personnel performing governmental administrative functions; e.g. Finance Ministry, Ministry of Defense, Ministry of Health, etc. (municipal or other local government entities must submit required support documentation); or

(b) National government-owned public service entities; e.g., nationally owned railway, postal, telephone, telegraph, broadcasting, and power systems, etc. The term ''foreign government agency'' does not include government corporations, quasi-government agencies, and state enterprises engaged in commercial, industrial, and manufacturing activities, such as petroleum refineries, mines, steel mills, retail stores, automobile manufacturing plants, airlines, or steamship lines that operate between two or more countries, etc.

Foreign policy control. A control imposed under the EAR for any and all of the following reasons: chemical and biological weapons, nuclear nonproliferation, missile technology, regional stability, crime control, anti-terrorism, United Nations sanctions, and any other reason for control implemented under section 6 of the EAA or other similar authority.

Foreign Terrorist Organizations (FTO). Any organization that is determined by the Secretary of the Treasury to be a foreign terrorist organization under notices or regulations issued by the Office of Foreign Assets Control (see 31 CFR chapter V).

Forwarding agent. The person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of the items from the United States. This may include air couriers or carriers. In routed export transactions, the forwarding agent and the exporter may be the same for compliance purposes under the EAR.

''*Fractional bandwidth*''. (Cat 3)—The ''instantaneous bandwidth'' divided by the center frequency, expressed as a percentage.

''*Frequency hopping*''. (Cat 5 part 1 and 5 part 2)—A form of ''spread spectrum'' in which the transmission frequency of a single communication channel is made to change by a random or pseudo-random sequence of discrete steps.

''*Frequency switching time*''. (Cat 3 and 5)—The maximum time (i.e., delay), taken by a signal, when switched from one selected output frequency to another selected output frequency, to reach:

(a) A frequency within 100 Hz of the final frequency; or

(b) An output level within 1 dB of the final output level.

''*Frequency synthesizer*''. (Cat 3)—Any kind of frequency source or signal generator, regardless of the actual technique used, providing a multiplicity of simultaneous or alternative output frequencies, from one or more outputs, controlled by, derived from or disciplined by a lesser number of standard (or master) frequencies.

''*Full Authority Digital Engine Control.*'' (''FADEC'') (Cat 7 and 9) means an electronic control system for gas turbine or combined cycle engines utilizing a digital computer to control the variables required to regulate engine thrust or shaft power output throughout the engine operating range from the beginning of fuel metering to fuel shutoff.

''*Gas Atomization*''. (Cat 1)—A process to reduce a molten stream of metal alloy to droplets of 500-micrometer diameter or less by a high-pressure gas stream.

General prohibitions. The 10 prohibitions found in part 734 of the EAR that prohibit certain exports, reexports, and other conduct, subject to the EAR, absent a license, License Exception, or determination that no license is required (''NLR'').

''*Geographically dispersed*''. (Cat 6)—Sensors are considered geographically dispersed when each location is distant from any other more than 1,500 m in any direction. Mobile sensors are always considered geographically dispersed.

''*Government end-user (as applied to encryption items)*''. A government end-user is any foreign central, regional or local government department, agency, or other entity performing governmental functions; including governmental research institutions, governmental corporations or their separate business units (as defined in part 772 of the EAR) which are engaged in the manufacture or distribution of items or services controlled on the Wassenaar Munitions List, and international governmental organizations. This term does not include: utilities (including telecommunications companies and Internet service providers); banks and financial institutions; transportation; broadcast or entertainment; educational organizations; civil health and medical organizations; retail or wholesale firms; and manufacturing or industrial entities not engaged in the manufacture or distribution of items or services controlled on the Wassenaar Munitions List.

Hold Without Action (HWA). License applications may be held without action only in the limited circumstances described in § 750.4(c) of the EAR. Encryption review requests may be placed on hold without action status as provided in § 740.17(d)(2) and § 742.15(b)(2) of the EAR.

''*Hot isostatic densification*''. (Cat 2)—A process of pressurizing a casting at temperatures exceeding 375 K (102 °C) in a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal force in all directions to reduce or eliminate internal voids in the casting.

''*Hybrid computer*''. (Cat 4)—Equipment that can:

(a) Accept data;

(b) Process data, in both analog and digital representation; and

(c) Provide output of data.

''*Hybrid integrated circuit*''. (Cat 3)—Any combination of integrated circuit(s), or integrated circuit with ''circuit elements'' or ''discrete components'' connected together to perform (a) specific function(s), and having all of the following criteria:

(a) Containing at least one unencapsulated device;

(b) Connected together using typical IC-production methods;

(c) Replaceable as an entity; and

(d) Not normally capable of being disassembled.

NOTES: 1. ''Circuit element'': a single active or passive functional part of an electronic circuit, such as one diode, one transistor, one resistor, one capacitor, etc.

2. ''Discrete component'': a separately packaged ''circuit element'' with its own external connections.

''*Image enhancement*''. (Cat 4)—The processing of externally derived information-bearing images by algorithms such as time compression, filtering, extraction, selection, correlation, convolution or transformations between domains (e.g., fast Fourier transform or Walsh transform). This does not include algorithms using only linear or rotational transformation of a single

image, such as translation, feature extraction, registration or false coloration.

''*Information security*''. (Cat 5)—All the means and functions ensuring the accessibility, confidentiality or integrity of information or communications, excluding the means and functions intended to safeguard against malfunctions. This includes ''cryptography'', ''cryptanalysis'', protection against compromising emanations and computer security.

N.B. ''Cryptanalysis'': the analysis of a cryptographic system or its inputs and outputs to derive confidential variables or sensitive data, including clear text. (ISO 7498–2–1988 (E), paragraph 3.3.18)

''*Instantaneous bandwidth*''. (Cat 3 and 5)—The bandwidth over which output power remains constant within 3 dB without adjustment of other operating parameters.

''*Instrumented range*''. (Cat 6)—The specified unambiguous display range of a radar.

Intent to Deny (ITD) letter. A letter informing the applicant:

(a) Of the reason for BIS's decision to deny a license application; and

(b) That the application will be denied 45 days from the date of the ITD letter, unless the applicant provides, and BIS accepts, a reason why the application should not be denied for the stated reason. See § 750.6 of the EAR.

''*Interconnected radar sensors*''. (Cat 6)—Two or more radar sensors are interconnected when they mutually exchange data in real time.

Intermediate consignee. The person that acts as an agent for a principal party in interest for the purpose of effecting delivery of items to the ultimate consignee. The intermediate consignee may be a bank, forwarding agent, or other person who acts as an agent for a principal party in interest.

''*Intrinsic Magnetic Gradiometer*''. (Cat 6)—A single magnetic field gradient sensing element and associated electronics the output of which is a measure of magnetic field gradient. (See also ''Magnetic Gradiometer'')

''*Isostatic presses*''. (Cat 2)—Equipment capable of pressurizing a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal pressure in all directions within the cavity upon a workpiece or material.

Item. ''Item'' means ''commodities, software, and technology.'' When the EAR intend to refer specifically to commodities, software, or technology, the text will use the specific reference.

Know. See ''knowledge.''

Knowledge. Knowledge of a circumstance (the term may be a variant, such as ''know,'' ''reason to know,'' or ''reason to believe'') includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts. This definition does not apply to part 760 of the EAR (Restrictive Trade Practices or Boycotts).

''*Laser*''. (Cat 2, 3, 5, 6, and 9)—An assembly of components that produce both spatially and temporally coherent light that is amplified by stimulated emission of radiation. See also: ''Chemical laser''; ''Q-switched laser''; ''Super High Power Laser''; and ''Transfer laser''.

Law or regulation relating to export control. Any statute, proclamation, executive order, regulation, rule, license, or order applicable to any conduct involving an export transaction shall be deemed to be a ''law or regulation relating to export control.''

Legible or legibility. Legible and legibility mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals.

License. Authority issued by the Bureau of Industry and Security authorizing an export, reexport, or other regulated activity. The term ''license'' does not include authority represented by a ''License Exception.''

License application; application for license. License application and similar wording mean an application to BIS requesting the issuance of a license to the applicant.

License Exception. An authorization described in part 740 of the EAR that allows you to export or reexport, under

stated conditions, items subject to the EAR that otherwise would require a license. Unless otherwise indicated, these License Exceptions are not applicable to exports under the licensing jurisdiction of agencies other than the Department of Commerce.

Licensee. The person to whom a license has been issued by BIS. See § 750.7(c) of the EAR for a complete definition and identification of a licensee's responsibilities.

''*Linearity*''. (Cat 2)—''Linearity'' (usually measured in terms of non-linearity) is the maximum deviation of the actual characteristic (average of upscale and downscale readings), positive or negative, from a straight line so positioned as to equalize and minimize the maximum deviations.

''*Local area network*''. (Cat 4)—A data communication system that:

(a) Allows an arbitrary number of independent ''data devices'' to communicate directly with each other; and

(b) Is confined to a geographical area of moderate size (e.g., office building, plant, campus, warehouse).

NOTE: ''Data device'': equipment capable of transmitting or receiving sequences of digital information.

''*MBTR*''—See ''maximum bit transfer rate''.

MTCR. See Missile Technology Control Regime.

MTEC. See Missile Technology Export Control Group.

''*Magnetic Gradiometers*''. (Cat 6)—Are designed to detect the spatial variation of magnetic fields from sources external to the instrument. They consist of multiple ''magnetometers'' and associated electronics the output of which is a measure of magnetic field gradient. (See also ''Intrinsic Magnetic Gradiometer''.)

''*Magnetometers*''. (Cat 6)—Are designed to detect magnetic fields from sources external to the instrument. They consist of a single magnetic field sensing element and associated electronics the output of which is a measure of the magnetic field.

''*Main storage*''. (Cat 4)—The primary storage for data or instructions for rapid access by a central processing unit. It consists of the internal storage of a ''digital computer'' and any hierarchical extension thereto, such as cache storage or non-sequentially accessed extended storage.

''*Matrix*''. (Cat 1, 2, 8, and 9)—A substantially continuous phase that fills the space between particles, whiskers or fibers.

''*Maximum bit transfer rate*''. (MBTR) (Cat 4)—Of solid state storage equipment: the number of data bits per second transferred between the equipment and its controller. Of a disk drive: the internal data transfer rate calculated as follows:

''MBTR'' (bits per second)=B × R × T, where:

B=Maximum number of data bits per track available to read or write in a single revolution;

R=Revolutions per second;

T=Number of tracks that can be used or written simultaneously.

''*Measurement uncertainty*''. (Cat 2)—The characteristic parameter that specifies in what range around the output value the correct value of the measurable variable lies with a confidence level of 95%. It includes the uncorrected systematic deviations, the uncorrected backlash, and the random deviations (Ref.: ISO 10360–2 or VDI/VDE 2617).

''*Mechanical alloying*''. (Cat 1)—An alloying process resulting from the bonding, fracturing and rebonding of elemental and master alloy powders by mechanical impact. Non-metallic particles may be incorporated in the alloy by addition of the appropriate powders.

''*Media access unit*''. (Cat 5)—Equipment that contains one or more communication interfaces (''network access controller'', ''communications channel controller'', modem or computer bus) to connect terminal equipment to a network.

Medical devices. For purposes of the EAR, medical devices are ''devices'' as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) including medical supplies, instruments, equipment, equipped ambulances, institutional washing machines for sterilization, and vehicles with medical testing equipment. Note that certain component parts and spares to be exported for incorporation

into medical devices are on the Commerce Control List. Only items meeting the definition of ''medical device'' and that are classified as EAR99 are eligible for export to Iran and Sudan under the licensing procedures set forth in the appropriate regulations promulgated and administered by Treasury's Office of Foreign Assets Control.

Medicines. Medicines means ''drug'' as defined in section 201 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321). For purposes of the EAR, medicines includes prescription and over the counter medicines for humans and animals. Note that certain medicines, such as vaccines and immunotoxins, are on the Commerce Control List. Only items meeting the definition of ''medicine'' and that are classified as EAR99 are eligible for export to Iran and Sudan under the licensing procedures set forth in the appropriate regulations promulgated and administered by Treasury's Office of Foreign Assets Control.

''*Melt Extraction*''. (Cat 1)—A process to ''solidify rapidly'' and extract a ribbon-like alloy product by the insertion of a short segment of a rotating chilled block into a bath of a molten metal alloy.

NOTE: ''Solidify rapidly'': solidification of molten material at cooling rates exceeding 1,000 K/sec.

''*Melt Spinning*''. (Cat 1)—A process to ''solidify rapidly'' a molten metal stream impinging upon a rotating chilled block, forming a flake, ribbon or rod-like product.

NOTE: ''Solidify rapidly'': solidification of molten material at cooling rates exceeding 1,000 K/sec.

Microcomputer microcircuit. (Cat 3) means a ''monolithic integrated circuit'' or ''multichip integrated circuit'' containing an arithmetic logic unit (ALU) capable of executing a series of general purpose instructions from an internal storage, on data contained in the internal storage.

TECHNICAL NOTE 1: The ''microprocessor microcircuit'' normally does not contain integral user-accessible storage, although storage present on-the-chip may be used in performing its logic function.

TECHNICAL NOTE 2: The internal storage may be augmented by an external storage.

NOTE: This definition includes chip sets which are designed to operate together to provide the function of a ''microprocessor microcircuit.''

''*Microorganisms.*'' (Cat 1 and 2) means bacteria, viruses, mycoplasms, rickettsiae, chlamydiae or fungi, whether natural, enhanced or modified, either in the form of isolated live cultures or as material including living material which has been deliberately inoculated or contaminated with such cultures.

''*Microprocessor microcircuit*''. (Cat 3)—A ''monolithic integrated circuit'' or ''multichip integrated circuit'' containing an arithmetic logic unit (ALU) capable of executing a series of general purpose instructions from an external storage.

N.B. 1: The ''microprocessor microcircuit'' normally does not contain integral user-accessible storage, although storage present on-the-chip may be used in performing its logic function.

N.B. 2: This definition includes chip sets that are designed to operate together to provide the function of a ''microprocessor microcircuit''.

''*Microprogram*''. (Cat 4 and 5)—A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

Missile Technology Control Regime (MTCR). The United States and other nations in this multilateral control regime have agreed to guidelines for restricting the export and reexport of dual-use items that may contribute to the development of missiles. The MTCR Annex lists missile-related equipment and technology controlled either by the Department of Commerce or by the Department of State's Office of Defense Trade Controls (22 CFR parts 120 through 130).

Missile Technology Export Control Group (MTEC). Chaired by the Department of State, the MTEC primarily reviews applications involving items controlled for Missile Technology (MT) reasons. The MTEC also reviews applications involving items not controlled for MT reasons, but destined for a country and/or end-use/end-user of concern.

''*Missiles*''. (All)—Rocket systems (including ballistic missile systems, space

launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) ''capable of'' delivering at least 500 kilograms payload to a range of at least 300 kilometers. *See* § 746.3 for definition of a ''ballistic missile'' to be exported or reexported to Iraq or transferred within Iraq.

''*Monolithic integrated circuit*''. (Cat 3)—A combination of passive or active ''circuit elements'' or both that:

(a) Are formed by means of diffusion processes, implantation processes or deposition processes in or on a single semiconducting piece of material, a so-called 'chip';

(b) Can be considered as indivisibly associated; and

(c) Perform the function(s) of a circuit.

NOTE: ''Circuit element'': a single active or passive functional part of an electronic circuit, such as one diode, one transistor, one resistor, one capacitor, etc.

''*Monospectral imaging sensors.*'' (Cat 6) are capable of acquisition of imaging data from one discrete spectral band.

''*Motion control board*''. (Cat 2)—An electronic ''assembly'' specially designed to provide a computer system with the capability to coordinate simultaneously the motion of axes of machine tools for ''contouring control''.

''*Multichip integrated circuit*''. (Cat 3)—Two or more ''monolithic integrated circuits'' bonded to a common ''substrate''.

''*Multi-data-stream processing*''. (Cat 4)—The ''microprogram'' or equipment architecture technique that permits simultaneous processing of two or more data sequences under the control of one or more instruction sequences by means such as:

(a) Single Instruction Multiple Data (SIMD) architectures such as vector or array processors;

(b) Multiple Single Instruction Multiple Data (MSIMD) architectures;

(c) Multiple Instruction Multiple Data (MIMD) architectures, including those that are tightly coupled, closely coupled or loosely coupled; or

(d) Structured arrays of processing elements, including systolic arrays.

''*Multilevel security*''. (Cat 5)—A class of system containing information with different sensitivities that simultaneously permits access by users with different security clearances and need-to-know, but prevents users from obtaining access to information for which they lack authorization.

NOTE: ''Multilevel security'' is computer security and not computer reliability that deals with equipment fault prevention or human error prevention in general.

''*Multispectral Imaging Sensors*''. (Cat 6)—Are capable of simultaneous or serial acquisition of imaging data from two or more discrete spectral bands. Sensors having more than twenty discrete spectral bands are sometimes referred to as hyperspectral imaging sensors.

''*N.E.S.*'' N.E.S or n.e.s. is an abbreviation meaning ''not elsewhere specified''.

NLR. NLR (''no license required'') is a symbol entred on the Shipper's Export Declaration or an Automated Export System record certifying that no license is required.

NSG. See Nuclear Suppliers Group.

NATO (North Atlantic Treaty Organization). A strategic defensive organization that consists of the following member nations: Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, the United Kingdom, and the United States.

''*Natural uranium.*'' (Cat 0) means uranium containing the mixtures of isotopes occurring in nature.

Net value. The actual selling price, less shipping charges or current market price, whichever is the larger, to the same type of purchaser in the United States.

''*Neural computer*''. (Cat 4)—A computational device designed or modified to mimic the behavior of a neuron or a collection of neurons (i.e., a computational device that is distinguished by its hardware capability to modulate the weights and numbers of the interconnections of a multiplicity of computational components based on previous data).

''*Noise level*''. (Cat 6)—An electrical signal given in terms of power spectral density. The relation between ''noise level'' expressed in peak-to-peak is

given by $S^2pp=8N_o(f_2–f_1)$, where S_{pp} is the peak-to-peak value of the signal (e.g., nanoteslas), N_o is the power spectral density (e.g., $(\text{nanotesla})^2/\text{Hz}$) and $(f_2–f_1)$ defines the bandwidth of interest.

''*Nuclear reactor.*'' (Cat 0 and 2) includes the items within or attached directly to the reactor vessel, the equipment which controls the level of power in the core, and the components which normally contain, come into direct contact with or control the primary coolant of the reactor core.

Nuclear Suppliers Group (NSG). The United States and other nations in this multilateral control regime have agreed to guidelines for restricting the export or reexport of items with nuclear applications. Members include: Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Kazakhstan, Latvia, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russia, Slovak Republic, Slovenia, Spain, South Africa, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States. See also § 742.3 of the EAR.

''*Numerical control*''. (Cat 2)—The automatic control of a process performed by a device that makes use of numeric data usually introduced as the operation is in progress (Ref. ISO 2382).

''*Object code*''. (or object language) (Cat 9)—An equipment executable form of a convenient expression of one or more processes (''source code'' (or source language)) that has been converted by a programming system. (See also ''source code'')

Office of Foreign Assets Control (FAC) or (OFAC). The office at the Department of the Treasury responsible for blocking assets of foreign countries subject to economic sanctions, controlling participation by U.S. persons, including foreign subsidiaries, in transactions with specific countries or nationals of such countries, and administering embargoes on certain countries or areas of countries. (See 31 CFR parts 500 through 590.)

''*Open cryptographic interface*''. A mechanism which is designed to allow a customer or other party to insert cryptographic functionality without the intervention, help or assistance of the manufacturer or its agents, e.g., manufacturer's signing of cryptographic code or proprietary interfaces. If the cryptographic interface implements a fixed set of cryptographic algorithms, key lengths or key exchange management systems, that cannot be changed, it will not be considered an ''open'' cryptographic interface. All general application programming interfaces (e.g., those that accept either a cryptographic or non-cryptographic interface but do not themselves maintain any cryptographic functionality) will not be considered ''open'' cryptographic interfaces.

''*Operate autonomously*''. (Cat 8)—Fully submerged, without snorkel, all systems working and cruising at minimum speed at which the submersible can safely control its depth dynamically by using its depth planes only, with no need for a support vessel or support base on the surface, sea-bed or shore, and containing a propulsion system for submerged or surface use.

Operating Committee (OC). The OC voting members include representatives of appropriate agencies in the Departments of Commerce, State, Defense, Justice (for encryption exports), and 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 Department of Commerce representative, appointed by the Secretary, is the Chair of the OC and serves as the Executive Secretary of the Advisory Committee on Export Policy. The OC may invite representatives of other Government agencies or departments (other than those identified in this definition) to participate in the activities of the OC when matters of interest to such agencies or departments are under consideration.

''*Optical amplification*''. (Cat 5)—In optical communications, an amplification technique that introduces a gain of optical signals that have been generated by a separate optical source, without conversion to electrical signals, i.e., using semiconductor optical

amplifiers, optical fiber luminescent amplifiers.

''*Optical computer*''. (Cat 4)—A computer designed or modified to use light to represent data and whose computational logic elements are based on directly coupled optical devices.

''*Optical integrated circuit*''. (Cat 3)—A ''monolithic integrated circuit'' or a ''hybrid integrated circuit'', containing one or more parts designed to function as photosensor or photoemitter or to perform (an) optical or (an) electro-optical function(s).

''*Optical switching*''. (Cat 5)—The routing of or switching of signals in optical form without conversion to electrical signals.

Order Party. The person in the United States who conducted the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and who, as a result of these negotiations, received the order from the foreign purchaser or ultimate consignee.

Organization for the Prohibition of Chemical Weapons (OPCW). Means the international organization, located in The Hague, Netherlands, that administers the Chemical Weapons Convention.

Other party authorized to receive license. The person authorized by the applicant to receive the license. If a person and address is listed in Block 15 of the BIS-748P Multipurpose Application Form, the Bureau of Industry and Security will send the license to that person instead of the applicant. Designation of another party to receive the license does not alter the responsibilities of the applicant, licensee or exporter.

''*Overall current density*''. (Cat 3)—The total number of ampere-turns in the coil (i.e., the sum of the number of turns multiplied by the maximum current carried by each turn) divided by the total cross-section of the coil (comprising the superconducting filaments, the metallic matrix in which the superconducting filaments are embedded, the encapsulating material, any cooling channels, etc.).

''*Part program*''. (Cat. 2)—An ordered set of instructions that is in a language and in a format required to cause operations to be effected under automatic control and that is either written in the form of a machine program on an input medium or prepared as input data for processing in a computer to obtain a machine program (Ref. ISO 2806–1980).

''*Payload*'' (MTCR). The total mass that can be carried or delivered by the specified rocket system or unmanned aerial vehicle (UAV) system that is not used to maintain flight.

NOTE: The particular equipment, subsystems, or components to be included in the payload depends on the type and configuration of the vehicle under consideration.

TECHNICAL NOTES:

a. Ballistic Missiles

1. ''Payload'' for systems with separating re-entry vehicles (RVs) includes:

i. The RVs, including:

A. Dedicated guidance, navigation, and control equipment;

B. Dedicated countermeasures equipment;

ii. Munitions of any type (*e.g.*, explosive or non-explosive);

iii. Supporting structures and deployment mechanisms for the munitions (*e.g.* hardware used to attach to, or separate the RV from, the bus/post-boost vehicle) that can be removed without violating the structural integrity of the vehicle;

iv. Mechanisms and devices for safing, arming, fuzing, or firing;

v. Any other countermeasures equipment (*e.g.*, decoys, jammers, or chaff dispensers) that separate from the RV bus/post-boost vehicle;

vi. The bus/post-boost vehicle or attitude control/velocity trim module not including systems/subsystems essential to the operation of other stages.

2. ''Payload'' for systems with non-separating re-entry vehicles includes:

i. Munitions of any type (*e.g.*, explosive or non-explosive);

ii. Supporting structures and deployment mechanisms for the munitions that can be removed without violating the structural integrity of the vehicle;

iii. Mechanisms and devices for safing, arming, fuzing or firing;

iv. Any countermeasures equipment (*e.g.*, decoys, jammers, or chaff dispensers) that can be removed without violating the structural integrity of the vehicle.

b. Space Launch Vehicles—''Payload'' includes:

1. Satellites (single or multiple);

2. Satellite-to-launch vehicle adapters including, if applicable, apogee/perigee kick motors or similar maneuvering systems;

c. Sounding Rockets—''Payload'' includes:

1. Equipment required for a mission, such as data gathering, recording or transmitting devices for mission-specific data;

2. Recovery equipment (*e.g.*, parachutes) that can be removed without violating the structural integrity of the vehicle.

d. Cruise Missiles—''Payload'' includes:

1. Munitions of any type (*e.g.*, explosive or non-explosive);

2. Supporting structures and mechanisms for the munitions that can be removed without violating the structural integrity of the vehicle;

3. Mechanisms and devices for safing, arming, fuzing or firing;

4. Countermeasures equipment (*e.g.*, decoys, jammers or chaff dispensers) that can be removed without violating the structural integrity of the vehicle;

5. Signature alteration equipment that can be removed without violating the structural integrity of the vehicle;

e. Other UAVs—''Payload'' includes:

1. Munitions of any type (*e.g.*, explosive or non-explosive);

2. Mechanisms and devices for safing, arming, fuzing or firing;

3. Countermeasures equipment (*e.g.*, decoys, jammers or chaff dispensers) that can be removed without violating the structural integrity of the vehicle;

4. Signature alteration equipment that can be removed without violating the structural integrity of the vehicle;

5. Equipment required for a mission such as data gathering, recording or transmitting devices for mission-specific data;

6. Recovery equipment (*e.g.*, parachutes) that can be removed without violating the structural integrity of the vehicle.

''*Peak power*''. (Cat 6)—Energy per pulse in Joule divided by the pulse duration in seconds.

Person. A natural person, including a citizen or national of the United States or of any foreign country; any firm; any government, government agency, government department, or government commission; any labor union; any fraternal or social organization; and any other association or organization whether or not organized for profit. This definition does not apply to part 760 of the EAR (Restrictive Trade Practices or Boycotts).

''*Personalized smart card*.'' (Cat 5) A smart card containing a microcircuit which has been programmed for a specific application and cannot be reprogrammed for any other application by the user.

Port of export. The port where the cargo to be shipped abroad is laden aboard the exporting carrier. It includes, in the case of an export by mail, the place of mailing.

''*Positioning accuracy*''. (Cat. 2)—The positioning accuracy of ''numerically controlled'' machine tools is to be determined and presented in accordance with ISO/DIS 230/2 (1988), paragraph 2.13, in conjunction with the following requirements:

(a) Test conditions:

(1) For 12 hours before and during measurements, the machine tool and accuracy measuring equipment will be kept at the same ambient temperature. During the pre-measurement time the slides of the machine will be continuously cycled in the same manner that the accuracy measurements will be taken;

(2) The machine shall be equipped with any mechanical, electronic, or software compensation to be exported with the machine;

(3) Accuracy of measuring equipment for the measurements shall be at least four times more accurate than the expected machine tool accuracy;

(4) Power supply for slide drives shall be as follows:

(i) Line voltage variation shall exceed ±10% of nominal rated voltage;

(ii) Frequency variation shall not exceed ±2 Hz of normal frequency;

(iii) Lineouts or interrupted service are not permitted.

(b) Test programs:

(1) Feed rate (velocity of slides) during measurement shall be the rapid traverse rate;

NOTE: In case of machine tools that generate optical quality surfaces, the feedrate shall be equal to or less than 50 mm per minute.

(2) Measurements shall be made in an incremental manner from one limit of the axis travel to the other without returning to the starting position for each move to the target position;

(3) Axes not being measured shall be retained at mid travel during the test of an axis.

(c) Presentation of test results: The results of the measurement must include:

(1) Position accuracy (A); and

(2) The mean reversal error (B).

''*Power management*''. (Cat 7)—Changing the transmitted power of the altimeter signal so that received power at the ''aircraft'' altitude is always at the

minimum necessary to determine the altitude.

''*Previously separated*.'' (Cat 1) The application of any process intended to increase the concentration of the controlled isotope.

''*Primary flight control*.'' (Cat 7) ''Aircraft'' stability or maneuvering control using force/moment generators, *i.e.*, aerodynamic control surfaces or propulsive thrust vectoring.

''*Principal element*''. (Cat 4)—An element is a ''principal element'' when its replacement value is more than 35% of the total value of the system of which it is an element. Element value is the price paid for the element by the manufacturer of the system, or by the system integrator. Total value is the normal international selling price to unrelated parties at the point of manufacture or consolidation of shipment.

Principal parties in interest. Those persons in a transaction that receive the primary benefit, monetary or otherwise, of the transaction. Generally, the principals in a transaction are the seller and the buyer. In most cases, the forwarding or other agent is not a principal party in interest.

''*Production*''. (General Technology Note) (All Categories)—Means all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.

''*Production equipment*''. (MTCR context)—Tooling, templates, jigs, mandrels, moulds, dies, fixtures, alignment mechanisms, test equipment, other machinery and components therefor, limited to those specially designed or modified for ''development'' or for one or more phases of ''production''.

Production. (General Technology Note)—Means all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.

''*Program*.'' (Cat 2, 4, 5, and 6)—A sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

''*Proof test*''. (Cat 5)—On-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20 °C) and relative humidity 40%.

NOTE: Equivalent national standards for executing the ''proof test'' may be used.

Publicly available information. Information that is generally accessible to the interested public in any form and, therefore, not subject to the EAR (See part 732 of the EAR).

Publicly available technology and software. Technology and software that are already published or will be published; arise during, or result from fundamental research; are educational; or are included in certain patent applications (see § 734.3(b)(3) of the EAR).

''*Pulse compression*''. (Cat 6)—The coding and processing of a radar signal pulse of long time duration to one of short time duration, while maintaining the benefits of high pulse energy.

''*Pulse duration*''. (Cat 6)—Duration of a ''laser'' pulse measured at Full Width Half Intensity (FWHI) levels.

Purchaser. The person abroad who has entered into a transaction to purchase an item for delivery to the ultimate consignee. In most cases, the purchaser is not a bank, forwarding agent, or intermediary. The purchaser and ultimate consignee may be the same entity.

''*Q-switched laser*''. (Cat 6)—A ''laser'' in which the energy is stored in the population inversion or in the optical resonator and subsequently emitted in a pulse.

RWA. See Return Without Action.

''*Radar frequency agility*''. (Cat 6)—Any technique that changes, in a pseudo-random sequence, the carrier frequency of a pulsed radar transmitter between pulses or between groups of pulses by an amount equal to or larger than the pulse bandwidth.

''*Radar spread spectrum*''. (Cat 6)—Any modulation technique for spreading energy originating from a signal with a relatively narrow frequency band, over a much wider band of frequencies, by using random or pseudo-random coding.

''*Range*''. (Cat 8)—Half the maximum distance a submersible vehicle can cover.

''*Range*'' (MTCR). The maximum distance that the specified rocket system or unmanned aerial vehicle (UAV) system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth.

TECHNICAL NOTES:

a. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining range.

b. The range for both rocket systems and UAV systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links or other external constraints.

c. For rocket systems, the range will be determined using the trajectory that maximizes range, assuming ICAO standard atmosphere with zero wind.

d. For UAV systems, the range will be determined for a one-way distance using the most fuel-efficient flight profile (*e.g.*, cruise speed and altitude), assuming ICAO standard atmosphere with zero wind.

''*Readable or readability*''. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.

''*Real-time bandwidth*''. (Cat 3)—For ''dynamic signal analyzers'', the widest frequency range that the analyzer can output to display or mass storage without causing any discontinuity in the analysis of the input data. For analyzers with more than one channel, the channel configuration yielding the widest ''real-time bandwidth'' shall be used to make the calculation.

''*Real-time processing*''. (Cat 2, 4, 6, and 7)—The processing of data by a computer system providing a required level of service, as a function of available resources, within a guaranteed response time, regardless of the load of the system, when stimulated by an external event.

Reasons for Control. Reasons for Control are: Anti-Terrorism (AT), Chemical & Biological Weapons (CB), Crime Control (CC), High Performance Computer (XP), Missile Technology (MT), National Security (NS), Nuclear Nonproliferation (NP), Regional Stability (RS), Short Supply (SS), and United Nations sanctions (UN). Items controlled within a particular ECCN may be controlled for more than one reason.

Recoverable commodities and software. As applied to encryption items, means any of the following:

(a) A stored data product containing a recovery feature that, when activated, allows recovery of the plaintext of encrypted data without the assistance of the end-user; or

(b) A product or system designed such that a network administrator or other authorized persons who are removed from the end-user can provide law enforcement access to plaintext without the knowledge or assistance of the end-user. This includes, for example, products or systems where plaintext exists and is accessible at intermediate points in a network or infrastructure system, enterprise-controlled recovery systems, and products which permit recovery of plaintext at the server where a system administrator controls or can provide recovery of plaintext across an enterprise.

NOTE TO THIS DEFINITION: ''Plaintext'' indicates that data that is initially received by or presented to the recoverable product before encryption takes place.

Reexport. ''Reexport'' means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country. For purposes of the EAR, the export or reexport of items subject to the EAR that will transit through a country or countries, or be transshipped in a country or countries to a new country, or are intended for reexport to the new country, are deemed to be exports to the new country. (See §734.2(b)of the EAR.) In addition, for purposes of satellites controlled by the Department of Commerce, the term ''reexport'' also includes the transfer of registration of a satellite or operational control over a satellite from a party resident in one country to a party resident in another country.

Replacement license. An authorization by the Bureau of Industry and Security revising the information, conditions, or riders stated on a license issued by BIS. See §750.7 of the EAR.

''*Required*''. (General Technology Note)(Cat 4, 5, 6, and 9)—As applied to ''technology'' or ''software'', refers to only that portion of ''technology'' or

''software'' which is peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions. Such ''required'' ''technology'' or ''software'' may be shared by different products. For example, assume product ''X'' is controlled if it operates at or above 400 MHz and is not controlled if it operates below 400 MHz. If production technologies ''A'', ''B'', and ''C'' allow production at no more than 399 MHz, then technologies ''A'', ''B'', and ''C'' are not ''required'' to produce the controlled product ''X''. If technologies ''A'', ''B'', ''C'', ''D'', and ''E'' are used together, a manufacturer can produce product ''X'' that operates at or above 400 MHz. In this example, technologies ''D'' and ''E'' are ''required'' to make the controlled product and are themselves controlled under the General Technology Note. (See the General Technology Note.)

''*Resolution*''. (Cat 2)—The least increment of a measuring device; on digital instruments, the least significant bit (Ref.: ANSI B–89.1.12).

''*Return Without Action (RWA)*''. An application may be RWA'd for one of the following reasons:

(a) The applicant has requested the application be returned;

(b) A License Exception applies;

(c) The items are not under Department of Commerce jurisdiction;

(d) Required documentation has not been submitted with the application; or

(e) The applicant cannot be reached after several attempts to request additional information necessary for processing of the application.

''*Robot*''. (Cat 2 and 8)—A manipulation mechanism, which may be of the continuous path or of the point-to-point variety, may use ''sensors'', and has all the following characteristics:

(a) Is multifunctional;

(b) Is capable of positioning or orienting material, parts, tools or special devices through variable movements in a three dimensional space;

(c) Incorporates three or more closed or open loop servo-devices that may include stepping motors; and

(d) Has ''user-accessible programmability'' by means of teach/playback method or by means of an electronic computer that may be a programmable logic controller, i.e., without mechanical intervention.

NOTE: This definition does not include the following devices:

(a) Manipulation mechanisms that are only manually/teleoperator controllable;

(b) Fixed sequence manipulation mechanisms that are automated moving devices, operating according to mechanically fixed programmed motions. The program is mechanically limited by fixed stops, such as pins or cams. The sequence of motions and the selection of paths or angles are not variable or changeable by mechanical, electronic or electrical means;

(c) Mechanically controlled variable sequence manipulation mechanisms that are automated moving devices, operating according to mechanically fixed programmed motions. The program is mechanically limited by fixed, but adjustable stops, such as pins or cams. The sequence of motions and the selection of paths or angles are variable within the fixed program pattern. Variations or modifications of the program pattern (e.g., changes of pins or exchanges of cams) in one or more motion axes are accomplished only through mechanical operations;

(d) Non-servo-controlled variable sequence manipulation mechanisms that are automated moving devices, operating according to mechanically fixed programmed motions. The program is variable, but the sequence proceeds only by the binary signal from mechanically fixed electrical binary devices or adjustable stops;

(e) Stacker cranes defined as Cartesian coordinate manipulator systems manufactured as an integral part of a vertical array of storage bins and designed to access the contents of those bins for storage or retrieval.

''*Rotary Atomization*''. (Cat 1)—A process to reduce a stream or pool of molten metal to droplets to a diameter of 500 micrometer or less by centrifugal force.

''*Routed export transaction*''. A transaction where the foreign principal party in interest authorizes a U.S. forwarding or other agent to facilitate export of items from the United States.

''*Run-out*''. (out-of-true running) (Cat 2)—Radial displacement in one revolution of the main spindle measured in a plane perpendicular to the spindle axis at a point on the external or internal revolving surface to be tested (Ref.: ISO 230 Part 1–1986, paragraph 5.61).

''*SHPL*.'' (Cat 6) is equivalent to ''Super High Power Laser'', see definition for ''super high power laser.''

SNEC. See Subgroup on Nuclear Export Coordination.

''*Scale factor*''. (gyro or accelerometer) (Cat 7)—The ratio of change in output to a change in the input intended to be measured. Scale factor is generally evaluated as the slope of the straight line that can be fitted by the method of least squares to input-output data obtained by varying the input cyclically over the input range.

Schedule B numbers. The commodity numbers appearing in the current edition of the Bureau of the Census publication, Schedule B Statistical Classification of Domestic and Foreign Commodities Exported from the United States. (See part 758 of the EAR for information on use of Schedule B numbers.)

''*Settling time*''. (Cat 3)—The time required for the output to come within one-half bit of the final value when switching between any two levels of the converter.

Shield. Chaired by the Department of State, the Shield primarily reviews applications involving items controlled for Chemical and Biological Weapons (CBW) reasons. The Shield also reviews applications involving items not controlled for CBW reasons, but destined for a country and/or end-use/end-user of concern. See § 750.4 of the EAR.

''*Signal analyzers*''. (Cat 3)—Apparatus capable of measuring and displaying basic properties of the single-frequency components of multi-frequency signals.

''*Signal analyzers*''. (dynamic) (Cat 3)—(See ''Dynamic signal analyzers''.)

''*Signal processing*''. (Cat 3, 4, 5, and 6)—The processing of externally derived information-bearing signals by algorithms such as time compression, filtering, extraction, selection, correlation, convolution or transformations between domains (e.g., fast Fourier transform or Walsh transform).

Single shipment. All items moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier, even if these items will be forwarded to one or more ultimate consignees. Items being transported in this manner shall be treated as a single shipment even if the items represent more than one order or are in separate containers.

''*Software*''. (Cat: all)—A collection of one or more ''programs'' or ''microprograms'' fixed in any tangible medium of expression.

''*Source code*''. (or source language) (Cat 4, 5, 6, 7, and 9)—A convenient expression of one or more processes that may be turned by a programming system into equipment executable form (''object code'' (or object language)).

''*Spacecraft*''. (Cat 7 and 9)—Active and passive satellites and space probes.

''*Space qualified*''. (Cat 3 and 6)—Products designed, manufactured and tested to meet the special electrical, mechanical or environmental requirements for use in the launch and deployment of satellites or high-altitude flight systems operating at altitudes of 100 km or higher.

''*Special fissile material.*'' (Cat 0) means plutonium-239, uranium-233, ''uranium enriched in the isotopes 235 or 233'', and any material containing the foregoing.

NOTE: As defined by 10 CFR 110.2 of the Nuclear Regulatory Commission Regulations, ''Special fissile material'' means: plutonium, uranium-233 or uranium enriched above 0.711 percent by weight in the isotope uranium-235.

Specially Designated National (SDN). Any person who is determined by the Secretary of the Treasury to be a specially designated national for any reason under regulations issued by the Office of Foreign Assets Control (see 31 CFR parts 500 through 590).

Specially Designated Terrorist (SDT). Any person who is determined by the Secretary of the Treasury to be a specially designated terrorist under notices or regulations issued by the Office of Foreign Assets Control (see 31 CFR chapter V).

''*Specially designed*''. (MTCR context)—Equipment, parts, components or ''software'' that, as a result of ''development'', have unique properties that distinguish them for certain predetermined purposes. For example, a piece of equipment that is ''specially designed'' for use in a ''missile'' will only be considered so if it has no other function or use. Similarly, a piece of manufacturing equipment that is ''specially designed'' to produce a certain type of component will only be considered such if it is not capable of producing other types of components.

''*Specific modulus*''. (Cat 1)—Young's modulus in pascals, equivalent to N/m^2

divided by specific weight in N/m^3, measured at a temperature of (296 ± 2) K ((23 ± 2) °C) and a relative humidity of (50 ± 5)%.

''*Specific tensile strength*''. (Cat 1)—Ultimate tensile strength in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296 ± 2) K ((23 ± 2) °C) and relative humidity of (50 ± 5)%.

''*Spectral efficiency*''. (Cat 5)—A figure of merit parametrized to characterize the efficiency of transmission system that uses complex modulation schemes such as QAM (quadrature amplitude modulation), Trellis coding, QSPK (Q-phased shift key), etc. It is defined as follows:

$$\text{Spectral efficiency} = \frac{\text{''Digital transfer rate''} \ \text{(bits/second)}}{\text{6 dB spectrum bandwidth (Hz).}}$$

''*Splat Quenching*''. (Cat 1)—A process to ''solidify rapidly'' a molten metal stream impinging upon a chilled block, forming a flake-like product.

NOTE: ''Solidify rapidly'': solidification of molten material at cooling rates exceeding 1,000 K/sec.

''*Spread spectrum*''. (Cat 5)—The technique whereby energy in a relatively narrow-band communication channel is spread over a much wider energy spectrum.

''*Spread spectrum radar*''. (Cat 6)—(see ''Radar spread spectrum'')

''*Stability*''. (Cat 7)—Standard deviation (1 sigma) of the variation of a particular parameter from its calibrated value measured under stable temperature conditions. This can be expressed as a function of time.

''*Stored program controlled*''. (Cat 2, 3, and 5)—A control using instructions stored in an electronic storage that a processor can execute in order to direct the performance of predetermined functions.

NOTE: Equipment may be ''stored program controlled'' whether the electronic storage is internal or external to the equipment.

Strategic partner (of a U.S. company). As applied to encryption items, means a foreign-based entity that:

(a) Has a business need to share the proprietary information with one or more U.S. companies; and

(b) Is contractually bound to the U.S. company (e.g., has an established pattern of continuing or recurring contractual relations).

Subgroup on Nuclear Export Coordination (SNEC). Chaired by the Department of State, the SNEC primarily reviews applications involving items controlled for nuclear nonproliferation (NP) reasons. The SNEC also reviews applications involving items not controlled for NP reasons, but destined for a country and/or end-use/end-user of NP concern.

Subject to the EAR. A term used in the EAR to describe those commodities, software, technology, and activities over which the Bureau of Industry and Security (BIS) exercises regulatory jurisdiction under the EAR (See § 734.2(a) of the EAR).

''*Substrate*''. (Cat 3)—A sheet of base material with or without an interconnection pattern and on which or within which ''discrete components'' or integrated circuits or both can be located.

NOTE: ''Discrete component'': a separately packaged ''circuit element'' with its own external connections.

''*Substrate blanks.*'' (Cat 6)—Monolithic compounds with dimensions suitable for the production of optical elements such as mirrors or optical windows.

''*Superalloy*''. (Cat 2 and 9)—Nickel−, cobalt−, or iron-base alloys having strengths superior to any alloys in the AISI 300 series at temperatures over 922 K (694 degrees C) under severe environmental and operating conditions.

''*Superconductive*''. (Cat 1, 3, 6, and 8)—Materials, i.e., metals, alloys, or compounds that can lose all electrical resistance, i.e., that can attain infinite electrical conductivity and carry very large electrical currents without Joule heating.

NOTE: The ''superconductive'' state of a material is individually characterized by a ''critical temperature'', a critical magnetic field that is a function of temperature, and a critical current density that is a function of both magnetic field and temperature.

''*Super High Power Laser*''. (SHPL) (Cat 6)—A ''laser'' capable of delivering (the total or any portion of) the output energy exceeding 1 kJ within 50 ms or having an average or CW power exceeding 20 kW.

''*Superplastic forming*''. (Cat 1 and 2)—A deformation process using heat for metals that are normally characterized by low elongation (less than 20%) at the breaking point as determined at room temperature by conventional tensile strength testing, in order to achieve elongations during processing that are at least 2 times those values.

''*Symmetric algorithm*''. (Cat 5, Part II) A cryptographic algorithm using an identical key for both encryption and decryption. A common use of ''symmetric algorithms'' is confidentiality of data.

''*System tracks*''. (Cat 6)—Processed, correlated (fusion of radar target data to flight plan position) and updated aircraft flight position report available to the Air Traffic Control center controllers.

''*Systolic array computer*''. (Cat 4)—A computer where the flow and modification of the data is dynamically controllable at the logic gate level by the user.

''*Technology*''. (General Technology Note)—Specific information necessary for the ''development'', ''production'', or ''use'' of a product. The information takes the form of ''technical data'' or ''technical assistance''. Controlled ''technology'' is defined in the General Technology Note and in the Commerce Control List (Supplement No. 1 to part 774 of the EAR).

N.B.: Technical assistance—May take forms such as instruction, skills training, working knowledge, consulting services.

NOTE: ''Technical assistance'' may involve transfer of ''technical data''.

''*Technical data*''—May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

''*Terminal interface equipment*''. (Cat 4)—Equipment at which information enters or leaves the telecommunication systems, e.g., telephone, data device, computer, facsimile device.

''*Three dimensional Vector Rate*''. (Cat 4)—The number of vectors generated per second that have 10 pixel poly line vectors, clip tested, randomly oriented, with either integer or floating point X-Y-Z coordinate values (whichever produces the maximum rate).

''*Tilting spindle*''. (Cat 2)—A tool-handling spindle that alters, during the machining process, the angular position of its center line with respect to any other axis.

''*Time constant*''. (Cat 6)—The time taken from the application of a light stimulus for the current increment to reach a value of 1–1/e times the final value (i.e., 63% of the final value).

''*Time-modulated ultra-wideband*''. (Cat 5 part 1 and Cat 5 part 2) The technique in which very short precisely time-controlled RF pulses are modulated in accordance with communications data by shifting pulse positions (usually called Pulse Position Modulation, PPM) channelized or scrambled in accordance with pseudo-random noise codes by PPM, then transmitted and received in the direct pulse form without using any carrier frequencies, consequently having extremely low power density over ultra-wide frequency bands. It is also known as Impulse Radio.

''*Total control of flight.*'' (Cat 7) means an automated control of ''aircraft'' state variables and flight path to meet mission objectives responding to real time changes in data regarding objectives, hazards or other ''aircraft.''

''*Total digital transfer rate*''. (Cat 5)—The number of bits, including line coding, overhead and so forth per unit time passing between corresponding equipment in a digital transmission system. (See also ''digital transfer rate''.)

''*Toxins.*'' (Cat 1 and 2) means toxins in the form of deliberately isolated preparations or mixtures, no matter how produced, other than toxins present as contaminants of other materials such as pathological specimens,

crops, foodstuffs or seed stocks of ''microorganisms.''

Transfer. A transfer to any person of items subject to the EAR either within the United States or outside of the United States with the knowledge or intent that the items will be shipped, transferred, or transmitted to an unauthorized recipient.

''*Transfer laser*''. (Cat 6)—A ''laser'' in which the lasting species is excited through the transfer of energy by collision of a non-lasing atom or molecule with a lasing atom or molecule species.

''*Tunable*''. (Cat 6)—The ability of a ''laser'' to produce a continuous output at all wavelengths over a range of several ''laser'' transitions. A line selectable ''laser'' produces discrete wavelengths within one ''laser'' transition and is not considered ''tunable''.

U.S. Person. (a) For purposes of §§ 740.19, 744.6, 744.10, 744.11, 744.12, 744.13 and 744.14 of the EAR, the term U.S. person includes:

(1) Any individual who is a citizen of the United States, a permanent resident alien of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3);

(2) Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and

(3) Any person in the United States.

(b) *See also* § 740.9 and parts 746 and 760 of the EAR for definitions of ''U.S. person'' that are specific to those parts.

U.S. subsidiary. As applied to encryption items, means

(a) A foreign branch of a U.S. company; or

(b) A foreign subsidiary or entity of a U.S. entity in which:

(1) The U.S. entity beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the foreign subsidiary or entity, if no other persons owns or controls (whether directly or indirectly) an equal or larger percentage; or

(2) The foreign entity is operated by the U.S. entity pursuant to the provisions of an exclusive management contract; or

(3) A majority of the members of the board of directors of the foreign subsidiary or entity also are members of the comparable governing body of the U.S. entity; or

(4) The U.S. entity has the authority to appoint the majority of the members of the board of directors of the foreign subsidiary or entity; or

(5) The U.S. entity has the authority to appoint the chief operating officer of the foreign subsidiary or entity.

Ultimate consignee. The principal party in interest located abroad who receives the exported or reexported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end-user.

United States. Unless otherwise stated, the 50 States, including offshore areas within their jurisdiction pursuant to section 3 of the Submerged Lands Act (43 U.S.C. 1311), the District of Columbia, Puerto Rico, and all territories, dependencies, and possessions of the United States, including foreign trade zones established pursuant to 19 U.S.C. 81A–81U, and also including the outer continental shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

United States airline. Any citizen of the United States who is authorized by the U.S. Government to engage in business as an airline. For purposes of this definition, a U.S. citizen is:

(a) An individual who is a citizen of the United States or one of its possessions; or

(b) A partnership of which each member is such an individual; or

(c) A corporation or association created or organized under the laws of the United States, or of any State, Territory, or possession of the United States, of which the president and two-thirds of the board of directors and other managing officers thereof are such individuals and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

''*Usable in*'', ''*usable for*'', ''*usable as*'' *or* ''*Capable of*''. (MTCR context)—Equipment, parts, components, materials or ''software'' which are suitable for a particular purpose. There is no need for the equipment, parts, components, materials or ''software'' to have been configured, modified or specified

for the particular purpose. For example, any military specification memory circuit would be ''capable of'' operation in a guidance system.

''*Use*''. (All categories and General Technology Note)—Operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.

''*User-accessible programmability*''. (Cat 4, 5, and 6)—The facility allowing a user to insert, modify, or replace ''programs'' by means other than:

(a) A physical change in wiring or interconnections; or

(b) The setting of function controls including entry of parameters.

Utilization facility. (a) As defined by 10 CFR 110.2 of the Nuclear Regulatory Commission Regulations, utilization facility means a nuclear reactor, other than one that is a production facility, any of the following major components of a nuclear reactor: Pressure vessels designed to contain the core of a nuclear reactor, other than one that is a production facility, and the following major components of a nuclear reactor:

(1) Primary coolant pumps;

(2) Fuel charging or discharging machines; and

(3) Control rods.

(b) Utilization facility does not include the steam turbine generator portion of a nuclear power plant.

''*Vacuum Atomization*''. (Cat 1)—A process to reduce a molten stream of metal to droplets of a diameter of 500 micrometer or less by the rapid evolution of a dissolved gas upon exposure to a vacuum.

''*Variable geometry airfoils*''. (Cat 7)—Use trailing edge flaps or tabs, or leading edge slats or pivoted nose droop, the position of which can be controlled in flight.

''*Vector Rate*''. (Cat 4)—See: ''Two dimensional Vector Rate''; ''Three dimensional Vector Rate''.

You. Any person, including a natural person, including a citizen of the United States or any foreign country; any firm; any government, government agency, government department, or government commission; any labor union; any fraternal or social organization; and any other association or organization whether or not organized for profit.

[61 FR 12925, Mar. 25, 1996, as amended at 61 FR 68586, Dec. 30, 1996; 62 FR 6686, Feb. 12, 1997; 62 FR 25470, May 9, 1997; 63 FR 50525, Sept. 22, 1998; 63 FR 72166, Dec. 31, 1998; 64 FR 1122, Jan. 8, 1999; 64 FR 5932, Feb. 8, 1999; 64 FR 13339, Mar. 18, 1999; 64 FR 27146, May 18, 1999; 65 FR 2501, Jan. 14, 2000; 65 FR 34075, May 26, 2000; 65 FR 42573, July 10, 2000; 65 FR 43133, July 12, 2000; 65 FR 62609, Oct. 19, 2000; 66 FR 18402, Apr. 9, 2001; 66 FR 36683, July 12, 2001; 66 FR 36910, July 16, 2001; 66 FR 461, Jan. 3, 2002; 67 FR 38869, June 6, 2002; 67 FR 54953, Aug. 27, 2002; 67 FR 55599, Aug. 29, 2002; 68 FR 10591, Mar. 5, 2003; 68 FR 34195, June 6, 2003; 68 FR 50474, Aug. 21, 2003; 68 FR 54656, Sept. 18, 2003; 68 FR 60289, Oct. 22, 2003; 68 FR 68980, Dec. 10, 2003; 69 FR 23638, Apr. 29, 2004; 69 FR 36011, June 28, 2004; 69 FR 46080, July 30, 2004; 69 FR 60546, Oct. 12, 2004; 69 FR 71364, Dec. 9, 2004; 70 FR 8250, Feb. 18, 2005; 70 FR 11861, Mar. 10, 2005; 70 FR 41102, July 15, 2005; 70 FR 45280, Aug. 5, 2005; 70 FR 67348, Nov. 7, 2005; 70 FR 69434, Nov. 16, 2005]

EDITORIAL NOTE: At 66 FR 36910, July 16, 2001, §772.1 was amended by revising the phrase ''Cat. 1 and 7'' to read ''All Categories'' in the definition for ''*Production*''. However, this phrase does not exist in this section.

PART 774—THE COMMERCE CONTROL LIST

Sec.
774.1 Introduction.
774.2 [Reserved]
SUPPLEMENT NO. 1 TO PART 774—THE COMMERCE CONTROL LIST
SUPPLEMENT NO. 2 TO PART 774—GENERAL TECHNOLOGY AND SOFTWARE NOTES
SUPPLEMENT NO. 3 TO PART 774—STATEMENT OF UNDERSTANDING

SOURCE: 61 FR 12937, Mar. 25, 1996, unless otherwise noted.

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; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763, 3 CFR, 2004 Comp., p. 284.

§774.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. The Bureau of Industry

and Security (BIS) maintains the Commerce Control List (CCL) that includes items (commodities, software, and technology) subject to the authority of BIS. The CCL does not include those items exclusively controlled for export by another department or agency of the U.S. Government. In instances where other agencies administer controls over related items, entries in the CCL will contain a reference to these controls. Those items subject to the EAR but not specified on the CCL are identified by the designator ''EAR99''. See §734.2(a) of the EAR for items that are ''subject to the EAR''. You should consult part 738 of the EAR for an explanation of the organization of the CCL and its relationship to the Country Chart.

The CCL is contained in Supplement No. 1 to this part, and Supplement No. 2 to this part contains the General Technology and Software Notes relevant to entries contained in the CCL.

§ 774.2 [Reserved]

SUPPLEMENT NO. 1 TO PART 774—THE COMMERCE CONTROL LIST

CATEGORY 0—NUCLEAR MATERIALS, FACILITIES, AND EQUIPMENT [AND MISCELLANEOUS ITEMS]

A. SYSTEMS, EQUIPMENT AND COMPONENTS

0A001 "Nuclear reactors", i.e., reactors capable of operation so as to maintain a controlled, self-sustaining fission chain reaction, and equipment and components specially designed or prepared for use in connection with a "nuclear reactor", including (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control:

Control(s): Items described in 0A001 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110)

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A.
Related Controls: N/A
Related Definitions: N/A
Items: a. Pressure vessels, i.e. metal vessels as complete units or X parts therefor, which are specially designed or prepared to contain the core of a ''nuclear reactor'' and are capable of withstanding the operating pressure of the primary coolant, including the top plate for a reactor pressure vessel;

b. Fuel element handling equipment, including reactor fuel charging and discharging machines;

c. Control rods specially designed or prepared for the control of the reaction rate in a ''nuclear reactor'', including the neutron absorbing part and the support or suspension structures therefore, and control rod guide tubes;

d. Electronic controls for controlling the power levels in ''nuclear reactors'', including reactor control rod drive mechanisms and radiation detection and measuring instruments to determine neutron flux levels;

e. Pressure tubes specially designed or prepared to contain fuel elements and the primary coolant in a ''nuclear reactor'' at an operating pressure in excess of 5.1 MPa;

f. Tubes or assemblies of tubes, made from zirconium metal or alloy in which the ratio of hafnium to zirconium is less than 1:500 parts by weight, specially designed or prepared for use in a ''nuclear reactor'';

g. Coolant pumps specially designed or prepared for circulating the primary coolant of ''nuclear reactors'';

h. Internal components specially designed or prepared for the operation of a ''nuclear reactor'', including core support structures, thermal shields, baffles, core grid plates and diffuser plates;

i. Heat exchangers.

0A002 Power generating or propulsion equipment specially designed for use with space, marine or mobile "nuclear reactors". (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

0A018 Items on the Wassenaar Munitions List.

LICENSE REQUIREMENTS

Reason for Control: NS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

LVS: $5000 for 0A018.a
$3000 for 0A018.b
$1500 for 0A018.c and .d
$0 for Rwanda
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: 0A018.a, and .b in $ value; 0A018.c and .d in number.
Related Controls: N/A
Related Definitions: N/A

Items: a. Construction equipment built to military specifications, specially designed for airborne transport; and specially designed parts and accessories therefor;

b. Specially designed components and parts for ammunition, except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines (all of which are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls). (See 22 CFR parts 120 through 130);

c. Muzzle loading (black powder) firearms with a caliber less than 20 mm that were manufactured later than 1937 and that are not reproductions of firearms manufactured earlier than 1890;

NOTE: 0A018.c does not control weapons used for hunting or sporting purposes that were not specifically designed for hunting or sporting purposes that were not specially designed for military use and are not of the fully automatic type, but see 0A984 concerning shotguns.

d. Military helmets, except:

d.1. Conventional steel helmets other than those described by 0A018.d.2 of this entry.

d.2. Helmets, made of any material, equipped with communications hardware, optional sights, slewing devices or mechanisms to protect against thermal flash or lasers.

NOTE: Helmets described in 0A018.d.1 are controlled by 0A988. Helmets described in 0A018.d.2 are controlled by the U.S. Department of State, Directorate of Defense Trade Controls (See 22 CFR part 121, Category X).

0A918 Miscellaneous Military Equipment Not on the Wassenaar Munitions List

LICENSE REQUIREMENTS

Reason for Control: RS, AT, UN.

Control(s)	Country chart
RS applies to entire entry	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

LVS: $5000 for 0A918.a
$1500 for 0A918.b
$0 for Rwanda
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: 0A918.a in $ value; 0A918.b in number.
Related Controls: N/A
Related Definitions: N/A
Items:

a. Power controlled searchlights and control units therefor, designed for military use, and equipment mounting such units; and specially designed parts and accessories therefor;

b. Bayonets.

0A978 Saps.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	Country Chart
CC applies to entire entry	CC Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0A979 Police helmets and shields; and parts, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	Country Chart
CC applies to entire entry	CC Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0A980 Horses by sea.

LICENSE REQUIREMENTS

Reason for Control: SS
Control(s): SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

0A982 Restraint devices, including thumbcuffs, leg irons, shackles, and handcuffs; straight jackets, plastic handcuffs; and parts and accessories, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC
Control(s)
CC applies to entire entry. A license is required for ALL destinations, except Canada, regardless of end-use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See part 742 of the EAR for additional information.)

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0A983 Specially designed implements of torture and thumbscrews; and parts and accessories, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC
Control(s): CC applies to entire entry. A license is required for ALL destinations, regardless of end-use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See part 742 of the EAR for additional information.)

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

0A984 Shotguns, barrel length 18 inches (45.72 cm) inches or over; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

LICENSE REQUIREMENTS
Reason for Control: CC, FC, UN.

Control(s)	Country chart
FC applies to entire entry	FC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 18 in. (45.72 cm), but less than 24 in. (60.96 cm) or buckshot shotgun shells controlled by this entry, regardless of end-user.	CC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm), regardless of end-user.	CC Column 2.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS
LVS: N/A
GBS: N/A
CIV: N/A
LIST OF ITEMS CONTROLLED
Unit: $ value.
Related Controls: This entry does not control shotguns with a barrel length of less than 18 inches (45.72 cm). (See 22 CFR part 121.) These items are subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0A985 Discharge type arms (for example, stun guns, shock batons, electric cattle prods, immobilization guns and projectiles) except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC, UN.
Control(s): CC applies to entire entry. A license is required for ALL destinations, except Canada, regardless of end-use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See part 742 of the EAR for additional information.)

UN applies to entire entry	Iraq and Rwanda

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0A986 Shotgun shells, except buckshot shotgun shells, and parts.

LICENSE REQUIREMENTS

Reason for Control: AT, FC, UN.
Control(s)—Country Chart: AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 of the EAR for additional information.

FC applies to entire entry	FC Column 1.

UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

0A987 Optical sighting devices for firearms (including shotguns controlled by 0A984); and parts, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: FC, CC, UN.

Control(s)	Country chart
FC applies to optical sights for firearms, including shotguns described in ECCN 0A984, and related parts.	FC Column 1.
CC applies to entire entry	CC Column 1.
UN applies to entire entry	Iraq and Rwanda.

0A988 Conventional military steel helmets as described by 0A018.d.1; and machetes.

LICENSE REQUIREMENTS

Reason for Control: UN.
Control(s): UN applies to entire entry. A license is required for conventional military steel helmets as described by 0A018.d.1 to Iraq and Rwanda. A license is required for machetes to Iraq and Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

NOTE: Exports from the U.S. and transhipments to Iran must be licensed by the Department of Treasury, Office of Foreign Assets Control. (See §746.7 of the EAR for additional information on this requirement.)

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

0A999 Specific Processing Equipment, as Follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT.
Control(s).
Country Chart.
AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 of the EAR for additional information.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:
a. Ring Magnets;
b. Reserved.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

0B001 Plant for the separation of isotopes of "natural uranium" and "depleted uranium", "special fissile materials" and "other fissile materials", and specially designed or prepared equipment and components therefor, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control:
Control(s): Items described in 0B001 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

LICENSE EXCEPTIONS,

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: ''*Materials resistant to corrosion by* UF_6'' may be copper, stainless steel, aluminum, aluminum oxide, aluminum alloys, nickel or alloy containing 60 weight percent or more nickel and UF_6-resistant fluorinated hydrocarbon polymers, as appropriate for the type of separation process.
Items: a. Plant specially designed for separating isotopes of ''natural uranium'' and ''depleted uranium'', ''special fissile materials'' and ''other fissile materials'', as follows:

a.1. Gaseous diffusion separation plant;
a.2. Gas centrifuge separation plant;
a.3. Aerodynamic separation plant;
a.4. Chemical exchange separation plant;
a.5. Ion-exchange separation plant;
a.6. Atomic vapor ''laser'' isotopic separation plant;

a.7. Molecular ''laser'' isotopic separation plant;

a.8. Plasma separation plant;

a.9. Electro magnetic separation plant;

b. Equipment and components, specially designed or prepared for gaseous diffusion separation process, as follows:

b.1. Bellow valves made of or protected by materials resistant to UF_6 (e.g., aluminum, aluminum alloys, nickel or alloy containing 60 weight percent or more nickel), with a diameter of 40 mm to 1500 mm;

b.2.a. Compressors (positive displacement, centrifugal and axial flowtypes) or gas blowers with a suction volume capacity of 1 m^3/min or more of UF_6, and discharge pressure up to 666.7 kPa, made of or protected by materials resistant to UF_6 (e.g. aluminum, aluminum alloys, nickel or alloy containing 60 weight percent or more nickel);

b.2.b. Rotary shaft seals for compressors or blowers specified in 0B001.b.2.a. and designed for a buffer gas in-leakage rate of less than 1,000 cm^3/min.;

b.3. Gaseous diffusion barriers made of porous metallic, polymer or ceramic materials resistant to corrosion by UF_6 with a pore size of 10 to 100 nm, a thickness of 5 mm or less, and, for tubular forms, a diameter of 25 mm or less;

b.4. Gaseous diffuser housings made of or protected by materials resistant to corrosion by UF_6;

b.5. Heat exchangers made of aluminum, copper, nickel, or alloys containing more than 60 weight percent nickel, or combinations of these metals as clad tubes, designed to operate at sub-atmospheric pressure with a leak rate that limits the pressure rise to less than 10 Pa per hour under a pressure differential of 100 kPa;

c. Equipment and components, specially designed or prepared for gas centrifuge separation process, as follows:

c.1. Gas centrifuges;

c.2. Complete rotor assemblies consisting of one or more rotor tube cylinders;

c.3. Rotor tube cylinders with a thickness of 12 mm or less, a diameter of between 75 mm and 400 mm, made from any of the following high strength-to-density ratio materials:

c.3.a. Maraging steel capable of an ultimate tensile strength of 2,050 MPa or more;

c.3.b. Aluminum alloys capable of an ultimate tensile strength of 460 MPa or more; *or*

c.3.c. ''Fibrous or filamentary materials'' with a ''specific modulus'' of more than 3.18 $\times 10^6$ m and a ''specific tensile strength'' greater than 76.2×10^3 m;

c.4. Magnetic suspension bearings consisting of an annular magnet suspended within a housing made of UF_6 resistant materials (e.g. aluminum, aluminum alloys, nickel or alloy containing 60 weight percent or more nickel) containing a damping medium and having the magnet coupling with a pole piece or second magnet fitted to the top cap of the rotor;

c.5. Specially prepared bearings comprising a pivot-cup assembly mounted on a damper;

c.6. Rings or bellows with a wall thickness of 3 mm or less and a diameter of between 75 mm and 400 mm and designed to give local support to a rotor tube or to join a number together, made from any of the following high strength-to-density ratio materials;

c.6.a. Maraging steel capable of an ultimate tensile strength of 2050 MPa or more;

c.6.b. Aluminum alloys capable of an ultimate tensile strength of 460 MPa or more; *or*

c.6.c. ''Fibrous or filamentary materials'' with a ''specific modulus'' of more than 3.18 $\times 10^6$ m and a ''specific tensile strength'' greater than 76.2×10^3 m;''.

c.7. Baffles of between 75 mm and 400 mm diameter for mounting inside a rotor tube, made from any of the following high strength-to-density ratio materials:

c.7.a. Maraging steel capable of an ultimate tensile strength of 2050 MPa or more;

c.7.b. Aluminum alloys capable of an ultimate tensile strength of 460 MPa or more; *or*

c.7.c. ''Fibrous or filamentary materials'' with a ''specific modulus'' of more than 3.18 $\times 10^6$ m and a ''specific tensile strength'' greater than 76.2×10^3 m;''.

c.8. Top and bottom caps of between 75 mm and 400 mm diameter to fit the ends of a rotor tube, made from any of the following high strength-to-density ratio materials:

c.8.a. Maraging steel capable of an ultimate tensile strength of 2050 MPa or more; *or*

c.8.b. Aluminum alloys capable of an ultimate tensile strength of 460 MPa or more;

c.8.c. ''Fibrous or filamentary materials'' with a ''specific modulus'' of more than 3.18 $\times 10^6$ m and a ''specific tensile strength'' greater than 76.2×10^3 m.

c.9. Molecular pumps comprised of cylinders having internally machined or extruded helical grooves and internally machined bores;

c.10. Ring-shaped motor stators for multiphase AC hysteresis (or reluctance) motors for synchronous operation within a vacuum in the frequency range of 600 to 2,000 Hz and a power range of 50 to 1,000 Volt-Amps;

c.11. Frequency changers (converters or inverters) specially designed or prepared to supply motor stators for gas centrifuge enrichment, having all of the following characteristics, and specially designed components therefor:

c.11.a. Multiphase output of 600 to 2000 Hz;

c.11.b. Frequency control better than 0.1%;

c.11.c. Harmonic distortion of less than 2%; *and*

c.11.d. An efficiency greater than 80%;

c.12. Centrifuge housing/recipients to contain the rotor tube assembly of a gas centrifuge, consisting of a rigid cylinder of wall

thickness up to 30 mm with precision machined ends and made of or protected by UF_6 resistant materials;

c.13. Scoops consisting of tubes of up to 12 mm internal diameter for the extraction of UF_6 gas from within a centrifuge rotor tube by a Pitot tube action, made of or protected by UF_6 resistant materials;

d. Equipment and components, specially designed or prepared for aerodynamic separation process, as follows:

d.1. Separation nozzles consisting of slit-shaped, curved channels having a radius of curvature less than 1 mm and having a knife-edge contained within the nozzle which separates the gas flowing through the nozzle into two streams;

d.2. Tangential inlet flow-driven cylindrical or conical tubes (vortex tubes), made of or protected by UF_6 resistant materials with a diameter of between 0.5 cm and 4 cm and a length to diameter ratio of 20:1 or less and with one or more tangential inlets;

d.3. Compressors (positive displacement, centrifugal and axial flow types) or gas blowers with a suction volume capacity of 2 m^3/min, made of or protected by materials resistant to UF_6 (e.g., aluminum, aluminum alloys, nickel or alloy containing 60 weight percent or more nickel), and rotary shaft seals therefor;

d.4. Aerodynamic separation element housings, made of or protected by materials resistant to UF_6 to contain vortex tubes or separation nozzles;

d.5. Heat exchangers made of aluminum, copper, nickel, or alloy containing more than 60 weight percent nickel, or combinations of these metals as clad tubes, designed to operate at pressures of 600 kPa or less;

d.6. Bellows valves made of or protected by UF_6 resistant materials with a diameter of 40 to 1500 mm;

d.7. Process systems for separating UF_6 from carrier gas (hydrogen or helium) to 1 ppm UF_6 content or less, including:

d.7.a. Cryogenic heat exchangers and cryoseparators capable of temperatures of −120° C or less;

d.7.b. Cryogenic refrigeration units capable of temperatures of −120° C or less;

d.7.c. Separation nozzle or vortex tube units for the separation of UF_6 from carrier gas;

d.7.d. UF_6 cold traps capable of temperatures of −20° C or less;

e. Equipment and components, specially designed or prepared for chemical exchange separation process, as follows:

e.1. Fast-exchange liquid-liquid centrifugal contactors with stage residence time of 30 seconds or less and resistant to concentrated hydrochloric acid (e.g., made of or lined with suitable plastic materials such as fluorocarbon polymers or lined with glass);

e.2. Fast-exchange liquid-liquid pulse columns with stage residence time of 30 seconds or less and resistant to concentrated hydrochloric acid (e.g., made of or lined with suitable plastic materials such as fluorocarbon polymers or lined with glass);

e.3. Electrochemical reduction cells designed to reduce uranium from one valence state to another;

e.4. Electrochemical reduction cells feed equipment to take U^{+4} from the organic stream and, for those parts in contact with the process stream, made of or protected by suitable materials (e.g., glass, fluorocarbon polymers, polyphenyl sulphate, polyether sulfone and resin-impregnated graphite);

e.5. Feed preparation systems for producing high purity uranium chloride solution consisting of dissolution, solvent extraction and/or ion exchange equipment for purification and electrolytic cells for reducing the uranium U^{+6} or U^{+4} to U^{+3};

e.6. Uranium oxidation systems for oxidation of U^{+3} to U^{+4};

f. Equipment and components, specially designed or prepared for ion-exchange separation process, as follows:

f.1. Fast reacting ion-exchange resins, pellicular or porous macro-reticulated resins in which the active chemical exchange groups are limited to a coating on the surface of an inactive porous support structure, and other composite structures in any suitable form, including particles or fibers, with diameters of 0.2 mm or less, resistant to concentrated hydrochloric acid and designed to have an exchange rate half-time of less than 10 seconds and capable of operating at temperatures in the range of 100° C to 200° C;

f.2. Ion exchange columns (cylindrical) with a diameter greater than 1000 mm, made of or protected by materials resistant to concentrated hydrochloric acid (e.g., titanium or fluorocarbon plastics) and capable of operating at temperatures in the range of 100° C to 200° C and pressures above 0.7 MPa;

f.3. Ion exchange reflux systems (chemical or electrochemical oxidation or reduction systems) for regeneration of the chemical reducing or oxidizing agents used in ion exchange enrichment cascades;

g. Equipment and components, specially designed or prepared for atomic vapor ''laser'' isotopic separation process, as follows:

g.1. High power electron beam guns with total power of more than 50 kW and strip or scanning electron beam guns with a delivered power of more than 2.5 kW/cm for use in uranium vaporization systems;

g.2. Trough shaped crucibles and cooling equipment made of or protected by materials resistant to heat and corrosion of molten uranium or uranium alloy's (e.g., tantalum, yttria-coated graphite, graphite coated with other rare earth oxides or mixtures thereof);

N.B: See also 2A225.

g.3. Product and tails collector systems made of or lined with materials resistant to

the heat and corrosion of uranium vapor, such as yttria-coated graphite or tantalum;

g.4. Separator module housings (cylindrical or rectangular vessels) for containing the uranium metal vapor source, the electron beam gun and the product and tails collectors;

g.5. ''Lasers'' or ''laser'' systems for the separation of uranium isotopes with a spectrum frequency stabilizer for operation over extended periods of time;

N.B.: See also 6A005 and 6A205.

h. Equipment and components, specially designed or prepared for molecular ''laser'' isotopic separation process, as follows:

h.1. Supersonic expansion nozzles for cooling mixtures of UF_6 and carrier gas to 150 K or less and made from UF_6 resistant materials;

h.2. Uranium fluoride (UF_5) product collectors consisting of filter, impact, or cyclone-type collectors or combinations thereof, and made of UF_5/UF_6 resistant materials (e.g. aluminum, aluminum alloys, nickel or alloys containing 60 weight percent of nickel and UF_6 resistant fully fluorinated hydrocarbon polymers);

h.3. Equipment for fluorinating UF_5 to UF_6;

h.4. Compressors made of or protected by materials resistant to UF_6 (e.g., aluminum, aluminum alloys, nickel or alloy containing 60 weight percent or more nickel), and rotary shaft seals therefor;

h.5. Process systems for separating UF_6 from carrier gas (e.g., nitrogen or argon) including:

h.5.a. Cryogenic heat exchangers and cryoseparators capable of temperatures of −120 °C or less;

h.5.b. Cryogenic refrigeration units capable of temperatures of −120 °C or less;

h.5.c. UF6 cold traps capable of temperatures of −20 °C or less;

h.6. ''Lasers'' or ''laser'' systems for the separation of uranium isotopes with a spectrum frequency stabilizer for operation over extended periods of time;

N.B.: See also 6A005 and 6A205.

i. Equipment and components, specially designed or prepared for plasma separation process, as follows:

i.1. Product and tails collectors made of or protected by materials resistant to the heat and corrosion of uranium vapor such as yttria-coated graphite or tantalum;

i.2. Radio frequency ion excitation coils for frequencies of more than 100 kHz and capable of handling more than 40 kW mean power;

i.3. Microwave power sources and antennae for producing or accelerating ions, with an output frequency greater than 30 GHz and mean power output greater than 50 kW;

i.4. Uranium plasma generation systems;

i.5. Liquid uranium metal handling systems consisting of crucibles, made of or protected by suitable corrosion and heat resistant materials (e.g., tantalum, yttria-coated graphite, graphite coated with other rare earth oxides or mixtures thereof), and cooling equipment for the crucibles;

N.B.: See also 2A225.

i.6. Separator module housings (cylindrical) for containing the uranium plasma source, radio-frequency drive coil and the product and tails collectors and made of a suitable non-magnetic material (e.g. stainless steel);

j. Equipment and components, specially designed or prepared for electromagnetic separation process, as follows:

j.1. Ion sources, single or multiple, consisting of a vapor source, ionizer, and beam accelerator made of suitable materials (e.g., graphite, stainless steel, or copper) and capable of providing a total ion beam current of 50 mA or greater;

j.2. Ion collector plates for collection of enriched or depleted uranium ion beams, consisting of two or more slits and pockets and made of suitable non-magnetic materials (e.g., graphite or stainless steel);

j.3. Vacuum housings for uranium electromagnetic separators made of non-magnetic materials (e.g. graphite or stainless steel) and designed to operate at pressures of 0.1 Pa or lower;

j.4. Magnet pole pieces with a diameter greater than 2 m;

j.5. High voltage power supplies for ion sources, having all of the following characteristics:

j.5.a. Capable of continuous operation;

j.5.b. Output voltage of 20,000 V or greater;

j.5.c. Output current of 1 A or greater;

j.5.d. Voltage regulation of better than 0.01% over a period of 8 hours;

N.B.: See also 3A227.

j.6. Magnet power supplies (high power, direct current) having all of the following characteristics:

j.6.a. Capable of continuous operation with a current output of 500 A or greater at a voltage of 100 V or greater;

j.6.b. Current or voltage regulation better than 0.01% over a period of 8 hours.

N.B.: See also 3A226.

0B002 Specially designed or prepared auxiliary systems, equipment and components, as follows, (see List of Items Controlled) for isotope separation plant specified in 0B001, made of or protected by UF_6 resistant materials.

LICENSE REQUIREMENTS

Reason for Control:

Control(s): Items described in 0B002 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110)

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. Feed autoclaves, ovens or systems used for passing UF_6 to the enrichment process;

b. Desublimers or cold traps, used to remove UF_6 from the enrichment process for subsequent transfer upon heating;

c. Product and tails stations for transferring UF_6 into containers;

d. Liquefaction or solidification stations used to remove UF_6 from the enrichment process by compressing and converting UF_6 to a liquid or solid form;

e. Piping systems and header systems specially designed for handling UF_6 within gaseous diffusion, centrifuge or aerodynamic cascades made of or protected by UF_6 resistant materials;

f.1. Vacuum manifolds or vacuum headers having a suction capacity of 5 m^3/minute or more; *or*

f.2. Vacuum pumps specially designed for use in UF_6 bearing atmospheres;

g. UF_6 mass spectrometers/ion sources specially designed or prepared for taking on-line samples of feed, product or tails from UF_6 gas streams and having all of the following characteristics:

g.1. Unit resolution for mass of more than 320 amu;

g.2. Ion sources constructed of or lined with nichrome or monel, or nickel plated;

g.3. Electron bombardment ionization sources; and

g.4. Collector system suitable for isotopic analysis.

0B003 Plant for the conversion of uranium and equipment specially designed or prepared therefor, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control
Control(s)

Items described in 0B003 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items:

a. Systems for the conversion of uranium ore concentrates to UO_3;

b. Systems for the conversion of UO_3 to UF_6;

c. Systems for the conversion of UO_3 to UO_2;

d. Systems for the conversion of UO_2 to UF_4;

e. Systems for the conversion of UF_4 to UF_6;

f. Systems for the conversion of UF_4 to uranium metal;

g. Systems for the conversion of UF_6 to UO_2;

h. Systems for the conversion of UF_6 to UF_4;

i. Systems for the conversion of UO_2 to UCl_4.

0B004 Plant for the production of heavy water, deuterium or deuterium compounds, and specially designed or prepared equipment and components therefor, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control:

Control(s): Items described in 0B004 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110)

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. Plant for the production of heavy water, deuterium or deuterium compounds, as follows:

a.1. Hydrogen sulphide-water exchange plants;

a.2. Ammonia-hydrogen exchange plants;

a.3. Hydrogen distillation plants;

b. Equipment and components, as follows, designed for:

b.1. Hydrogen sulphide-water exchange process:

b.1.a. Tray exchange towers;

b.1.b. Hydrogen sulphide gas compressors;

b.2. Ammonia-hydrogen exchange process:

b.2.a. High-pressure ammonia-hydrogen exchange towers;

b.2.b. High-efficiency stage contactors;

b.2.c. Submersible stage recirculation pumps;

b.2.d. Ammonia crackers designed for pressures of more than 3 MPa;

b.3. Hydrogen distillation process:

b.3.a. Hydrogen cryogenic distillation towers and cold boxes designed for operation below 35 K (−238° C);

b.3.b. Turboexpanders or turboexpander-compressor sets designed for operation below 35 K (−238° C);

b.4. Heavy water concentration process to reactor grade level (99.75 weight percent deuterium oxide):

b.4.a. Water distillation towers containing specially designed packings;

b.4.b. Ammonia distillation towers containing specially designed packings;

b.4.c. Catalytic burners for conversion of fully enriched deuterium to heavy water;

b.4.d. Infrared absorption analyzers capable of on-line hydrogen-deuterium ratio analysis where deuterium concentrations are equal to or more than 90 weight percent.

0B005 Plant specially designed for the fabrication of "nuclear reactor" fuel elements and specially designed equipment therefor.

LICENSE REQUIREMENTS

Reason for Control:

Control(s): Items described in 0B005 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110)

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: A plant for the fabrication of ''nuclear reactor'' fuel elements includes equipment which: (a) Normally comes into direct contact with or directly processes or controls the production flow of nuclear materials; (b) Seals the nuclear materials within the cladding; (c) Checks the integrity of the cladding or the seal; *and* (d) Checks the finish treatment of the solid fuel
Items: The List of Items Controlled is contained in the ECCN heading

0B006 Plant for the reprocessing of irradiated "nuclear reactor" fuel elements, and specially designed or prepared equipment and components therefor, including (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control:

Control(s): Items described in 0B006 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110)

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. Fuel element chopping or shredding machines, i.e. remotely operated equipment to cut, chop, shred or shear irradiated ''nuclear reactor'' fuel assemblies, bundles or rods;

b. Dissolvers, critically safe tanks (e.g. small diameter, annular or slab tanks) specially designed or prepared for the dissolution of irradiated ''nuclear reactor'' fuel, which are capable of withstanding hot, highly corrosive liquids, and which can be remotely loaded and maintained;

c. Counter-current solvent extractors and ion-exchange processing equipment specially designed or prepared for use in a plant for the reprocessing of irradiated ''natural uranium'', ''depleted uranium'' or ''special fissile materials'' and ''other fissile materials'';

d. Process control instrumentation specially designed or prepared for monitoring or controlling the reprocessing of irradiated ''natural uranium'', ''depleted uranium'' or ''special fissile materials'' and ''other fissile materials'';

e. Holding or storage vessels specially designed to be critically safe and resistant to the corrosive effects of nitric acid;

NOTE: Critically safe tanks may have the following features:

1. Walls or internal structures with a boron equivalent of at least two percent;

2. A maximum diameter or 175 mm for cylindrical vessels; or

3. A maximum width of 75 mm for either a slab or annular vessel.

f. Complete systems specially designed or prepared for the conversion of plutonium nitrate to plutonium oxide;

g. Complete systems specially designed or prepared for the production of plutonium metal.

NOTE: Plant for the reprocessing of irradiated ''nuclear reactor'' fuel elements includes equipment and components which normally come into direct contact with and directly control the irradiated fuel and the major nuclear material and fission product processing streams.

0B986 Equipment specially designed for manufacturing shotgun shells; and ammunition hand-loading equipment for both cartridges and shotgun shells.

LICENSE REQUIREMENTS

Reason for Control: AT, UN.

Control(s): AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. *See* §742.19 of the EAR for additional information.

UN applies to entire entry. A license is required for items controlled by this entry to Iraq and Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. *See* part 746 of the EAR for additional information.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

0B999 Specific Processing Equipment, as Follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT.
Control(s)—Country Chart: AT applies to entire entry. A license is required for items controlled by this entry to Iraq and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 and §746.3 of the EAR for additional information.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:
a. Hot cells;
b. Glove boxes suitable for use with radioactive materials.

C. MATERIALS

0C001 "Natural uranium" or "depleted uranium" or thorium in the form of metal, alloy, chemical compound or concentrate and any other material containing one or more of the foregoing.

LICENSE REQUIREMENTS

Reason for Control:
Control(s): Items described in 0C001 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110)

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: (1) See also 1A290. (2) This entry does not control: (a) Four grams or less of ''natural uranium'' or ''depleted uranium'' when contained in a sensing component in instruments (see 10 CFR part 110); or (b) ''Depleted uranium'' specially fabricated for the following civil non-nuclear applications: Shielding; Packaging; Ballasts; or Counter-weights
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

0C002 "Special fissile materials" and "other fissile materials"; except, four "effective grams" or less when contained in a sensing component in instruments.

LICENSE REQUIREMENTS

Reason for Control:
Control(s): Items described in 0C002 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110)

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The List of Items Controlled is Contained in the ECCN heading

0C004 Deuterium, heavy water, deuterated paraffins and other compounds of deuterium, and mixtures and solutions containing deuterium, in which the isotopic ratio of deuterium to hydrogen exceeds 1:5000.

LICENSE REQUIREMENTS

Reason for Control:
Control(s): Items described in 0C004 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110)

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

0C005 Graphite, having a purity level of less than 5 parts per million "boron equivalent" as measured according to ASTM standard C–1233–98 and intended for use in a nuclear reactor.

LICENSE REQUIREMENTS

Reason for Control:

Control(s): Items described in 0C005 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A.
Related Controls: Graphite intended for a use other than in a nuclear reactor, and that meets certain density parameters, is classified under ECCN 1C107.High-purity graphite with a boron content of less than 5 parts per million and a density greater than 1.5 grams per cubic centimeter, is classified under ECCN 1C298.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0C006 Nickel powder or porous nickel metal, specially prepared for the manufacture of gaseous diffusion barriers, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control:
Control(s): Items described in 0C006 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110)

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: See also 1C240
Related Definitions: N/A
Items: a. Powder with a nickel purity content of 99.9 weight percent or more and a mean particle size of less than 10 micrometers measured by American Society for Testing and Materials (ASTM) B330 standard and a high degree of particle size uniformity; *or*

b. Porous nickel metal produced from materials specified in 0C006.a.

0C201 Specially prepared compounds or powders, other than nickel, resistant to corrosion by UF_6 (e.g. aluminum oxide and fully fluorinated hydrocarbon polymers), for the manufacture of gaseous diffusion barriers, having a purity of 99.9 weight percent or more and a mean particle size of less than 10 micrometers measured by American Society for Testing and Materials (ASTM) B330 standard and a high degree of particle size uniformity.

LICENSE REQUIREMENTS

Reason for Control:
Control(s): Items described in 0C201 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110)

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

D. SOFTWARE

0D001 "Software" specially designed or modified for the "development", "production", or "use" of items described in 0A001, 0A002, 0B (except 0B986 and 0B999), or 0C.

LICENSE REQUIREMENTS

Reason for Control
Control(s)

''Software'' for items described in 0A001, 0B001, 0B002, 0B003, 0B004, 0B005, 0B006, 0C001, 0C002, 0C004, 0C005, 0C006, or 0C201 is subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

''Software'' for items described in 0A002 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (*see* 22 CFR part 121).

License Exceptions
CIV: N/A
TSR: N/A
List of Items Controlled
Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The List of Items Controlled is contained in the ECCN heading.

0D999 Specific Software, as Follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT.
Control(s)—Country Chart: AT applies to entire entry. A license is required for items controlled by this entry to Iraq and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 and §746.3 of the EAR for additional information.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.

Items:

a. Software for neutronic calculations/modeling;

b. Software for radiation transport calculations/modeling;

c. Software for hydrodynamic calculations/modeling.

E. TECHNOLOGY

0E001 "Technology," according to the Nuclear Technology Note, for the "development", "production", or "use" of items described in 0A001, 0A002, 0B (except 0B986 and 0B999), 0C, or 0D001.

LICENSE REQUIREMENTS

Reason for Control

Control(s)

''Technology'' for items described in 0A001, 0B001, 0B002, 0B003, 0B004, 0B005, 0B006, 0C001, 0C002, 0C004, 0C005, 0C006, 0C201, or 0D001 (applies to ''software'' in 0D001 for all items except those described in 0A002) is subject to the export licensing authority of the Department of Energy (see 10 CFR part 810).

''Technology'' for items described in 0A002 and 0D001 (applies to ''software'' in 0D001 for items described in 0A002 only) is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

License Exceptions

CIV: N/A

TSR: N/A

List of Items Controlled

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The List of Items Controlled is contained in the ECCN heading.

0E018 "Technology" for the "Development", "Production", or "Use" of Items Controlled by 0A018.a Through 0A018.c.

LICENSE REQUIREMENTS

Reason for Control: NS, UN, AT.

Reason for Control: NS, UN, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
UN applies to entire entry	Iraq and Rwanda.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except N/A for Rwanda

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

0E918 "Technology" for the "Development", "Production", or "Use" of Bayonets.

LICENSE REQUIREMENTS

Reason for Control: RS, UN, AT.

Control(s)	Country chart
RS applies to entire entry	RS Column 2.
UN applies to entire entry	Iraq and Rwanda.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

0E982 "Technology" exclusively for the "development" or "production" of equipment controlled by 0A982 or 0A985.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)

CC applies to ''technology'' for items controlled by 0A982 or 0A985. A license is required for ALL destinations, except Canada, regardless of end-use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See part 742 of the EAR for additional information.)

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

0E984 "Technology" for the "development" or "production" of shotguns controlled by 0A984 and buckshot shotgun shells.

LICENSE REQUIREMENTS

Reason for Control: CC, UN.

Control(s)	Country chart
CC applies to ''technology'' for shotguns with a barrel length over 18 in. (45.72 cm) but less than 24 in. (60.96 cm) and shotgun shells, regardless of end-user.	CC Column 1.
CC applies to ''technology'' for shotguns with a barrel length over 24 in. (60.96 cm), regardless of end-user.	CC Column 2.
CC applies to ''technology'' for shotguns with a barrel length over 24 in. (60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins''

A. SYSTEMS, EQUIPMENT AND COMPONENTS

1A001 Components made from fluorinated compounds, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms.
Related Controls: Items specially designed or modified for missiles or for items on the U.S. Munitions List are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121.)
Related Definitions: N/A.
Items:

a. Seals, gaskets, sealants or fuel bladders specially designed for ''aircraft'' or aerospace use made from more than 50% by weight of any of the materials controlled by 1C009.b or 1C009.c;

b. Piezoelectric polymers and copolymers made from vinylidene fluoride materials controlled by 1C009.a:

b.1. In sheet or film form; *and*

b.2. With a thickness exceeding 200 μm

c. Seals, gaskets, valve seats, bladders or diaphragms made from fluoroelastomers containing at least one vinylether group as a constitutional unit, specially designed for ''aircraft'', aerospace or missile use.

1A002 "Composite" structures or laminates, having any of the following (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
NP applies to 1A002.b.1 in the form of tubes with an inside diameter between 75 mm and 400 mm.	NP Column 1.
1 AT applies to entire entry	AT Column 1.

License Requirement Notes:

See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

LVS: $1,500; N/A for NP; N/A for ''composite'' structures or laminates controlled by 1A002.a, having an organic ''matrix'' and made from materials controlled by 1C010.c or 1C010.d.
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms.
Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) Also see ECCNs 1A202, 1C010, 1C210, 9A010, and 9A110. (3) ''Composite'' structures specially designed for missile applications (including specially designed subsystems and components) are controlled by ECCN 9A110. (4) ''Composite'' structures or laminates specially designed or prepared for use in separating uranium isotopes are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).
Related Definitions: N/A.
Items:

a. An organic ''matrix'' and made from materials controlled by 1C010.c, 1C010.d or 1C010.e; or

NOTE: 1A002.a does not control finished or semifinished items specially designed for purely civilian applications as follows:

a. Sporting goods;
b. Automotive industry;
c. Machine tool industry; and
d. Medical applications.

b. A metal or carbon ''matrix'' and made from:

b.1. Carbon ''fibrous or filamentary materials'' with:

b.1.a. A ''specific modulus'' exceeding 10.15×10^6 m; and

b.1.b. A ''specific tensile strength'' exceeding 17.7×10^4 m; or

b.2. Materials controlled by 1C010.c.

NOTE: 1A002.b does not control finished or semifinished items specially designed for purely civilian applications as follows:

a. Sporting goods;
b. Automotive industry;
c. Machine tool industry; and
d. Medical applications.

TECHNICAL NOTES: (1) Specific modulus: Young's modulus in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) K ((23±2) °C)

and a relative humidity of (50±5)%. (2) Specific tensile strength: ultimate tensile strength in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) K ((232) °C) and a relative humidity of (50±5)%.

NOTE: 1A002 does not control composite structures or laminates made from epoxy resin impregnated carbon ''fibrous or filamentary materials'' for the repair of aircraft structures of laminates, provided that the size does not exceed one square meter (1 m^2).

1A003 Manufactures of non-fluorinated polymeric substances controlled by 1C008.a.3 in film, sheet, tape or ribbon form with either of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $200
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: This entry does not control manufactures when coated or laminated with copper and designed for the production of electronic printed circuit boards
Related Definitions: N/A
Items: a. With a thickness exceeding 0.254 mm; *or*

b. Coated or laminated with carbon, graphite, metals or magnetic substances

1A004 Protective and detection equipment and components not specially designed for military use as follows (see List of Items Controlled).

LICENSE REQUIREMENTS
Reason for Control: NS, CB, AT

Control(s)	*Country chart*
NS applies to entire entry	NS Column 2.
CB applies to chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a.	CB Column 2.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS
LVS: N/A
GBS: N/A
CIV: N/A
LIST OF ITEMS CONTROLLED
Unit: $ value
Related Controls: (1) *See* ECCNs 1A995, 2B351, and 2B352. (2) Chemical and biological protective and detection equipment specifically designed, developed, modified, configured, or adapted for military applications is subject to the export licensing jurisdiction of the Department of State, Directorate of Defense Trade Controls (*see* 22 CFR part 121, category XIV(f)), as is commercial equipment that incorporates components or parts controlled under that category unless those components or parts are: (1) Integral to the device; (2) inseparable from the device; and (3) incapable of replacement without compromising the effectiveness of the device, in which case the equipment is subject to the export licensing jurisdiction of the Department of Commerce under ECCN 1A004.
Related Definitions: N/A
Items:

a. Gas masks, filter canisters and decontamination equipment therefor designed or modified for defense against biological agents or radioactive materials adapted for use in war or chemical warfare (CW) agents and specially designed components therefor;

b. Protective suits, gloves and shoes specially designed or modified for defense against biological agents or radioactive materials adapted for use in war or chemical warfare (CW) agents;

c. Nuclear, biological and chemical (NBC) detection systems specially designed or modified for detection or identification of biological agents or radioactive materials adapted for use in war or chemical warfare (CW) agents and specially designed components therefor.

NOTE: In this entry, the phrase ''adapted for use in war'' means: Any modification or selection (such as altering purity, shelf life, virulence, dissemination characteristics, or resistance to UV radiation) designed to increase the effectiveness in producing casualties in humans or animals, degrading equipment or damaging crops or the environment.

NOTE: 1A004 does not control:

a. Personal radiation monitoring dosimeters;

b. Equipment limited by design or function to protect against hazards specific to civil industries, such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or to the food industry.

NOTE: Protective equipment and components are classified as 1A004 if they have been tested and proven effective against penetration of BW/CW agents or their simulants using test protocols published by a U.S. Government Agency, such as the National Institute of Occupational Safety and Health (NIOSH) or the U.S. Army, for use by emergency responders or evacuees in chemical, biological, radiological or nuclear environments and labeled with or otherwise identified by the manufacturer or exporter as being effective against penetration by BW/

CW agents even if such equipment or components are used in civil industries such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or the food industry.

1A005 Body armor, and specially designed components therefor, not manufactured to military standards or specifications, nor to their equivalents in performance.

LICENSE REQUIREMENTS

Reason for Control: NS, UN, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
UN applies to entire entry	Iraq and Rwanda.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A

GBS: Yes, except UN

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) Bulletproof and bullet resistant vests (body armor) NIJ levels III and IV, are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (*See* 22 CFR part 121.) (2) For ''fibrous or filamentary materials'' used in the manufacture of body armor, see ECCN 1C010.

Related Definitions: NA

Items:

NOTE TO ECCN 1A005: 1. This entry does not control body armor or protective garments when accompanying their user for the user's own personal protection.

2. This entry does not control body armor designed to provide frontal protection only from both fragment and blast from non-military explosive devices.

The list of items controlled is contained in the ECCN heading.

1A101 Devices for reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures, for applications usable in "missiles" and their subsystems.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country Chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See also 1C101. For commodities that meet the definition of defense articles under 22 CFR 120.3 of the International Traffic in Arms Regulations (ITAR), see also 22 CFR 121.16, Item 17-Category II of the (ITAR), which describes similar commodities under the jurisdiction of the Department of State, Directorate of Defense Trade Controls.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1A102 Resaturated pyrolized carbon-carbon components designed for "missiles". (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

1A202 Composite structures, other than those controlled by 1A002, in the form of tubes and having both of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: (1) See ECCNs 1E201 (''use'') and 1E202 (''development'' and ''production'') for technology for items controlled by this entry. (2) Also see ECCNs 1A002, 1C010, 1C210, 9A010, and 9A110. (3) ''Composite'' structures specially designed or prepared for use in separating uranium isotopes are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

Related Definitions: N/A

Items:

a. An inside diameter of between 75 mm and 400 mm; *and*

b. Made with any of the ''fibrous or filamentary materials'' specified in 1C010.a or .b or 1C210.a or with carbon prepreg materials specified in 1C210.c.

1A225 Platinized catalysts specially designed or prepared for promoting the hydrogen isotope exchange reaction between hydrogen and water for the recovery of tritium from heavy water or for the production of heavy water.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: (1) See ECCNs 1E201 (''use'') and 1E202 (''development'' and ''production'') for technology for items controlled by this entry. (2) Equipment specially designed or prepared for the production of heavy water is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1A226 Specialized packings, which may be used in separating heavy water from ordinary water, having both of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) See ECCNs 1E201 (''use'') and 1E202 (''development'' and ''production'') for technology for items controlled by this entry. (2) Equipment specially designed or prepared for the production of heavy water is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).
Related Definitions: N/A
Items:

a. Made of phosphor bronze mesh chemically treated to improve wettability; *and*

b. Designed to be used in vacuum distillation towers.

1A227 High-density (lead glass or other) radiation shielding windows, having all of the following characteristics (see List of Items Controlled), and specially designed frames therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) See ECCNs 1E201 (''use'') and 1E202 (''development'' and ''production'') for technology for items controlled by this entry. (2) Equipment specially designed or prepared for nuclear reactors and reprocessing facilities is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).
Related Definitions: In 1A227.a, the term ''cold area'' means the viewing area of the window exposed to the lowest level of radiation in the design application.
Items:

a. A ''cold area'' greater than 0.09 m^2;

b. A density greater than 3 g/cm^3; and

c. A thickness of 100 mm or greater.

1A290 Depleted uranium (any uranium containing less than 0.711% of the isotope U–235) in shipments of more than 1,000 kilograms in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: (1) This entry does not control depleted uranium in fabricated forms for use in munitions. See 22 CFR part 121 for depleted uranium subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (2) Depleted uranium that is not fabricated for use in munitions or fabricated into commodities solely to take advantage of its high density (e.g., aircraft, ship, or other counterweights) or in the forms listed in this entry are subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.) (3) See also 0C001
Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

1A984 Chemical agents, including tear gas formulation containing 1 percent or less of orthochlorobenzalmalononitrile (CS), or 1 percent or less of chloroacetophenone (CN) except in individual containers with a net weight of 20 grams or less; liquid pepper except when packaged in individual containers with a net weight of 3 ounces (85.05 grams) or less; smoke bombs; non-irritant smoke flares, canisters, grenades and charges; and other pyrotechnic articles having dual military and commercial use.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1A985 Fingerprinting powders, dyes, and inks.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1A995 Protective and detection equipment and components not specially designed for military use and not controlled by ECCN 1A004 or ECCN 2B351, as follows (*see* **List of Items Controlled).**

LICENSE REQUIREMENTS
Reason for Control: AT

Control(s)	*Country chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS
LVS: N/A
GBS: N/A
CIV: N/A
LIST OF ITEMS CONTROLLED
Unit: $ value
Related controls: See ECCNs 1A004, 2B351, and 2B352.
Related Definitions: N/A
Items:
a. Personal radiation monitoring dosimeters;
b. Equipment limited by design or function to protect against hazards specific to civil industries, such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or to the food industry.
NOTE: This entry (1A995) does not control items for protection against chemical or biological agents that are consumer goods, packaged for retail sale or personal use, or medical products, such as latex exam gloves, latex surgical gloves, liquid disinfectant soap, disposable surgical drapes, surgical gowns, surgical foot covers, and surgical masks. Such items are classified as EAR99.

1A999 Specific Processing Equipment, n.e.s., as Follows (See List of Items Controlled).

LICENSE REQUIREMENTS
Reason for Control: AT.
Control(s).
Country Chart.
AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 of the EAR for additional information.
LICENSE EXCEPTIONS
LVS: N/A.
GBS: N/A.
CIV: N/A.
LIST OF ITEMS CONTROLLED
Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:
a. Radiation detection, monitoring and measurement equipment, n.e.s.;
b. Radiographic detection equipment such as x-ray converters, and storage phosphor image plates.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

1B001 Equipment for the production of fibers, prepregs, preforms or "composites" controlled by 1A002 or 1C010, and specially designed components and accessories therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry, except 1B001.d.4 and .f.	MT Column 1
NP applies to filament winding machines described in 1B001.a that are capable of winding cylindrical rotors having a diameter between 75 mm (3 in) and 400 mm (16 in) and lengths of 600 mm (24 in) or greater; and coordinating and programming controls and precision mandrels for these filament winding machines.	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A for MT and for 1B001.a; $5,000 for all other items

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) See ECCN 1D001 for software for items controlled by this entry and see ECCNs 1E001 (''development'' and ''production'') and 1E101 (''use'') for technology for items controlled by this entry. (2) Also see ECCNs 1B101 and 1B201.

Related Definitions: N/A

Items:

a. Filament winding machines of which the motions for positioning, wrapping and winding fibers are coordinated and programmed in three or more axes, specially designed for the manufacture of ''composite'' structures or laminates from ''fibrous or filamentary materials'';

b. Tape-laying or tow-placement machines of which the motions for positioning and laying tape, tows or sheets are coordinated and programmed in two or more axes, specially designed for the manufacture of ''composite'' airframe or ''missile'' structures;

c. Multidirectional, multidimensional weaving machines or interlacing machines, including adapters and modification kits, for weaving, interlacing or braiding fibers to manufacture ''composite'' structures;

TECHNICAL NOTE: For the purposes of 1B001.c the technique of interlacing includes knitting.

NOTE: 1B001.c does not control textile machinery not modified for the above end-uses.

d. Equipment specially designed or adapted for the production of reinforcement fibers, as follows:

d.1. Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, pitch or polycarbosilane) into carbon fibers or silicon carbide fibers, including special equipment to strain the fiber during heating;

d.2. Equipment for the chemical vapor deposition of elements or compounds on heated filamentary substrates to manufacture silicon carbide fibers;

d.3. Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide);

d.4. Equipment for converting aluminum containing precursor fibers into alumina fibers by heat treatment;

e. Equipment for producing prepregs controlled by 1C010.e by the hot melt method;

f. Non-destructive inspection equipment capable of inspecting defects three dimensionally, using ultrasonic or X-ray tomography and specially designed for ''composite'' materials.

1B002 Equipment for Producing Metal Alloys, Metal Alloy Powder or Alloyed Materials, Specially Designed to Avoid Contamination and Specially Designed for Use in One of the Processes Specified in 1C002.c.2

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

1B003 Tools, dies, molds or fixtures, for "superplastic forming" or "diffusion bonding" titanium or aluminum or their alloys, specially designed for the manufacture of (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components in $ value

Related Controls: For specially designed production equipment of systems, sub-systems and components controlled by 9A005 to 9A009, 9A011, 9A101, 9A105 to 9A109, 9A111, and 9A116 to 9A120 usable in ''missiles'', see 9B115.

Related Definitions: N/A

Items: a. Airframe or aerospace structures;

b. ''Aircraft'' or aerospace engines; *or*

c. Specially designed components for those structures or engines.

1B018 Equipment on the International Munitions List.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to equipment for the ''production'' of rocket propellants.	MT Column 1.
RS applies to 1B018.a.	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

LVS: $3000 for 1B018.a for countries WITHOUT an ''X'' in RS Column 2 on the Country Chart contained in Supplement No. 1 to part 738 of the EAR; $5000 for 1B018.b; N/A for Rwanda.

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. Equipment for the ''production'' of military explosives and solid propellants.

a.1. Complete installations;

a.2. Specialized components (for example, dehydration presses; extrusion presses for the extrusion of small arms, cannon and rocket propellants; cutting machines for the sizing of extruded propellants; sweetie barrels (tumblers) 6 feet and over in diameter and having over 500 pounds product capacity; and continuous mixers for solid propellants); or

a.3. Nitrators, continuous types; and

a.4. Specially designed parts and accessories therefor.

b. Environmental chambers capable of pressures below (10^{-4}) Torr, and specially designed components therefor.

1B101 Equipment, other than that controlled by 1B001, for the "production" of structural composites, fibers, prepregs or preforms as follows (see List of Items Controlled); and specially designed components and accessories therefor.

LICENSE REQUIREMENTS

*Reason for Control:*MT, NP, AT

Control(s)	Country Chart
MT applies to entire entry	MT Column 1.
NP applies to filament winding machines described in 1B101.a that are capable of winding cylindrical rotors having a diameter between 75 mm (3 in.) and 400 mm (16 in.) and lengths of 600 mm (24 in.) or greater AND to coordinating and programming controls and precision mandrels for these filament winding machines.	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See ECCN 1D101 for software for items controlled by this entry and see ECCNs 1E001 (''development'' and ''production'') and 1E101 (''use'') for technology for items controlled by this entry. Also see 1B201.

Related Definitions: Examples of components and accessories for the machines controlled by this entry are molds, mandrels, dies, fixtures and tooling for the preform pressing, curing, casting, sintering or bonding of composite structures, laminates and manufactures thereof.

Items:

a. Filament winding machines of which the motions for positioning, wrapping and winding fibers can be coordinated and programmed in three or more axes, designed to fabricate composite structures or laminates from fibrous or filamentary materials, and coordinating and programming controls;

b. Tape-laying machines of which the motions for positioning and laying tape and sheets can be coordinated and programmed in two or more axes, designed for the manufacture of composite airframe and ''missile'' structures;

c. Equipment designed or modified for the ''production'' of ''fibrous or filamentary materials'' as follows:

c.1. Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon or polycarbosilane) including special provision to strain the fiber during heating;

c.2. Equipment for the vapor deposition of elements or compounds on heated filament substrates; and

c.3. Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide);

d. Equipment designed or modified for special fiber surface treatment or for producing prepregs and preforms controlled by 9A110.

NOTE: Equipment covered in 1B101.d includes but is not limited to, rollers, tension stretchers, coating equipment, cutting equipment and clicker dies.

1B102 Metal powder "production equipment," other than that specified in 1B002, and components as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country Chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components in $ value

Related Controls: 1.) See also 1B115.b.

Related Definitions: N/A

Items:

a. Metal power ''production equipment usable for the ''production,'' in a controlled environment, of spherical or atomized materials specified in 1C011.a, 1C011.b, 1C111.a.1, 1C111.a.2, or on the U.S. Munitions List.

b. Specially designed components for ''production equipment'' specified in 1B002 or 1B102.a.

NOTE: 1B102 includes:

a. Plasma generators (high frequency arcjet) usable for obtaining sputtered or spherical metallic powders with organization of the process in an argon-water environment;

b. Electroburst equipment usable for obtaining sputtered or spherical metallic powders with organization of the process in an argon-water environment;

c. Equipment usable for the ''production'' of spherical aluminum powders by powdering a melt in an inert medium (*e.g.*, nitrogen).

1B115 "Equipment, other than that controlled in 1B002 or 1B102, for the "production" of propellant or propellant constituents, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components in $ value

Related Controls: For the control of batch mixers, continuous mixers and fluid energy mills, see 1B117, 1B118 and 1B119.

Related Definitions: N/A

Items:

a. ''Production equipment'' for the ''production'', handling or acceptance testing of liquid propellants or propellant constituents controlled by 1C011.a, 1C011.b, 1C111 or on the U.S. Munitions List;

b. ''Production equipment,'' for the production, handling, mixing, curing, casting, pressing, machining, extruding or acceptance testing of solid propellants or propellant constituents described in 1C011.a, 1C011.b or 1C111, or on the U.S. Munitions List.

NOTE: 1B115.b does not control batch mixers, continuous mixers or fluid energy mills. For the control of batch mixers, continuous mixers and fluid energy mills see 1B117, 1B118, and 1B119.

NOTE 1: [Reserved]

NOTE 2: 1B115 does not control equipment for the ''production,'' handling and acceptance testing of boron carbide.

1B116 Specially designed nozzles for producing pyrolitically derived materials formed on a mold, mandrel or other substrate from precursor gases which decompose in the 1,573 K (1,300 °C) to 3,173 K (2,900 °C) temperature range at pressures of 130 Pa to 20 kPa.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

1B117 "Batch mixers with provision for mixing under vacuum in the range from zero to 13.326 kPa and with temperature control capability of the mixing chamber and having all of the following characteristics (see List of Items Controlled), and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, AT.

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components in $ value

Related Controls: N/A

Related Definitions: N/A

Items:

a. A total volumetric capacity of 110 liters (30 gallons) or more; and

b. At least one mixing/kneading shaft mounted off center.

1B118 Continuous mixers with provision for mixing under vacuum in the range from zero to 13.326 kPa and with temperature control capability of the mixing chamber and having all of the following characteristics (see List of Items Controlled), and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components in $ value

Related Controls: N/A

Related Definitions: N/A

Items:

a. Two or more mixing/kneading shafts; or

b. A single rotating shaft which oscillates and has kneading teeth/pins on the shaft as well as inside the casing of the mixing chamber.

1B119 Fluid energy mills usable for grinding or milling propellant or propellant constituents specified in 1C011.a, 1C011.b or 1C111, or on the U.S. Munitions List, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components in $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1B201 Filament winding machines, other than those controlled by ECCN 1B001 or 1B101, and related equipment, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See ECCN 1D201 for software for items controlled by this entry and see ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. Also see ECCN 1E203 for technology for the ''development'' of software controlled by ECCN 1D201.

Related Definitions: N/A

Items:

a. Filament winding machines having all of the following characteristics:

a.1. Having motions for positioning, wrapping, and winding fibers coordinated and programmed in two or more axes;

a.2. Specially designed to fabricate composite structures or laminates from ''fibrous or filamentary materials''; *and*

a.3. Capable of winding cylindrical rotors of diameter between 75 mm (3 in.) and 400 mm (16 in.) and lengths of 600 mm (24 in.) or greater;

b. Coordinating and programming controls for filament winding machines controlled by 1B201.a;

c. Precision mandrels for filament winding machines controlled by 1B201.a.

1B225 Electrolytic cells for fluorine production with a production capacity greater than 250 g of fluorine per hour.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1B226 Electromagnetic isotope separators designed for, or equipped with, single or multiple ion sources capable of providing a total ion beam current of 50 mA or greater.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) Electromagnetic isotope separators specially designed or prepared for use in separating uranium isotopes are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (2) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.

Related Definitions: N/A

ECCN Controls: This entry includes separators capable of enriching stable isotopes and separators with the ion sources and collectors both in the magnetic field and those configurations in which they are external to the field.

Items: The list of items controlled is contained in the ECCN heading.

1B227 Ammonia synthesis converters or ammonia synthesis units in which the synthesis gas (nitrogen and hydrogen) is withdrawn from an ammonia/hydrogen high-pressure exchange column and the synthesized ammonia is returned to that column.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) Equipment specially designed or prepared for the production of heavy water is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (2) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1B228 Hydrogen-cryogenic distillation columns having all of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) Equipment specially designed or prepared for the production of heavy water is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (2) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.

Related Definitions: ''Fine-grain stainless steels'' in this entry are defined to be fine-grain austenitic stainless steels with an ASTM (or equivalent standard) grain size number of 5 or greater

Items: a. Designed to operate with internal temperatures of 35 K (−238 °C) or less;

b. Designed to operate at an internal pressure of 0.5 to 5 MPa (5 to 50 atmospheres);

c. Constructed of ''fine-grain stainless steels'' of the 300 series with low sulphur content or equivalent cryogenic and H_2-compatible materials; *and*

d. With internal diameters of 1 m or greater and effective lengths of 5 m or greater.

1B229 Water-hydrogen sulphide exchange tray columns and "internal contactors", as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) Equipment specially designed or prepared for the production of heavy water is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (2) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.

Related Definitions: The ''internal contactors'' controlled by 1B229.b are segmented trays that have an effective assembled diameter of 1.8 m (6 ft.) or greater, are designed to facilitate countercurrent contacting, and are constructed of stainless steels with a carbon content of 0.03% or less. These may be sieve trays, valve trays, bubble cap trays, or turbogrid trays.

Items:

a. Water-hydrogen sulphide exchange tray columns, having all of the following characteristics:

a.1. Can operate at pressures of 2 MPa or greater;

a.2. Constructed of carbon steel having an austenitic ASTM (or equivalent standard) grain size number of 5 or greater; *and*

a.3. With a diameter of 1.8 m (6 ft.) or greater;

b. ''Internal contactors'' for the water-hydrogen sulphide exchange tray columns controlled by 1B229.a.

1B230 Pumps capable of circulating solutions of concentrated or dilute potassium amide catalyst in liquid ammonia (KNH_2/NH_3), having all of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) Equipment specially designed or prepared for the production of heavy water is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (2) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.

Related Definitions: N/A

Items:

a. Airtight (i.e., hermetically sealed);

b. A capacity greater than 8.5 m^3/h; *and*

c. Either of the following characteristics:

c.1. For concentrated potassium amide solutions (1% or greater), an operating pressure of 1.5 to 60 MPa (15–600 atmospheres); *or*

c.2. For dilute potassium amide solutions (less than 1%), an operating pressure of 20 to 60 MPa (200–600 atmospheres).

1B231 Tritium facilities or plants, and equipment therefor, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) Tritium, tritium compounds, and mixtures containing tritium are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (2) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.

Related Definitions: N/A

Items: a. Facilities or plant for the production, recovery, extraction, concentration, or handling of tritium;

b. Equipment for tritium facilities or plant, as follows:

b.1. Hydrogen or helium refrigeration units capable of cooling to 23 K (−250 C) or less, with heat removal capacity greater than 150 watts; *or*

b.2. Hydrogen isotope storage and purification systems using metal hydrides as the storage, or purification medium.

1B232 Turboexpanders or turboexpander-compressor sets having both of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) Equipment specially designed or prepared for the production of heavy water is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (2) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.
Related Definitions: N/A
Items:

a. Designed for operation with an outlet temperature of 35 K (−238 °C) or less; *and*

b. Designed for a throughput of hydrogen gas of 1,000 kg/h or greater.

1B233 Lithium isotope separation facilities or plants, and equipment therefor, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	Country Chart
Facilities and plants described in 1B233.a are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).	
NP applies to 1B233.b	NP Column 1.
AT applies to 1B233.b	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See ECCN 1E001 (''development'' and ''production'') and ECCN 1E201 (''use'') for technology for items described in this entry.
Related Definitions: N/A
Items:

a. Facilities or plants for the separation of lithium isotopes;

b. Equipment for the separation of lithium isotopes, as follows:

b.1. Packed liquid-liquid exchange columns specially designed for lithium amalgams;

b.2. Mercury and/or lithium amalgam pumps;

b.3. Lithium amalgam electrolysis cells;

b.4. Evaporators for concentrated lithium hydroxide solution.

1B999 Specific Processing Equipment, n.e.s., as Follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT.

Control(s)—Country Chart AT applies to entire entry. A license is required for items controlled by this entry to Iraq and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 and §746.3 of the EAR for additional information.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: See also 1B001, 1B101, 1B201, 1B225 and 1D999.
Related Definitions: N/A.
Items:

a. Electrolytic cells for flourine production, n.e.s.;

b. Particle accelerators;

c. Industrial process control hardware/systems designed for power industries, n.e.s.;

d. Freon and chilled water cooling systems capable of continuous cooling duties of 100,000 BTU/hr (29.3 kW) or greater;

e. Equipment for the production of structural composites, fibers, prepregs and preforms, n.e.s.

C. MATERIALS

TECHNICAL NOTE: Metals and alloys: Unless provision to the contrary is made, the words ''metals'' and ''alloys'' in 1C001 to 1C012 cover crude and semi-fabricated forms, as follows:

Crude forms: Anodes, balls, bars (including notched bars and wire bars), billets, blocks, blooms, brickets, cakes, cathodes, crystals, cubes, dice, grains, granules, ingots, lumps, pellets, pigs, powder, rondelles, shot, slabs, slugs, sponge, sticks;

Semi-fabricated forms (whether or not coated, plated, drilled or punched):

a. Wrought or worked materials fabricated by rolling, drawing, extruding, forging, impact extruding, pressing, graining, atomizing, and grinding, i.e.: angles, channels, circles, discs, dust, flakes, foils and leaf, forging, plate, powder, pressings and stampings, ribbons, rings, rods (including bare welding rods, wire rods, and rolled wire), sections, shapes, sheets, strip, pipe and tubes (including tube rounds, squares, and hollows), drawn or extruded wire;

b. Cast material produced by casting in sand, die, metal, plaster or other types of molds, including high pressure castings, sintered forms, and forms made by powder metallurgy.

The object of the control should not be defeated by the export of non-listed forms alleged to be finished products but representing in reality crude forms or semi-fabricated forms.

1C001 Materials specially designed for use as absorbers of electromagnetic waves, or intrinsically conductive polymers, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED
Unit: Kilograms.
Related Controls: See also 1C101.
Related Definitions: N/A.
Items:

a. Materials for absorbing frequencies exceeding 2×10^8 Hz but less than 3×10^{12} Hz.

NOTE 1: 1C001.a does not control:

a. Hair type absorbers, constructed of natural or synthetic fibers, with non-magnetic loading to provide absorption;

b. Absorbers having no magnetic loss and whose incident surface is non-planar in shape, including pyramids, cones, wedges and convoluted surfaces;

c. Planar absorbers, having all of the following characteristics:

1. Made from any of the following:

a. Plastic foam materials (flexible or non-flexible) with carbon-loading, or organic materials, including binders, providing more than 5% echo compared with metal over a bandwidth exceeding ±15% of the center frequency of the incident energy, and not capable of withstanding temperatures exceeding 450 K (177 °C); *or*

b. Ceramic materials providing more than 20% echo compared with metal over a bandwidth exceeding ±15% of the center frequency of the incident energy, and not capable of withstanding temperatures exceeding 800 K (527 °C);

TECHNICAL NOTE: Absorption test samples for 1C001.a. Note 1.c.1 should be a square at least 5 wavelengths of the center frequency on a side and positioned in the far field of the radiating element.

2. Tensile strength less than 7×10^6 N/m^2; *and*

3. Compressive strength less than 14×10^6 N/m^2;

d. Planar absorbers made of sintered ferrite, having:

1. A specific gravity exceeding 4.4; *and*

2. A maximum operating temperature of 548 K (275 °C).

NOTE 2: Nothing in Note 1 releases magnetic materials to provide absorption when contained in paint.

b. Materials for absorbing frequencies exceeding 1.5×10^{14} Hz but less than 3.7×10^{14} Hz and not transparent to visible light;

c. Intrinsically conductive polymeric materials with a bulk electrical conductivity exceeding 10,000 S/m (Siemens per meter) or a sheet (surface) resistivity of less than 100 ohms/square, based on any of the following polymers:

c.1. Polyaniline;

c.2. Polypyrrole;

c.3. Polythiophene;

c.4. Poly phenylene-vinylene; *or*

c.5. Poly thienylene-vinylene.

TECHNICAL NOTE: Bulk electrical conductivity and sheet (surface) resistivity should be determined using ASTM D–257 or national equivalents.

1C002 Metal alloys, metal alloy powder and alloyed materials, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS
Reason for Control: NS, NP, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
NP applies to 1C002.b.3 or b.4 if they exceed the parameters stated in 1C202.	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: $3,000; N/A for NP
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED
Unit: Kilograms.
Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) Also see ECCN 1C202. (3) Aluminum alloys and titanium alloys in physical forms and finished products specially designed or prepared for use in separating uranium isotopes are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).
Related Definition: N/A.
Items:

NOTE: 1C002 does not control metal alloys, metal alloy powder or alloyed materials for coating substrates.

TECHNICAL NOTE 1: The metal alloys in 1C002 are those containing a higher percentage by weight of the stated metal than of any other element.

TECHNICAL NOTE 2: Stress-rupture life should be measured in accordance with ASTM standard E–139 or national equivalents.

TECHNICAL NOTE 3: Low cycle fatigue life should be measured in accordance with ASTM Standard E–606 ''Recommended Practice for Constant-Amplitude Low-Cycle Fatigue Testing'' or national equivalents. Testing should be axial with an average stress ratio equal to 1 and a stress-concentration factor (K_t) equal to 1. The average stress is defined as maximum stress minus minimum stress divided by maximum stress.

a. Aluminides, as follows:

a.1. Nickel aluminides containing a minimum of 15 weight percent aluminum, a maximum of 38 weight percent aluminum and at least one additional alloying element;

a.2. Titanium aluminides containing 10 weight percent or more aluminum and at least one additional alloying element;

b. Metal alloys, as follows, made from material controlled by 1C002.c:

b.1. Nickel alloys with:

b.1.a. A stress-rupture life of 10,000 hours or longer at 923 K (650 °C) at a stress of 676 MPa; or

b.1.b. A low cycle fatigue life of 10,000 cycles or more at 823 K (550 °C) at a maximum stress of 1,095 MPa;

b.2. Niobium alloys with:

b.2.a. A stress-rupture life of 10,000 hours or longer at 1,073 K (800 °C) at a stress of 400 MPa; or

b.2.b. A low cycle fatigue life of 10,000 cycles or more at 973 K (700 °C) at a maximum stress of 700 MPa;

b.3. Titanium alloys with:

b.3.a. A stress-rupture life of 10,000 hours or longer at 723 K (450 °C) at a stress of 200 MPa; or

b.3.b. A low cycle fatigue life of 10,000 cycles or more at 723 K (450 °C) at a maximum stress of 400 MPa;

b.4 Aluminum alloys with a tensile strength of:

b.4.a. 240 MPa or more at 473 K (200 °C); or

b.4.b. 415 MPa or more at 298 K (25 °C);

b.5. Magnesium alloys with:

b.5.a. A tensile strength of 345 MPa or more; and

b.5.b. A corrosion rate of less than 1 mm/year in 3% sodium chloride aqueous solution measured in accordance with ASTM standard G–31 or national equivalents;

c. Metal alloy powder or particulate material, having all of the following characteristics:

c.1. Made from any of the following composition systems:

TECHNICAL NOTE: X in the following equals one or more alloying elements.

c.1.a. Nickel alloys (Ni-Al-X, Ni-X-Al) qualified for turbine engine parts or components, i.e. with less than 3 non-metallic particles (introduced during the manufacturing process) larger than 100 μ in 10^9 alloy particles;

c.1.b. Niobium alloys (Nb-Al-X or Nb-X-Al, Nb-Si-X or Nb-X-Si, Nb-Ti-X or Nb-X-Ti);

c.1.c. Titanium alloys (Ti-Al-X or Ti-X-Al);

c.1.d. Aluminum alloys (Al-Mg-X or Al-X-Mg, Al-Zn-X or Al-X-Zn, Al-Fe-X or Al-X-Fe); or

c.1.e. Magnesium alloys (Mg-Al-X or Mg-X-Al); and

c.2. Made in a controlled environment by any of the following processes:

c.2.a. ''Vacuum atomization'';

c.2.b. ''Gas atomization'';

c.2.c. ''Rotary atomization'';

c.2.d. ''Splat quenching'';

c.2.e. ''Melt spinning'' and ''comminution'';

c.2.f. ''Melt extraction'' and ''comminution''; or

c.2.g. ''Mechanical alloying'';

d. Alloyed materials, having all the following characteristics:

d.1. Made from any of the composition systems specified in 1C002.c.1;

d.2. In the form of uncomminuted flakes, ribbons or thin rods; *and*

d.3. Produced in a controlled environment by any of the following:

d.3.a. ''Splat quenching'';

d.3.b. ''Melt spinning''; or

d.3.c. ''Melt extraction''.

1C003 Magnetic metals, of all types and of whatever form, having any of the characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: N/A

Related Definitions: N/A

Items: a. Initial relative permeability of 120,000 or more and a thickness of 0.05 mm or less;

TECHNICAL NOTE: Measurement of initial permeability must be performed on fully annealed materials.

b. Magnetostrictive alloys, having any of the following characteristics:

b.1. A saturation magnetostriction of more than 5×10^{-4}; *or*

b.2. A magnetomechanical coupling factor (k) of more than 0.8; *or*

c. Amorphous or nanocrystalline alloy strips, having all of the following characteristics:

c.1. A composition having a minimum of 75 weight percent of iron, cobalt or nickel;

c.2. A saturation magnetic induction (B_s) of 1.6 T or more; *and*

c.3. Any of the following:

c.3.a. A strip thickness of 0.02 mm or less; *or*

c.3.b. An electrical resistivity of 2×10^{-4}; ohm cm or more.

TECHNICAL NOTE: Nanocrystalline materials in 1C003.c are those materials having a crystal grain size of 50 nm or less, as determined by X-ray diffraction.

1C004 Uranium titanium alloys or tungsten alloys with a "matrix" based on iron, nickel or copper, having all of the characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items:

a. A density exceeding 17.5 g/cm^3;

b. An elastic limit exceeding 880 MPa;

c. An ultimate tensile strength exceeding 1,270 MPa; *and*

d. An elongation exceeding 8%.

1C005 "Superconductive" "composite" conductors in lengths exceeding 100 m or with a mass exceeding 100 g, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Multifilamentary ''superconductive'' ''composite'' conductors containing one or more niobium-titanium filaments:

a.1. Embedded in a ''matrix'' other than a copper or copper-based mixed ''matrix''; *or*

a.2. Having a cross-section area less than 0.28×10^{-4} mm^2 (6 µm in diameter for circular filaments);

b. ''Superconductive'' ''composite'' conductors consisting of one or more ''superconductive'' filaments other than niobium-titanium, having all of the following:

b.1. A ''critical temperature'' at zero magnetic induction exceeding 9.85 K (−263.31° C) but less than 24 K (−249.16° C);

b.2. A cross-section area less than 0.28×10^{-4} mm^2; *and*

b.3. Remaining in the ''superconductive'' state at a temperature of 4.2 K (−268.96° C) when exposed to a magnetic field corresponding to a magnetic induction of 12 T.

1C006 Fluids and lubricating materials, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: Yes for 1C006.d
CIV: Yes for 1C006.d

LIST OF ITEMS CONTROLLED

Unit: Barrels (55 U.S. gallons/209 liters).
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Hydraulic fluids containing, as their principal ingredients, any of the following compounds or materials:

a.1. Synthetic silahydrocarbon oils, having all of the following:

TECHNICAL NOTE: For the purpose of 1C006.a.1, silahydrocarbon oils contain exclusively silicon, hydrogen and carbon.

a.1.a. A flash point exceeding 477 K (204 °C);

a.1.b. A pour point at 239 K (−34 °C) or less;

a.1.c. A viscosity index of 75 or more; *and*

a.1.d. A thermal stability at 616 K (343 °C); or

a.2. Chlorofluorocarbons, having all of the following:

TECHNICAL NOTE: For the purpose of 1C006.a.2, chlorofluorocarbons contain exclusively carbon, fluorine and chlorine.

a.2.a. No flash point;

a.2.b. An autogenous ignition temperature exceeding 977 K (704 °C);

a.2.c. A pour point at 219 K (−54 °C) or less;

a.2.d. A viscosity index of 80 or more; *and*

a.2.e. A boiling point at 473 K (200 °C) or higher;

b. Lubricating materials containing, as their principal ingredients, any of the following compounds or materials:

b.1. Phenylene or alkylphenylene ethers or thio-ethers, or their mixtures, containing more than two ether or thio-ether functions or mixtures thereof; *or*

b.2. Fluorinated silicone fluids with a kinematic viscosity of less than 5,000 mm^2/s (5,000 centistokes) measured at 298 K (25 °C);

c. Damping or flotation fluids with a purity exceeding 99.8%, containing less than 25 particles of 200 µm or larger in size per 100 ml and made from at least 85% of any of the following compounds or materials:

c.1. Dibromotetrafluoroethane;

c.2. Polychlorotrifluoroethylene (oily and waxy modifications only); *or*

c.3. Polybromotrifluoroethylene;

d. Fluorocarbon electronic cooling fluids, having all of the following characteristics:

d.1. Containing 85% by weight or more of any of the following, or mixtures thereof:

d.1.a. Monomeric forms of perfluoropolyalkylether-triazines or perfluoroaliphatic-ethers;

d.1.b. Perfluoroalkylamines;

d.1.c. Perfluorocycloalkanes; *or*

d.1.d. Perfluoroalkanes;

d.2. Density at 298 K (25 °C) of 1.5 g/ml or more;

d.3. In a liquid state at 273 K (0 °C); *and*

d.4. Containing 60% or more by weight of fluorine.

TECHNICAL NOTE: For the purpose of 1C006:

a. Flash point is determined using the Cleveland Open Cup Method described in ASTM D–92 or national equivalents;

b. Pour point is determined using the method described in ASTM D–97 or national equivalents;

c. Viscosity index is determined using the method describe in ASTM D–2270 or national equivalents;

d. Thermal stability is determined by the following test procedure or national equivalents:

Twenty ml of the fluid under test is placed in a 46 ml type 317 stainless steel chamber containing one each of 12.5 mm (nominal) diameter balls of M–10 tool steel, 52100 steel and naval bronze (60% Cu, 39% Zn, 0.75% Sn);

The chamber is purged with nitrogen, sealed at atmospheric pressure and the temperature raised to and maintained at 644 ± 6 K (371 ± 6 °C) for six hours;

The specimen will be considered thermally stable if, on completion of the above procedure, all of the following conditions are met:

1. The loss in weight of each ball is less than 10 mg/mm² of ball surface;

2. The change in original viscosity as determined at 311 K (38 °C) is less than 25%; and

3. The total acid or base number is less than 0.40;

e. Autogenous ignition temperature is determined using the method described in ASTM E–659 or national equivalents.

1C007 Ceramic base materials, non-"composite" ceramic materials, ceramic-"matrix" "composite" materials and precursor materials, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2.
MT applies to items in 1C007.d and .f when the dielectric constant is less than 6 at any frequency from 100 MHz to 100 GHz for use in ''missile'' radomes.	MT Column 1.
AT applies to entire entry	AT Column 1.

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $5000, except N/A for MT and for 1C007.e

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms.

Related Controls: See also 1C107.

Related Definitions: N/A.

Items:

a. Base materials of single or complex borides of titanium having total metallic impurities, excluding intentional additions, of less than 5,000 ppm, an average particle size equal to or less than 5 µm and no more than 10% of the particles larger than 10 µm;

b. Non-''composite'' ceramic materials in crude or semi-fabricated form, composed of borides of titanium with a density of 98% or more of the theoretical density;

NOTE: 1C007.b does not control abrasives.

c. Ceramic-ceramic ''composite'' materials with a glass or oxide-''matrix'' and reinforced with fibers having all the following:

c.1 Made from any of the following materials:

c.1.a. Si-N;

c.1.b. Si-C;

c.1.c. Si-Al-O-N; or

c.1.d. Si-O-N; and

c.2. Having a ''specific tensile strength'' exceeding 12.7×10^3 m;

d. Ceramic-ceramic ''composite'' materials, with or without a continuous metallic phase, incorporating particles, whiskers or fibers, where carbides or nitrides of silicon, zirconium or boron form the ''matrix'';

e. Precursor materials (i.e., special purpose polymeric or metallo-organic materials) for producing any phase or phases of the materials controlled by 1C007.c, as follows:

e.1. Polydiorganosilanes (for producing silicon carbide);

e.2. Polysilazanes (for producing silicon nitride);

e.3. Polycarbosilazanes (for producing ceramics with silicon, carbon and nitrogen components);

f. Ceramic-ceramic ''composite'' materials with an oxide or glass ''matrix'' reinforced with continuous fibers from any of the following systems:

f.1. Al_2O_3; or

f.2. Si-C-N.

NOTE: 1C007.f does not control ''composites'' containing fibers from these systems with a fiber tensile strength of less than 700 MPa at 1,273 K (1,000 °C) or fiber tensile creep resistance of more than 1% creep strain at 100 MPa load and 1,273 K (1,000 °C) for 100 hours.

1C008 Non-fluorinated polymeric substances, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $200
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items:

a. Non-fluorinated polymeric substances, as follows:

a.1. Bismaleimides;

a.2. Aromatic polyamide-imides;

a.3. Aromatic polyimides;

a.4. Aromatic polyetherimides having a glass transition temperature (T_g) exceeding 513K (240 °C).

NOTE: 1C008.a does not control non-fusible compression molding powders or molded forms.

b. Thermoplastic liquid crystal copolymers having a heat distortion temperature exceeding 523 K (250 °C) measured according to ISO 75–3 (2004), or national equivalents, with a load of 1.82 N/mm^2 and composed of:

b.1. Any of the following:

b.1.a. Phenylene, biphenylene or naphthalene; *or*

b.1.b. Methyl, tertiary-butyl or phenyl substituted phenylene, biphenylene or naphthalene; *and*

b.2. Any of the following acids:

b.2.a. Terephthalic acid;

b.2.b. 6-hydroxy-2 naphthoic acid; *or*

b.2.c. 4-hydroxybenzoic acid;

c. Polyarylene ether ketones, as follows:

c.1. Polyether ether ketone (PEEK)

c.2. Polyether ketone ketone (PEKK);

c.3. Polyether ketone (PEK);

c.4. Polyether ketone ether ketone ketone (PEKEKK);

d. Polyarylene ketones;

e. Polyarylene sulphides, where the arylene group is biphenylene, triphenylene or combinations thereof;

f. Polybiphenylenethersulphone having a glass transition temperature (T_g) exceeding 513 K (240 °C).

TECHNICAL NOTE: The glass transition temperature (T_g) for 1C008 materials is determined using the method described in ISO 11357–2 (1999) or national equivalents.

1C009 Unprocessed fluorinated compounds, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Copolymers of vinylidene fluoride having 75% or more beta crystalline structure without stretching;

b. Fluorinated polyimides containing 10% by weight or more of combined fluorine;

c. Fluorinated phosphazene elastomers containing 30% by weight or more of combined fluorine.

1C010 "Fibrous or filamentary materials" which may be used in organic "matrix", metallic "matrix" or carbon "matrix" "composite" structures or laminates, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
NP applies to 1C010.a (aramid ''fibrous or filamentary materials'', .b (carbon ''fibrous and filamentary materials''), and e.1 for ''fibrous and filamentary materials'' that meet or exceed the control criteria of ECCN 1C210.	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $1500, N/A for NP
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) Also see ECCNs 1C210 and 1C990. (3) See also 9C110 for material not controlled by 1C010.e, as defined by notes 1 or 2.
Related Definitions: (1) Specific modulus: Young's modulus in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) K ((23+2) C) and a relative humidity of

(50±5)%. (2) Specific tensile strength: ultimate tensile strength in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) K ((23±2) C) and a relative humidity of (50±5)%

Items: a. Organic ''fibrous or filamentary materials'', having all of the following:

a.1. A specific modulus exceeding 12.7×10^6 m; *and*

a.2. A specific tensile strength exceeding 23.5×10^4 m;

NOTE: 1C010.a does not control polyethylene.

b. Carbon ''fibrous or filamentary materials'', having all of the following:

b.1. A specific modulus exceeding 12.7×10^6 m; *and*

b.2. A specific tensile strength exceeding 23.5×10^4 m;

TECHNICAL NOTE: Properties for materials described in 1C010.b should be determined using SACMA recommended methods SRM 12 to 17, or national equivalent tow tests, such as Japanese Industrial Standard JIS-R-7601, Paragraph 6.6.2, and based on lot average.

NOTE: 1C010.b does not control fabric made from ''fibrous or filamentary materials'' for the repair of aircraft structures or laminates, in which the size of individual sheets does not exceed 50 cm × 90 cm.

c. Inorganic ''fibrous or filamentary materials'', having all of the following:

c.1. A specific modulus exceeding 2.54×10^6 m; and

c.2. A melting, softening, decomposition or sublimation point exceeding 1,922 K (1,649 °C) in an inert environment;

NOTE: 1C010.c does not control:

1. Discontinuous, multiphase, polycrystalline alumina fibers in chopped fiber or random mat form, containing 3 weight percent or more silica, with a specific modulus of less than 10×10^6 m;

2. Molybdenum and molybdenum alloy fibers;

3. Boron fibers;

4. Discontinuous ceramic fibers with a melting, softening, decomposition or sublimation point lower than 2,043 K (1,770 °C) in an inert environment.

d. ''Fibrous or filamentary materials'':

d.1. Composed of any of the following:

d.1.a. Polyetherimides controlled by 1C008.a; *or*

d.1.b. Materials controlled by 1C008.b to 1C008.f; *or*

d.2. Composed of materials controlled by 1C010.d.1.a or 1C010.d.1.b and ''commingled'' with other fibers controlled by 1C010.a, 1C010.b or 1C010.c;

e. Resin-impregnated or pitch-impregnated fibers (prepregs), metal or carbon-coated fibers (preforms) or ''carbon fiber preforms'', as follows:

e.1. Made from ''fibrous or filamentary materials'' controlled by 1C010.a, 1C010.b or 1C010.c;

e.2. Made from organic or carbon ''fibrous or filamentary materials'':

e.2.a. With a ''specific tensile strength'' exceeding 17.7×10^4 m;

e.2.b. With a ''specific modulus'' exceeding 10.15×10^6 m;

e.2.c. Not controlled by 1C010.a or 1C010.b; *and*

e.2.d. When impregnated with materials controlled by 1C008 or 1C009.b, having a glass transition temperature (T_g) exceeding 383 K (110 °C) or with phenolic or epoxy resins, having a glass transition temperature (T_g) equal to or exceeding 418 K (145 °C).

NOTES: 1C010.e does not control:

1. Epoxy resin ''matrix'' impregnated carbon ''fibrous or filamentary materials'' (prepregs) for the repair of aircraft structures or laminates, in which the size of individual sheets of prepreg does not exceed 50 cm × 90 cm;

2. Prepregs when impregnated with phenolic or epoxy resins having a glass transition temperature (T_g) less than 433 K (160 °C) and a cure temperature lower than the glass transition temperature.

TECHNICAL NOTE: The glass transition temperature (T_g) for 1C010.e materials is determined using the method described in ASTM D 3418 using the dry method. The glass transition temperature for phenolic and epoxy resins is determined using the method described in ASTM D 4065 at a frequency of 1 Hz and a heating rate of 2 K per minute using the dry method.

1C011 Metals and compounds, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to 1C011.a and .b	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A.

Related Controls: 1.) See also 1C111. 2.) Items controlled by 1C011.a, and metal fuels in particle form, whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99 percent or more of items controlled by 1C011.b. are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: N/A.

Items:

a. Metals in particle sizes of less than 60 µm whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99% or more of zirconium, magnesium and alloys of these;

TECHNICAL NOTE: The natural content of hafnium in the zirconium (typically 2% to 7%) is counted with the zirconium.

NOTE: The metals or alloys listed in 1C011.a are controlled whether or not the metals or alloys are encapsulated in aluminum, magnesium, zirconium or beryllium.

b. Boron or boron carbide of 85% purity or higher and a particle size of 60 µm or less;

NOTE: The metals or alloys listed in 1C011.b are controlled whether or not the metals or alloys are encapsulated in aluminum, magnesium, zirconium or beryllium.

c. Guanidine nitrate;

d. Nitroguanidine (NQ) (CAS 556–88–7).

1C012 Materials, as Follows (See List of Items Controlled)

LICENSE REQUIREMENTS

Reason for Control:

Control(s): Items described in 1C012 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110)

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A.

Related Controls: N/A.

Related Definitions: These materials are typically used for nuclear heat sources.

Items:

a. Plutonium in any form with a plutonium isotopic assay of plutonium-238 of more than 50% by weight;

NOTE: 1C012.a does not control:

1. Shipments with a plutonium content of 1 g or less;

2. Shipments of 3 ''effective grams'' or less when contained in a sensing component in instruments.

b. Previously separated neptunium-237 in any form.

NOTE: 1C012.b does not control shipments with a neptunium-237 content of 1 g or less.

1C018 Commercial Charges and Devices Containing Energetic Materials on the Wassenaar Arrangement Munitions List and Certain Chemicals as Follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT, UN.

Control(s)	Country chart
NS applies to entire entry except as noted in 1C018.m.	NS Column 1.
MT applies to 1C018.m except as noted therein.	MT Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

LVS: $3000, except N/A for Rwanda

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number.

Related Controls: (1) Explosive devices or charges in paragraphs .a through .k of this entry that utilize USML controlled energetic materials (*See* 22 CFR 121.1 Category V) are subject to the licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls if they have been specifically designed, developed, configured, adapted, or modified for a military application. (2) With the exception of slurries, cutters and severing tools, if the USML controlled materials utilized in devices and charges controlled by paragraphs .a through .k of this entry can be easily extracted without destroying the device or charge, then they are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (3) Commercial prefabricated slurries and emulsions containing greater than 35% of USML controlled energetic materials are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (4) The individual USML controlled energetic materials in paragraphs .a through .k of this entry, even when compounded with other materials, remain subject to the export licensing authority of the Department of State when not incorporated into explosive devices or charges controlled by this entry or 1C992. (5) The chemicals in paragraphs .l and .m of this entry, when incorporated into items listed on the United States Munitions List, become subject to the licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls (6) *See also* ECCNs 1C011, 1C111, and 1C239 for additional controlled energetic materials. (7) *See* ECCN 1C238 for additional controls on chlorine trifluoride (ClF_3).

Related Definitions: (1) For purposes of this entry, the term ''controlled materials'' means controlled energetic materials (*see* ECCNs 1C011, 1C111, 1C239 and 22 CFR 121.1 Category V). (2) For purposes of this entry, the mass of aluminum powder, potassium perchlorate, and any of the substances listed in the note to the USML (*see* 22 CFR 121.1 Category V) (such as ammonium pictrate, black powder, etc.) contained in commercial explosive devices and in the charges are

omitted when determining the total mass of controlled material.

Items:

a. Shaped charges specially designed for oil well operations, utilizing one charge functioning along a single axis, that upon detonation produce a hole; and

a.1. Contain any controlled materials;

a.2. Have a uniform shaped conical liner with an included angle of 90 degrees or less;

a.3. Have more than 0.090 kg but not more that 2.0 kg of controlled materials; and

a.4. Have a diameter not exceeding 4.5 inches.

b. Detonating cord or shock tubes containing greater than 0.064 kg per meter (300 grains per foot), but not more than 0.1 kg per meter (470 grains per foot) of controlled materials;

c. Cartridge power devices containing greater than 0.70 kg, but not more than 1.0 kg of controlled materials;

d. Detonators (electric or nonelectric) and assemblies thereof containing greater than 0.01 kg, but not more than 0.1 kg of controlled materials;

e. Igniters containing greater than 0.01 kg, but not more than 0.1 kg of controlled materials;

f. Oil well cartridges containing greater than 0.015 kg, but not more than 0.1 kg of controlled materials;

g. Commercial cast or pressed boosters containing greater than 1.0 kg, but not more than 5.0 kg of controlled materials;

h. Commercial prefabricated slurries and emulsions containing greater than 10 kg and less than or equal to thirty-five percent by weight of USML controlled materials;

i. Cutters and severing tools containing greater than 3.5 kg, but not more than 10 kg of controlled materials;

j. Pyrotechnic devices when designed exclusively for commercial purposes (*e.g.*, theatrical stages, motion picture special effects, and fireworks displays), and containing greater than 3.0 kg, but not more than 5.0 kg of controlled materials;

k. Other commercial explosive devices and charges, not controlled by 1C018.a through g above, when used for commercial applications and containing greater than 1.0 kg but not more than 5.0 kg of controlled materials;

l. Propyleneimine (2-methylaziridine) (CAS 75–55–8); or

m. Any oxidizer or mixture thereof that is a compound composed of fluorine and one or more of the following—other halogens, oxygen, or nitrogen.

Note: Nitrogen trifluoride (NF_3) in a gaseous state is controlled by ECCN 1C992 and not by 1C018.

Note: National security is not a reason for control for chlorine trifluoride.

Note: If a chemical in paragraphs .1 or .m of 1C018 is incorporated into a commercial charge or device described in paragraphs .a through .k of ECCN 1C018 or in 1C992, the classification of the commercial charge or device applies to the item.

1C101 Materials for reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures (i.e., stealth technology), other than those controlled by 1C001, for applications usable in "missiles" and their subsystems.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) Materials controlled by this entry include structural materials and coatings (including paints), specially designed for reduced or tailored reflectivity or emissivity in the microwave, infrared or ultraviolet spectra. (2) This entry does not control coatings (including paints) when specially used for the thermal control of satellites. (3) For commodities that meet the definition of defense articles under 22 CFR 120.3 of the International Traffic in Arms Regulations (ITAR), see 22 CFR 121.16, Item 17-Category II of the (ITAR), which describes similar commodities under the jurisdiction of the Department of State, Directorate of Defense Trade Controls.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1C102 Resaturated pyrolized carbon-carbon materials designed for space launch vehicles specified in 9A004 or sounding rockets specified in 9A104. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

1C107 Graphite and ceramic materials, other than those controlled by 1C007, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country chart*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms.

Related Controls: (1) See also 0C005, 1C004, and 1C298. (2) For commodities that meet the definition of defense articles under 22 CFR 120.3 of the ITAR, see 22 CFR 121.16, Item 8-Category II of the International Traffic in Arms Regulations (ITAR), which describes similar commodities under the jurisdiction of the Department of State, Directorate of Defense Trade Controls.

Related Definitions: N/A.

Items: a. Fine grain recrystallized bulk graphites with a bulk density of 1.72 g/cm3 or greater, measured at 288 K (15 °C), and having a particle size of 100 micrometers or less, usable for rocket nozzles and reentry vehicle nose tips as follows:

a.1. Cylinders having a diameter of 120 mm or greater and a length of 50 mm orgreater;

a.2. Tubes having an inner diameter of 65 mm or greater and a wall thickness of 25 mm or greater and a length of 50 mm or greater;

a.3. Blocks having a size of 120 mm × 120 mm × 50 mm or greater.

b. Pyrolytic or fibrous reinforced graphites, usable for rocket nozzles and reentry vehicle nose tips;

c. Ceramic composite materials (dielectric constant is less than 6 at any frequency from 100 MHz to 100 GHz), for use in ''missile'' radomes; and

d. Bulk machinable silicon-carbide reinforced unfired ceramic, usable for nose tips.

1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms.

Related Controls: (1) Butacene as defined by 1C111.c.1 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR 121.12(b)(6), other ferrocene derivatives). (2) See 1C018 for controls on oxidizers that are composed of fluorine and one or more of the following—other halogens, oxygen, or nitrogen. Solid oxidizer substances are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (See 22 CFR 121.1 Category V).

Related Definitions: N/A.

Items:

a. Propulsive substances:

a.1. Spherical aluminum powder, other than that specified on the U.S. Munitions List, with particles of uniform diameter of less than 200 micrometer and an aluminum content of 97% by weight or more, if at least 10 percent of the total weight is made up of particles of less than 63 micrometer, according to ISO 2591:1988 or national equivalents such as JIS Z8820.

TECHNICAL NOTE: A particle size of 63 micrometer (ISO R–565) corresponds to 250 mesh (Tyler) or 230 mesh (ASTM standard E–11).

a.2. Metal fuels, other than that controlled by the U.S. Munitions List, in particle sizes of less than z60×10^{-6} m (60 micrometers), whether spherical, atomized, spheroidal, flaked or ground, consisting 97% by weight or more of any of the following:

a.2.a Zirconium;

a.2.b Beryllium;

a.2.c Magnesium; or

a.2.d Alloys of the metals specified by a.2.a to a.2.c above.

TECHNICAL NOTE: The natural content of hafnium in the zirconium (typically 2% to 7%) is counted with the zirconium.

a.3. Liquid oxidizers, as follows:

a.3.a. Dinitrogen trioxide;

a.3.b. Nitrogen dioxide/dinitrogen tetroxide;

a.3.c. Dinitrogen pentoxide;

a.3.d. Mixed oxides of nitrogen (MON);

a.3.e. Inhibited red fuming nitric acid (IRFNA);

TECHNICAL NOTE: Mixed oxides of nitrogen (MON) are solutions of nitric oxide (NO) in dinitrogen tetroxide/nitrogen dioxide (N_2O_4/NO_2) that can be used in missile systems. There are a range of compositions that can be denoted as MONi or MONij, where i and j are integers representing the percentage of nitric oxide in the mixture (*e.g.*, MON3 contains 3% nitric oxide, MON25 25% nitric oxide. An upper limit is MON40, 40% by weight).

b. Polymeric substances:

b.1. Carboxy-terminated polybutadiene (CTPB);

b.2. Hydroxy-terminated polybutadiene (HTPB), other than that controlled by the U.S. Munitions List;

b.3. Polybutadiene-acrylic acid (PBAA);

b.4. Polybutadiene-acrylic acid -acrylonitrile (PBAN);

c. Other propellant additives and agents:

c.1. Butacene;

c.2. Triethylene glycol dinitrate (TEGDN);

c.3. 2–Nitrodiphenylamine;

c.4. Trimethylolethane trinitrate (TMETN);

c.5. Diethylene glycol dinitrate (DEGDN).

1C116 Maraging Steels (Steels Generally Characterized by High Nickel, Very Low Carbon Content and the Use of Substitutional Elements or Precipitates To Produce Age-Hardening) Having an Ultimate Tensile Strength Equal to or Greater Than 1.5 GPa, Measured at 293 K (20 °C), in the Form of Sheet, Plate or Tubing With a Wall or Plate Thickness Equal to or Less Than 5 mm

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
NP applies to items that meet or exceed the parameters of 1C216.	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E101 (''use'') for technology for items controlled by this entry. (2) Also see ECCN 1C216. (3) Maraging steel, in physical forms and finished products and specially designed or prepared for use in separating uranium isotopes, is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1C117 Tungsten, molybdenum and alloys of these metals in the form of uniform, spherical or atomized particles of 500 micrometer diameter or less with a purity of 97% or greater for fabrication of rocket motor components, i.e., heat shields, nozzle substrates, nozzle throats and thrust vector control surfaces.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1C118 Titanium-stabilized duplex stainless steel (Ti-DSS), having all of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry.	MT Column 1.
1AT applies to entire entry.	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Having all of the following characteristics:

a.1. Containing 17.0–23.0 weight percent chromium and 4.5–7.0 weight percent nickel;

a.2. Having a titanium content of greater than 0.10 weight percent; *and*

a.3. A ferritic-austenitic microstructure (also referred to as a two-phase microstructure) of which at least 10 percent is austenite by volume (according to ASTM E–1181–87 or national equivalents), *and*

b. Having any of the following forms:

b.1. Ingots or bars having a size of 100 mm or more in each dimension;

b.2. Sheets having a width of 600 mm or more and a thickness of 3 mm or less; *or*

b.3. Tubes having an outer diameter of 600 mm or more and a wall thickness of 3 mm or less.

1C202 Alloys, other than those controlled by 1C002.a.2.c or .d, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: (1) *See* ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled

by this entry. (2) Also see ECCN 1C002. (3) Aluminum alloys and titanium alloys, in physical forms and finished products and specially designed or prepared for use in separating uranium isotopes, are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: The phrase ''capable of'' refers to aluminum alloys and titanium alloys either before or after heat treatment.

Items:

a. Aluminum alloys having both of the following characteristics:

a.1. ''Capable of'' an ultimate tensile strength of 460 MPa or more at 293 K (20 °C); *and*

a.2. In the form of tubes or cylindrical solid forms (including forgings) with an outside diameter of more than 75 mm;

b. Titanium alloys having both of the following characteristics:

b.1. ''Capable of'' an ultimate tensile strength of 900 MPa or more at 293 K (20 °C); *and*

b.2. In the form of tubes or cylindrical solid forms (including forgings) with an outside diameter of more than 75 mm.

1C210 "Fibrous or filamentary materials" or prepregs, other than those controlled by 1C010.a, .b or .e, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) Also see ECCNs 1C010 and 1C990.

Related Definitions: For the purpose of this entry, the term ''fibrous or filamentary materials'' is restricted to continuous ''monofilaments'', ''yarns'', ''rovings'', ''tows'', or ''tapes''. Definitions for other terms used in this entry:

Filament or Monofilament is the smallest increment of fiber, usually several µm in diameter.

Strand is a bundle of filaments (typically over 200) arranged approximately parallel.

Roving is a bundle (typically 12–120) of approximately parallel strands.

Yarn is a bundle of twisted strands.

Tow is a bundle of filaments, usually approximately parallel.

Tape is a material constructed of interlaced or unidirectional filaments, strands, rovings, tows, or yarns, etc., usually preimpregnated with resin.

Specific modulus is the Young's modulus in N/m^2 divided by the specific weight in N/m^3, measured at a temperature of (296 ± 2) K ((23 ± 2) °C) and a relative humidity of 50 ± 5 percent.

Specific tensile strength is the ultimate tensile strength in N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296 ± 2) K ((23 ± 2) °C) and a relative humidity of 50 ± 5 percent.

Items: a. Carbon or aramid ''fibrous or filamentary materials'' having a ''specific modulus'' of 12.7×10^6 m or greater or a ''specific tensile strength'' of 235×10^3 m or greater *except* Aramid ''fibrous or filamentary materials'' having 0.25 percent or more by weight of an ester based fiber surface modifier;

b. Glass ''fibrous or filamentary materials'' having a ''specific modulus'' of 3.18×10^6 m or greater and a ''specific tensile strength'' of 76.2×10^3 m or greater; *or*

c. Thermoset resin impregnated continuous ''yarns'', ''rovings'', ''tows'' or ''tapes'' with a width no greater than 15 mm (prepregs), made from carbon or glass ''fibrous or filamentary materials'' controlled by 1C210.a or .b.

TECHNICAL NOTE: The resin forms the matrix of the composite.

1C216 Maraging steel, other than that controlled by 1C116, "capable of" an ultimate tensile strength of 2,050 MPa or more, at 293 K (20 °C).

LICENSE REQUIREMENTS

Reason for Control: NP, AT.

Control(s)	Country chart
NP applies to entire entry	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) Also see ECCN 1C116. (3) Maraging steel, in physical form and finished products specially designed or prepared for use in separating uranium isotopes, is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

Related Definitions: The phrase ''capable of'' in the ECCN heading refers to maraging steel either before or after heat treatment.
ECCN Controls: This entry does not control forms in which all linear dimensions are 75 mm or less.
Items: The list of items controlled is contained in the ECCN heading.

1C225 Boron enriched in the boron-10 (^{10}B) isotope to greater than its natural isotopic abundance, as follows: elemental boron, compounds, mixtures containing boron, manufactures thereof, waste or scrap of any of the foregoing.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.
Related Definitions: In this entry, mixtures containing boron include boron-loaded materials.
Items:
Technical Note: The natural isotopic abundance of boron-10 is approximately 18.5 weight percent (20 atom percent).
The list of items controlled is contained in the ECCN heading.

1C226 Tungsten, tungsten carbide, and alloys containing more than 90% tungsten by weight, having both of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.
Related Definitions: N/A
ECCN Controls: This entry does not control manufactures specially designed as weights or gamma-ray collimators.
Items:

a. In forms with a hollow cylindrical symmetry (including cylinder segments) with an inside diameter between 100 and 300 mm; *and*
b. A mass greater than 20 kg.

1C227 Calcium having both of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.
Related Definitions: N/A
Items:

a. Containing less than 1,000 parts per million by weight of metallic impurities other than magnesium; *and*
b. Containing less than 10 parts per million by weight of boron.

1C228 Magnesium having both of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilogram
Related Controls: See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.
Related Definitions: N/A
Items:

a. Containing less than 200 parts per million by weight of metallic impurities other than calcium; *and*

b. Containing less than 10 parts per million by weight of boron.

1C229 Bismuth having both of the following characteristics (see List of Items Controlled)

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.
Related Definitions: N/A
Items:

a. A purity of 99.99% or greater by weight; *and*

b. Containing less than 10 parts per million by weight of silver.

1C230 Beryllium metal, alloys containing more than 50% beryllium by weight, beryllium compounds, manufactures thereof, and waste or scrap of any of the foregoing.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.
Related Definitions: N/A
ECCN Controls: This entry does not control the following:

a. Metal windows for X-ray machines, or for bore-hole logging devices;

b. Oxide shapes in fabricated or semi-fabricated forms specially designed for electronic component parts or as substrates for electronic circuits;

c. Beryl (silicate of beryllium and aluminum) in the form of emeralds or aquamarines.

Items: The list of items controlled is contained in the ECCN heading.

1C231 Hafnium metal, hafnium alloys and compounds containing more than 60% hafnium by weight, manufactures thereof, and waste or scrap of any of the foregoing.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C232 Helium-3 (^{3}He), mixtures containing helium-3, and products or devices containing any of the foregoing.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Liters
Related Controls: See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.
Related Definitions: N/A
ECCN Controls: This entry does not control a product or device containing less than 1 g of helium-3.
Items: The list of items controlled is contained in the ECCN heading.

1C233 Lithium enriched in the lithium-6 (^{6}Li) isotope to greater than its natural isotopic abundance, and products or devices containing enriched lithium, as follows: elemental lithium, alloys, compounds, mixtures containing lithium, manufactures thereof, and waste or scrap of any of the foregoing.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) Facilities or plants specially designed or prepared for the separation of lithium isotopes are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

Related Definitions: The natural isotopic abundance of lithium-6 is approximately 6.5 weight percent (7.5 atom percent).

ECCN Controls: This entry does not control thermoluminescent dosimeters.

Items: The list of items controlled is contained in the ECCN heading.

1C234 Zirconium with a hafnium content of less than 1 part hafnium to 500 parts zirconium by weight, as follows: metal, alloys containing more than 50% zirconium by weight, compounds, manufactures thereof, and waste or scrap of any of the foregoing.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) Zirconium metal and alloys in the form of tubes or assemblies of tubes, specially designed or prepared for use in a reactor, are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

Related Definitions: N/A

ECCN Controls: This entry does not control zirconium in the form of foil having a thickness of 0.10 mm (0.004 in.) or less.

Items: The list of items controlled is contained in the ECCN heading.

1C235 Tritium, tritium compounds, mixtures containing tritium in which the ratio of tritium to hydrogen atoms exceeds 1 part in 1,000, and products or devices containing any of the foregoing.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	Country chart
NP applies to entire entry	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) Also see ECCN 1B231. (3) Tritium that is byproduct material (*e.g.*, produced in a nuclear reactor) is subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: N/A

ECCN Controls: (1) This entry does not control tritium, tritium compounds, and mixtures that are byproduct material (e.g., produced in a nuclear reactor)—such materials are subject to the licensing jurisdiction of the Nuclear Regulatory Commission (see Related Controls paragraph for this entry). (2) This entry does not control a product or device containing less than 1.48×10^3 GBq (40 Ci) of tritium.

Items: The list of items controlled is contained in the ECCN heading.

1C236 Alpha-emitting radionuclides having an alpha half-life of 10 days or greater, but less than 200 years, in the following forms (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Gigabecquerels

Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) Certain alpha-emitting

radionuclides are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

Related Definitions: N/A

ECCN Controls: This entry does not control a product or device containing less than 3.7 GBq (100 millicuries) of alpha activity.

Items:

a. Elemental;

b. Compounds having a total alpha activity of 37 GBq/kg (1 Ci/kg) or greater;

c. Mixtures having a total alpha activity of 37 GBq/kg (1 Ci/kg) or greater;

d. Products or devices containing any of the items in 1C236.a, .b., or .c.

1C237 Radium-226 (^{226}Ra), radium-226 alloys, radium-226 compounds, mixtures containing radium-226, manufactures thereof, and products or devices containing any of the foregoing.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Gigabecquerels

Related Controls: See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry.

Related Definitions: N/A

ECCN Controls: This entry does not control the following:

a. Medical applicators;

b. A product or device containing less than 0.37 GBq (10 millicuries) of radium-226.

Items: The list of items controlled is contained in the ECCN heading.

1C238 Chlorine trifluoride (ClF_3).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. See 1C018 for additional controls on Chlorine trifluoride (ClF_3).

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1C239 High explosives, other than those controlled by the U.S. Munitions List, or substances or mixtures containing more than 2% by weight thereof, with a crystal density greater than 1.8 g/cm^3 and having a detonation velocity greater than 8,000 m/s.

LICENSE REQUIREMENTS

Reason for Control:

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) High explosives for military use are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (*see* 22 CFR part 121.12).

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1C240 Nickel powder or porous nickel metal, other than those described in 0C006, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control:

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) Nickel powder and porous nickel metal, specially designed or prepared for use in separating uranium isotopes, are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: N/A

ECCN Controls: This entry does not control the following:

a. Filamentary nickel powders;

b. Single porous nickel sheets with an area of 1,000 cm^2 per sheet or less.

Items:

a. Nickel powder having both of the following characteristics:

a.1. A nickel purity content of 99.0% or greater by weight; and

a.2. A mean particle size of less than 10 micrometers measured by American Society for Testing and Materials (ASTM) B330 standard;

b. Porous nickel metal produced from materials controlled by 1C240.a.

TECHNICAL NOTE: 1C240.b refers to porous metal formed by compacting and sintering the materials in 1C240.a to form a metal material with fine pores interconnected throughout the structure.

1C298 Graphite with a boron content of less than 5 parts per million and a density greater than 1.5 grams per cubic centimeter that is intended for use other than in a nuclear reactor.

LICENSE REQUIREMENTS

Reason for Control: NP.

Control(s)	*Country chart*
NP applies to entire entry.	NP Column 2

License Requirement Note: This entry does not control graphite intended for use in a nuclear reactor. Such graphite is subject to the export licensing authority of the Nuclear Regulatory Commission (see ECCN 0C005 and 10 CFR part 110).

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A.

Related Controls: See also 1C107 and 0C005.

Related Definitions: For the purpose of this entry, graphite with a purity level better than 5 parts per million boron equivalent is determined according to ASTM standard C1233–98. In applying ASTM standard C1233–98, the boron equivalence of the element carbon is not included in the boron equivalence calculation, since carbon is not considered an impurity.

Items: The list of items controlled is contained in the ECCN heading.

1C350 Chemicals that may be used as precursors for toxic chemical agents.

LICENSE REQUIREMENTS

Reason for Control: CB, CW, AT

Control(s)	Country chart
CB applies to entire entry	CB Column 2.

CW applies to 1C350.b and .c. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required, for CW reasons, to export or reexport Schedule 2 chemicals and mixtures identified in 1C350.b to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR). A license is required, for CW reasons, to export Schedule 3 chemicals and mixtures identified in 1C350.c to States not Party to the CWC, unless an End-Use Certificate issued by the government of the importing country has been obtained by the exporter prior to export. A license is required, for CW reasons, to reexport Schedule 3 chemicals and mixtures identified in 1C350.c from a State not Party to the CWC to any other State not Party to the CWC. (See §742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons. See §745.2 of the EAR for End-Use Certificate requirements that apply to exports of Schedule 3 chemicals to countries not listed in Supplement No. 2 to part 745 of the EAR.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C350. A license is required, for AT reasons, to export or reexport items controlled by 1C350 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, Libya, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba and Iran. See Supplement No. 1 to part 736 of the EAR for export controls on Syria.)

License Requirement Notes:

1. *SAMPLE SHIPMENTS:* Subject to the following requirements and restrictions, a license is not required for sample shipments when the cumulative total of these shipments does not exceed a 55-gallon container or 200 kg of a single chemical to any one consignee during a calendar year. A consignee that receives a sample shipment under this exclusion may not resell, transfer, or reexport the sample shipment, but may use the sample shipment for any other legal purpose unrelated to chemical weapons.

a. *Chemicals Not Eligible:*

A. [*Reserved*]

B. *CWC Schedule 2 chemicals (States not Party to the CWC).* No CWC Schedule 2 chemical or mixture identified in 1C350.b is eligible for sample shipment to *States not Party to*

the CWC (*i.e.*, destinations *not* listed in Supplement No. 2 to part 745 of the EAR) without a license.

b. *Countries Not Eligible:* Countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR are *not* eligible to receive sample shipments of any chemicals controlled by this ECCN without a license.

c. *Sample shipments that require an End-Use Certificate for CW reasons:* No CWC Schedule 3 chemical or mixture identified in 1C350.c is eligible for sample shipment to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR) without a license, unless an End-Use Certificate issued by the government of the importing country is obtained by the exporter prior to export (*see* §745.2 of the EAR for End-Use Certificate requirements).

d. *Sample shipments that require a license for reasons set forth elsewhere in the EAR:* Sample shipments, as described in this Note 1, may require a license for reasons set forth elsewhere in the EAR. *See*, in particular, the end-use/end-user restrictions in part 744 of the EAR, and the restrictions that apply to embargoed countries in part 746 of the EAR.

e. *Quarterly report requirement.* The exporter is required to submit a quarterly written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery (titled ''Report of Sample Shipments of Chemical Precursors'' at the top of the first page) and identify the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee's name and address, and the date exported. The report must be sent to the U.S. Department of Commerce, Bureau of Industry and Security, P.O. Box 273, Washington, DC 20044, Attn: ''Report of Sample Shipments of Chemical Precursors''.

2. *MIXTURES:*

a. Mixtures that contain precursor chemicals identified in ECCN 1C350, in concentrations that are below the levels indicated in 1C350.a through .d, are controlled by ECCN 1C395 or 1C995 and are subject to the licensing requirements specified in those ECCNs.

b. A license is not required for mixtures controlled under this ECCN when the controlled chemical in the mixture is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

NOTE TO MIXTURES: Calculation of concentrations of AG-controlled chemicals:

a. Exclusion. No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. Percent Weight Calculation. When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents.

3. *COMPOUNDS.* Compounds created with any chemicals identified in this ECCN 1C350 may be shipped NLR (No License Required), without obtaining an End-Use Certificate, unless those compounds are also identified in this entry or require a license for reasons set forth elsewhere in the EAR.

4. *TESTING KITS:* Certain medical, analytical, diagnostic, and food testing kits containing small quantities of chemicals identified in this ECCN 1C350 are excluded from the scope of this ECCN and are controlled under ECCN 1C395 or 1C995. (Note that replacement reagents for such kits are controlled by this ECCN 1C350 if the reagents contain one or more of the precursor chemicals identified in 1C350 in concentrations equal to or greater than the control levels for mixtures indicated in 1C350.)

TECHNICAL NOTES: 1. For purposes of this entry, a ''mixture'' is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

2. The scope of this control applicable to Hydrogen Fluoride (see 1C350.d.7 in the List of Items Controlled) includes its liquid, gaseous, and aqueous phases, and hydrates.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Liters or kilograms, as appropriate.

Related Controls: The chemicals 0-Ethyl-2-diisopropylaminoethyl methyl phosphonite (QL) (C.A.S. #57856–11–8); Ethyl phosphonyl difluoride (C.A.S. #753–98–0); and Methyl phosphonyl difluoride. (C.A.S. #676–99–3); methylphosphinyl dichloride (C.A.S. 676–83–5); methylphosphinyl difluoride (C.A.S. #753–59–3); and methylphosphonyl dichloride (C.A.S. #676–97–1) are subject to the licensing jurisdiction of the Directorate of Defense Trade Controls, U.S. Department of State.

Related Definitions: See §770.2(k) of the EAR for synonyms for the chemicals listed in this entry.

Items

a. [Reserved]

b. Australia Group-controlled precursor chemicals also identified as Schedule 2 chemicals under the CWC, as follows, and mixtures in which at least one of the following chemicals constitutes 30 percent or more of the weight of the mixture:

b.1. (C.A.S. #7784–34–1) Arsenic trichloride;

b.2. (C.A.S. #76–93–7) Benzilic acid;

b.3. (C.A.S. #78–38–6) Diethyl ethylphosphonate;

b.4. (C.A.S. #15715–41–0) Diethyl methylphosphonite;

b.5. (C.A.S. #2404–03–7) Diethyl-N,N-dimethylphosphoroamidate;

b.6. (C.A.S. #5842–07–9) N,N-Diisopropyl-beta-aminoethane thiol;
b.7. (C.A.S. #4261–68–1) N,N-Diisopropyl-beta-aminoethyl chloride hydrochloride;
b.8. (C.A.S. #96–80–0) N,N-Diisopropyl-beta-aminoethanol;
b.9. (C.A.S. #96–79–7), N,N-Diisopropyl-beta-aminoethyl chloride;
b.10. (C.A.S. #6163–75–3) Dimethyl ethylphosphonate;
b.11. (C.A.S. #756–79–6) Dimethyl methylphosphonate;
b.12. (C.A.S. #1498–40–4) Ethyl phosphonous dichloride [Ethyl phosphinyl dichloride];
b.13. (C.A.S. #430–78–4) Ethyl phosphonus difluoride [Ethyl phosphinyl difluoride];
b.14. (C.A.S. #1066–50–8) Ethyl phosphonyl dichloride;
b.15. [Reserved]
b.16. [Reserved]
b.17. [Reserved]
b.18. (C.A.S. #464–07–3) Pinacolyl alcohol;
b.19. (C.A.S. #1619–34–7) 3-Quinuclidinol;
b.20. (C.A.S. #111–48–8) Thiodiglycol;
b.21. (C.A.S. #993–13–5) Methylphosphonic acid;
b.22. (C.A.S. #683–08–9) Diethyl methylphosphonate;
b.23. (C.A.S. #667–43–0) N,N-dimethylamino-phosphoryl dichloride;
b.24. (C.A.S. #676–98–2) Methylphosphonothioic dichloride.

c. Australia Group-controlled precursor chemicals also identified as Schedule 3 chemicals under the CWC, as follows, and mixtures in which at least one of the following chemicals constitutes 30 percent or more of the weight of the mixture:

c.1. (C.A.S. #762–04–9) Diethyl phosphite;
c.2. (C.A.S. #868–85–9) Dimethyl phosphite (dimethyl hydrogen phosphite);
c.3. (C.A.S. #10025–87–3) Phosphorus oxychloride;
c.4. (C.A.S. #10026–13–8) Phosphorus pentachloride;
c.5. (C.A.S. #7719–12–2) Phosphorus trichloride;
c.6. (C.A.S. #10025–67–9) Sulfur monochloride;
c.7. (C.A.S. #10545–99–0) Sulfur dichloride;
c.8. (C.A.S. #7719–09–7) Thionyl chloride;
c.9. (C.A.S. #102–71–6) Triethanolamine;
c.10. (C.A.S. #122–52–1) Triethyl phosphite;
c.11. (C.A.S. #121–45–9) Trimethyl phosphite;
c.12. (C.A.S. #139–87–7) Ethyldiethanolamine.

d. Other Australia Group-controlled precursor chemicals not also identified as Schedule 1, 2, or 3 chemicals under the CWC, as follows, and mixtures in which at least one of the following chemicals constitutes 30 percent or more of the weight of the mixture:

d.1. (C.A.S. #1341–49–7) Ammonium hydrogen fluoride;
d.2. (C.A.S. #107–07–3) 2-Chloroethanol;
d.3. (C.A.S. #100–37–8) N,N-Diethylaminoethanol;
d.4. (C.A.S. #108–18–9) Di-isopropylamine;
d.5. (C.A.S. #124–40–3) Dimethylamine;
d.6. (C.A.S. #506–59–2) Dimethylamine hydrochloride;
d.7. (C.A.S. #7664–39–3) Hydrogen fluoride;
d.8. (C.A.S. #3554–74–3) 3-Hydroxyl-1-methylpiperidine;
d.9. (C.A.S. #76–89–1) Methyl benzilate;
d.10. (C.A.S. #1314–80–3) Phosphorus pentasulfide;
d.11. (C.A.S. #75–97–8) Pinacolone;
d.12. (C.A.S. #151–50–8) Potassium cyanide;
d.13. (C.A.S. #7789–23–3) Potassium fluoride;
d.14. (C.A.S. #7789–29–9) Potassium bifluoride;
d.15. (C.A.S. #3731–38–2) 3-Quinuclidone;
d.16. (C.A.S. #1333–83–1) Sodium bifluoride;
d.17. (C.A.S. #143–33–9) Sodium cyanide;
d.18. (C.A.S. #7681–49–4) Sodium fluoride;
d.19. (C.A.S. #1313–82–2) Sodium sulfide;
d.20. (C.A.S. #637–39–8) Triethanolamine hydrochloride;
d.21. (C.A.S. #116–17–6) Tri-isopropyl phosphite;
d.22. (C.A.S. #2465–65–8) O,O-diethyl phosphorothioate;
d.23. (C.A.S. #298–06–6) O,O-diethyl phosphorodithioate;
d.24. (C.A.S. #16893–85–9) Sodium hexafluorosilicate.

1C351 Human and zoonotic pathogens and "toxins", as follows (seeList of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: CB, CW, AT

Control(s)	Country chart
CB applies to entire entry	CB Column 1

CW applies to 1C351.d.5 and d.6 and a license is required for CW reasons for all destinations, including Canada, as follows: CW applies to 1C351.d.5 for ricin in the form of (1) Ricinus Communis Agglutinin$_{II}$ (RCA$_{II}$), also known as ricin D or Ricinus Communis Lectin$_{III}$ (RCL$_{III}$); and (2) Ricinus Communis Lectin$_{IV}$ (RCL$_{IV}$), also known as ricin E. CW applies to 1C351d.6 for saxitoxin identified by C.A.S. #35523–89–8. See §742.18 of the EAR for licensing information pertaining to chemicals subject to restriction pursuant to the Chemical Weapons Convention (CWC). The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.

AT applies to entire entry ..... AT Column 1

LICENSE EXCEPTIONS
LVS: N/A
GBS: N/A
CIV: N/A
LIST OF ITEMS CONTROLLED

Unit: Value.

Related Controls: Certain forms of ricin and saxitoxin in 1C351.d.5. and d.6 are CWC Schedule 1 chemicals (*see* §742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. See §745.1 of the EAR for notification procedures. See 22 CFR part 121, Category XIV and §121.7 for additional CWC Schedule 1 chemicals controlled by the Department of State. All vaccines and ''immunotoxins'' are excluded from the scope of this entry. Certain medical products and diagnostic and food testing kits that contain biological toxins controlled under paragraph (d) of this entry, with the exception of toxins controlled for CW reasons under d.5 and d.6, are excluded from the scope of this entry. Vaccines, ''immunotoxins'', certain medical products, and diagnostic and food testing kits excluded from the scope of this entry are controlled under ECCN 1C991. For the purposes of this entry, only saxitoxin is controlled under paragraph d.6; other members of the paralytic shellfish poison family (*e.g.* neosaxitoxin) are classified as EAR99. Clostridium perfringens strains, other than the epsilon toxin-producing strains of Clostridium perfringens described in c.14, are excluded from the scope of this entry, since they may be used as positive control cultures for food testing and quality control.

Related Definitions: 1. For the purposes of this entry ''immunotoxin'' is defined as an antibody-toxin conjugate intended to destroy specific target cells (*e.g.,* tumor cells) that bear antigens homologous to the antibody. 2. For the purposes of this entry ''subunit'' is defined as a portion of the ''toxin''.

Items:

a. *Viruses, as follows:*

a.1. Chikungunya virus;

a.2. Congo-Crimean haemorrhagic fever virus;

a.3. Dengue fever virus;

a.4. Eastern equine encephalitis virus;

a.5. Ebola virus;

a.6. Hantaan virus;

a.7. Japanese encephalitis virus;

a.8. Junin virus;

a.9. Lassa fever virus

a.10. Lymphocytic choriomeningitis virus;

a.11. Machupo virus;

a.12. Marburg virus;

a.13. Monkey pox virus;

a.14. Rift Valley fever virus;

a.15. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);

a.16. Variola virus;

a.17. Venezuelan equine encephalitis virus;

a.18. Western equine encephalitis virus;

a.19. White pox;

a.20. Yellow fever virus;

a.21. Kyasanur Forest virus;

a.22. Louping ill virus;

a.23. Murray Valley encephalitis virus;

a.24. Omsk haemorrhagic fever virus;

a.25. Oropouche virus;

a.26. Powassan virus;

a.27. Rocio virus;

a.28. St. Louis encephalitis virus;

a.29. Hendra virus (Equine morbillivirus);

a.30. South American haemorrhagic fever (Sabia, Flexal, Guanarito);

a.31. Pulmonary and renal syndrome-haemorrhagic fever viruses (Seoul, Dobrava, Puumala, Sin Nombre); or

a.32. Nipah virus.

b. Rickettsiae, as follows:

b.1. Bartonella quintana (Rochalimea quintana, Rickettsia quintana);

b.2. Coxiella burnetii;

b.3. Rickettsia prowasecki; or

b.4. Rickettsia rickettsii.

c. Bacteria, as follows:

c.1. Bacillus anthracis;

c.2. Brucella abortus;

c.3. Brucella melitensis;

c.4. Brucella suis;

c.5. Burkholderia mallei (Pseudomonas mallei);

c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);

c.7. Chlamydia psittaci;

c.8. Clostridium botulinum;

c.9. Francisella tularensis;

c.10. Salmonella typhi;

c.11. Shigella dysenteriae;

c.12. Vibrio cholerae;

c.13. Yersinia pestis;

c.14. Clostridium perfringens, epsilon toxin producing types; or

c.15. Enterohaemorrhagic Escherichia coli, serotype O157 and other verotoxin producing serotypes.

d. ''Toxins'', as follows, and ''subunits'' thereof:

d.1. Botulinum toxins;

d.2. Clostridium perfringens toxins;

d.3. Conotoxin;

d.4. Microcystin (Cyanginosin);

d.5. Ricin;

d.6. Saxitoxin;

d.7. Shiga toxin;

d.8. Staphylococcus aureus toxins;

d.9. Tetrodotoxin;

d.10. Verotoxin;

d.11. Aflatoxins;

d.12. Abrin;

d.13. Cholera toxin;

d.14. Diacetoxyscirpenol toxin;

d.15. T–2 toxin;

d.16. HT–2 toxin;

d.17. Modeccin toxin;

d.18. Volkensin toxin; or

d.19. Viscum Album Lectin 1 (Viscumin).

1C352 Animal pathogens, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: All vaccines are excluded from the scope of this entry. *See* ECCN 1C991.
Related Definitions: N/A.
Items:

a. *Viruses, as follows:*
a.1. African swine fever virus;
a.2. Avian influenza viruses that are:
a.2.a. Defined in EC Directive 92/40/EC (O.J. L.16 23.1.92 p. 19) as having high pathogenicity, as follows:
a.2.a.1. Type A viruses with an IVPI (intravenous pathogenicity index) in 6 week old chickens of greater than 1.2; or
a.2.a.2. Type A viruses H5 or H7 subtype for which nucleotide sequencing has demonstrated multiple basic amino acids at the cleavage site of haemagglutinin;
a.3. Bluetongue virus;
a.4. Foot and mouth disease virus;
a.5. Goat pox virus;
a.6. Porcine herpes virus (Aujeszky's disease);
a.7. Swine fever virus (Hog cholera virus);
a.8. Lyssa virus;
a.9. Newcastle disease virus;
a.10. Peste des petits ruminants virus;
a.11. Porcine enterovirus type 9 (swine vesicular disease virus);
a.12. Rinderpest virus;
a.13. Sheep pox virus;
a.14. Teschen disease virus;
a.15. Vesicular stomatitis virus;
a.16. Lumpy skin disease virus;
a.17. African horse sickness virus.

b. Bacteria, as follows:
b.1. Mycoplasma mycoides;
b.2. Reserved.

1C353 Genetic elements and genetically modified organisms, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: Vaccines that contain genetic elements or genetically modified organisms identified in this entry are controlled by ECCN 1C991.
Related Definition: N/A.
Items:

a. Genetic elements, as follows:
a.1. Genetic elements that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a to .c, 1C352, or 1C354;
a.2. Genetic elements that contain nucleic acid sequences coding for any of the ''toxins'' controlled by 1C351.d or ''sub-units of toxins'' thereof.
b. Genetically modified organisms, as follows:
b.1. Genetically modified organisms that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a to .c, 1C352, or 1C354;
b.2. Genetically modified organisms that contain nucleic acid sequences coding for any of the ''toxins'' controlled by 1C351.d or ''sub-units of toxins'' thereof.

Technical Note: 1. ''Genetic elements'' include, inter alia, chromosomes, genomes, plasmids, transposons, and vectors, whether genetically modified or unmodified.
2. This ECCN does not control nucleic acid sequences associated with the pathogenicity of enterohaemorrhagic Escherichia coli, serotype O157 and other verotoxin producing strains, except those nucleic acid sequences that contain coding for the verotoxin or its sub-units.
3. ''Nucleic acid sequences associated with the pathogenicity of any of the microorganisms controlled by 1C351.a to .c, 1C352, or 1C354'' means any sequence specific to the relevant controlled microorganism that:
a. In itself or through its transcribed or translated products represents a significant hazard to human, animal or plant health; or
b. Is known to enhance the ability of a microorganism controlled by 1C351.a to .c, 1C352, or 1C354, or any other organism into which it may be inserted or otherwise integrated, to cause serious harm to human, animal or plant health.

1C354 Plant pathogens, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: All vaccines are excluded from the scope of this entry. See ECCN 1C991.

Related Definitions: N/A

Items

a. Bacteria, as follows:

a.1. *Xanthomonas albilineans*;

a.2. *Xanthomonas campestris* pv. *citri* including strains referred to as *Xanthomonas campestris* pv. *citri* types A,B,C,D,E or otherwise classified as *Xanthomonas citri, Xanthomonas campestris* pv. *aurantifolia* or *Xanthomonas campestris* pv. *citrumelo*;

a.3. *Xanthomonas oryzae* pv. *oryzae* (syn. *Pseudomonas campestris* pv. *oryzae*);

a.4. *Clavibacter michiganensis* subspecies *sepedonicus* (syn. *Corynebacterium michiganensis* subspecies *sepedonicum* or *Corynebacterium sepedonicum*);

a.5. *Ralstonia solanacearum* Races 2 and 3 (syn. *Pseudomonas solanacearum* Races 2 and 3 or *Burkholderia solanacearum* Races 2 and 3);

b. Fungi, as follows:

b.1. *Colletotrichum coffeanum* var. *virulans* (*Colletotrichum kahawae*);

b.2. *Cochliobolus miyabeanus* (*Helminthosporium oryzae*);

b.3. *Microcyclus ulei* (syn. *Dothidella ulei*);

b.4. *Puccinia graminis* (syn. *Puccinia graminis* f. sp. *tritici*);

b.5. *Puccinia striiformis* (syn. *Puccinia glumarum*);

b.6. *Magnaporthe grisea* (*pyricularia grisea/pyricularia oryzae*);

c. Viruses, as follows:

c.1. Potato Andean latent tymovirus;

c.2. Potato spindle tuber viroid.

1C355 Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals and families of chemicals not controlled by ECCN 1C350 or by the Department of State under the ITAR.

LICENSE REQUIREMENTS

Reason for Control: CW, AT

Control(s) CW applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required to export or reexport CWC Schedule 2 chemicals and mixtures identified in 1C355.a to States not Party to the CWC (*i.e.*, destinations *not* listed in Supplement No. 2 to part 745 of the EAR). A license is required to export CWC Schedule 3 chemicals and mixtures identified in 1C355.b to States not Party to the CWC, unless an End-Use Certificate issued by the government of the importing country is obtained by the exporter, prior to export. A license is required to reexport CWC Schedule 3 chemicals and mixtures identified in 1C355.b from a State not Party to the CWC to any other State not Party to the CWC. (See §742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C355. A license is required, for AT reasons, to export or reexport items controlled by 1C355 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, Libya, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba and Iran. See Supplement No. 1 to part 736 of the EAR for export controls on Syria.)

License Requirements Notes

1. *Mixtures:* a. Mixtures containing toxic and precursor chemicals identified in ECCN 1C355, in concentrations that are below the control levels indicated in 1C355.a and .b, are controlled by ECCN 1C995 and are subject to the license requirements specified in that ECCN.

b. Mixtures containing chemicals identified in this entry are not controlled by ECCN 1C355 when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use or packaged for individual use. Such consumer goods are classified as EAR99.

NOTE TO MIXTURES: Calculation of concentrations of CW-controlled chemicals:

a. *Exclusion.* No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. *Percent Weight Calculation.* When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents.

2. *Compounds:* Compounds created with any chemicals identified in this ECCN 1C355 may be shipped NLR (No License Required), without obtaining an End-Use Certificate, unless those compounds are also identified in this entry or require a license for reasons set forth elsewhere in the EAR.

Technical Notes: For purposes of this entry, a ''mixture'' is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

LICENSE EXCEPTIONS

LVS: N/A.

GBS: N/A.

CIV: N/A.

LIST OF ITEMS CONTROLLED

Unit: Liters or kilograms, as appropriate.

Related Controls: See also ECCNs 1C350, 1C351, 1C395, and 1C995. See §§742.18 and 745.2

of the EAR for End-Use Certification requirements.

Related Definitions: N/A.

Items:

a. CWC Schedule 2 chemicals and mixtures containing Schedule 2 chemicals:

a.1. Toxic chemicals, as follows, and mixtures containing toxic chemicals:

a.1.a. PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene (C.A.S. 382–21–8) and mixtures in which PFIB constitutes more than 1 percent of the weight of the mixture;

a.1.b. [Reserved]

a.2. Precursor chemicals, as follows, and mixtures in which at least one of the following precursor chemicals constitutes more than 10 percent of the weight of the mixture:

a.2.a. Chemicals except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl, or propyl (normal or iso) group but not further carbon atoms.

NOTE: 1C355.a.2.a does not control Fonofos: O-Ethyl S-phenyl ethylphosphonothiolothionate (C.A.S. 944–22–9).

a.2.b. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides;

a.2.c. FAMILY: Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr, or i-Pr)-phosphoramidates;

a.2.d. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts;

a.2.e. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts;

NOTE: 1C355.a.2.e. does not control N,N-Dimethylaminoethanol and corresponding protonated salts (C.A.S. 108-01-0) or N,N-Diethylaminoethanol and corresponding protonated salts (C.A.S. 100-37-8).

a.2.f. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts.

b. CWC Schedule 3 chemicals and mixtures containing Schedule 3 chemicals:

b.1. Toxic chemicals, as follows, and mixtures in which at least one of the following toxic chemicals constitutes 30 percent or more of the weight of the mixture:

b.1.a. Phosgene: Carbonyl dichloride (C.A.S. 75–44–5);

b.1.b. Cyanogen chloride (C.A.S. 506–77–4);

b.1.c. Hydrogen cyanide (C.A.S. 74–90–8);

b.1.d. Chloropicrin: Trichloronitromethane (CAS 76–06–2).

b.2. Precursor chemicals, as follows, and mixtures in which at least one of the following precursor chemicals constitutes 30 percent or more of the weight of the mixture:

b.2.a. Ethyldiethanolamine (C.A.S. 139–87–7);

b.2.b. Methyldiethanolamine (C.A.S. 105–59–9).

1C395 Mixtures and Medical, Analytical, Diagnostic, and Food Testing Kits Not Controlled by ECCN 1C350, as follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: CB, CW, AT

Control(s): CB applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CB reasons in 1C395. A license is required, for CB reasons, to export or reexport mixtures controlled by 1C395.a and test kits controlled by 1C395.b to States not Party to the CWC (*i.e.*, destinations not listed in Supplement No. 2 to part 745 of the EAR).

CW applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required for CW reasons, as follows, to States not Party to the CWC (*i.e.*, destinations not listed in Supplement No. 2 to part 745 of the EAR): (1) Exports and reexports of mixtures controlled by 1C395.a, (2) exports and reexports of test kits controlled by 1C395.b that contain CWC Schedule 2 chemicals controlled by ECCN 1C350, (3) exports of test kits controlled by 1C395.b that contain CWC Schedule 3 chemicals controlled by ECCN 1C350, except that a license is not required, for CW reasons, to export test kits containing CWC Schedule 3 chemicals if an End-Use Certificate issued by the government of the importing country is obtained by the exporter prior to export, and (4) reexports from States not Party to the CWC of test kits controlled by 1C395.b that contain CWC Schedule 3 chemicals. (*See* §742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C395. A license is required, for AT reasons, to export or reexport items controlled by 1C395 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, Libya, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba and Iran. See Supplement No. 1 to part 736 of the EAR for information on export controls that apply to Syria.)

License Requirements Notes

1. 1C395.b does not control mixtures that contain precursor chemicals identified in ECCN 1C350.b or .c in concentrations below the control levels for mixtures indicated in

1C350.b or .c. 1C395.a and 1C995.a.1 and a.2.a control such mixtures, unless they are consumer goods, as described in License Requirements Note 2 of this ECCN.

2. This ECCN does not control mixtures when the controlled chemicals are normal ingredients in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: 1. ECCN 1C350 controls mixtures containing 30 percent or higher concentrations, by weight, of any single CWC Schedule 2 chemical identified in ECCN 1C350.b; ECCN 1C995 controls such mixtures containing concentrations of 10 percent or less. 2. ECCN 1C995 controls ''medical, analytical, diagnostic, and food testing kits'' (as defined in the Related Definitions paragraph of this ECCN) that contain precursor chemicals listed in ECCN 1C350.d. ECCN 1C350 controls any such kits in which the amount of any single chemical listed in 1C350.b, .c, or .d exceeds 300 grams by weight.

Related Definitions: For the purpose of this entry, ''medical, analytical, diagnostic, and food testing kits'' are pre-packaged materials of defined composition that are specifically developed, packaged and marketed for medical, analytical, diagnostic, or public health purposes. Replacement reagents for medical, analytical, diagnostic, and food testing kits described in 1C395.b are controlled by ECCN 1C350 if the reagents contain at least one of the precursor chemicals identified in that ECCN in concentrations equal to or greater than the control levels for mixtures indicated in 1C350.b. or .c.

Items:

a. Mixtures containing more than 10 percent, but less than 30 percent, by weight of any single CWC Schedule 2 chemical identified in ECCN 1C350.b (For controls on other mixtures containing these chemicals, see Note 1 in the Related Controls paragraph of this ECCN.).

b. ''Medical, analytical, diagnostic, and food testing kits'' (as defined in the Related Definitions for this ECCN) that contain CWC Schedule 2 or 3 chemicals controlled by ECCN 1C350.b or .c in an amount *not* exceeding 300 grams per chemical. (For controls on other such test kits containing these and other controlled chemicals, see Note 2 in the Related Controls paragraph of this ECCN.)

1C980 Inorganic chemicals listed in Supplement No. 1 to part 754 of the EAR that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR produced or derived commodities.

LICENSE REQUIREMENTS

Reason for Control: SS

Control(s): SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons

LIST OF ITEMS CONTROLLED

Unit: Barrels/Liters
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1C981 Crude petroleum including reconstituted crude petroleum, tar sands & crude shale oil listed in Supplement No. 1 to part 754 of the EAR.

LICENSE REQUIREMENTS

Reason for Control: SS

Control(s): SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons

LIST OF ITEMS CONTROLLED

Unit: Barrels/Liters
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

1C982 Other petroleum products listed in Supplement No. 1 to part 754 of the EAR that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR produced or derived commodities.

LICENSE REQUIREMENTS

Reason for Control: SS

Control(s): SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

1C983 Natural gas liquids and other natural gas derivatives listed in Supplement No. 1 to part 754 of the EAR that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR produced or derived commodities.

LICENSE REQUIREMENTS

Reason for Control: SS

Control(s): SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

LIST OF ITEMS CONTROLLED

Unit: Barrels/Liters
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

1C984 Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy) listed in Supplement No. 1 to part 754 of the EAR that were produced or derived from the Naval Petroleum Reserves (NPR) or became available for export as a result of an exchange of any NPR produced or derived commodities.

LICENSE REQUIREMENTS

Reason for Control: SS

Control(s): SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons

LIST OF ITEMS CONTROLLED

Unit: Millions of cubic feet
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

1C988 Western red cedar (thuja plicata), logs and timber, and rough, dressed and worked lumber containing wane listed in Supplement No. 2 to part 754 of the EAR.

LICENSE REQUIREMENTS

Reason for Control: SS

Control(s): SS applies to entire entry. For licensing requirements (and possible License Exceptions) proceed directly to part 754 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons

LIST OF ITEMS CONTROLLED

Unit: Million board feet scribner
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

1C990 Fibrous and filamentary materials, not controlled by 1C010 or 1C210, for use in "composite" structures and with a specific modulus of 3.18×10^{6} m or greater and a specific tensile strength of 7.62×10^{4} m or greater.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

1C991 Vaccines, immunotoxins, medical products, diagnostic and food testing kits, as follows (see List of Items controlled).

LICENSE REQUIREMENTS

Reason for Control: CB, AT.

Control(s)	Country Chart
CB applies to 1C991.d	CB Column 3
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS
LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: Medical products containing ricin or saxitoxin, as follows, are controlled for CW reasons under ECCN 1C351:

(1) Ricinus Communis $Agglutinin_{II}$ (RCA_{II}), also known as ricin D, or Ricinus Communis $Lectin_{III}$ (RCL_{III});

(2) Ricinus Communis $Lectin_{IV}$ (RCL_{IV}), also known as ricin E; or

(3) Saxitoxin identified by C.A.S. #35523–89–8.

Related Definitions: For the purpose of this entry, ''*immunotoxin*'' is defined as an antibody-toxin conjugate intended to destroy specific target cells (*e.g.*, tumor cells) that bear antigens homologous to the antibody. For the purpose of this entry, ''*medical products*'' are: (1) Pharmaceutical formulations designed for human administration in the

treatment of medical conditions, (2) prepackaged for distribution as medical products, and (3) approved by the U.S. Food and Drug Administration to be marketed as medical products. For the purpose of this entry, ''*diagnostic and food testing kits*'' are specifically developed, packaged and marketed for diagnostic or public health purposes. Biological toxins in any other configuration, including bulk shipments, or for any other end-uses are controlled by ECCN 1C351. For the purpose of this entry, ''*vaccine*'' is defined as a medicinal (or veterinary) product in a pharmaceutical formulation, approved by the U.S. Food and Drug Administration or the U.S. Department of Agriculture to be marketed as a medical (or veterinary) product or for use in clinical trials, that is intended to stimulate a protective immunological response in humans or animals in order to prevent disease in those to whom or to which it is administered.

Items

a. Vaccines against items controlled by ECCN 1C351, 1C352, 1C353, or 1C354;

b. Immunotoxins containing items controlled by 1C351.d;

c. Medical products containing botulinum toxins controlled by ECCN 1C351.d.1 or conotoxins controlled by ECCN 1C351.d.3;

d. Medical products containing items controlled by ECCN 1C351.d, except botulinum toxins controlled by ECCN 1C351.d.1, conotoxins controlled by ECCN 1C351.d.3, and items controlled for CW reasons under 1C351.d.5 or .d.6; and

e. Diagnostic and food testing kits containing items controlled by ECCN 1C351.d, except items controlled for CW reasons under ECCN 1C351.d.5 or .d.6.

1C992 Commercial charges and devices containing energetic materials, n.e.s and nitrogen trifluoride in a gaseous state

LICENSE REQUIREMENTS

Reason for Control: AT.

AT applies to entire entry	AT Column 1 and Iraq

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: (1) Commercial charges and devices containing USML controlled energetic materials that exceed the quantities noted or that are not covered by this entry are controlled under 1C018. (2) Nitrogen trifluoride when not in a gaseous state is controlled under 1C018.

Related Definitions: (1) Items controlled by this entry 1C992 are those materials not subject to the licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121) or controlled by ECCN 1C018. (2) For purposes of this entry, the term ''controlled materials'' means controlled energetic materials (see ECCNs 1C011, 1C111, 1C239 and 22 CFR 121.1, Category V). (3) The individual USML controlled energetic materials, even when compounded with other materials, remain subject to the export licensing authority of the Department of State when not incorporated into explosive devices or charges controlled by this entry. (4) Commercial prefabricated slurries and emulsions containing greater than 35% of USML controlled energetic materials are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (5) For purposes of this entry, the mass of aluminum powder, potassium perchlorate, and any of the substances listed in the note to the USML (see 22 CFR 121.12) (such as ammonium pictrate, black powder, etc.) contained in commercial explosive devices and in the charges are omitted when determining the total mass of controlled material.

Items:

a. Shaped charges specially designed for oil well operations, utilizing one charge functioning along a single axis, that upon detonation produce a hole, and

a.1. Contain any formulation of controlled materials;

a.2. Have only a uniform shaped conical liner with an included angle of 90 degrees or less;

a.3. Contain more than 0.010 kg but less than or equal to 0.090 kg of controlled materials; and

a.4. Have a diameter not exceeding 4.5 inches;

b. Shaped charges specially designed for oil well operations containing less than or equal to 0.010 kg of controlled materials;

c. Detonation cord or shock tubes containing less than or equal to 0.064 kg per meter (300 grains per foot) of controlled materials;

d. Cartridge power devices, that contain less than or equal to 0.70 kg of controlled materials in the deflagration material;

e. Detonators (electric or nonelectric) and assemblies thereof, that contain less than or equal to 0.01 kg of controlled materials;

f. Igniters, that contain less than or equal to 0.01 kg of controlled materials;

g. Oil well cartridges, that contain less than or equal to 0.015 kg of controlled energetic materials;

h. Commercial cast or pressed boosters containing less than or equal to 1.0 kg of controlled materials;

i. Commercial prefabricated slurries and emulsions containing less than or equal to 10.0 kg and less than or equal to thirty-five percent by weight of USML controlled materials;

j. Cutters and severing tools containing less than or equal to 3.5 kg of controlled materials;

k. Pyrotechnic devices when designed exclusively for commercial purposes (*e.g.*, theatrical stages, motion picture special effects, and fireworks displays) and containing less than or equal to 3.0 kg of controlled materials; or

l. Other commercial explosive devices and charges not controlled by 1C992.a through .k containing less than or equal to 1.0 kg of controlled materials.

NOTE: 1C992.l includes automotive safety devices; extinguishing systems; cartridges for riveting guns; explosive charges for agricultural, oil and gas operations, sporting goods, commercial mining, or public works purposes; and delay tubes used in the assembly of commercial explosive devices.

m. Nitrogen trifluoride (NF_3) in a gaseous state.

1C995 Mixtures not controlled by ECCN 1C350, ECCN 1C355 or ECCN 1C395 that contain chemicals controlled by ECCN 1C350 or ECCN 1C355 and medical, analytical, diagnostic, and food testing kits not controlled by ECCN 1C350 or ECCN 1C395 that contain chemicals controlled by ECCN 1C350.d, as follows (see List of Items controlled).

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry ..	AT Column 1 and Iraq.

License Requirement Notes

1. This ECCN does not control mixtures containing less than 0.5% of any single toxic or precursor chemical controlled by ECCN 1C350.b, .c, or .d or ECCN 1C355 as unavoidable by-products or impurities. Such mixtures are classified as EAR99.

2. 1C995.c does not control mixtures that contain precursor chemicals identified in 1C350.d in concentrations below the levels for mixtures indicated in 1C350.d. 1C995.a.2.b controls such mixtures, unless they are consumer goods as described in License Requirements Note 3 of this ECCN.

3. This ECCN does not control mixtures when the controlled chemicals are normal ingredients in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: 1. ECCN 1C350 controls mixtures containing 30 percent or higher concentrations of any single CWC Schedule 2 chemical identified in ECCN 1C350.b. ECCN 1C395 controls mixtures containing concentrations of more than 10 percent, but less than 30 percent, of any single CWC Schedule 2 chemical identified in ECCN 1C350.b. 2. ECCN 1C350 controls mixtures containing chemicals identified in ECCN 1C350.c or .d that exceed the concentration levels indicated in 1C995.a.2. 3. ECCN 1C355 controls mixtures containing chemicals identified in ECCN 1C355 that exceed the concentration levels indicated in 1C995.b. 4. ECCN 1C395 controls ''medical, analytical, diagnostic, and food testing kits'' (as defined in the Related Controls paragraph of this ECCN) that contain CWC Schedule 2 or 3 chemicals listed in 1C350.b or .c. ECCN 1C350 controls any such testing kits in which the amount of any single chemical listed in 1C350.b, .c., or .d exceeds 300 grams by weight.

Related Definitions: For the purpose of this entry, ''medical, analytical, diagnostic, and food testing kits'' are pre-packaged materials of defined composition that are specifically developed, packaged and marketed for medical, analytical, diagnostic, or public health purposes. Replacement reagents for medical, analytical, diagnostic, and food testing kits described in 1C995.c are controlled by ECCN 1C350 if the reagents contain at least one of the precursor chemicals identified in that ECCN in concentrations equal to or greater than the control levels for mixtures indicated in 1C350.d.

Items:

a. Mixtures containing the following concentrations of precursor chemicals controlled by ECCN 1C350 (For controls on other mixtures containing these chemicals, see Notes 1 and 2 in the Related Controls paragraph of this ECCN.):

a.1. Mixtures containing 10 percent or less, by weight, of any single CWC Schedule 2 chemical controlled by ECCN 1C350.b;

a.2. Mixtures containing less than 30 percent, by weight, of:

a.2.a. Any single CWC Schedule 3 chemical controlled by ECCN 1C350.c; or

a.2.b. Any single precursor chemical controlled by ECCN 1C350.d.

b. Mixtures containing the following concentrations of toxic or precursor chemicals controlled by ECCN 1C355 (For controls on other mixtures containing these chemicals, see Note 3 in the Related Controls paragraph of this ECCN.):

b.1. Mixtures containing the following concentrations of CWC Schedule 2 chemicals controlled by ECCN 1C355.a:

b.1.a. Mixtures containing 1 percent or less, by weight, of any single CWC Schedule 2 chemical controlled by ECCN 1C355.a.1 (i.e., mixtures containing PFIB); or

b.1.b. Mixtures containing 10 percent or less, by weight, of any single CWC Schedule 2 chemical controlled by 1C355.a.2;

b.2. Mixtures containing less than 30 percent, by weight, of any single CWC Schedule 3 chemical controlled by ECCN 1C355.b.

c. ''Medical, analytical, diagnostic, and food testing kits'' (as defined in the Related Definitions for this ECCN) that contain precursor chemicals controlled by ECCN 1C350.d in an amount *not* exceeding 300 grams per chemical. (For controls on other such test kits containing these and other controlled chemicals, see Note 4 in the Related Controls paragraph of this ECCN.)

1C996 Hydraulic fluids containing synthetic hydrocarbon oils, having all the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Barrels (55 U.S. gallons/209 liters)

Related Controls: N/A

Related Definitions: N/A

Items:

a. A flash point exceeding 477 K (204° C);

b. A pour point at 239 K (-34° C) or less;

c. A viscosity index of 75 or more; *and*

d. A thermal stability at 616 K (343° C).

1C997 Ammonium Nitrate, Including Fertilizers and Fertilizer Blends Containing More Than 15% by Weight Ammonium Nitrate, Except Liquid Fertilizers (Containing Any Amount of Ammonium Nitrate) or Dry Fertilizers Containing Less Than 15% by Weight Ammonium Nitrate

LICENSE REQUIREMENTS

Reason for Control: AT.

Control(s)	Country chart
AT applies to entire entry	AT Column 1 and Iraq

LICENSE EXCEPTIONS

LVS: N/A.

GBS: N/A.

CIV: N/A.

LIST OF ITEMS CONTROLLED

Unit: Kilograms.

Related Controls: N/A.

Related Definitions: N/A.

Items: The list of items controlled is contained in the ECCN heading.

1C999 Specific Materials, n.e.s., as Follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT.

Control(s)—Country Chart: AT applies to entire entry. A license is required for items controlled by this entry to Iraq and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 and §746.3 of the EAR for additional information.

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: See also 1C236.

Related Definitions: N/A.

Items:

a. Hardened steel and tungsten carbide precision ball bearings (3mm or greater diameter);

b. 304 and 316 stainless steel plate, n.e.s.;

c. Monel plate;

d. Tributyl phosphate;

e. Nitric acid in concentrations of 20 weight percent or greater;

f. Flourine;

g. Alpha-emitting radionuclides, n.e.s.

1D001 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 1B001 to 1B003.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to ''software'' for the ''development'', ''production'', or ''use'' of items controlled by 1B001 for MT reasons.	MT Column 1
NP applies to ''software'' for the ''development'', ''production'' or ''use'' of items controlled by 1B001 for NP reasons.	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: Yes, except N/A for MT

TSR: Yes, except N/A for MT

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) See ECCNs 1E101 (''use'') and 1E102 (''development'' and ''production'') for technology for items controlled by this entry. (2) Also see ECCNs 1D101 and 1D102.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1D002 "Software" for the "development" of organic "matrix", metal "matrix" or carbon "matrix" laminates or "composites".

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under Exceptions.

LICENSE EXCEPTIONS

CIV: Yes
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: ''Software'' for items controlled by 1A102 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

1D018 "Software" specially designed or modified for the "development", "production", or "use" of items controlled by 1B018.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to ''software'' for the ''development'', ''production'', or ''use'' of items controlled by 1B018 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

1D101 "Software" specially designed or modified for the "use" of commodities controlled by 1B101, 1B102, 1B115, 1B117, 1B118, or 1B119.

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
NP applies to ''software'' for the ''use'' of items controlled by 1B101.a.	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See ECCNs 1E101 (''use'') and 1E102 (''development'' and ''production'') for technology for items controlled by this entry.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1D103 "Software" specially designed for reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures, for applications usable in "missiles" or their subsystems.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) This entry includes ''software'' specially designed for analysis of signature reduction. (2) For software that meets the definition of defense articles under 22 CFR 120.3 of the International Traffic in Arms Regulations (ITAR), see 22 CFR 121.16, Item 17-Category II of the (ITAR), which describes similar software that are under the jurisdiction of the Department of State, Directorate of Defense Trade Controls.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

1D201 "Software" specially designed or modified for the "use" of items controlled by 1B201.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See ECCNs 1E201 (''use'') and 1E203 (''development'' and ''production'') for technology for items controlled by this entry.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1D390 "Software" for process control that is specifically configured to control or initiate "production" of chemicals controlled by 1C350.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

1D993 "Software" specially designed for the "development", "production", or "use" of equipment or materials controlled by 1C210.b or 1C990.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

1D999 Specific Software, n.e.s., as Follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT.

Control(s).

Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 of the EAR for additional information.

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: See also 1B999.

Related Definitions: N/A.

Items:

a. Software specially designed for industrial process control hardware/systems controlled by 1B999, n.e.s.;

b. Software specially designed for equipment for the production of structural composites, fibers, prepregs and preforms controlled by 1B999, n.e.s.

E. TECHNOLOGY

1E001 "Technology" according to the General Technology Note for the "development" or "production" of items controlled by 1A001.b, 1A001.c, 1A002, 1A003, 1A004, 1A005, 1A101, 1B, or 1C (except 1C355, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C992, and 1C995).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to ''technology'' for items controlled by 1A001.b and .c, 1A002, 1A003, 1A005, 1B001 to 1B003, 1B018, 1C001 to 1C011, or 1C018.	NS Column 1.
NS applies to ''technology'' for items controlled by 1A004.	NS Column 2.
MT applies to ''technology'' for items controlled by 1A101, 1B001, 1B101, 1B102, 1B115, to 1B119, 1C001, 1C007, 1C011, 1C101, 1C102, 1C107, 1C111, 1C116, 1C117, or 1C118 for MT reasons.	MT Column 1.
NP applies to ''technology'' for items controlled by 1A002, 1B001, 1B101, 1B201, 1B225 to 1B233, 1C002, 1C010, 1C116, 1C202, 1C210, 1C216, 1C225 to 1C240 for NP reasons.	NP Column 1.
CB applies to ''technology'' for items controlled by 1C351, 1C352, 1C353, or 1C354.	CB Column 1.
CB applies to ''technology'' for materials controlled by 1C350, and for chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a.	CB Column 2.
AT applies to entire entry	AT Column 1.

LICENSE REQUIREMENTS NOTE: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except for the following:

(1) Items controlled for MT reasons; or

(2) Exports and reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' for the ''development'' or ''production'' of the following:

(a) Items controlled by 1C001; or

(b) Items controlled by 1A002.a which are composite structures or laminates having an organic ''matrix'' and being made from materials listed under 1C010.c or 1C010.d.

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: (1) Also see ECCNs 1E101, 1E201, and 1E202. (2) ''Technology'' for lithium isotope separation (*see* related ECCN 1B233) and ''technology'' for items described in ECCN 1C012 are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110). (3) ''Technology'' for items described in ECCN 1A102 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (*see* 22 CFR part 121).

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

1E002 Other "technology", as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to 1E002.e	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except for 1E002.e

LIST OF ITEMS CONTROLLED

Unit: N/A.

Related Controls: See also 1E102, 1E202, and 1E101 for ''technology'' related to 1E002.e.

Related Definitions: N/A.

Items:

a. ''Technology'' for the ''development'' or ''production'' of polybenzothiazoles or polybenzoxazoles;

b. ''Technology'' for the ''development'' or ''production'' of fluoroelastomer compounds containing at least one vinylether monomer;

c. ''Technology'' for the design or ''production'' of the following base materials or non-''composite'' ceramic materials:

c.1. Base materials having all of the following characteristics:

c.1.a. Any of the following compositions:

c.1.a.1. Single or complex oxides of zirconium and complex oxides of silicon or aluminum;

c.1.a.2. Single nitrides of boron (cubic crystalline forms);

c.1.a.3. Single or complex carbides of silicon or boron; *or*

c.1.a.4. Single or complex nitrides of silicon;

c.1.b. Total metallic impurities, excluding intentional additions, of less than:

c.1.b.1. 1,000 ppm for single oxides or carbides; *or*

c.1.b.2. 5,000 ppm for complex compounds or single nitrides; *and*

c.1.c. Being any of the following:

c.1.c.1. Zirconia with an average particle size equal to or less than 1 µm and no more than 10% of the particles larger than 5 µm;

c.1.c.2. Other base materials with an average particle size equal to or less than 5 µm and no more than 10% of the particles larger than 10 µm; *or*

c.1.c.3. Having all of the following:

c.1.c.3.a. Platelets with a length to thickness ratio exceeding 5;

c.1.c.3.b. Whiskers with a length to diameter ratio exceeding 10 for diameters less than 2 µm; *and*

c.1.c.3.c. Continuous or chopped fibers less than 10 µm in diameter;

c.2. Non-''composite'' ceramic materials composed of the materials described in 1E002.c.1;

NOTE: 1E002.c.2 does not control technology for the design or production of abrasives.

d. ''Technology'' for the ''production'' of aromatic polyamide fibers;

e. ''Technology'' for the installation, maintenance or repair of materials controlled by 1C001;

f. ''Technology'' for the repair of ''composite'' structures, laminates or materials controlled by 1A002, 1C007.c or 1C007.d.

NOTE: 1E002.f does not control ''technology'' for the repair of ''civil aircraft'' structures using carbon ''fibrous or filamentary materials'' and epoxy resins, contained in aircraft manufacturers' manuals.

1E101 "Technology", in accordance with the General Technology Note, for the "use" of commodities and software controlled by 1A101, 1A102, 1B001, 1B101, 1B102, 1B115 to 1B119, 1C001, 1C007, 1C011, 1C101, 1C107, 1C111, 1C116, 1C117, 1C118, 1D001, 1D101, or 1D103.

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
NP applies to ''technology'' for items controlled by 1B001, 1B101, 1C116, 1D001, and 1D101 for NP reasons.	NP Column 1.

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: ''Technology'' for items controlled by 1A102 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E102 "Technology" according to the General Technology Note for the "development" of software controlled by 1D001, 1D101 or 1D103.

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
NP applies to "technology" for items controlled by 1D001 and 1D101 for NP reasons.	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: This entry includes databases specially designed for analysis of signature reduction.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E103 "Technical data" (including processing conditions) and procedures for the regulation of temperature, pressure or atmosphere in autoclaves or hydroclaves, when used for the "production" of "composites" or partially processed "composites", usable for equipment or materials specified in 1C007, 1C102, 1C107, 1C116, 1C117, 1C118, 9A110, and 9C110.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: See also 1E203
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E104 "Technology" for the "production" of pyrolytically derived materials formed on a mold, mandrel or other substrate from precursor gases which decompose in the 1,573 K (1,300 °C) to 3,173 K (2,900 °C) temperature range at pressures of 130 Pa (1 mm Hg) to 20 kPa (150 mm Hg), including "technology" for the composition of precursor gases, flow-rates and process control schedules and parameters.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E201 "Technology" according to the General Technology Note for the "use" of items controlled by 1A002, 1A202, 1A225 to 1A227, 1B201, 1B225 to 1B232, 1B233.b, 1C002.a.2.c or .d, 1C010.a, 1C010.b, 1C010.e.1, 1C202, 1C210, 1C216, 1C225 to 1C240 or 1D201.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E202 "Technology" according to the General Technology Note for the "development" or "production" of goods controlled by 1A202 or 1A225 to 1A227.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E203 "Technology" according to the General Technology Note for the "development" or "production" of "software" controlled by 1D201.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E350 "Technology" according to the "General Technology Note" for facilities designed or intended to produce chemicals controlled by 1C350.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E351 "Technology" according to the "General Technology Note" for the disposal of chemicals or microbiological materials controlled by 1C350, 1C351, 1C352, 1C353, or 1C354.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to ''technology'' for the disposal of items controlled by 1C351, 1C352, 1C353, or 1C354.	CB Column 1
CB applies to ''technology'' for the disposal of items controlled by 1C350.	CB Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1E355 Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals, as follows (see List of Items Controlled):

LICENSE REQUIREMENTS

Reason for Control: CW, AT.

Control(s)	*Country Chart*
CW applies to entire entry. A license is required for CW reasons to CWC non-States Parties (destinations not listed in Supplement No. 2 to part 745), except for Israel and Taiwan. See §742.18 of the EAR. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.	
AT applies to the entire entry	AT Column 1

LICENSE EXCEPTIONS

TSR: N/A.
CIV: N/A.

LIST OF ITEMS CONTROLLED

Unit: N/A.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Technology for the production of the following CWC Schedule 2 toxic chemicals:

a.1. PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene (382–21–8);

a.2. [Reserved]

b. Technology for the production of the following CWC Schedule 3 toxic chemicals CWC:

b.1. Phosgene: Carbonyl dichloride (75–44–5);

b.2. Cyanogen chloride (506–77–4);

b.3. Hydrogen cyanide (74–90–8).

1E994 "Technology" for the "development", "production", or "use" of fibrous and filamentary materials controlled by 1C990.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere controlled by this CCL Category or in any other category in the CCL are designated by the number EAR99.

Category 2—Materials Processing

NOTE: For quiet running bearings, see the U.S. Munitions List.

A. SYSTEMS, EQUIPMENT AND COMPONENTS

2A001 Anti-friction bearings and bearing systems, as follows, (see List of Items Controlled) and components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2.
MT applies to radial ball bearings having all tolerances specified in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9, or other national equivalents) or better and having all the following characteristics: An inner ring bore diameter between 12 and 50 mm; an outer ring outside diameter between 25 and 100 mm; and a width between 10 and 20 mm..	MT Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: $3000, N/A for MT

GBS: Yes, for 2A001.a and 2A001.b, N/A for MT

CIV: Yes, for 2A001.a and 2A001.b, N/A for MT

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: (1) See also 2A991. (2) Quiet running bearings are subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.)

Related Definitions: Annular Bearing Engineers Committee (ABEC).

Items:

NOTE: 2A001 does not control balls with tolerance specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse.

a. Ball bearings and solid roller bearings having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 4 (or ANSI/ABMA Std 20 Tolerance Class ABEC–7 or RBEC–7, or other national equivalents), or better, and having both ringsand rolling elements (ISO 5593) made from monel or beryllium;

NOTE: 2A001.a does not control tapered roller bearings.

b. Other ball bearings and solid roller bearings having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or RBEC–9, or other national equivalents), or better;

NOTE: 2A001.b does not control tapered roller bearings.

c. Active magnetic bearing systems using any of the following:

c.1. Materials with flux densities of 2.0 T or greater and yield strengths greater than 414 MPa;

c.2. All-electromagnetic 3D homopolar bias designs for actuators; *or*

c.3. High temperature (450 K (177oC) and above) position sensors.

2A225 Crucibles made of materials resistant to liquid actinide metals, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry.

Related Definitions: N/A

Items:

a. Crucibles having both of the following characteristics:

a.1. A volume of between 150 cm^3 and 8,000 cm^3; and

a.2. Made of or coated with any of the following materials, having a purity of 98% or greater by weight:

a.2.a. Calcium fluoride (CaF_2);

a.2.b. Calcium zirconate (metazirconate) ($CaZrO_3$);

a.2.c. Cerium sulphide (Ce_2S_3);

a.2.d. Erbium oxide (erbia) (Er_2O_3);

a.2.e. Hafnium oxide (hafnia) (HfO_2);

a.2.f. Magnesium oxide (MgO);

a.2.g. Nitrided niobium-titanium-tungsten alloy (approximately 50% Nb, 30% Ti, 20% W);

a.2.h. Yttrium oxide (yttria) (Y_2O_3); *or*

a.2.i. Zirconium oxide (zirconia) (ZrO_2);

b. Crucibles having both of the following characteristics:

b.1. A volume of between 50 cm^3 and 2,000 cm^3; *and*

b.2. Made of or lined with tantalum, having a purity of 99.9% or greater by weight;

c. Crucibles having all of the following characteristics:

c.1. A volume of between 50 cm^3 and 2,000 cm^3;

c.2. Made of or lined with tantalum, having a purity of 98% or greater by weight; *and*

c.3. Coated with tantalum carbide, nitride, boride, or any combination thereof.

2A226 Valves having all of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, CB, AT

Control(s)	Country chart
NP applies to entire entry	NP Column 1.
CB applies to valves that also meet or exceed the technical parameters in 2B350.g.	CB Column 2.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (2) Also see ECCNs 2A292 and 2B350.g. (3) Valves specially designed or prepared for certain nuclear uses are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: For valves with different inlet and outlet diameters, the ''nominal size'' in 2A226 refers to the smallest diameter.

Items:

a. A ''nominal size'' of 5 mm or greater;

b. Having a bellows seal; *and*

c. Wholly made of or lined with aluminum, aluminum alloy, nickel, or nickel alloy containing more than 60% nickel by weight.

2A290 Generators and other equipment specially designed, prepared, or intended for use with nuclear plants.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) *See* ECCN 2D290 for software for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E290 (''use'') for technology for items controlled under this entry. (3) Also see ECCN 2A291. (4) Certain nuclear equipment specially designed or prepared for use in nuclear plants is subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: N/A

Items:

a. Generators, turbine-generator sets, steam turbines, heat exchangers, and heat exchanger type condensers designed or intended for use in a nuclear reactor;

b. Process control systems intended for use with the equipment controlled by 2A290.a.

2A291 Equipment, except items controlled by 2A290, related to nuclear material handling and processing and to nuclear reactors.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: (1) *See* ECCN 2D290 for software for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E290 (''use'') for technology for items controlled under this entry. (3) Also see ECCN 2A290. (4) Certain equipment specially designed or prepared for use in a nuclear reactor or in nuclear material handling is subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110). (5) Nuclear radiation detection and measurement devices specially designed or modified for military purposes are subject to

the export licensing authority of the Department of State (*see* 22 CFR parts 120 through 130).

Related Definitions: N/A

Items:

a. Process control systems intended for use with nuclear reactors.

b. Simulators specially designed for ''nuclear reactors''.

c. Casks that are specially designed for transportation of high-level radioactive material and that weigh more than 1,000 kg.

d. Commodities, parts and accessories specially designed or prepared for use with nuclear plants (*e.g.*, snubbers, airlocks, pumps, reactor fuel charging and discharging equipment, containment equipment such as hydrogen recombiner and penetration seals, and reactor and fuel inspection equipment, including ultrasonic or eddy current test equipment).

e. Radiation detectors and monitors specially designed for detecting or measuring ''special nuclear material'' (as defined in 10 CFR part 110) or for nuclear reactors.

Technical Notes: 1. 2A291.e does not control neutron flux detectors and monitors. These are subject to the export licens ing authority of the Nuclear Regulatory Commission, pursuant to 10 CFR part 110.

2. 2A291.e does not control general purpose radiation detection equipment, such as geiger counters and dosimeters. These items are controlled by ECCN 1A999.

2A292 Piping, fittings and valves made of, or lined with, stainless steel, copper-nickel alloy or other alloy steel containing 10% or more nickel and/or chromium.

LICENSE REQUIREMENTS

*Reason for Control:*NP, CB, AT

Control(s)	Country chart
NP applies to entire entry	NP Column 2.
CB applies to valves that meet or exceed the technical parameters described in 2B350.g.	CB Column 2.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Pressure tubes, pipes, and fittings in kilograms; valves in number; parts and accessories in $ value

Related Controls: (1) *See* ECCN 2D290 for software for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E290 (''use'') for technology for items controlled under this entry. (3) Also *see* ECCN 2A226. (4) Piping, fittings, and valves specially designed or prepared for certain nuclear uses are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: N/A

Items:

a. Pressure tube, pipe, and fittings of 200 mm (8 in.) or more inside diameter, and suitable for operation at pressures of 3.4 MPa (500 psi) or greater;

b. Pipe valves having all of the following characteristics:

b.1. A pipe size connection of 200 mm (8 in.) or more inside diameter; *and*

b.2. Rated at 10.3 MPa (1,500 psi) or more.

2A293 Pumps designed to move molten metals by electromagnetic forces.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number

Related Controls: (1) *See* ECCN 2D290 for software for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E290 (''use'') for technology for items controlled under this entry. (3) Pumps for use in liquid-metal-cooled reactors are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

2A983 Explosives or detonator detection equipment, both bulk and trace based, consisting of an automated device, or combination of devices for automated decision making to detect the presence of different types of explosives, explosive residue, or detonators; and parts and components, n.e.s.

LICENSE REQUIREMENTS

*Reason for Control:*RS, AT

Control(s)	Country chart
RS applies to entire entry	RS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: (1) For the purpose of this entry, automated decision making is the ability of the equipment to detect explosives or detonators at the design or operator-selected level of sensitivity and provide an automated alarm when explosives or detonators at or above the sensitivity level are detected. This entry does not control equipment that depends on operator interpretation of indicators such as inorganic/organic color mapping of the items(s) being scanned.

(2) Explosives and detonators include commercial charges and devices controlled by 1C018 and 1C992 and energetic materials controlled by ECCNs 1C011, 1C111, 1C239 and 22 CFR 121.1 Category V.
Items:

NOTE: Explosives or detonation detection equipment in 2A983 includes equipment for screening people, documents, baggage, other personal effects, cargo and/or mail.

a. Explosives detection equipment for automated decision making to detect and identify bulk explosives utilizing, but not limited to, x-ray (*e.g.*, computed tomography, dual energy, or coherent scattering), nuclear (*e.g.*, thermal neutron analysis, pulse fast neutron analysis, pulse fast neutron transmission spectroscopy, and gamma resonance absorption), or electromagnetic techniques (*e.g.*, quadropole resonance and dielectrometry).

b. Explosives detection equipment for automated decision making to detect and identify the presence of explosive residues utilizing, but not limited to, explosives trace detection techniques (*e.g.*, chemiluminesence, ion mobility spectroscopy and mass spectroscopy).

c. Detonator detection equipment for automated decision making to detect and identify initiation devices (*e.g.* detonators, blasting caps) utilizing, but not limited to, x-ray (*e.g.* dual energy or computed tomography) or electromagnetic techniques.

2A991 Bearings and bearing systems not controlled by 2A001.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) This entry does not control balls with tolerance specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse. (2) Quiet running bearings are subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121)
Related Definitions: (1) (a) DN is the product of the bearing bore diameter in mm and the bearing rotational velocity in rpm. (b) Operating temperatures include those temperatures obtained when a gas turbine engine has stopped after operation. (2) Annular Bearing Engineers Committee (ABEC); American National Standards Institute (ANSI); Anti-Friction Bearing Manufacturers Association (AFBMA)
Items: a. Ball bearings or Solid ball bearings (except tapered roller bearings), having tolerances specified by the manufacturer in accordance with ABEC 7, ABEC 7P, or ABEC 7T or ISO Standard Class 4 or better (or equivalents) and having any of the following characteristics.

a.1. Manufactured for use at operating temperatures above 573 K (300° C) either by using special materials or by special heat treatment; *or*

a.2. With lubricating elements or component modifications that, according to the manufacturer's specifications, are specially designed to enable the bearings to operate at speeds exceeding 2.3 million DN.

b. Solid tapered roller bearings, having tolerances specified by the manufacturer in accordance with ANSI/AFBMA Class 00 (inch) or Class A (metric) or better (or equivalents) and having either of the following characteristics.

b.1. With lubricating elements or component modifications that, according to the manufacturer's specifications, are specially designed to enable the bearings to operate at speeds exceeding 2.3 million DN; *or*

b.2. Manufactured for use at operating temperatures below 219 K (−54° C) or above 423 K (150° C).

c. Gas-lubricated foil bearing manufactured for use at operating temperatures of 561 K (288° C) or higher and a unit load capacity exceeding 1 MPa.

d. Active magnetic bearing systems.

e. Fabric-lined self-aligning or fabric-lined journal sliding bearings manufactured for use at operating temperatures below 219 K (−54° C) or above 423 K (150° C).

2A994 Portable electric generators and specially designed parts.

LICENSE REQUIREMENTS

Reason for Control: AT.
Control(s). AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya and North Korea. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of

the EAR for additional information on Cuba and Iran. See §§740.19 and 742.20 of the EAR for additional information on Libya. See §742.19 of the EAR for additional information on North Korea.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 2D994 and 2E994.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

NOTES FOR CATEGORY 2B: 1. Secondary parallel contouring axes, (e.g., the w-axis on horizontal boring mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis) are not counted in the total number of contouring axes. Rotary axes need not rotate over 360°. A rotary axis can be driven by a linear device (*e.g.*, a screw or a rack-and-pinion).

2. Axis nomenclature shall be in accordance with International Standard ISO 841, ''Numerical Control Machines—Axis and Motion Nomenclature''.

3. For the purposes of 2B001 to 2B009 a ''tilting spindle'' is counted as a rotary axis.

4. Guaranteed positioning accuracy levels instead of individual test protocols may be used for each machine tool model using the agreed ISO test procedure.

5. The positioning accuracy of ''numerically controlled'' machine tools is to be determined and presented in accordance with ISO 230/2 (1988).

2A999 Specific Processing Equipment, n.e.s., as Follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT.
Control(s).
Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 of the EAR for additional information.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: See also 2A226, 2B350.
Related Definitions: N/A.
Items:

a. Bellows sealed valves;
b. Reserved.

B. Test, Inspection and Production Equipment

Technical Notes for 2B001 to 2B009:

1. Secondary parallel contouring axes, (*e.g.*, the w-axis on horizontal boring mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis) are not counted in the total number of contouring axes. Rotary axes need not rotate over 360°. A rotary axis can be driven by a linear device (*e.g.*, a screw or a rack-and-pinion).

2. The number of axes which can be coordinated simultaneously for ''contouring control'' is the number of axes along or around which, during processing of the workpiece, simultaneous and interrelated motions are performed between the workpiece and a tool. This does not include any additional axes along or around which other relative motions within the machine are performed, such as:

2.a. Wheel-dressing systems in grinding machines;

2.b. Parallel rotary axes designed for mounting of separate workpieces;

2.c. Co-linear rotary axes designed for manipulating the same workpiece by holding it in a chuck from different ends.

3. Axis nomenclature shall be in accordance with International Standard ISO 841, ''Numerical Control Machines—Axis and Motion Nomenclature'.

4. A ''tilting spindle'' is counted as a rotary axis.

5. Guaranteed ''positioning accuracy'' levels instead of individual test protocols may be used for each machine tool model using the agreed ISO test procedure.

6. The positioning accuracy of ''numerically controlled'' machine tools is to be determined and presented in accordance with ISO 230/2 (1988).

2B001 Machine tools and any combination thereof, for removing (or cutting) metals, ceramics or "composites", which, according to the manufacturer's technical specifications, can be equipped with electronic devices for "numerical control"; and specially designed components (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2.

Control(s)	Country chart
NP applies to 2B001.a, .b, .c, and .d, EXCEPT: (1) turning machines under 2B001.a with a capacity equal to or less than 35 mm diameter; (2) bar machines (Swissturn), limited to machining only bar feed through, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks. (Machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm); or (3) milling machines under 2B001.b. with x-axis travel greater than two meters and overall ''positioning accuracy'' on the x-axis more (worse) than 0.030 mm.	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: (1) *See* ECCNs 2D001 and 2D002 for software for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (3) Also *see* ECCNs 2B201, 2B290, and 2B991.

Related Definitions: N/A.

Items:

NOTE 1: 2B001 does not control special purpose machine tools limited to the manufacture of gears. For such machines, see 2B003.

NOTE 2: 2B001 does not control special purpose machine tools limited to the manufacture of any of the following parts:

a. Crank shafts or cam shafts;

b. Tools or cutters;

c. Extruder worms;

d. Engraved or faceted jewelry parts.

NOTE 3: A machine tool having at least two of the three turning, milling or grinding capabilities (*e.g.*, a turning machine with milling capability), must be evaluated against each applicable entry 2.B001.a., b. or c.

a. Machine tools for turning, having all of the following characteristics:

a.1. Positioning accuracy with ''all compensations available'' of less (better) than 6 µm along any linear axis; *and*

a.2. Two or more axes which can be coordinated simultaneously for ''contouring control'';

NOTE: 2B001.a does not control turning machines specially designed for the production of contact lenses.

b. Machine tools for milling, having any of the following characteristics:

b.1. Having all of the following:

b.1.a. Positioning accuracy with ''all compensations available'' of less (better) than 6 µm along any linear axis; *and*

b.1.b. Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';

b.2. Five or more axes which can be coordinated simultaneously for ''contouring control'';

b.3. A positioning accuracy for jig boring machines, with ''all compensations available'', of less (better) than 4 µm along any linear axis; *or*

b.4. Fly cutting machines, having all of the following characteristics:

b.4.a. Spindle ''run-out'' and ''camming'' less (better) than 0.0004 mm TIR; *and*

b.4.b. Angular deviation of slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over 300 mm of travel.

c. Machine tools for grinding, having any of the following characteristics:

c.1. Having all of the following:

c.1.a. Positioning accuracy with ''all compensations available'' of less (better) than 4 µm along any linear axis; *and*

c.1.b. Three or more axes which can be coordinated simultaneously for ''contouring control'' *or*

c.2. Five or more axes which can be coordinated simultaneously for ''contouring control'';

NOTES: 2B001.c does not control grinding machines, as follows:

1. Cylindrical external, internal, and external-internal grinding machines having all the following characteristics:

a. Limited to cylindrical grinding; and

b. Limited to a maximum workpiece capacity of 150 mm outside diameter or length.

2. Machines designed specifically as jig grinders that do not have a z-axis or a w-axis, with a positioning accuracy with ''all compensations available'' less (better) than 4 µm.

3. Surface grinders.

d. Electrical discharge machines (EDM) of the non-wire type which have two or more rotary axes which can be coordinated simultaneously for ''contouring control'';

e. Machine tools for removing metals, ceramics or ''composites'' having all of the following characteristics:

e.1. Removing material by means of any of the following:

e.1.a. Water or other liquid jets, including those employing abrasive additives;

e.1.b. Electron beam; *or*

e.1.c. ''Laser'' beam; *and*

e.2. Having two or more rotary axes which:

e.2.a. Can be coordinated simultaneously for ''contouring control'' *and*

e.2.b. Have a positioning accuracy of less (better) than 0.003°;

f. Deep-hole-drilling machines and turning machines modified for deep-hole-drilling, having a maximum depth-of-bore capability

exceeding 5,000 mm and specially designed components therefor.

2B002 Numerically controlled machine tools using a magnetorheological finishing (MRF) process

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number.

Related Controls: See also 2B001.

Related Definitions: For the purposes of 2B002, ''MRF'' is a material removal process using an abrasive magnetic fluid whose viscosity is controlled by a magnetic field.

Items: The list of items controlled is contained in the ECCN heading.

2B003 "Numerically controlled" or manual machine tools, and specially designed components, controls and accessories therefor, specially designed for the shaving, finishing, grinding or honing of hardened (R_c = 40 or more) spur, helical and double-helical gears with a pitch diameter exceeding 1,250 mm and a face width of 15% of pitch diameter or larger finished to a quality of AGMA 14 or better (equivalent to ISO 1328 class 3).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*County Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $5000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: See also 2B993

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

2B004 Hot "isostatic presses", having all of the characteristics described in the List of Items Controlled, and specially designed components and accessories therefor.

LICENSE REQUIREMENTS

*Reason for Control:*NS, MT NP, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
MT applies to entire entry	MT Column 1.
NP applies to entire entry, except 2B004.b.3 and presses with maximum working pressures below 69 MPa.	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: (1) *See* ECCN 2D001 for software for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E101 (''use'') for technology for items controlled under this entry. (3) For specially designed dies, molds and tooling, *see* ECCNs 1B003 and 9B009 and ML18 (22 CFR part 121). (4) For additional controls on dies, molds and tooling, *see* ECCNs 1B101.d, 2B104 and 2B204. (5) *Also see* ECCN 2B117.

Related Definitions: N/A

Items:

a. A controlled thermal environment within the closed cavity and possessing a chamber cavity with an inside diameter of 406 mm or more; *and*

b. Any of the following:

b.1. A maximum working pressure exceeding 207 MPa;

b.2. A controlled thermal environment exceeding 1,773 K (1,500° C); *or*

b.3. A facility for hydrocarbon impregnation and removal of resultant gaseous degradation products.

TECHNICAL NOTE: The inside chamber dimension is that of the chamber in which both the working temperature and the working pressure are achieved and does not include fixtures. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated furnace chamber, depending on which of the two chambers is located inside the other.

2B005 Equipment specially designed for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications, as follows, for non-electronic substrates, by processes shown in the Table and associated Notes following 2E003.f, and specially designed automated handling, positioning, manipulation and control components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) This entry does not control chemical vapor deposition, cathodic arc, sputter deposition, ion plating or ion implantation equipment specially designed for cutting or machining tools. (2) Vapor deposition equipment for the production of filamentary materials are controlled by 1B001 or 1B101. (3) Chemical Vapor Deposition furnaces designed or modified for densification of carbon-carbon composites are controlled by 2B104.

Related Definitions: N/A

Items:

a. Chemical vapor deposition (CVD) production equipment having all of the following:

a.1. Process modified for one of the following:

a.1.a. Pulsating CVD;

a.1.b. Controlled nucleation thermal deposition (CNTD); *or*

a.1.c. Plasma enhanced or plasma assisted CVD; *and*

a.2. Any of the following:

a.2.a. Incorporating high vacuum (equal to or less than 0.01 Pa) rotating seals; *or*

a.2.b. Incorporating *in situ* coating thickness control;

b. Ion implantation production equipment having beam currents of 5 mA or more;

c. Electron beam physical vapor (EB–PVD) production equipment incorporating power systems rated for over 80 kW, having any of the following:

c.1. A liquid pool level ''laser'' control system which regulates precisely the ingots feed rate; *or*

c.2. A computer controlled rate monitor operating on the principle of photo-luminescence of the ionized atoms in the evaporant stream to control the deposition rate of a coating containing two or more elements;

d. Plasma spraying production equipment having any of the following characteristics:

d.1. Operating at reduced pressure controlled atmosphere (equal or less than 10 kPa measured above and within 300 mm of the gun nozzle exit) in a vacuum chamber capable of evacuation down to 0.01 Pa prior to the spraying process; *or*

d.2. Incorporating *in situ* coating thickness control;

e. Sputter deposition production equipment capable of current densities of 0.1 mA/mm² or higher at a deposition rate 15 µm/h or more;

f. Cathodic arc deposition equipment incorporating a grid of electromagnets for steering control of the arc spot on the cathode;

g. Ion plating production equipment allowing for the *in situ* measurement of any of the following:

g.1. Coating thickness on the substrate and rate control; *or*

g.2. Optical characteristics.

2B006 Dimensional inspection or measuring systems and equipment, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
NP applies to 2B006.a and .b	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number

Related Controls: (1) *See* ECCNs 2D001 and 2D002 for ''software'' for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (3) *Also see* ECCNs 2B206 and 2B996.

Related Definitions: N/A

Items:

a. Computer controlled or ''numerically controlled'' co-ordinate measuring machines (CMM), having a three dimensional length (volumetric) maximum permissible error of indication (MPE_E) at any point within the operating range of the machine (*i.e.*, within the length of axes) equal to or less (better) than (1.7 + L/1,000) µm (L is the measured length in mm) tested according to ISO 10360–2 (2001);

b. Linear and angular displacement measuring instruments, as follows:

b.1. Linear displacement measuring instruments having any of the following:

TECHNICAL NOTE: For the purpose of 2B006.b.1 ''linear displacement'' means the change of distance between the measuring probe and the measured object.

b.1.a. Non-contact type measuring systems with a ''resolution'' equal to or less (better) than 0.2 µm within a measuring range up to 0.2 mm;

b.1.b. Linear voltage differential transformer systems having all of the following characteristics:

b.1.b.1. ''Linearity'' equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*

b.1.b.2. Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ±1 K; *or*

b.1.c. Measuring systems having all of the following:

b.1.c.1. Containing a ''laser''; *and*

b.1.c.2. Maintaining, for at least 12 hours, over a temperature range of ±1 K around a standard temperature and at a standard pressure, all of the following:

b.1.c.2.a. A ''resolution'' over their full scale of 0.1 µm or less (better); *and*

b.1.c.2.b. A ''measurement uncertainty'' equal to or less (better) than (0.2 + L/2,000) µm (L is the measured length in mm);

NOTE: 2B006.b.1 does not control measuring interferometer systems, without closed or open loop feedback, containing a ''laser'' to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.

b.2. Angular displacement measuring instruments having an ''angular position deviation'' equal to or less (better) than 0.00025°;

NOTE: 2B006.b.2 does not control optical instruments, such as autocollimators, using collimated light (*e.g.*, laser light) to detect angular displacement of a mirror.

c. Equipment for measuring surface irregularities, by measuring optical scatter as a function of angle, with a sensitivity of 0.5 nm or less (better).

2B007 "Robots" having any of the following characteristics described in the List of Items Controlled and specially designed controllers and "end-effectors" therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
NP applies to 2B007.b and 2B007.c and to specially designed controllers and ''end-effectors'' therefor.	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: $5000, except 2B007.b and .c

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) *See* ECCN 2D001 for ''software'' for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (3) *Also see* ECCNs 2B207, 2B225 and 2B997.

Related Definitions: N/A

Items:

a. Capable in real time of full three-dimensional image processing or full three-dimensional ''scene analysis'' to generate or modify ''programs'' or to generate or modify numerical program data;

Technical Note: The ''scene analysis'' limitation does not include approximation of the third dimension by viewing at a given angle, or limited grey scale interpretation for the perception of depth or texture for the approved tasks (2½ D).

b. Specially designed to comply with national safety standards applicable to explosive munitions environments;

c. Specially designed or rated as radiation-hardened to withstand a total radiation dose greater than 5×10^3 Gy (silicon) without operational degradation; *or*

Technical Note: The term Gy (silicon) refers to the energy in Joules per kilogram absorbed by an unshielded silicon sample when exposed to ionizing radiation.

d. Specially designed to operate at altitudes exceeding 30,000m.

2B008 Assemblies or Units, Specially Designed for Machine Tools, or Dimensional Inspection or Measuring Systems and Equipment, as Follows (See List of Items Controlled)

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: See also 2B998.

Related Definition: N/A.

Items:

a. Linear position feedback units (*e.g.*, inductive type devices, graduated scales, infrared systems or ''laser'' systems) having an overall ''accuracy'' less (better) than $(800+(600\times L\times 10^{-3}))$ nm (L equals the effective length in mm);

N.B.: For ''laser'' systems see also Note to 2B006.b.1.

b. Rotary position feedback units (*e.g.*, inductive type devices, graduated scales, infrared systems or ''laser'' systems) having an ''accuracy'' less (better) than 0.00025°;

N.B.: For ''laser'' systems see also Note to 2B006.b.1.

c. ''Compound rotary tables'' and ''tilting spindles'', capable of upgrading, according to the manufacturer's specifications, machine tools to or above the levels controlled by 2B001 to 2B009.

2B009 Spin-forming machines and flow-forming machines, which, according to

the manufacturer's technical specifications, can be equipped with "numerical control" units or a computer control and having all of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2
MT applies to: spin-forming machines combining the functions of spin-forming and flow-forming; and flow-forming machines that meet or exceed the parameters of 2B009.a and 2B109.	MT Column 1
NP applies to flow-forming machines, and spin-forming machines capable of flow-forming functions, that meet or exceed the parameters of 2B209.	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) See ECCN 2D001 for ''software'' for items controlled under this entry. (2) See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E101 (''use'') for technology for items controlled under this entry. (3) Also see ECCNs 2B109 and 2B209 for additional flow-forming machines for MT and NP reasons.

Related Definitions: Machines combining the function of spin-forming and flow-forming are for the purpose of 2B009 regarded as flow-forming machines.

Items:

a. Two or more controlled axes of which at least two can be coordinated simultaneously for ''contouring control''; *and*

b. A roller force more than 60 kN.

Technical Note: Machines combining the function of spin-forming and flow-forming are for the purpose of 2B009 regarded as flow-forming machines.

2B018 Equipment on the International Munitions List.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) usable in systems that are controlled for MT reasons including their propulsion systems and components, and pyrolytic deposition and densification equipment.	MT Column 1.
RS applies to entire entry	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

LVS: $3000, except N/A for Rwanda

GBS: Yes for Advisory Note in this entry to 2B018, except N/A for Rwanda

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: N/A

Related Definitions: N/A

Items: Specialized machinery, equipment, gear, and specially designed parts and accessories therefor, including but not limited to the following, that are specially designed for the examination, manufacture, testing, and checking of arms, appliances, machines, and implements of war: a. Armor plate drilling machines, other than radial drilling machines;

b. Armor plate planing machines;

c. Armor plate quenching presses;

d. Centrifugal casting machines capable of casting tubes 6 feet (183 cm) or more in length, with a wall thickness of 2 inches (5 cm) and over;

e. Gun barrel rifling and broaching machines, and tools therefor;

f. Gun barrel rifling machines;

g. Gun barrel trepanning machines;

h. Gun boring and turning machines;

i. Gun honing machines of 6 feet (183 cm) stroke or more;

j. Gun jump screw lathes;

k. Gun rifling machines;

l. Gun straightening presses;

m. Induction hardening machines for tank turret rings and sprockets;

n. Jigs and fixtures and other metal-working implements or accessories of the kinds exclusively designed for use in the manufacture of firearms, ordnance, and other stores and appliances for land, sea, or aerial warfare;

o. Small arms chambering machines;

p. Small arms deep hole drilling machines and drills therefor;

q. Small arms rifling machines;

r. Small arms spill boring machines;

s. Tank turret bearing grinding machines.

ADVISORY NOTE: Licenses are likely to be approved, as administrative exceptions, for export and reexport to Country Group D:1 of equipment used to determine the safety data of explosives, as required by the International Convention on the Transport of Dangerous Goods (C.I.M.) articles 3 and 4 in Annex 1 RID, provided that such equipment will be used only by the railway authorities of current C.I.M. members, or by the Government-accredited testing facilities in those countries, for the testing of explosives to transport safety standards, of the following description:

a. Equipment for determining the ignition and deflagration temperatures;

b. Equipment for steel-shell tests;

c. Drophammers not exceeding 20 kg in weight for determining the sensitivity of explosives to shock;

d. Equipment for determining the friction sensitivity of explosives when exposed to charges not exceeding 36 kg in weight.

2B104 "Isostatic presses", other than those controlled by 2B004, having all of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
NP applies to entire entry	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number

Related Controls: (1) *See* ECCN 2D101 for ''software'' for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E101 (''use'') for technology for items controlled under this entry. (3) Also *see* ECCNs 2B004, 2B204, and 2B117.

Related Definitions: The inside chamber dimension is that of the chamber in which both the working temperature and the working pressure are achieved and does not include fixtures. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated chamber, depending on which of the two chambers is located inside the other.

Items:

a. Maximum working pressure equal to or greater than 69 MPa;

b. Designed to achieve and maintain a controlled thermal environment of 873 K (600 °C) or greater; and

c. Possessing a chamber cavity with an inside diameter of 254 mm or greater.

2B105 Chemical vapor deposition (CVD) furnaces, other than those controlled by 2B005.a, designed or modified for the densification of carbon-carbon composites.

LICENSE REQUIREMENTS

*Reason for Control:*MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: Equipment in number

Related Controls: (1) See ECCN 2D101 for ''software'' for items controlled under this entry. (2) See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E101 (''use'') for technology for items controlled under this entry. (3) Also see ECCNs 2B005 and 2B117.

Related Definitions: N/A

Items: The list of items controlled in contained in the ECCN heading.

2B109 Flow-forming machines, other than those controlled by 2B009, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
NP applies to items controlled by this entry that meet or exceed the technical parameters in 2B209.	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components in $ value

Related Controls: (1) See ECCN 2D101 for ''software'' for items controlled under this entry. (2) See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E101 (''use'') for technology for items controlled under this entry. (3) Also see ECCNs 2B009 and 2B209.

Related Definitions: N/A

Items:

a. Flow-forming machines having all of the following:

a.1. According to the manufacturer's technical specification, can be equipped with ''numerical control'' units or a computer control, even when not equipped with such units at delivery; *and*

a.2. Have more than two axes which can be coordinated simultaneously for ''contouring control.''

b. Specially designed components for flow-forming machines controlled in 2B009 or 2B109.a.

TECHNICAL NOTES: 1. Machines combining the function of spin-forming and flow-forming are for the purpose of 2B109 regarded as flow-forming machines.

2. 2B109 does not control machines that are not usable in the ''production'' of propulsion components and equipment (*e.g.* motor cases) for systems in 9A005, 9A007.a, or 9A105.a.

2B116 Vibration test systems, equipment and components therefor, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
NP applies to electrodynamic vibration test systems in 2B116.a and to all items in 2B116.b, .c, and .d.	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) *See* ECCN 2D101 for ''software'' for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E101 (''use'') for technology for items controlled under this entry. (3) *Also see* ECCN 9B990.

Related Definitions: Vibration test systems incorporating a digital controller are those systems, the functions of which are, partly or entirely, automatically controlled by stored and digitally coded electrical signals.

Items:

a. Vibration test systems employing feedback or closed loop techniques and incorporating a digital controller, capable of vibrating a system at an acceleration equal to or greater than 10 g rms between 20 Hz to 2,000 Hz and imparting forces equal to or greater than 50 kN (11,250 lbs.), measured 'bare table';

b. Digital controllers, combined with specially designed vibration test ''software'', with a real-time bandwidth greater than 5 kHz and designed for use with vibration test systems described in 2B116.a;

c. Vibration thrusters (shaker units), with or without associated amplifiers, capable of imparting a force equal to or greater than 50 kN (11,250 lbs.), measured 'bare table', and usable in vibration test systems described in 2B116.a;

d. Test piece support structures and electronic units designed to combine multiple shaker units into a complete shaker system capable of providing an effective combined force equal to or greater than 50 kN, measured 'bare table', and usable in vibration test systems described in 2B116.a.

TECHNICAL NOTE: 'bare table' means a flat table, or surface, with no fixture or fitting.

2B117 Equipment and process controls, other than those controlled by 2B004, 2B005.a, 2B104 or 2B105, designed or modified for the densification and pyrolysis of structural composite rocket nozzles and re-entry vehicle nose tips.

LICENSE REQUIREMENTS

*Reason for Control:*MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number

Related Controls: (1) *See* ECCN 2D101 for ''software'' for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E101 (''use'') for technology for items controlled under this entry. (3) *Also see* ECCN s 2B004, 2B005, 2B104, 2B105, and 2B204.

Related Definitions: N/A

Items: The list of items controlled in contained in the ECCN heading.

2B119 Balancing machines and related equipment, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See also 2B219, 7B101.

Related Definitions: N/A

Items:

a. Balancing machines having all the following characteristics:

a.1. Not capable of balancing rotors/assemblies having a mass greater than 3 kg;

a.2. Capable of balancing rotors/assemblies at speeds greater than 12,500 rpm;

a.3. Capable of correcting unbalance in two planes or more; and

a.4. Capable of balancing to a residual specific unbalance of 0.2 g mm per kg of rotor mass.

NOTE: 2B119.a. does not control balancing machines designed or modified for dental or other medical equipment.

b. Indicator heads designed or modified for use with machines specified in 2B119.a.

NOTE: Indicator heads are sometimes known as balancing instrumentation.

2B120 Motion simulators or rate tables (equipment capable of simulating motion), having all of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT column 1
AT applies to entire entry	AT column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) Rate tables not controlled by 2B120 and providing the characteristics of a positioning table are to be evaluated according to 2B121. (2) Equipment that has the characteristics specified in 2B121, which also meets the characteristics of 2B120 will be treated as equipment specified in 2B120. (3) See also 2B008, 2B121, 7B101 and 7B994.

Related Definitions: N/A

Items:

a. Two axes or more;

b. Slip rigs capable of transmitting electrical power and/or signal information; *and*

c. Having any of the following characteristics:

c.1. For any single axis having all of the following:

c.1.a. Capable of rates of rotation of 400 degrees/s or more, or 30 degrees/s or less, *and*

c.1.b. A rate resolution equal to or less than 6 degrees/s and an accuracy equal to or less than 0.6 degrees/s; or

c.2. Having a worst-case rate stability equal to or better (less) than plus or minus 0.05% averaged over 10 degrees or more; *or*

c.3. A positioning accuracy equal to or better than 5 arc-second.

NOTE: 2B120 does not control rotary tables designed or modified for machine tools or for medical equipment. For controls on machine tool rotary tables see 2B008.

2B121 Positioning tables (equipment capable of precise rotary position in any axis), other than those controlled in 2B120, having all the following characteristics (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: $ value

Related Controls: (1) Equipment that has the characteristics specified in 2B121, which also meets the characteristics of 2B120 will be treated as equipment specified in 2B120. (2) See also 2B008, 2B120, 7B101 and 7B994.

Related Definitions: N/A

Items:

a. Two axes or more; *and*

b. A positioning accuracy equal to or better than 5 arc-second.

NOTE: 2B121 does not control rotary tables designed or modified for machine tools or for medical equipment. For controls on machine tool rotary tables see 2B008.

2B122 Centrifuges capable of imparting accelerations above 100 g and having slip rings capable of transmitting electrical power and signal information.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See also 7B101.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

2B201 Machine tools, other than those controlled by 2B001, for removing or cutting metals, ceramics or "composites", which, according to the manufacturer's technical specifications, can be equipped with electronic devices for simultaneous "contouring control" in two or more axes.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: (1) See ECCNs 2D002 and 2D202 for ''software'' for items controlled by this entry. ''Numerical control'' units are controlled by their associated ''software''. (2) See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (3) Also see ECCNs 2B001, 2B290, and 2B991.

Related Definitions: N/A

Items:

a. Machine tools for turning, that have ''positioning accuracies'' with all compensations available better (less) than 6 µm according to ISO 230/2 (1988) along any linear axis (overall positioning) for machines capable of machining diameters greater than 35 mm;

NOTE: Item 2B201.a. does not control bar machines (Swissturn), limited to machining only bar feed thru, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks. Machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm.

b. Machine tools for milling, having any of the following characteristics:

b.1. Positioning accuracies with ''all compensations available'' equal to or less (better) than 6 µm along any linear axis (overall positioning); *or*

b.2. Two or more contouring rotary axes.

NOTE: 2B201.b does not control milling machines having the following characteristics:

a. X-axis travel greater than 2 m; and

b. Overall positioning accuracy on the x-axis more (worse) than 30 µm.

c. Machine tools for grinding, having any of the following characteristics:

c.1. Positioning accuracies with ''all compensations available'' equal to or less (better) than 4 µm along any linear axis (overall positioning); *or*

c.2. Two or more contouring rotary axes.

NOTE: 2B201.c does not control the following grinding machines:

a. Cylindrical external, internal, and external-internal grinding machines having all of the following characteristics:

1. Limited to cylindrical grinding;

2. A maximum workpiece outside diameter or length of 150 mm;

3. Not more than two axes that can be coordinated simultaneously for ''contouring control''; and

4. No contouring c-axis.

b. Jig grinders with axes limited to x, y, c and a where c axis is used to maintain the grinding wheel normal to the work surface, and the a axis is configured to grind barrel cams;

c. Tool or cutter grinding machines with ''software'' specially designed for the production of tools or cutters; or

d. Crankshaft or camshaft grinding machines.

2B204 "Isostatic presses", other than those controlled by 2B004 or 2B104, and related equipment, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number

Related Controls: (1) *See* ECCN 2D201 for ''software'' for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (3) *Also see* ECCNs 2B004 and 2B104.

Related Definitions: The inside chamber dimension is that of the chamber in which both the working temperature and working pressure are achieved and does not include fixtures. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated chamber, depending on which of the two chambers is located inside the other.

Items:

a. ''Isostatic presses'' having both of the following characteristics:

a.1. Capable of achieving a maximum working pressure of 69 MPa or greater; *and*

a.2. A chamber cavity with an inside diameter in excess of 152 mm;

b. Dies, molds and controls, specially designed for ''isostatic presses'' controlled by 2B204.a.

2B206 Dimensional inspection machines, instruments or systems, other than those described in 2B006, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: (1) *See* ECCNs 2D002 and 2D201 for ''software'' for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (3) *Also see* ECCNs 2B006 and 2B996.

Related Definitions: N/A

ECCN Controls: (1) Machine tools that can be used as measuring machines are controlled by this entry if they meet or exceed the criteria specified for the machine tool function or the measuring machine function. (2) A machine described in this entry is controlled if it exceeds the control threshold anywhere within its operating range.

Items:

a. Computer controlled or numerically controlled dimensional inspection machines having both of the following characteristics:

a.1. Two or more axes; *and*

a.2. A one-dimensional length ''measurement uncertainty'' equal to or less (better) than (1.25 + L/1000) µm tested with a probe of an ''accuracy'' of less (better) than 0.2 µm (L is the measured length in millimeters) (Ref.: VDI/VDE 2617 Parts 1 and 2);

b. Systems for simultaneously linear-angular inspection of hemishells, having both of the following characteristics:

b.1. ''Measurement uncertainty'' along any linear axis equal to or less (better) than 3.5 µm per 5 mm; *and*

b.2. ''Angular position deviation'' equal to or less than 0.02°.

TECHNICAL NOTES: (1) The probe used in determining the measurement uncertainty of a dimensional inspection system shall be described in VDI/VDE 2617 parts 2, 3 and 4.

(2) All parameters of measurement values in this entry represent plus/minus, *i.e.*, not total band.

c. Angular displacement measuring instruments having an ''angular position deviation'' equal to or less (better) than 0.00025°;

NOTE: 2B206.c does not control optical instruments, such as autocollimators, using collimated light to detect angular displacement of a mirror.

2B207 "Robots", "end-effectors" and control units, other than those controlled by 2B007, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) *See* ECCN 2D201 for ''software'' for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (3) *Also see* ECCNs 2B007, 2B225, and 2B997.

Related Definitions: N/A

ECCN Controls: This entry does not control ''robots'' specially designed for non-nuclear industrial applications, such as automobile paint-spraying booths.

Items:

a. ''Robots'' or ''end-effectors'' specially designed to comply with national safety standards applicable to handling high explosives (for example, meeting electrical code ratings for high explosives);

b. Control units specially designed for any of the ''robots'' or ''end-effectors'' controlled by 2B207.a.

2B209 Flow forming machines, spin forming machines capable of flow forming functions, other than those controlled by 2B009 or 2B109, and mandrels, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: (1) *See* ECCN 2D201 for ''software'' for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (3) *Also see* ECCNs 2B009 and 2B109.

Related Definitions: N/A

Items:

a. Machines having both of the following characteristics:

a.1. Three or more rollers (active or guiding); *and*

a.2. According to the manufacturer's technical specifications, can be equipped with ''numerical control'' units or a computer control;

NOTE: 2B209.a includes machines that have only a single roller designed to deform metal, plus two auxiliary rollers that support the mandrel, but do not participate directly in the deformation process.

b. Rotor-forming mandrels designed to form cylindrical rotors of inside diameter between 75 mm and 400 mm.

2B225 Remote manipulators that can be used to provide remote actions in radiochemical separation operations or hot cells, having either of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (2) *Also see* ECCNs 2B007 and 2B207. (3) Remote manipulators specially designed or prepared for use in fuel reprocessing or for use in a reactor are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: N/A

Items:

a. A capability of penetrating 0.6 m or more of hot cell wall (through-the-wall operation); *or*

b. A capability of bridging over the top of a hot cell wall with a thickness of 0.6 m or more (over-the-wall operation).

Technical Note: Remote manipulators provide translation of human operator actions to a remote operating arm and terminal fixture. They may be of ''master/slave'' type or operated by joystick or keypad.

2B226 Controlled atmosphere (vacuum or inert gas) induction furnaces, and power supplies therefor, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (2) Also see ECCN 2B227 and Category 3B.

Related Definitions: N/A

ECCN Controls: 2B226.a does not control furnaces designed for the processing of semiconductor wafers.

Items:

a. Furnaces having all of the following characteristics:

a.1. Capable of operation above 1,123 K (850 °C);

a.2. Induction coils 600 mm or less in diameter; *and*

a.3. Designed for power inputs of 5 kW or more;

b. Power supplies, with a specified power output of 5 kW or more, specially designed for furnaces controlled by 2B226.a.

2B227 Vacuum or other controlled atmosphere metallurgical melting and casting furnaces and related equipment, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) See ECCN 2D201 for ''software'' for items controlled under this

entry. (2) See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (2) Also see ECCN 2B226.

Related Definitions: N/A

Items:

a. Arc remelt and casting furnaces having both of the following characteristics:

a.1. Consumable electrode capabilities between 1,000 cm^3 and 20,000 cm^3; *and*

a.2. Capable of operating with melting temperatures above 1,973 K (1,700 °C);

b. Electron beam melting furnaces and plasma atomization and melting furnaces, having both of the following characteristics:

b.1. A power of 50 kW or greater; *and*

b.2. Capable of operating with melting temperatures above 1,473 K (1,200 °C);

c. Computer control and monitoring systems specially configured for any of the furnaces controlled by 2B227.a or .b.

2B228 Rotor fabrication and assembly equipment, rotor straightening equipment, bellows-forming mandrels and dies, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry.

Related Definitions: N/A

Items:

a. Rotor assembly equipment for assembly of gas centrifuge rotor tube sections, baffles, and end-caps;

NOTE: 2B228.a includes precision mandrels, clamps, and shrink fit machines.

b. Rotor straightening equipment for alignment of gas centrifuge rotor tube sections to a common axis;

Technical Note: The rotor straightening equipment in 2B228.b normally consists of precision measuring probes linked to a computer that subsequently controls the action of, for example, pneumatic rams used for aligning the rotor tube sections.

c. Bellows-forming mandrels and dies for producing single-convolution bellows.

Technical Note: In 2B228.c, the bellows have all of the following characteristics:

1. Inside diameter between 75 mm and 400 mm;

2. Length equal to or greater than 12.7 mm;

3. Single convolution depth greater than 2 mm; *and*

4. Made of high-strength aluminum alloys, maraging steel or high strength ''fibrous or filamentary materials''.

2B229 Centrifugal multiplane balancing machines, fixed or portable, horizontal or vertical, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) *See* ECCN 2D201 for ''software'' for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry.

Related Definitions: N/A

Items:

a. Centrifugal balancing machines designed for balancing flexible rotors having a length of 600 mm or more and having all of the following characteristics:

a.1. Swing or journal diameter greater than 75 mm;

a.2. Mass capability of from 0.9 to 23 kg; *and*

a.3. Capable of balancing speed of revolution greater than 5,000 r.p.m.;

b. Centrifugal balancing machines designed for balancing hollow cylindrical rotor components and having all of the following characteristics:

b.1. Journal diameter greater than 75 mm;

b.2. Mass capability of from 0.9 to 23 kg;

b.3. Capable of balancing to a residual imbalance equal to or less than 0.01 kg × mm/kg per plane; *and*

b.4. Belt drive type.

2B230 "Pressure transducers" capable of measuring absolute pressures at any point in the range 0 to 13 kPa and having both of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry.

Related Definitions: (1) Pressure transducers are devices that convert pressure measurements into an electrical signal. (2) For purposes of this entry, ''accuracy'' includes non-linearity, hysteresis and repeatability at ambient temperature.

Items:

a. Pressure sensing elements made of or protected by aluminum, aluminum alloy, nickel or nickel alloy with more than 60% nickel by weight; *and*

b. Having either of the following characteristics:

b.1. A full scale of less than 13 kPa and an ''accuracy'' of better than ± 1% of full-scale; *or*

b.2. A full scale of 13 kPa or greater and an ''accuracy'' of better than ± 130 Pa.

2B231 Vacuum pumps having all of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (2) Vacuum pumps specially designed or prepared for the separation of uranium isotopes are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: (1) The pumping speed is determined at the measurement point with nitrogen gas or air. (2) The ultimate vacuum is determined at the input of the pump with the input of the pump blocked off.

Items:

a. Input throat size equal to or greater than 380 mm;

b. Pumping speed equal to or greater than 15 m^3/s; *and*

c. Capable of producing an ultimate vacuum better than 13.3 mPa.

2B232 Multistage light gas guns or other high-velocity gun systems (coil, electromagnetic, and electrothermal types, and other advanced systems) capable of accelerating projectiles to 2 km/s or greater.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

2B290 "Numerically controlled" machine tools not controlled by 2B001 or 2B201.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: (1) *See* ECCNs 2D002 and 2D290 for ''software'' for items controlled under this entry. (2) *See* ECCNs 2E001 (''development''), 2E002 (''production''), and 2E290 (''use'') for technology for items controlled under this entry. (3) *Also see* ECCNs 2B001, 2B201, and 2B991.

Related Definition: N/A

Items: a. Turning machines or combination turning/milling machines that are capable of machining diameters greater than 2.5 meters.

b. Reserved.

2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 2.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number.

Related Controls: The controls in this entry do not apply to equipment that is:

(a.) specially designed for use in civil applications (*e.g.*, food processing, pulp and paper processing, or water purification); AND (b.) inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the flow of chemical weapons precursors controlled by 1C350.

Related Definitions: For purposes of this entry the term ''chemical warfare agents'' are those agents subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.)

Items:

a. Reaction vessels or reactors, with or without agitators, with total internal (geometric) volume greater than 0.1 m^3 (100 liters) and less than 20 m^3 (20,000 liters), where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

a.1. Alloys with more than 25% nickel and 20% chromium by weight;

a.2. Fluoropolymers;

a.3. Glass (including vitrified or enameled coating or glass lining);

a.4. Nickel or alloys with more than 40% nickel by weight;

a.5. Tantalum or tantalum alloys;

a.6. Titanium or titanium alloys; or

a.7. Zirconium or zirconium alloys.

b. Agitators for use in reaction vessels or reactors described in 2B350.a, and impellers, blades or shafts designed for such agitators, where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

b.1. Alloys with more than 25% nickel and 20% chromium by weight;

b.2. Fluoropolymers;

b.3. Glass (including vitrified or enameled coatings or glass lining);

b.4. Nickel or alloys with more than 40% nickel by weight;

b.5. Tantalum or tantalum alloys;

b.6. Titanium or titanium alloys; or

b.7. Zirconium or zirconium alloys.

c. Storage tanks, containers or receivers with a total internal (geometric) volume greater than 0.1 m^3 (100 liters) where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

c.1. Alloys with more than 25% nickel and 20% chromium by weight;

c.2. Fluoropolymers;

c.3. Glass (including vitrified or enameled coatings or glass lining);

c.4. Nickel or alloys with more than 40% nickel by weight;

c.5. Tantalum or tantalum alloys;

c.6. Titanium or titanium alloys; or

c.7. Zirconium or zirconium alloys.

d. Heat exchangers or condensers with a heat transfer surface area of less than 20 m^2, but greater than 0.15 m^2, and tubes, plates, coils or blocks (cores) designed for such heat exchangers or condensers, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

d.1. Alloys with more than 25% nickel and 20% chromium by weight;

d.2. Fluoropolymers;

d.3. Glass (including vitrified or enameled coatings or glass lining);

d.4. Graphite or carbon-graphite;

d.5. Nickel or alloys with more than 40% nickel by weight;

d.6. Silicon carbide;

d.7. Tantalum or tantalum alloys;

d.8. Titanium or titanium alloys;

d.9. Titanium carbide; or

d.10. Zirconium or zirconium alloys.

e. Distillation or absorption columns of internal diameter greater than 0.1 m, and liquid distributors, vapor distributors or liquid collectors designed for such distillation or absorption columns, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

e.1. Alloys with more than 25% nickel and 20% chromium by weight;

e.2. Fluoropolymers;

e.3. Glass (including vitrified or enameled coatings or glass lining);

e.4. Graphite or carbon-graphite;

e.5. Nickel or alloys with more than 40% nickel by weight;

e.6. Tantalum or tantalum alloys;

e.7. Titanium or titanium alloys; or

e.8. Zirconium or zirconium alloys.

f. Remotely operated filling equipment in which all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

f.1. Alloys with more than 25% nickels and 20% chromium by weight; or

f.2. Nickel or alloys with more than 40% nickel by weight.

g. Valves with nominal sizes greater than 1.0 cm (⅜ in.), and casings (valve bodies) or preformed casing liners designed for such

valves, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

g.1. Nickel or alloys with more than 40% nickel by weight;

g.2. Alloys with more than 25% nickel and 20% chromium by weight;

g.3. Fluoropolymers;

g.4. Glass or glass lined (including vitrified or enameled coatings);

g.5. Tantalum or tantalum alloys;

g.6. Titanium or titanium alloys; or

g.7. Zirconium or zirconium alloys.

h. Multi-walled piping incorporating a leak detection port, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

h.1. Alloys with more than 25% nickel and 20% chromium by weight;

h.2. Fluoropolymers;

h.3. Glass (including vitrified or enameled coatings or glass lining);

h.4. Graphite or carbon-graphite;

h.5. Nickel or alloys with more than 40% nickel by weight;

h.6. Tantalum or tantalum alloys;

h.7. Titanium or titanium alloys; or

h.8. Zirconium or zirconium alloys.

i. Multiple-seal and seal-less pumps with manufacturer's specified maximum flow-rate greater than 0.6 m^3/hour, or vacuum pumps with manufacturer's specified maximum flow-rate greater than 5 m^3/hour (under standard temperature (273 K (0 °C)) and pressure (101.3 kPa) conditions), and casings (pump bodies), preformed casing liners, impellers, rotors or jet pump nozzles designed for such pumps, in which all surfaces that come into direct contact with the chemical(s) being processed are made from any of the of the following materials:

i.1. Alloys with more than 25% nickel and 20% chromium by weight;

i.2. Ceramics;

i.3. Ferrosilicon;

i.4. Fluoropolymers;

i.5. Glass (including vitrified or enameled coatings or glass lining);

i.6. Graphite or carbon-graphite;

i.7. Nickel or alloys with more than 40% nickel by weight;

i.8. Tantalum or tantalum alloys;

i.9. Titanium or titanium alloys, or

i.10. Zirconium or zirconium alloys.

j. Incinerators designed to destroy chemical warfare agents, chemical weapons precursors controlled by 1C350, or chemical munitions having specially designed waste supply systems, special handling facilities and an average combustion chamber temperature greater than 1000 °C in which all surfaces in the waste supply system that come into direct contact with the waste products are made from or lined with any of the following materials:

j.1. Alloys with more than 25% nickel and 20% chromium by weight;

j.2. Ceramics; or

j.3. Nickel or alloys with more than 40% nickel by weight.

Technical Note: Carbon-graphite is a composition consisting primarily of graphite and amorphous carbon, in which the graphite is 8 percent or more by weight of the composition.

2B351 Toxic gas monitoring systems that operate on-line and dedicated detectors therefor, except those systems and detectors controlled by ECCN 1A004.c.

LICENSE REQUIREMENTS

Reason for Control: CB, AT.

Control(s)	Country chart
CB applies to entire entry	CB Column 2.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number.

Related Controls: Also see ECCN 1A004, which controls chemical detection systems and specially designed components therefor that are specially designed or modified for detection or identification of chemical warfare agents, but not specially designed for military use, and ECCN 1A995, which controls certain detection equipment and components not controlled by ECCN 1A004 or by this ECCN.

Related Definitions: For the purposes of this entry, the term ''continuous operation'' describes the capability of the equipment to operate on line without human intervention. The intent of this entry is to control toxic gas monitoring systems capable of collection and detection of samples in environments such as chemical plants, rather than those used for batch-mode operation in laboratories.

Items

a. Designed for continuous operation and usable for the detection of chemical warfare agents or chemicals controlled by 1C350 at concentrations of less than 0.3 mg/m^3; or

b. Designed for the detection of cholinesterase-inhibiting activity.

2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 2.

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number

Related Controls: See ECCNs 1A004 and 1A995 for protective equipment that is not covered by this entry. Also see ECCN 9A120 for controls on certain ''UAV'' systems designed or modified to dispense an aerosol and capable of carrying elements of a payload in the form of a particulate or liquid, other than fuel components of such vehicles, of a volume greater than 20 liters.

Related Definitions: (1) ''Lighter than air vehicles''—balloons and airships that rely on hot air or on lighter-than-air gases, such as helium or hydrogen, for their lift. (2) ''UAVs''—Unmanned Aerial Vehicles. (3) ''VMD''—Volume Median Diameter.

Items:

a. Complete containment facilities at P3 or P4 containment level.

Technical Note: P3 or P4 (BL3, BL4, L3, L4) containment levels are as specified in the WHO Laboratory Biosafety Manual (Geneva, 1983).

b. Fermenters capable of cultivation of pathogenic microorganisms, viruses, or for toxin production, without the propagation of aerosols, having a capacity equal to or greater than 20 liters.

Technical Note: Fermenters include bioreactors, chemostats, and continuous-flow systems.

c. Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols, and having all of the following characteristics:

c.1. One or more sealing joints within the steam containment area;

c.2. A flow rate greater than 100 liters per hour;

c.3. Components of polished stainless steel or titanium; and

c.4. Capable of in-situ steam sterilization in a closed state.

Technical Note: Centrifugal separators include decanters.

d. Cross (tangential) flow filtration equipment and accessories, as follows:

d.1. Cross (tangential) flow filtration equipment capable of separation of pathogenic microorganisms, viruses, toxins or cell cultures, without the propagation of aerosols, having all of the following characteristics:

d.1.a. A total filtration area equal to or greater than 1 square meter (1 m^2); and

d.1.b. Capable of being sterilized or disinfected in-situ.

N.B.: 2B352.d.1 does not control reverse osmosis equipment, as specified by the manufacturer.

d.2. Cross (tangential) flow filtration components (*e.g.*, modules, elements, cassettes, cartridges, units or plates) with filtration area equal to or greater than 0.2 square meters (0.2 m^2) for each component and designed for use in cross (tangential) flow filtration equipment controlled by 2B352.d.1.

Technical Note: In this ECCN, ''sterilized'' denotes the elimination of all viable microbes from the equipment through the use of either physical (*e.g.*, steam) or chemical agents. ''Disinfected'' denotes the destruction of potential microbial infectivity in the equipment through the use of chemical agents with a germicidal effect. ''Disinfection'' and ''sterilization'' are distinct from ''sanitization'', the latter referring to cleaning procedures designed to lower the microbial content of equipment without necessarily achieving elimination of all microbial infectivity or viability.

e. Steam sterilizable freeze-drying equipment with a condenser capacity of 10 kgs of ice or greater in 24 hours, but less than 1,000 kgs of ice in 24 hours.

f. Protective and containment equipment, as follows:

f.1. Protective full or half suits, or hoods dependant upon a tethered external air supply and operating under positive pressure;

Technical Note: This entry does not control suits designed to be worn with self-contained breathing apparatus.

f.2. Class III biological safety cabinets or isolators with similar performance standards, *e.g.*, flexible isolators, dry boxes, anaerobic chambers, glove boxes or laminar flow hoods (closed with vertical flow).

g. Chambers designed for aerosol challenge testing with microorganisms, viruses, or toxins and having a capacity of 1 m^3 or greater.

h. Spraying or fogging systems and components therefor, as follows:

h.1. Complete spraying or fogging systems, specially designed or modified for fitting to aircraft, ''lighter than air vehicles,'' or ''UAVs,'' capable of delivering, from a liquid suspension, an initial droplet ''VMD'' of less than 50 microns at a flow rate of greater than 2 liters per minute;

h.2. Spray booms or arrays of aerosol generating units, specially designed or modified for fitting to aircraft, ''lighter than air vehicles,'' or ''UAVs,'' capable of delivering, from a liquid suspension, an initial droplet ''VMD'' of less than 50 microns at a flow rate of greater than 2 liters per minute;

h.3. Aerosol generating units specially designed for fitting to the systems specified in paragraphs h.1 and h.2 of this ECCN.

Technical Notes: 1. ''*Aerosol generating units*'' are devices specially designed or modified for fitting to aircraft and include

nozzles, rotary drum atomizers and similar devices.

2. This ECCN does not control spraying or fogging systems and components, as specified in 2B352.h., that are demonstrated not to be capable of delivering biological agents in the form of infectious aerosols.

3. Droplet size for spray equipment or nozzles specially designed for use on aircraft or ''UAVs'' should be measured using either of the following methods (pending the adoption of internationally accepted standards):

a. Doppler laser method,

b. Forward laser diffraction method.

2B991 Numerical control units for machine tools and "numerically controlled" machine tools, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: Also see ECCNs 2B001, 2B201, and 2B290.
Related Definitions: N/A
Items: a. ''Numerical control'' units for machine tools:

a.1. Having four interpolating axes that can be coordinated simultaneously for ''contouring control''; or

a.2. Having two or more axes that can be coordinated simultaneously for ''contouring control'' and a minimum programmable increment better (less) than 0.001 mm;

a.3. ''Numerical control'' units for machine tools having two, three or four interpolating axes that can be coordinated simultaneously for ''contouring control'', and capable of receiving directly (on-line) and processing computer-aided-design (CAD) data for internal preparation of machine instructions; *or*

b. ''Motion control boards'' specially designed for machine tools and having any of the following characteristics:

b.1. Interpolation in more than four axes;

b.2. Capable of ''real time processing'' of data to modify tool path, feed rate and spindle data, during the machining operation, by any of the following:

b.2.a. Automatic calculation and modification of part program data for machining in two or more axes by means of measuring cycles and access to source data; *or*

b.2.b. ''Adaptive control'' with more than one physical variable measured and processed by means of a computing model (strategy) to change one or more machining instructions to optimize the process.

b.3. Capable of receiving and processing CAD data for internal preparation of machine instructions; *or*

c. ''Numerically controlled'' machine tools that, according to the manufacturer's technical specifications, can be equipped with electronic devices for simultaneous ''contouring control'' in two or more axes and that have both of the following characteristics:

c.1. Two or more axes that can be coordinated simultaneously for contouring control; *and*

c.2. ''Positioning accuracies'', with all compensations available:

c.2.a. Better than 0.020 mm along any linear axis (overall positioning) for grinding machines;

c.2.b. Better than 0.020 mm along any linear axis (overall positioning) for milling machines; *or*

c.2.c. Better than 0.020 mm along any linear axis (overall positioning) for turning machines; *or*

d. Machine tools, as follows, for removing or cutting metals, ceramics or composites, that, according to the manufacturer's technical specifications, can be equipped with electronic devices for simultaneous ''contouring control'' in two or more axes:

d.1. Machine tools for turning, grinding, milling or any combination thereof, having two or more axes that can be coordinated simultaneously for ''contouring control'' and having any of the following characteristics:

d.1.a. One or more contouring ''tilting spindles'';

NOTE: 2B991.d.1.a. applies to machine tools for grinding or milling only.

d.1.b. ''Camming'' (axial displacement) in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

NOTE: 2B991.d.1.b. applies to machine tools for turning only.

d.1.c. ''Run out'' (out-of-true running) in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

d.1.d. The ''positioning accuracies'', with all compensations available, are less (better) than: 0.001° on any rotary axis;

d.2. Electrical discharge machines (EDM) of the wire feed type that have five or more axes that can be coordinated simultaneously for ''contouring control''.

2B992 Non-"numerically controlled" machine tools for generating optical quality surfaces, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: a. Turning machines using a single point cutting tool and having all of the following characteristics:

a.1. Slide positioning accuracy less (better) than 0.0005 mm per 300 mm of travel;

a.2. Bidirectional slide positioning repeatability less (better) than 0.00025 mm per 300 mm of travel;

a.3. Spindle ''run out'' and ''camming'' less (better) than 0.0004 mm total indicator reading (TIR);

a.4. Angular deviation of the slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over full travel; *and*

a.5. Slide perpendicularity less (better) than 0.001 mm per 300 mm of travel;

TECHNICAL NOTE: The bidirectional slide positioning repeatability (R) of an axis is the maximum value of the repeatability of positioning at any position along or around the axis determined using the procedure and under the conditions specified in part 2.11 of ISO 230/2: 1988.

b. Fly cutting machines having all of the following characteristics:

b.1. Spindle ''run out'' and ''camming'' less (better) than 0.0004 mm TIR; *and*

b.2. Angular deviation of slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over full travel.

2B993 Gearmaking and/or finishing machinery not controlled by 2B003 capable of producing gears to a quality level of better than AGMA 11.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2B996 Dimensional inspection or measuring systems or equipment not controlled by 2B006.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: a. Manual dimensional inspection machines, having both of the following characteristics:

a.1. Two or more axes; *and*

a.2. A measurement uncertainty equal to or less (better) than (3 + L/300) micrometer in any axes (L measured length in mm).

2B997 "Robots" not controlled by 2B007 or 2B207 that are capable of employing feedback information in real-time processing from one or more sensors to generate or modify "programs" or to generate or modify numerical program data.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2B998 Assemblies, units or inserts specially designed for machine tools controlled by 2B991, or for equipment controlled by 2B993, 2B996 or 2B997.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: This entry does not control measuring interferometer systems, without closed or open loop feedback, containing a laser to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.

Related Definition: N/A

Items: a. Spindle assemblies, consisting of spindles and bearings as a minimal assembly, with radial (''run out'') or axial (''camming'') axis motion in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

b. Single point diamond cutting tool inserts, having all of the following characteristics:

b.1. Flawless and chip-free cutting edge when magnified 400 times in any direction;

b.2. Cutting radius from 0.1 to 5 mm inclusive; *and*

b.3. Cutting radius out-of-roundness less (better) than 0.002 mm TIR.

c. Specially designed printed circuit boards with mounted components capable of upgrading, according to the manufacturer's specifications, ''numerical control'' units, machine tools or feedback devices to or above the levels specified in ECCNs 2B991, 2B993, 2B996, 2B997, or 2B998.

2B999 Specific Processing Equipment, n.e.s., as Follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT.

Control(s).

Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 of the EAR for additional information.

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: See also 0B001, 0B002, 0B004, 1B233, 2A293, 2B001.f, 2B004, 2B009, 2B104, 1B109, 2B204, 2B209, 2B228, 2B229, 2B231, 2B350.

Related Definitions: N/A.

Items:

a. Isostatic presses, n.e.s.;

b. Bellows manufacturing equipment, including hydraulic forming equipment and bellows forming dies;

c. Laser welding machines;

d. MIG welders;

e. E-beam welders;

f. Monel equipment, including valves, piping, tanks and vessels;

g. 304 and 316 stainless steel valves, piping, tanks and vessels;

h. Mining and drilling equipment, as follows:

h.1. Large boring equipment capable of drilling holes greater than two feet in diameter;

h.2. Large earth-moving equipment used in the mining industry;

i. Electroplating equipment designed for coating parts with nickel or aluminum;

j. Pumps designed for industrial service and for use with an electrical motor of 5 HP or greater;

k. Vacuum valves, piping, flanges, gaskets and related equipment specially designed for use in high-vacuum service, n.e.s.;

l. Spin forming and flow forming machines, n.e.s.;

m. Centrifugal multiplane balancing machines, n.e.s.;

n. Austenitic stainless steel plate, valves, piping, tanks and vessels.

C. MATERIALS [RESERVED]

D. SOFTWARE

2D001 "Software", other than that controlled by 2D002, specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A001 or 2B001 to 2B009.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to ''software'' for equipment controlled by 2B004 and 2B009 for MT reasons.	MT Column 1
NP applies to specially designed or modified ''software'' for equipment controlled by 2B001 for NP reasons, and to specially designed ''software'' for equipment controlled by 2B004, 2B006, 2B007, or 2B009 for NP reasons.	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except N/A for MT

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) *See* ECCNs 2E001 (''development'') and 2E101 (''use'') for technology for ''software'' controlled under this entry. (2) *Also see* ECCNs 2D101 and 2D201.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

2D002 "Software" for electronic devices, even when residing in an electronic device or system, enabling such devices or systems to function as a "numerical control" unit, capable of coordinating simultaneously more than 4 axes for "contouring control".

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
NP applies to entire entry	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: (1) *See* ECCNs 2E001 (''development'') and 2E201 (''use'') for technology for ''software'' controlled under this entry. (2) Also see ECCN 2D202.

Related Definitions: N/A.

Items:

NOTE 1: 2D002 does not control ''software'' specially designed or modified for the operation of machine tools not controlled by Category 2.

NOTE 2: 2D002 does not control ''software'' for items controlled by 2B002. See 2D001 for control of ''software'' for items controlled by 2B002.

The list of items controlled is contained in the ECCN heading.

2D018 "Software" for the "development", "production" or "use" of equipment controlled by 2B018.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to ''software'' for equipment controlled by 2B018 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except N/A for Rwanda

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

2D101 "Software" specially designed or modified for the "use" of equipment controlled by 2B104, 2B105, 2B109, 2B116, 2B117, or 2B119 to 2B122.

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
NP applies to ''software'' specially designed for the use'' of items controlled by 2B104, 2B109, or 2B116 for NP reasons.	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) *See* ECCNs 2E001 (''development'') and 2E101 (''use'') for technology for ''software'' controlled under this entry. (2) *Also see* ECCN 9D004.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

2D201 "Software" specially designed for the "use" of equipment controlled by 2B204, 2B206, 2B207, 2B209, 2B227 or 2B229.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) See ECCNs 2E001 (''development'') and 2E201 (''use'') for technology for ''software'' controlled under this entry. (2) Also see ECCNs 2D002 and 2D202.

Related Definitions: N/A

ECCN Controls: ''Software'' specially designed for systems controlled by 2B206.b includes software for simultaneous measurements of wall thickness and contour.

Items: The list of items controlled is contained in the ECCN heading.

2D202 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2B201.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2D290 "Software" specially designed or modified for the "development", "production" or "use" of items controlled by 2A290, 2A291, 2A292, 2A293, or 2B290.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See ECCN 2E001 (''development'') for technology for ''software'' controlled under this entry.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2D983 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A983.

LICENSE REQUIREMENTS

*Reason for Control:*RS, AT

Control(s)	Country chart
RS applies to entire entry	RS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2D991 "Software" specially designed for the "development", "production", or "use" of equipment controlled by 2B991, 2B993, or 2B996, 2B997, and 2B998.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2D992 Specific "software", as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Software'' to provide ''adaptive control'' and having both of the following characteristics:

a.1. For ''flexible manufacturing units'' (FMUs) which consist at least of equipment described in b.1 and b.2 of the definition of ''flexible manufacturing unit'' contained in part 772 of the EAR; *and*

a.2. Capable of generating or modifying, in ''real time processing'', programs or data by using the signals obtained simultaneously by means of at least two detection techniques, such as:

a.2.a. Machine vision (optical ranging);
a.2.b. Infrared imaging;
a.2.c. Acoustical imaging (acoustical ranging);
a.2.d. Tactile measurement;
a.2.e. Inertial positioning;
a.2.f. Force measurement; *and*
a.2.g. Torque measurement.

NOTE: 2D992.a does not control ''software'' which only provides rescheduling of functionally identical equipment within ''flexible manufacturing units'' using pre-stored part programs and a pre-stored strategy for the distribution of the part programs.

b. Reserved.

2D994 "Software" specially designed for the "development" or "production" of portable electric generators controlled by 2A994.

LICENSE REQUIREMENTS

Reason for Control: AT.
Control(s).

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya, and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Cuba and Iran. See §742.20 for additional information on Libya. See §742.19 of the EAR for additional information on North Korea.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

2E001 "Technology according to the General Technology Note for the "development" of equipment or "software" controlled by 2A (except 2A983, 2A991, or 2A994), 2B (except 2B991, 2B993, 2B996 2B997 or 2B998), or 2D (except 2D983, 2D991, 2D992, or 2D994).

LICENSE REQUIREMENTS
Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to "technology" for items controlled by 2A001, 2B001 to 2B009, 2D001 or 2D002.	NS Column 1
MT applies to "technology" for items controlled by 2B004, 2B009, 2B018, 2B104, 2B105, 2B109, 2B116, 2B117, 2B119 to 2B122, 2D001, or 2D101 for MT reasons.	MT Column 1
NP applies to "technology" for items controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232, 2D001, 2D002, 2D101, 2D201 or 2D202 for NP reasons.	NP Column 1
NP applies to "technology" for items controlled by 2A290 to 2A293, 2B290, or 2D290 for NP reasons.	NP Column 2
CB applies to "technology" for equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g.	CB Column 2
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: *See* §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes, except N/A for MT

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: See also 2E101, 2E201, and 2E301
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2E002 "Technology" according to the General Technology Note for the "production" of equipment controlled by 2A (except 2A983, 2A991, or 2A994) or 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998).

LICENSE REQUIREMENTS
Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to "technology" for equipment controlled by 2A001, 2B001 to 2B009.	NS Column 1.
MT applies to "technology" for equipment controlled by 2B004, 2B009, 2B018, 2B104, 2B105, 2B109, 2B116, 2B117, or 2B119 to 2B122 for MT reasons.	MT Column 1.
NP applies to "technology" for equipment controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232 for NP reasons.	NP Column 1.
NP applies to "technology" for equipment controlled by 2A290 to 2A293, 2B290 for NP reasons.	NP Column 2.
CB applies to "technology" for equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g.	CB Column 2.
AT applies to entire entry	AT Column 1.

LICENSE REQUIREMENT NOTES: *See* §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes, except N/A for MT

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2E003 Other "technology", as follows (see List of Items Controlled).

LICENSE REQUIREMENTS
Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except 2E003.a, .b, .e and .f

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: See 2E001, 2E002, and 2E101 for ''development'' and ''use'' technology for equipment that are designed or modified for densification of carbon-carbon composites, structural composite rocket nozzles and reentry vehicle nose tips.

Related Definitions: N/A

Items:

a. ''Technology'' for the ''development'' of interactive graphics as an integrated part in ''numerical control'' units for preparation or modification of part programs;

b. ''Technology'' for metal-working manufacturing processes, as follows:

b.1. ''Technology'' for the design of tools, dies or fixtures specially designed for any of the following processes:

b.1.a. ''Superplastic forming'';

b.1.b. ''Diffusion bonding''; *or*

b.1.c. ''Direct-acting hydraulic pressing'';

b.2. Technical data consisting of process methods or parameters as listed below used to control:

b.2.a. ''Superplastic forming'' of aluminum alloys, titanium alloys or ''superalloys'':

b.2.a.1. Surface preparation;

b.2.a.2. Strain rate;

b.2.a.3. Temperature;

b.2.a.4. Pressure;

b.2.b. ''Diffusion bonding'' of ''superalloys'' or titanium alloys:

b.2.b.1. Surface preparation;

b.2.b.2. Temperature;

b.2.b.3. Pressure;

b.2.c. ''Direct-acting hydraulic pressing'' of aluminum alloys or titanium alloys:

b.2.c.1. Pressure;

b.2.c.2. Cycle time;

b.2.d. ''Hot isostatic densification'' of titanium alloys, aluminum alloys or ''superalloys'':

b.2.d.1. Temperature;

b.2.d.2. Pressure;

b.2.d.3. Cycle time;

c. ''Technology'' for the ''development'' or ''production'' of hydraulic stretch-forming machines and dies therefor, for the manufacture of airframe structures;

d. ''Technology'' for the ''development'' of generators of machine tool instructions (e.g., part programs) from design data residing inside ''numerical control'' units;

e. ''Technology for the development'' of integration ''software'' for incorporation of expert systems for advanced decision support of shop floor operations into ''numerical control'' units;

f. ''Technology'' for the application of inorganic overlay coatings or inorganic surface modification coatings (specified in column 3 of the following table) to non-electronic substrates (specified in column 2 of the following table), by processes specified in column 1 of the following table and defined in the Technical Note.

N.B. This table should be read to control the technology of a particular 'Coating Process' only when the 'Resultant Coating' in column 3 is in a paragraph directly across from the relevant 'Substrate' under column 2. For example, Chemical Vapor Deposition (CVD) coating process technical data are controlled for the application of 'silicides' to Carbon-carbon, Ceramic and Metal ''matrix'' ''composites'' substrates, but are not controlled for the application of 'silicides' to 'Cemented tungsten carbide (16), Silicon carbide (18)' substrates. In the second case, the 'Resultant Coating' is not listed in the paragraph under column 3 directly across from the paragraph under column 2 listing 'Cemented tungsten carbide (16), Silicon carbide (18)'.

CATEGORY 2E—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES

1. Coating process (1) [1]	2. Substrate	3. Resultant coating
A. Chemical Vapor Deposition (CVD)	''Superalloys''	Aluminides for internal passages
	Ceramics (19) and Low-expansion glasses (14).	Silicides Carbides Dielectric layers (15) Diamond Diamond-like carbon (17)
	Carbon-carbon, Ceramic, and Metal ''matrix'' ''composites''.	Silicides Carbides Refractory metals, Mixtures thereof (4) Dielectric layers (15) Aluminides Alloyed aluminides (2) Boron nitride
	Cemented tungsten carbide (16), Silicon Carbide (18).	Carbides Tungsten Mixtures thereof (4) Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric Players (15)

CATEGORY 2E—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES—Continued

1. Coating process (1) [1]	2. Substrate	3. Resultant coating
	Beryllium and Beryllium alloys	Dielectric layers (15) Diamond Diamond-like carbon (17)
	Sensor window materials (9)	Dielectric layers (15) Diamond Diamond-like carbon (17)
B. Thermal Evaportation Physical Vapor		
1. Physical Vapor Deposition (PVD): Deposition (TE-PVD) Electron-Beam (EB-PVD).	''Superalloys''	Alloyed silicides Alloyed aluminides (2) McrAlX (5) Modified zirconia (12) Silicides Aluminides Mixtures thereof (4)
	Ceramics (19) and Low-expansion glasses (14).	Dielectric layers (15)
	Corrosion resistant steel (7)	MCrAlX (5) Modified zirconia (12) Mixtures thereof (4)
	Carbon-carbon, Ceramic and Metal ''matrix'' ''composites''.	Silicides Carbides Refractory metals Mixtures thereof (4) Dielectric layers (15) Boron nitride
	Cemented tungsten carbide (16), Silicon carbide (18).	Carbides Tungsten Mixtures thereof (4) Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Dielectric layers (15) Borides Beryllium
	Sensor window materials (9)	Dielectric layers (15)
	Titanium alloys (13)	Borides Nitrides
2. Ion assisted resistive heating. Physical Vapor Deposition (PVD) (Ion Plating).	Ceramics (19) and Low-expansion glasses (14).	Dielectric layers (15) Diamond-like carbon (17)
	Carbon-carbon, Ceramic and Metal ''matrix'' ''composites''.	Dielectric layers (15)
	Cemented tungsten carbide (16), Silicon carbide.	Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Dielectric layers (15)
	Sensor window materials (9)	Dielectric layers (15) Diamond-like carbon (17)
3. Physical Vapor Deposition (PVD): ''Laser'' Vaporization.	Ceramics (19) and Low-expansion glasses (14).	Silicides Dielectric layers (15) Diamond-like carbon (17)
	Carbon-carbon, Ceramic and Metal ''matrix'' ''composites''.	Dielectric layers (15)
	Cemented tungsten carbide (16), Silicon carbide.	Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Dielectric layers (15)
	Sensor window materials (9)	Dielectric layers (15) Diamond-like carbon
4. Physical Vapor Deposition (PVD): Cathodic Arc Discharge.	''Superalloys''	Alloyed silicides Alloyed Aluminides (2) MCrAlX (5)
	Polymers (11) and Organic ''matrix'' ''composites''.	Borides Carbides Nitrides Diamond-like carbon (17)
C. Pack cementation (see A above for out-of-pack cementation) (10).	Carbon-carbon, Ceramic and Metal ''matrix'' ''composites''.	Silicides Carbides Mixtures thereof (4)
	Titanium alloys (13)	Silicides Aluminides Alloyed aluminides (2)
	Refractory metals and alloys (8)	Silicides Oxides

CATEGORY 2E—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES—Continued

1. Coating process (1) [1]	2. Substrate	3. Resultant coating
D. Plasma spraying	''Superalloys''	MCrAlX (5)
		Modified zirconia (12)
		Mixtures thereof (4)
		Abradable Nickel-Graphite
		Abradable materials containing Ni-Cr-Al
		Abradable
		Al-Si-Polyester
		Alloyed aluminides (2)
	Aluminum alloys (6)	MCrAlX (5)
		Modified zirconia (12)
		Silicides
		Mixtures thereof (4)
	Refractory metals and alloys (8), Carbides, Corrosion resistant steel (7).	Aluminides
		Silicides
		MCrAlX (5)
		Modified zirconia (12)
		Mixtures thereof (4)
	Titanium alloys (13)	Carbides
		Aluminides
		Silicides
		Alloyed aluminides (2)
	Abradable, Nickel-Graphite	Abradable materials containing Ni-Cr-Al
		Abradable Al-Si-Polyester
E. Slurry Deposition	Refractory metals and alloys (8)	Fused silicides
		Fused aluminides except for resistance heating elements
	Carbon-carbon, Ceramic and Metal ''matrix'' ''composites''.	Silicides
		Carbides
		Mixtures thereof (4)
F. Sputter Deposition	''Superalloys''	Alloyed silicides
		Alloyed aluminides (2)
		Noble metal modified aluminides (3)
		McrAlX (5)
		Modified zirconia (12)
		Platinum Mixtures thereof (4)
	Ceramics and Low-expansion glasses (14).	Silicides
		Platinum
		Mixtures thereof (4)
		Dielectric layers (15)
		Diamond-like carbon (17)
	Titanium alloys (13)	Borides
		Nitrides
		Oxides
		Silicides
		Aluminides
		Alloyed aluminides (2)
		Carbides
	Carbon-carbon, Ceramic and Metal ''matrix'' ''Composites''.	Silicides
		Carbides
		Refractory metals
		Mixtures thereof (4)
		Dielectric layers (15)
		Boron nitride
	Cemented tungsten carbide (16), Silicon carbide (18).	Carbides
		Tungsten
		Mixtures thereof (4)
		Dielectric layers (15)
		Boron nitride
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Borides
		Dielectric layers (15)
		Beryllium
	Sensor window materials (9)	Dielectric layers (15)
		Diamond-like carbon (17)
	Refractory metals and alloys (8)	Aluminides
		Silicides
		Oxides
		Carbides
G. Ion Implantation	High temperature bearing steels	Additions of Chromium, Tantalum, or Niobium (Columbium)
	Titanium alloys (13)	Borides
		Nitrides

CATEGORY 2E—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES—Continued

1. Coating process (1)[1]	2. Substrate	3. Resultant coating
	Beryllium and Beryllium alloys Cemented tungsten carbide (16)	Borides Carbides Nitrides

[1] The numbers in parenthesis refer to the Notes following this Table.

NOTES TO TABLE ON DEPOSITION TECHNIQUES

1. The term 'coating process' includes coating repair and refurbishing as well as original coating.

2. The term 'alloyed aluminide coating' includes single or multiple-step coatings in which an element or elements are deposited prior to or during application of the aluminide coating, even if these elements are deposited by another coating process. It does not, however, include the multiple use of single-step pack cementation processes to achieve alloyed aluminides.

3. The term 'noble metal modified aluminide' coating includes multiple-step coatings in which the noble metal or noble metals are laid down by some other coating process prior to application of the aluminide coating.

4. The term 'mixtures thereof' includes infiltrated material, graded compositions, codeposits and multilayer deposits and are obtained by one or more of the coating processes specified in the Table.

5. MCrAlX refers to a coating alloy where M equals cobalt, iron, nickel or combinations thereof and X equals hafnium, yttrium, silicon, tantalum in any amount or other intentional additions over 0.01 weight percent in various proportions and combinations, except:

a. CoCrAlY coatings which contain less than 22 weight percent of chromium, less than 7 weight percent of aluminum and less than 2 weight percent of yttrium;

b. CoCrAlY coatings which contain 22 to 24 weight percent of chromium, 10 to 12 weight percent of aluminum and 0.5 to 0.7 weight percent of yttrium; *or*

c. NiCrAlY coatings which contain 21 to 23 weight percent of chromium, 10 to 12 weight percent of aluminum and 0.9 to 1.1 weight percent of yttrium.

6. The term 'aluminum alloys' refers to alloys having an ultimate tensile strength of 190 MPa or more measured at 293 K (20° C).

7. The term 'corrosion resistant steel' refers to AISI (American Iron and Steel Institute) 300 series or equivalent national standard steels.

8. 'Refractory metals and alloys' include the following metals and their alloys: niobium (columbium), molybdenum, tungsten and tantalum.

9. 'Sensor window materials', as follows: alumina, silicon, germanium, zinc sulphide, zinc selenide, gallium arsenide, diamond, gallium phosphide, sapphire and the following metal halides: sensor window materials of more than 40 mm diameter for zirconium fluoride and hafnium fluoride.

10. ''Technology'' for single-step pack cementation of solid airfoils is not controlled by this Category.

11. 'Polymers', as follows: polyimide, polyester, polysulfide, polycarbonates and polyurethanes.

12. 'Modified zirconia' refers to additions of other metal oxides, (e.g., calcia, magnesia, yttria, hafnia, rare earth oxides) to zirconia in order to stabilize certain crystallographic phases and phase compositions. Thermal barrier coatings made of zirconia, modified with calcia or magnesia by mixing or fusion, are not controlled.

13. 'Titanium alloys' refers only to aerospace alloys having an ultimate tensile strength of 900 MPa or more measured at 293 K (20° C).

14. 'Low-expansion glasses' refers to glasses which have a coefficient of thermal expansion of 1×10^{-7} K^{-1} or less measured at 293 K (20° C).

15. 'Dielectric layers' coatings constructed of multi-layers of insulator materials in which the interference properties of a design composed of materials of various refractive indices are used to reflect, transmit or absorb various wavelength bands. Dielectric layers refers to more than four dielectric layers or dielectric/metal ''composite'' layers.

16. 'Cemented tungsten carbide' does not include cutting and forming tool materials consisting of tungsten carbide/(cobalt, nickel), titanium carbide/(cobalt, nickel), chromium carbide/nickel-chromium and chromium carbide/nickel.

17. ''Technology'' specially designed to deposit diamond-like carbon on any of the following is not controlled: magnetic disk drives and heads, equipment for the manufacture of disposables valves for faucets, acoustic diaphragms for speakers, engine parts for automobiles, cutting tools, punching-pressing dies, office automation equipment, microphones or medical devices or molds, for casting or molding of plastics, manufactured from alloys containing less than 5% beryllium.

18. 'Silicon carbide' does not include cutting and forming tool materials.

19. Ceramic substrates, as used in this entry, does not include ceramic materials containing 5% by weight, or greater, clay or cement content, either as separate constituents or in combination.

TECHNICAL NOTE TO TABLE ON DEPOSITION TECHNIQUES: Processes specified in Column 1 of the Table are defined as follows:

a. Chemical Vapor Deposition (CVD) is an overlay coating or surface modification coating process wherein a metal, alloy, ''composite'', dielectric or ceramic is deposited upon a heated substrate. Gaseous reactants are decomposed or combined in the vicinity of a substrate resulting in the deposition of the desired elemental, alloy or compound material on the substrate. Energy for this decomposition or chemical reaction process may be provided by the heat of the substrate, a glow discharge plasma, or ''laser'' irradiation.

NOTE 1: CVD includes the following processes: directed gas flow out-of-pack deposition, pulsating CVD, controlled nucleation thermal decomposition (CNTD), plasma enhanced or plasma assisted CVD processes.

NOTE 2: Pack denotes a substrate immersed in a powder mixture.

NOTE 3: The gaseous reactants used in the out-of-pack process are produced using the same basic reactions and parameters as the pack cementation process, except that the substrate to be coated is not in contact with the powder mixture.

b. Thermal Evaporation-Physical Vapor Deposition (TE-PVD) is an overlay coating process conducted in a vacuum with a pressure less than 0.1 Pa wherein a source of thermal energy is used to vaporize the coating material. This process results in the condensation, or deposition, of the evaporated species onto appropriately positioned substrates. The addition of gases to the vacuum chamber during the coating process to synthesize compound coatings is an ordinary modification of the process. The use of ion or electron beams, or plasma, to activate or assist the coating's deposition is also a common modification in this technique. The use of monitors to provide in-process measurement of optical characteristics and thickness of coatings can be a feature of these processes. Specific TE-PVD processes are as follows:

1. Electron Beam PVD uses an electron beam to heat and evaporate the material which forms the coating;

2. Ion Assisted Resistive Heating PVD employs electrically resistive heating sources in combination with impinging ion beam(s) to produce a controlled and uniform flux of evaporated coating species;

3. ''Laser'' Vaporization uses either pulsed or continuous wave ''laser'' beams to vaporize the material which forms the coating;

4. Cathodic Arc Deposition employs a consumable cathode of the material which forms the coating and has an arc discharge established on the surface by a momentary contact of a ground trigger. Controlled motion of arcing erodes the cathode surface creating a highly ionized plasma. The anode can be either a cone attached to the periphery of the cathode, through an insulator, or the chamber. Substrate biasing is used for non line-of-sight deposition.

NOTE: This definition does not include random cathodic arc deposition with non-biased substrates.

5. Ion Plating is a special modification of a general TE-PVD process in which a plasma or an ion source is used to ionize the species to be deposited, and a negative bias is applied to the substrate in order to facilitate the extraction of the species from the plasma. The introduction of reactive species, evaporation of solids within the process chamber, and the use of monitors to provide in-process measurement of optical characteristics and thicknesses of coatings are ordinary modifications of the process.

c. Pack Cementation is a surface modification coating or overlay coating process wherein a substrate is immersed in a powder mixture (a pack), that consists of:

1. The metallic powders that are to be deposited (usually aluminum, chromium, silicon or combinations thereof);

2. An activator (normally a halide salt); *and*

3. An inert powder, most frequently alumina.

NOTE: The substrate and powder mixture is contained within a retort which is heated to between 1,030 K (757 °C) to 1,375 K (1,102 °C) for sufficient time to deposit the coating.

d. Plasma Spraying is an overlay coating process wherein a gun (spray torch) which produces and controls a plasma accepts powder or wire coating materials, melts them and propels them towards a substrate, whereon an integrally bonded coating is formed. Plasma spraying constitutes either low pressure plasma spraying or high velocity plasma spraying.

NOTE 1: Low pressure means less than ambient atmospheric pressure.

NOTE 2: High velocity refers to nozzle-exit gas velocity exceeding 750 m/s calculated at 293 K (20 °C) at 0.1 MPa.

e. Slurry Deposition is a surface modification coating or overlay coating process wherein a metallic or ceramic powder with an organic binder is suspended in a liquid and is applied to a substrate by either spraying, dipping or painting, subsequent air or oven drying, and heat treatment to obtain the desired coating.

f. Sputter Deposition is an overlay coating process based on a momentum transfer phenomenon, wherein positive ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on an appropriately positioned substrate.

NOTE 1: The Table refers only to triode, magnetron or reactive sputter deposition which is used to increase adhesion of the coating and rate of deposition and to radio frequency (RF) augmented sputter deposition used to permit vaporization of non-metallic coating materials.

NOTE 2: Low-energy ion beams (less than 5 keV) can be used to activate the deposition.

g. Ion Implantation is a surface modification coating process in which the element to be alloyed is ionized, accelerated through a potential gradient and implanted into the surface region of the substrate. This includes processes in which ion implantation is performed simultaneously with electron beam physical vapor deposition or sputter deposition.

ACCOMPANYING TECHNICAL INFORMATION TO TABLE ON DEPOSITION TECHNIQUES:

1. ''Technology'' for pretreatments of the substrates listed in the Table, as follows:
a. Chemical stripping and cleaning bath cycle parameters, as follows:
1. Bath composition;
a. For the removal of old or defective coatings corrosion product or foreign deposits;
b. For preparation of virgin substrates;
2. Time in bath;
3. Temperature of bath;
4. Number and sequences of wash cycles;
b. Visual and macroscopic criteria for acceptance of the cleaned part;
c. Heat treatment cycle parameters, as follows:
1. Atmosphere parameters, as follows:
a. Composition of the atmosphere;
b. Pressure of the atmosphere;
2. Temperature for heat treatment;
3. Time of heat treatment;
d. Substrate surface preparation parameters, as follows:
1. Grit blasting parameters, as follows:
a. Grit composition;
b. Grit size and shape;
c. Grit velocity;
2. Time and sequence of cleaning cycle after grit blast;
3. Surface finish parameters;
4. Application of binders to promote adhesion;
e. Masking technique parameters, as follows:
1. Material of mask;
2. Location of mask;

2. ''Technology'' for in situ quality assurance techniques for evaluation of the coating processes listed in the Table, as follows:
a. Atmosphere parameters, as follows:
1. Composition of the atmosphere;
2. Pressure of the atmosphere;
b. Time parameters;
c. Temperature parameters;
d. Thickness parameters;
e. Index of refraction parameters;
f. Control of composition;
3. ''Technology'' for post deposition treatments of the coated substrates listed in the Table, as follows:
a. Shot peening parameters, as follows:
1. Shot composition;
2. Shot size;
3. Shot velocity;
b. Post shot peening cleaning parameters;
c. Heat treatment cycle parameters, as follows:
1. Atmosphere parameters, as follows:
a. Composition of the atmosphere;
b. Pressure of the atmosphere;
2. Time-temperature cycles;
d. Post heat treatment visual and macroscopic criteria for acceptance of the coated substrates;
4. ''Technology'' for quality assurance techniques for the evaluation of the coated substrates listed in the Table, as follows:
a. Statistical sampling criteria;
b. Microscopic criteria for:
1. Magnification;
2. Coating thickness, uniformity;
3. Coating integrity;
4. Coating composition;
5. Coating and substrates bonding;
6. Microstructural uniformity.
c. Criteria for optical properties assessment (measured as a function of wavelength):
1. Reflectance;
2. Transmission;
3. Absorption;
4. Scatter;
5. ''Technology'' and parameters related to specific coating and surface modification processes listed in the Table, as follows:
a. For Chemical Vapor Deposition (CVD):
1. Coating source composition and formulation;
2. Carrier gas composition;
3. Substrate temperature;
4. Time-temperature-pressure cycles;
5. Gas control and part manipulation;
b. For Thermal Evaporation-Physical Vapor Deposition (PVD):
1. Ingot or coating material source composition;
2. Substrate temperature;
3. Reactive gas composition;
4. Ingot feed rate or material vaporization rate;
5. Time-temperature-pressure cycles;
6. Beam and part manipulation;
7. ''Laser'' parameters, as follows:

a. Wave length;
b. Power density;
c. Pulse length;
d. Repetition ratio;
e. Source;
c. For Pack Cementation:
1. Pack composition and formulation;
2. Carrier gas composition;
3. Time-temperature-pressure cycles;
d. For Plasma Spraying:
1. Powder composition, preparation and size distributions;
2. Feed gas composition and parameters;
3. Substrate temperature;
4. Gun power parameters;
5. Spray distance;
6. Spray angle;
7. Cover gas composition, pressure and flow rates;
8. Gun control and part manipulation;
e. For Sputter Deposition:
1. Target composition and fabrication;
2. Geometrical positioning of part and target;
3. Reactive gas composition;
4. Electrical bias;
5. Time-temperature-pressure cycles;
6. Triode power;
7. Part manipulation;
f. For Ion Implantation:
1. Beam control and part manipulation;
2. Ion source design details;
3. Control techniques for ion beam and deposition rate parameters;
4. Time-temperature-pressure cycles.
g. For Ion Plating:
1. Beam control and part manipulation;
2. Ion source design details;
3. Control techniques for ion beam and deposition rate parameters;
4. Time-temperature-pressure cycles;
5. Coating material feed rate and vaporization rate;
6. Substrate temperature;
7. Substrate bias parameters.

2E018 "Technology" for the "use" of equipment controlled by 2B018.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to ''technology'' for equipment controlled by 2B018 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes, except N/A for Rwanda

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2E101 "Technology" according to the General Technology Note for the "use" of equipment or "software" controlled by 2B004, 2B009, 2B104, 2B105, 2B109, 2B116, 2B117, 2B119 to 2B122, 2D001, 2D002 or 2D101.

LICENSE REQUIREMENTS

Reason for Control: MT, NP, AT

Control(s)	Country chart
MT applies to ''technology'' for items controlled by 2B004, 2B009, 2B104, 2B105, 2B109, 2B116, 2B117, 2B119 to 2B122, 2D001, or 2D101 for MT reasons.	MT Column 1
NP applies to ''technology'' for items controlled by 2B004, 2B009, 2B104, 2B109, 2B116, 2D001, 2D002 or 2D101 for NP reasons.	NP Column 1
AT applies to entire entry.	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: (1) This entry controls only ''technology'' for 2B009 and 2B109 for spin forming machines combining the functions of spin forming and flow forming, and flow forming machines.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2E201 "Technology" according to the General Technology Note for the "use" of equipment or "software" controlled by 2A225, 2A226, 2B001, 2B006, 2B007.b, 2B007.c, 2B008, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232, 2D002, 2D201 or 2D202.

LICENSE REQUIREMENTS

Reason for Control: NP, CB, AT

Control(s)	Country chart
NP applies to entire entry, except 2B008.	NP Column 1.
CB applies to ''technology'' for valves controlled by 2A226 that meet or exceed the technical parameters in 2B350.g.	CB Column 2.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

2E290 "Technology" according to the General Technology Note for the "use" of equipment controlled by 2A290, 2A291, 2A292, 2A293, or 2B290.

LICENSE REQUIREMENTS

Reason for Control: NP, CB, AT

Control(s)	Country chart
NP applies to entire entry	NP Column 2.
CB applies to ''technology'' for valves controlled by 2A292 that meet or exceed the technical parameters in 2B350.g.	CB Column 2.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2E301 "Technology" according to the "General Technology Note" for the "use" of items controlled by 2B350, 2B351 and 2B352.

LICENSE REQUIREMENTS

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry	CB Column 2.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The lists of items controlled are contained in the ECCN headings.

2E983 "Technology" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A983, or the "development" of software controlled by 2D983.

LICENSE REQUIREMENTS

*Reason for Control:*RS, AT

Control(s)	Country chart
RS applies to entire entry	RS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

2E991 "Technology" for the "use" of equipment controlled by 2B991, 2B993, 2B996, or 2B997.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A.
Related Definitions: N/A.
Items: The list of items controlled is contained in the ECCN heading.

2E994 "Technology" for the "use" of portable electric generators controlled by 2A994.

LICENSE REQUIREMENTS

Reason for Control: AT
Control(s).

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya, and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Cuba and Iran. See §742.20 for additional information on Libya. See §742.19 of the EAR for additional information on North Korea.

NOTE: Exports from the U.S. and transhipments to Iran must be licensed by the Department of Treasury, Office of Foreign Assets Control. (See §742.8 and §746.7 of the EAR for additional information on this requirement.)

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A.
Related Definitions: N/A.
Items: The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere controlled by this CCL Category or in any other category in the CCL are designated by the number EAR99.

Category 3—Electronics

A. SYSTEMS, EQUIPMENT AND COMPONENTS

NOTE 1: The control status of equipment and components described in 3A001 or 3A002, other than those described in 3A001.a.3 to 3A001.a.10 or 3A001.a.12, which are specially designed for or which have the same functional characteristics as other equipment is determined by the control status of the other equipment.

NOTE 2: The control status of integrated circuits described in 3A001.a.3 to 3A001.a.9 or 3A001.a.12 that are unalterably programmed or designed for a specific function for other equipment is determined by the control status of the other equipment.

N.B.: When the manufacturer or applicant cannot determine the control status of the other equipment, the control status of the integrated circuits is determined in 3A001.a.3 to 3A001.a.9 and 3A001.a.12. If the integrated circuit is a silicon-based ''microcomputer microcircuit'' or microcontroller microcircuit described in 3A001.a.3 having an operand (data) word length of 8 bit or less, the control status of the integrated circuit is determined in 3A001.a.3.

3A001 Electronic components, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2
MT applies to 3A001.a.1.a when usable in ''missiles''; and to 3A001.a.5.a when ''designed or modified'' for military use, hermetically sealed and rated for operation in the temperature range from below −54 °C to above +125 °C.	MT Column 1
NP applies to pulse discharge capacitors in 3A001.e.2 and superconducting solenoidal electromagnets in 3A001.e.3 that meet or exceed the technical parameters in 3A201.a and 3A201.b, respectively.	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A for MT or NP.

Yes for:

$1500: 3A001.c

$3000: 3A001.b.1, b.2, b.3, .d, .e and .f

$5000: 3A001.a (except.a.1.a and a.5.a when controlled for MT), and .b.4 to b.7

GBS: Yes for 3A001.a.1.b, a.2 to a.12 (except .a.5.a when controlled for MT), b.2, and b.8 (except for TWTAs exceeding 18 GHz).

CIV: Yes for 3A001.a.3.b, a.3.c, a.4, a.7, and a.11.

LIST OF ITEMS CONTROLLED

Unit: Number.

Related Controls: (1) The following commodities are under the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121) when ''space qualified'' and operating at frequencies higher than 31.8 GHz: helix tubes (traveling wave tubes (TWT)) defined in 3A001.b.1.a.4.c; microwave solid state amplifiers defined in 3A001.b.4.b traveling wave tube amplifiers (TWTA) defined in 3A001.b.8; and derivatives thereof; (2) ''Space qualified'' and radiation hardened photovoltaic arrays, as defined in 3A001.e.1.c, having silicon cells or having single, dual or triple junction solar cells that have gallium arsenide as one of the junctions, are subject to the export licensing authority of the Department of Commerce. All other ''space qualified'' and radiation hardened photovoltaic arrays defined in 3A001.e.1.c and spacecraft/satellite concentrators and batteries are under the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121). *See also* 3A101, 3A201, and 3A991.

Related Definitions: For the purposes of integrated circuits in 3A001.a.1, 5×10^3 Gy(Si) = 5×10^5 Rads (Si); 5×10^6 Gy (Si)/s = 5×10^8 Rads (Si)/s. For purposes of photovoltaic arrays in 3A001.e.1.c, an array predominately consists of: a substrate; solar cells having silicon cells or having single, dual, and or triple junction solar cells that have gallium arsenide as one of the junctions; coverglass; ultra-violet coating(s); and bonding agent(s). Spacecraft/satellite: solar concentrators, power conditioners and or controllers, bearing and power transfer assembly, and or deployment hardware/systems are controlled under the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121).

Items:

a. General purpose integrated circuits, as follows:

NOTE 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

NOTE 2: Integrated circuits include the following types:

''Monolithic integrated circuits''

''Hybrid integrated circuits''

''Multichip integrated circuits''

''Film type integrated circuits'', including silicon-on-sapphire integrated circuits;

''Optical integrated circuits''

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher;

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher; *or*

a.1.c. A fluence (integrated flux) of neutrons (1 MeV equivalent) of 5×10^{13} n/cm^2 or higher on silicon, or its equivalent for other materials;

NOTE: 3A001.a.1.c does not apply to Metal Insulator Semiconductors (MIS).

a.2. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or ''optical integrated circuits'' designed for ''signal processing'', field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125 °C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55 °C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55 °C) to 398 K (125 °C);

NOTE: 3A001.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. ''Microprocessor microcircuits'', ''micro-computer microcircuits'' and microcontroller microcircuits, having any of the following characteristics:

NOTE: 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. [Reserved]

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; *or*

a.3.c. More than three data or instruction bus or serial communication ports, each providing direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate of 1000 Mbyte/s or greater;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1.A resolution of 8 bit or more, but less than 10 bit, an output rate greater than 500 million words per second;

a.5.a.2 A resolution of 10 bit or more, but less than 12 bit, with an output rate greater than 200 million words per second;

a.5.a.3. A resolution of 12 bit with an output rate greater than 50 million words per second;

a.5.a.4. A resolution of more than 12 bit but equal to or less than 14 bit with an output rate greater than 5 million words per second; *or*

a.5.a.5. A resolution of more than 14 bit with an output rate greater than 1 million words per second.

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a ''settling time'' of less than 10 ns;

TECHNICAL NOTES:

1. A resolution of n bit corresponds to a quantization of 2^n levels.

2. The number of bits in the output word is equal to the resolution of the analogue-to-digital converter.

3. The output rate is the maximum output rate of the converter, regardless of architecture or oversampling. Vendors may also refer to the output rate as sampling rate, conversion rate or throughput rate. It is often specified in megahertz (MHz) or mega samples per second (MSPS).

4. For the purpose of measuring output rate, one output word per second is equivalent to one Hertz or one sample per second.

a.6. Electro-optical and ''optical integrated circuits'' designed for ''signal processing'' having all of the following:

a.6.a. One or more than one internal ''laser'' diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical ''basic gate propagation delay time'' of less than 0.1 ns; *or*

a.7.c. A toggle frequency exceeding 133 MHz;

NOTE: 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. [Reserved]

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,000 terminals;

a.10.b. A typical ''basic gate propagation delay time'' of less than 0.1 ns; *or*

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than (N log2 N)/20,480 ms, where N is the number of points;

TECHNICAL NOTE: When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500 μs.

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

NOTE 1: 3A001.b.1 does not control tubes designed or rated for operation in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31.8 GHz; and

(b) Is ''allocated by the ITU'' for radiocommunications services, but not for radiodetermination.

NOTE 2: 3A001.b.1 does not control non-''space-qualified'' tubes which meet all the following characteristics:

(a) An average output power equal to or less than 50 W; *and*

(b) Designed or rated for operation in any frequency band which meets all of the following characteristics:

(1) Exceeds 31.8 GHz but does not exceed 43.5 GHz; *and*

(2) Is ''allocated by the ITU'' for radiocommunications services, but not for radiodetermination.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies exceeding 31.8 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with a ''fractional bandwidth'' of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An ''instantaneous bandwidth'' of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An ''instantaneous bandwidth'' of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. Being ''space qualified'';

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 A/cm^2;

b.2. Microwave monolithic integrated circuits (MMIC) power amplifiers having any of the following:

b.2.a. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6 GHz and with an average output power greater than 4W (36 dBm) with a ''fractional bandwidth'' greater than 15%;

b.2.b. Rated for operation at frequencies exceeding 6 GHz up to and including 16 GHz and with an average output power greater than 1W (30 dBm) with a ''fractional bandwidth'' greater than 10%;

b.2.c. Rated for operation at frequencies exceeding 16 GHz up to and including 31.8 GHz and with an average output power greater than 0.8W (29 dBm) with a ''fractional bandwidth'' greater than 10%;

b.2.d. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37.5 GHz;

b.2.e. Rated for operation at frequencies exceeding 37.5 GHz up to and including 43.5 GHz and with an average output power greater than 0.25W (24 dBm) with a ''fractional bandwidth'' greater than 10%; or

b.2.f. Rated for operation at frequencies exceeding 43.5 GHz.

NOTE 1: 3A001.b.2 does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz.

NOTE 2: The control status of the MMIC whose operating frequency spans more than one frequency range, as defined by 3A001.b.2., is determined by the lowest average output power control threshold.

NOTE 3: Notes 1 and 2 following the Category 3 heading for A. Systems, Equipment, and Components mean that 3A001.b.2. does not control MMICs if they are specially designed for other applications, *e.g.*, telecommunications, radar, automobiles.

b.3. Microwave transistors having any of the following:

b.3.a. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6 GHz and having an average output power greater than 60W (47.8 dBm);

b.3.b. Rated for operation at frequencies exceeding 6 GHz up to and including 31.8 GHz and having an average output power greater than 20W (43 dBm);

b.3.c. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37.5 GHz and having an average output power greater than 0.5W (27 dBm);

b.3.d. Rated for operation at frequencies exceeding 37.5 GHz up to and including 43.5 GHz and having an average output power greater than 1W (30 dBm); or

b.3.e. Rated for operation at frequencies exceeding 43.5 GHz.

NOTE: The control status of an item whose operating frequency spans more than one frequency range, as defined by 3A001.b.3, is determined by the lowest average output power control threshold.

b.4. Microwave solid state amplifiers and microwave assemblies/modules containing

microwave amplifiers having any of the following:

b.4.a. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6 GHz and with an average output power greater than 60W (47.8 dBm) with a ''fractional bandwidth'' greater than 15%;

b.4.b. Rated for operation at frequencies exceeding 6 GHz up to and including 31.8 GHz and with an average output power greater than 15W (42 dBm) with a ''fractional bandwidth'' greater than 10%;

b.4.c. Rated for operation at frequencies exceeding 31.8 GHz up to and including 37.5 GHz;

b.4.d. Rated for operation at frequencies exceeding 37.5 GHz up to and including 43.5 GHz and with an average output power greater than 1W (30 dBm) with a ''fractional bandwidth'' greater than 10%;

b.4.e. Rated for operation at frequencies exceeding 43.5 GHz; or

b.4.f. Rated for operation at frequencies above 3 GHz and all of the following:

b.4.f.1. An average output power (in watts), P, greater than 150 divided by the maximum operating frequency (in GHz) squared [$P > 150\ W^{*}GHz^{2}/f_{GHz}^{2}$];

b.4.f.2. A fractional bandwidth of 5% or greater; *and*

b.4.f.3. Any two sides perpendicular to one another with length d (in cm) equal to or less than 15 divided by the lowest operating frequency in GHz [$d \leq 15\ cm^{*}GHz/f_{GHz}$].

N.B. MMIC power amplifiers should be evaluated against the criteria in 3A001.b.2.

NOTE 1: 3A001.b.4. does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz.

NOTE 2: The control status of an item whose operating frequency spans more than one frequency range, as defined by 3A001.b.4, is determined by the lowest average output power control threshold.

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 µs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. [Reserved]

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm^3;

NOTE: 3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, ''signal processing'' devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in µs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 µs; *or*

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in µs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 µs; *or*

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (*i.e.*, ''signal processing'' devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic ''signal processing'' devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents, with any of the following:

d.1. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

NOTE: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm^3 (*e.g.*, standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

TECHNICAL NOTE: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. ''Space qualified'' and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28 °C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527 °C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. ''Superconductive'' electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

NOTE: 3A001.e.3 does not control ''superconductive'' electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or ''overall current density'' in the winding of more than 300 A/mm^2;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; *or*

f.2. An accuracy better than ±2.5 seconds of arc.

3A002 General purpose electronic equipment, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $3000: 3A002.a, .e, .f, .g; $5000: 3A002.b to .d

GBS: Yes for 3A002.a.1.; 3A002.b (synthesized output frequency of 2.6 GHz or less and a ''frequency switching time'' of 0.3 ms or more); and 3A002.d (synthesized output frequency of 2.6 GHz or less and a ''frequency switching time'' of 0.3 ms or more)

CIV: Yes for 3A002.a.1 (provided all of the following conditions are met: (1) Bandwidths do not exceed: 4 MHz per track and have up to 28 tracks or 2 MHz per track and have up to 42 tracks; (2) Tape speed does not exceed 6.1 m/s; (3) They are not designed for underwater use; (4) They are not ruggedized for military use; *and* (5) Recording density does not exceed 653.2 magnetic flux sine waves per mm); 3A002.b (synthesized output frequency of 2.6 GHz or less; and a ''frequency switching time'' of 0.3 ms or more), 3A002.d (synthesized output frequency of 2.6 GHz or less; and a ''frequency switching time'' of 0.3 ms or more).

LIST OF ITEMS CONTROLLED

Unit: Number.

Related Controls: ''Space qualified'' atomic frequency standards defined in 3A002.g.2 are subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121). See also 3A292 and 3A992.

Related Definitions: Constant percentage bandwidth filters are also known as octave or fractional octave filters.

Items:

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (*e.g.*, using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; or

a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than '' 0.1 :s;

NOTE: Analog magnetic tape recorders specially designed for civilian video purposes are not considered to be instrumentation tape recorders.

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 360 Mbit/s;

NOTE: 3A002.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU, the ETSI, or the IEEE for civil television applications.

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having any of the following:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; or

a.3.b. Being ''space qualified'';

NOTE: 3A002.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, having a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders having all of the following: N.B.: See also 3A292.

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; and

a.5.b. A continuous throughput of 2 Gbit/s or more;

TECHNICAL NOTE: For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

a.6. Digital instrumentation data recorders, using magnetic disk storage technique, having all of the following:

a.6.a. Digitizing rate equal to or more than 100 million samples per second and a resolution of 8 bits or more; and

a.6.b. A continuous throughput of 1 Gbit/s or more;

b. ''Frequency synthesizer'' ''electronic assemblies'' having a ''frequency switching time'' from one selected frequency to another of less than 1 ms;

c. Radio frequency ''signal analyzers'', as follows:

c.1. ''Signal analyzers'' capable of analyzing any frequencies exceeding 31.8 GHz but not exceeding 37.5 Ghz and having a 3 dB resolution bandwidth (RBW) exceeding 10 MHz;

c.2. ''Signal analyzers'' capable of analyzing frequencies exceeding 43.5 Ghz;

c.3. ''Dynamic signal analyzers'' having a ''real-time bandwidth'' exceeding 500 kHz;

NOTE: 3A002.c.3 does not control those ''dynamic signal analyzers'' using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31.8 GHz, but not exceeding 43.5 GHz and rated to generate a pulse duration of less than 100 ns;

d.2. A maximum synthesized frequency exceeding 43.5 GHz;

d.3. A ''frequency switching time'' from one selected frequency to another of less than 1 ms; or

d.4. A single sideband (SSB) phase noise better than $-(126 + 20 \log10F - 20 \log10f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

TECHNICAL NOTE: For the purposes of 3A002.d.1., 'pulse duration' is defined as the time interval between the leading edge of the pulse achieving 90% of the peak and the trailing edge of the pulse achieving 10% of the peak.

NOTE: 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 43.5 GHz;

f. Microwave test receivers having all of the following:

f.1. A maximum operating frequency exceeding 43.5 GHz; and

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having any of the following:

g.1. Long-term stability (aging) less (better) than $1 \times 10–11$/month; or

g.2. Being ''space qualified''.

NOTE: 3A002.g.1 does not control non-''space qualified'' rubidium standards.

3A003 Spray cooling thermal management systems employing closed loop fluid handling and reconditioning equipment in a sealed enclosure where a dielectric fluid is sprayed onto electronic components using specially designed spray nozzles that are designed to maintain electronic components within their operating temperature range, and specially designed components therefore.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number of systems, components in $
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3A101 Electronic equipment, devices and components, other than those controlled by 3A001, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: Items controlled in 3A101.a are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (See 22 CFR part 121).
Related Definitions: N/A
Items:

a. Analog-to-digital converters, usable in ''missiles'', designed to meet military specifications for ruggedized equipment;

b. Accelerators capable of delivering electromagnetic radiation produced by bremsstrahlung from accelerated electrons of 2 MeV or greater, and systems containing those accelerators, usable for the ''missiles'' or the subsystems of ''missiles''.

NOTE: 3A101.b above does not include equipment specially designed for medical purposes.

3A201 Electronic components, other than those controlled by 3A001, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: (1) *See* ECCNs 3E001 (''development'' and ''production'') and 3E201 (''use'') for technology for items controlled under this entry. (2) *Also see* 3A001.e.2 (capacitors) and 3A001.e.3 (superconducting electromagnets). (3) Superconducting electromagnets specially designed or prepared for use in separating uranium isotopes are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).
Related Definitions: N/A
Items:

a. Pulse discharge capacitors having either of the following sets of characteristics:

a.1. Voltage rating greater than 1.4 kV, energy storage greater than 10 J, capacitance greater than 0.5 µF, *and* series inductance less than 50 nH; *or*

a.2. Voltage rating greater than 750 V, capacitance greater than 0.25 µF, *and* series inductance less than 10 nH;

b. Superconducting solenoidal electromagnets having all of the following characteristics:

b.1. Capable of creating magnetic fields greater than 2 T;

b.2. A ratio of length to inner diameter greater than 2;

b.3. Inner diameter greater than 300 mm; *and*

b.4. Magnetic field uniform to better than 1% over the central 50% of the inner volume;

NOTE: 3A201.b does not control magnets specially designed for and exported ''as parts of'' medical nuclear magnetic resonance (NMR) imaging systems. The phrase ''as part of'' does not necessarily mean physical part in the same shipment; separate shipments from different sources are allowed, provided the related export documents clearly specify that the shipments are dispatched ''as part of'' the imaging systems.

c. Flash X-ray generators or pulsed electron accelerators having either of the following sets of characteristics:

c.1. An accelerator peak electron energy of 500 keV or greater, but less than 25 MeV, *and* with a ''figure of merit'' (K) of 0.25 or greater; *or*

c.2. An accelerator peak electron energy of 25 MeV or greater, *and* a ''peak power'' greater than 50 MW;

NOTE: 3A201.c does not control accelerators that are component parts of devices designed for purposes other than electron beam or X-ray radiation (electron microscopy, for example) nor those designed for medical purposes.

Technical Notes: (1) The ''figure of merit'' K is defined as: $K = 1.7 \times 10^3 V^{2.65} Q$. V is the peak electron energy in million electron volts. If the accelerator beam pulse duration is less than or equal to 1 μs, then Q is the total accelerated charge in Coulombs. If the accelerator beam pulse duration is greater than 1 μs, then Q is the maximum accelerated charge in 1 μs. Q equals the intergral of i with respect to t, over the lesser of 1 μs or the time duration of the beam pulse $Q = \int i dt$), where i is beam current in amperes and t is time in seconds.

(2) ''Peak power'' = (peak potential in volts) × (peak beam current in amperes).

(3) In machines based on microwave accelerating cavities, the time duration of the beam pulse is the lesser of 1 μs or the duration of the bunched beam packet resulting from one microwave modulator pulse.

(4) In machines based on microwave accelerating cavities, the peak beam current is the average current in the time duration of a bunched beam packet.

3A225 Frequency changers (also known as converters or inverters) or generators, other than those described in 0B001.c.11, having all of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number

Related Controls: (1) *See* ECCNs 3E001 (''development'' and ''production'') and 3E201 (''use'') for technology for items controlled under this entry. (2) Frequency changers (also known as converters or inverters) specially designed or prepared for use in separating uranium isotopes are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: N/A

Items: a. A multiphase output capable of providing a power of 40 W or more;

b. Capable of operating in the frequency range between 600 and 2000 Hz;

c. Total harmonic distortion below 10%; *and*

d. Frequency control better than 0.1%.

3A226 High-power direct current power supplies, other than those described in 0B001.j.6, having both of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) *See* ECCNs 3E001 (''development'' and ''production'') and 3E201 (''use'') for technology for items controlled under this entry. (2) Also *see* ECCN 3A227. (3) Direct current power supplies specially designed or prepared for use in separating uranium isotopes are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: N/A

Items:

a. Capable of continuously producing, over a time period of 8 hours, 100 V or greater with current output of 500 A or greater; *and*

b. Current or voltage stability better than 0.1% over a time period of 8 hours.

3A227 High-voltage direct current power supplies, other than those described in 0B001.j.5, having both of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) *See* ECCNs 3E001 (''development'' and ''production'') and 3E201 (''use'') for technology for items controlled under this entry. (2) Also *see* ECCN 3A226. (3) Direct current power supplies specially

designed or prepared for use in separating uranium isotopes are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: N/A

Items:

a. Capable of continuously producing, over a time period of 8 hours, 20 kV or greater with current output of 1 A or greater; *and*

b. Current or voltage stability better than 0.1% over a time period of 8 hours.

3A228 Switching devices, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number

Related Controls: (1) *See* ECCNs 3E001 (''development'' and ''production'') and 3E201 (''use'') for technology for items controlled under this entry.

(2) Also *see* ECCN 3A991.k.

Related Definitions: N/A

Items:

a. Cold-cathode tubes, whether gas filled or not, operating similarly to a spark gap, having all of the following characteristics:

a.1. Containing three or more electrodes;

a.2. Anode peak voltage rating of 2.5 kV or more;

a.3. Anode peak current rating of 100 A or more; *and*

a.4. Anode delay time of 10 µs or less.

Technical Note: 3A228.a includes gas krytron tubes and vacuum sprytron tubes.

b. Triggered spark-gaps having both of the following characteristics:

b.1. An anode delay time of 15 µs or less; *and*

b.2. Rated for a peak current of 500 A or more.

c. Modules or assemblies with a fast switching function having all of the following characteristics:

c.1. Anode peak voltage rating greater than 2 kV;

c.2. Anode peak current rating of 500 A or more; *and*

c.3. Turn-on time of 1 µs or less.

3A229 Firing sets and equivalent high-current pulse generators (for detonators controlled by 3A232), as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number

Related Controls: (1) *See* ECCNs 3E001 (''development'' and ''production'') and 3E201 (''use'') for technology for items controlled under this entry. (2) High explosives and related equipment for military use are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (*see* 22 CFR part 121).

Related Definitions: In 3A229.b.5, ''rise time'' is defined as the time interval from 10% to 90% current amplitude when driving a resistive load.

ECCN Controls: 3A229.b includes xenon flashlamp drivers.

Items:

a. Explosive detonator firing sets designed to drive multiple controlled detonators controlled by 3A232;

b. Modular electrical pulse generators (pulsers) having all of the following characteristics:

b.1. Designed for portable, mobile, or ruggedized use;

b.2. Enclosed in a dust-tight enclosure;

b.3. Capable of delivering their energy in less than 15 µs;

b.4. Having an output greater than 100 A;

b.5. Having a ''rise time'' of less than 10 µs into loads of less than 40 ohms;

b.6. No dimension greater than 254 mm;

b.7. Weight less than 25 kg; *and*

b.8. Specified for use over an extended temperature range 223 K (−50 °C) to 373 K (100 °C) or specified as suitable for aerospace applications.

3A230 High-speed pulse generators having both of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number

Related Controls: See ECCNs 3E001 (''development'' and ''production'') and 3E201 (''use'') for technology for items controlled under this entry.

Related Definitions: In 3A230.b, ''pulse transition time'' is defined as the time interval between 10% and 90% voltage amplitude.

Items:

a. Output voltage greater than 6 V into a resistive load of less than 55 ohms; *and*

b. ''Pulse transition time'' less than 500 ps.

3A231 Neutron generator systems, including tubes, having both of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number; parts and accessories in $ value

Related Controls: See ECCNs 3E001 (''development'' and ''production'') and 3E201 (''use'') for technology for items controlled under this entry.

Related Definitions: N/A

Items:

a. Designed for operation without an external vacuum system; and

b. Utilizing electrostatic acceleration to induce a tritium-deuterium nuclear reaction.

3A232 Detonators and multipoint initiation systems, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number

Related Controls: (1) See ECCNs 3E001 (''development'' and ''production'') and 3E201 (''use'') for technology for items controlled under this entry. (2) High explosives and related equipment for military use are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (*see* 22 CFR part 121).

Related Definitions: N/A

ECCN Controls: This entry does not control detonators using only primary explosives, such as lead azide.

Items:

a. Electrically driven explosive detonators, as follows:

a.1. Exploding bridge (EB);

a.2. Exploding bridge wire (EBW);

a.3. Slapper;

a.4. Exploding foil initiators (EFI);

b. Arrangements using single or multiple detonators designed to nearly simultaneously initiate an explosive surface over an area greater than 5,000 mm^2 from a single firing signal with an initiation timing spread over the surface of less than 2.5 µs.

Technical Note: The detonators controlled by this entry all utilize a small electrical conductor (bridge, bridge wire or foil) that explosively vaporizes when a fast, high-current electrical pulse is passed through it. In nonslapper types, the exploding conductor starts a chemical detonation in a contacting high-explosive material, such as PETN (Pentaerythritoltetranitrate). In slapper detonators, the explosive vaporization of the electrical conductor drives a flyer or slapper across a gap and the impact of the slapper on an explosive starts a chemical detonation. The slapper in some designs is driven by a magnetic force. The term exploding foil detonator may refer to either a EB or a slapper-type detonator. Also, the word initiator is sometimes used in place of the word detonator.

3A233 Mass spectrometers, other than those described in 0B002.g, capable of measuring ions of 230 atomic mass units or greater and having a resolution of better than 2 parts in 230, and ion sources therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number

Related Controls: (1) *See* ECCNs 3E001 (''development'' and ''production'') and 3E201 (''use'') for technology for items controlled under this entry. (2) Mass spectrometers specially designed or prepared for analyzing on-line samples of UF_6 gas streams

are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: N/A

Items:

a. Inductively coupled plasma mass spectrometers (ICP/MS);

b. Glow discharge mass spectrometers (GDMS);

c. Thermal ionization mass spectrometers (TIMS);

d. Electron bombardment mass spectrometers that have a source chamber constructed from, lined with or plated with materials resistant to UF_6;

e. Molecular beam mass spectrometers having either of the following characteristics:

e.1. A source chamber constructed from, lined with or plated with stainless steel or molybdenum and equipped with a cold trap capable of cooling to 193 K (−80 °C) or less; *or*

e.2. A source chamber constructed from, lined with or plated with materials resistant to UF_6;

f. Mass spectrometers equipped with a microfluorination ion source designed for actinides or actinide fluorides.

3A292 Oscilloscopes and transient recorders other than those controlled by 3A002.a.5, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number

Related Controls: See ECCN 3E292 (''development'', ''production'', and ''use'') for technology for items controlled under this entry.

Related Definitions: ''Bandwidth'' is defined as the band of frequencies over which the deflection on the cathode ray tube does not fall below 70.7% of that at the maximum point measured with a constant input voltage to the oscilloscope amplifier.

Items: a. Non-modular analog oscilloscopes having a bandwidth of 1 GHz or greater;

b. Modular analog oscilloscope systems having either of the following characteristics:

b.1. A mainframe with a bandwidth of 1 GHz or greater; *or*

b.2. Plug-in modules with an individual bandwidth of 4 GHz or greater;

c. Analog sampling oscilloscopes for the analysis of recurring phenomena with an effective bandwidth greater than 4 GHz;

d. Digital oscilloscopes and transient recorders, using analog-to-digital conversion techniques, capable of storing transients by sequentially sampling single-shot inputs at successive intervals of less than 1 ns (greater than 1 giga-sample per second), digitizing to 8 bits or greater resolution and storing 256 or more samples.

NOTE: Specially designed components controlled by this item are the following, for analog oscilloscopes:

1. Plug-in units;
2. External amplifiers;
3. Pre-amplifiers;
4. Sampling devices;
5. Cathode ray tubes.

3A980 Voice print identification and analysis equipment and parts, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

3A981 Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; electronic monitoring restraint devices; and specially designed parts and accessories, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

3A991 Electronic devices and components not controlled by 3A001.

LICENSE REQUIREMENTS

Reason for Control: AT.

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

See §§740.19 and 742.20 of the EAR for additional information on Libya.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits having any of the following:

a.1. A ''composite theoretical performance'' (''CTP'') of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more;

a.2. A clock frequency rate exceeding 25 MHz; *or*

a.3. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate of 2.5 Mbyte/s.

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; *or*

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; *or*

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; *or*

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Analog-to-digital converters having any of the following:

c.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 10 ns;

c.2. A resolution of 12 bit with a total conversion time of less than 200 ns;

c.3. A resolution of more than 12 bit but equal to or less than 14 bit with a total conversion time of less than 2 µs; *or*

c.4. A resolution of more than 14 bit with a total conversion time of less than 2 µs;

d. Field programmable logic devices having either of the following:

d.1. An equivalent gate count of more than 5000 (2 input gates); *or*

d.2. A toggle frequency exceeding 100 MHz;

e. Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms.

f. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

f.1. More than 144 terminals; *or*

f.2. A typical ''basic propagation delay time'' of less than 0.4 ns.

g. Traveling wave tubes, pulsed or continuous wave, as follows:

g.1. Coupled cavity tubes, or derivatives thereof;

g.2. Helix tubes, or derivatives thereof, with any of the following:

g.2.a. An ''instantaneous bandwidth'' of half an octave or more; *and*

g.2.b. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

g.2.c. An ''instantaneous bandwidth'' of less than half an octave; *and*

g.2.d. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

h. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

i. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.,* ''signal processing'' devices employing elastic waves in materials), having either of the following:

i.1. A carrier frequency exceeding 1 GHz; *or*

i.2. A carrier frequency of 1 GHz or less; *and*

i.2.a. A frequency side-lobe rejection exceeding 55 Db;

i.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

i.2.c. A dispersive delay of more than 10 microseconds.

j. Batteries, as follows:

NOTE: 3A991.j does not control batteries with volumes equal to or less than 27 cm^3 (*e.g.,* standard C-cells or UM–2 batteries).

j.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

j.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal

capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

TECHNICAL NOTE: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

k. ''Superconductive'' electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, having all of the following:

NOTE: 3A991.k does not control ''superconductive'' electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

k.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

k.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

k.3. Rated for a magnetic induction of more than 8T or ''overall current density'' in the winding of more than 300 A/mm^2.

l. Circuits or systems for electromagnetic energy storage, containing components manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents, having all of the following:

1.1. Resonant operating frequencies exceeding 1 MHz;

1.2. A stored energy density of 1 MJ/M^3 or more; *and*

1.3. A discharge time of less than 1 ms;

m. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

n. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

3A992 General purpose electronic equipment not controlled by 3A002.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1.

See §§740.19 and 742.20 of the EAR for additional information on Libya.

LICENSE EXCEPTIONS

LVS: $1000 for Syria for .a only
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: a. Electronic test equipment, n.e.s.

b. Digital instrumentation magnetic tape data recorders having any of the following characteristics;

b.1. A maximum digital interface transfer rate exceeding 60 Mbit/s and employing helical scan techniques;

b.2. A maximum digital interface transfer rate exceeding 120 Mbit/s and employing fixed head techniques; or

b.3. ''Space qualified'';

c. Equipment, with a maximum digital interface transfer rate exceeding 60 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

3A999 Specific Processing Equipment, n.e.s., as Follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT.
Control(s).
Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 of the EAR for additional information.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: See also 0B002, 3A225 (for frequency changes capable of operating in the frequency range of 600 Hz and above), 3A233.
Related Definitions: N/A.
Items:

a. Frequency changers capable of operating in the frequency range from 300 up to 600 Hz, n.e.s;

b. Mass spectrometers n.e.s;

c. All flash x-ray machines, and components of pulsed power systems designed thereof, including Marx generators, high power pulse shaping networks, high voltage capacitors, and triggers;

d. Pulse amplifiers, n.e.s.;

e. Electronic equipment for time delay generation or time interval measurement, as follows:

e.1. Digital time delay generators with a resolution of 50 nanoseconds or less over time intervals of 1 microsecond or greater; *or*

e.2. Multi-channel (three or more) or modular time interval meter and chronometry equipment with resolution of 50 nanoseconds or less over time intervals of 1 microsecond or greater;

f. Chromatography and spectrometry analytical instruments.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

3B001 Equipment for the manufacturing of semiconductor devices or materials, as follows (see List of Items Controlled), and specially designed components and accessories therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $500

GBS: ''Yes, except 3B001. a.2 (metal organic chemical vapor deposition reactors), a.3 (molecular beam epitaxial growth equipment using gas sources), e (automatic loading multi-chamber central wafer handling systems *only* if connected to equipment controlled by 3B001.a.2 and a.3, and f), or f (lithography equipment).

CIV: Yes for equipment controlled by 3B001.a.1

LIST OF ITEMS CONTROLLED

Unit: Number.

Related Controls: See also 3B991.

Related Definitions: N/A.

Items:

a. Equipment designed for epitaxial growth, as follows:

a.1. Equipment capable of producing any of the following:

a.1.a. A silicon layer with a thickness uniform to less than '' 2.5% across a distance of 200 mm or more; *or*

a.1.b. A layer of any material other than silicon with a thickness uniform to less than ±2.5% across a distance of 75 mm or more;

a.2. Metal organic chemical vapor deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C003 or 3C004;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. Equipment designed for ion implantation, having any of the following:

b.1. A beam energy (accelerating voltage) exceeding 1MeV;

b.2. Being specially designed and optimized to operate at a beam energy (accelerating voltage of less than 2 keV;

b.3. Direct write capability; *or*

b.4. A beam energy of 65 keV or more and a beam current of 45 mA or more for high energy oxygen implant into a heated semiconductor material ''substrate'';

c. Anisotropic plasma dry etching equipment, as follows:

c.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

c.1.a. Designed or optimized to produce critical dimensions of 180 nm or less with ±5% 3 sigma precision; *or*

c.1.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 µm in diameter;

c.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

c.2.a. Designed or optimized to produce critical dimensions of 180 nm or less with ±5% 3 sigma precision; *or*

c.2.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 µm in diameter;

d. Plasma enhanced CVD equipment, as follows:

d.1. Equipment with cassette-to-cassette operation and load-locks, and designed according to the manufacturer's specifications or optimized for use in the production of semiconductor devices with critical dimensions of 180 nm or less;

d.2. Equipment specially designed for equipment controlled by 3B001.e. and designed according to the manufacturer's specifications or optimized for use in the production of semiconductor devices with critical dimensions of 180 nm or less;

e. Automatic loading multi-chamber central wafer handling systems, having all of the following:

e.1. Interfaces for wafer input and output, to which more than two pieces of semiconductor processing equipment are to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for sequential multiple wafer processing;

NOTE: 3B001.e. does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. Lithography equipment, as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 245 nm; *or*

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 180 nm or less;

TECHNICAL NOTE: The minimum resolvable feature size is calculated by the following formula:

MRF =

$$\frac{\text{(an exposure light source wavelength in } \mu\text{m)} \times \text{(K factor)}}{\text{numerical aperture}}$$

where the K factor = 0.45
MRF = minimum resolvable feature size.

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focused electron beam, ion beam or ''laser'' beam, having any of the following:

f.2.a. A spot size smaller than 0.2 µm;

f.2.b. Being capable of producing a pattern with a feature size of less than 1 µm; *or*

f.2.c. An overlay accuracy of better than ±0.20 µm (3 sigma);

g. Masks and reticles designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer.

NOTE: 3B001.h. does not control multi-layer masks with a phase shift layer designed for the fabrication of memory devices not controlled by 3A001.

3B002 "Test equipment, specially designed for testing finished or unfinished semiconductor devices, as follows (see List of Items Controlled), and specially designed components and accessories therefor

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $500
GBS: Yes
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number.
Related Controls: See also 3B992.
Related Definitions: N/A.
Items:

a. For testing S-parameters of transistor devices at frequencies exceeding 31.8 GHz;

b. [Reserved]

c. For testing microwave integrated circuits controlled by 3A001.b.2.

3B991 Equipment not controlled by 3B001 for the manufacture of electronic components and materials, and specially designed components and accessories therefor.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number.
Related Controls: N/A.
Related Definitions: 'Sputtering' is an overlay coating process wherein positively charged ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on the substrate. (**Note:** Triode, magnetron or radio frequency sputtering to increase adhesion of coating and rate of deposition are ordinary modifications of the process.)
Items:

a. Equipment specially designed for the manufacture of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the manufacture of semiconductor devices, integrated circuits and ''electronic assemblies'', as follows, and systems incorporating or having the characteristics of such equipment:

NOTE: 3B991.b also controls equipment used or modified for use in the manufacture of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of 3B991.b, as follows:

NOTE: 3B991 does not control quartz furnace tubes, furnace liners, paddles, boats (except specially designed caged boats), bubblers, cassettes or crucibles specially designed for the processing equipment controlled by 3B991.b.1.

b.1.a. Equipment for producing polycrystalline silicon and materials controlled by 3C001;

b.1.b. Equipment specially designed for purifying or processing III/V and II/VI semiconductor materials controlled by 3C001, 3C002, 3C003, or 3C004, except crystal pullers, for which see 3B991.b.1.c below;

b.1.c. Crystal pullers and furnaces, as follows:

NOTE: 3B991.b.1.c does not control diffusion and oxidation furnaces.

b.1.c.1. Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 m^2 per minute;

b.1.c.2. ''Stored program controlled'' crystal pullers having any of the following characteristics:

b.1.c.2.a. Rechargeable without replacing the crucible container;

b.1.c.2.b. Capable of operation at pressures above 2.5×10^5 Pa; *or*

b.1.c.2.c. Capable of pulling crystals of a diameter exceeding 100 mm;

b.1.d. ''Stored program controlled'' equipment for epitaxial growth having any of the following characteristics:

b.1.d.1. Capable of producing a layer thickness uniformity across the wafer of equal to or better than ±3.5%; *or*

b.1.d.2. Rotation of individual wafers during processing;

b.1.e. Molecular beam epitaxial growth equipment;

b.1.f. Magnetically enhanced ''sputtering'' equipment with specially designed integral load locks capable of transferring wafers in an isolated vacuum environment;

b.1.g. Equipment specially designed for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

b.1.g.1. Patterning capability;

b.1.g.2. Beam energy (accelerating voltage) exceeding 200 keV;

b.1.g.3. Optimized to operate at a beam energy (accelerating voltage) of less than 10 keV; *or*

b.1.g.4. Capable of high energy oxygen implant into a heated ''substrate'';

b.1.h. ''Stored program controlled'' equipment for the selective removal (etching) by means of anisotropic dry methods (*e.g.*, plasma), as follows:

b.1.h.1. Batch types having either of the following:

b.1.h.1.a. End-point detection, other than optical emission spectroscopy types; *or*

b.1.h.1.b. Reactor operational (etching) pressure of 26.66 Pa or less;

b.1.h.2. Single wafer types having any of the following:

b.1.h.2.a. End-point detection, other than optical emission spectroscopy types;

b.1.h.2.b. Reactor operational (etching) pressure of 26.66 Pa or less; *or*

b.1.h.2.c. Cassette-to-cassette and load locks wafer handling;

NOTES: 1. ''Batch types'' refers to machines not specially designed for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, *e.g.*, RF power, temperature, etch gas species, flow rates.

2. ''Single wafer types'' refers to machines specially designed for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, *e.g.*, RF power or end point, can be independently determined for each individual wafer.

b.1.i. ''Chemical vapor deposition'' (CVD) equipment, *e.g.*, plasma-enhanced CVD (PECVD) or photo-enhanced CVD, for semiconductor device manufacturing, having either of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon:

b.1.i.1. ''Chemical vapor deposition'' equipment operating below 10^5 Pa; *or*

b.1.i.2. PECVD equipment operating either below 60 Pa (450 millitorr) or having automatic cassette-to-cassette and load lock wafer handling;

NOTE: 3B991.b.1.i does not control low pressure ''chemical vapor deposition'' (LPCVD) systems or reactive ''sputtering'' equipment.

b.1.j. Electron beam systems specially designed or modified for mask making or semiconductor device processing having any of the following characteristics:

b.1.j.1. Electrostatic beam deflection;

b.1.j.2. Shaped, non-Gaussian beam profile;

b.1.j.3. Digital-to-analog conversion rate exceeding 3 MHz;

b.1.j.4. Digital-to-analog conversion accuracy exceeding 12 bit; *or*

b.1.j.5. Target-to-beam position feedback control precision of 1 micrometer or finer;

NOTE: 3B991.b.1.j does not control electron beam deposition systems or general purpose scanning electron microscopes.

b.1.k. Surface finishing equipment for the processing of semiconductor wafers as follows:

b.1.k.1. Specially designed equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; *or*

b.1.k.2. Specially designed equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

NOTE: 3B991.b.1.k does not control single-side lapping and polishing equipment for wafer surface finishing.

b.1.l. Interconnection equipment which includes common single or multiple vacuum chambers specially designed to permit the integration of any equipment controlled by 3B991 into a complete system;

b.1.m. ''Stored program controlled'' equipment using ''lasers'' for the repair or trimming of ''monolithic integrated circuits'' with either of the following characteristics:

b.1.m.1. Positioning accuracy less than ±1 micrometer; *or*

b.1.m.2. Spot size (kerf width) less than 3 micrometer.

b.2. Masks, mask ''substrates'', mask-making equipment and image transfer equipment for the manufacture of devices and components as specified in the heading of 3B991, as follows:

NOTE: The term ''masks'' refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.

b.2.a. Finished masks, reticles and designs therefor, except:

b.2.a.1. Finished masks or reticles for the production of unembargoed integrated circuits; *or*

b.2.a.2. Masks or reticles, having both of the following characteristics:

b.2.a.2.a. Their design is based on geometries of 2.5 micrometer or more; *and*

b.2.a.2.b. The design does not include special features to alter the intended use by means of production equipment or ''software'';

b.2.b. Mask ''substrates'' as follows:

b.2.b.1. Hard surface (*e.g.*, chromium, silicon, molybdenum) coated ''substrates'' (*e.g.*, glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm ×125 mm; *or*

b.2.b.2. ''Substrates'' specially designed for X-ray masks;

b.2.c. Equipment, other than general purpose computers, specially designed for computer aided design (CAD) of semiconductor devices or integrated circuits;

b.2.d. Equipment or machines, as follows, for mask or reticle fabrication:

b.2.d.1. Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm x 100 mm, or capable of producing a single exposure larger than 6 mm x 6 mm in the image (*i.e.*, focal) plane, or capable of producing line widths of less than 2.5 micrometer in the photoresist on the ''substrate'';

b.2.d.2. Mask or reticle fabrication equipment using ion or ''laser'' beam lithography capable of producing line widths of less than 2.5 micrometer; *or*

b.2.d.3. Equipment or holders for altering masks or reticles or adding pellicles to remove defects;

NOTE: 3B991.b.2.d.1 and b.2.d.2 do not control mask fabrication equipment using photo-optical methods which was either commercially available before the 1st January, 1980, or has a performance no better than such equipment.

b.2.e. ''Stored program controlled'' equipment for the inspection of masks, reticles or pellicles with:

b.2.e.1. A resolution of 0.25 micrometer or finer; *and*

b.2.e.2. A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

NOTE: 3B991.b.2.e does not control general purpose scanning electron microscopes except when specially designed and instrumented for automatic pattern inspection.

b.2.f. Align and expose equipment for wafer production using photo-optical or X-ray methods, *e.g.*, lithography equipment, including both projection image transfer equipment and step and repeat (direct step on wafer) or step and scan (scanner) equipment, capable of performing any of the following functions:

NOTE: 3B991.b.2.f does not control photo-optical contact and proximity mask align and expose equipment or contact image transfer equipment.

b.2.f.1. Production of a pattern size of less than 2.5 micrometer;

b.2.f.2. Alignment with a precision finer than ±0.25 micrometer (3 sigma);

b.2.f.3. Machine-to-machine overlay no better than ±0.3 micrometer; *or*

b.2.f.4. A light source wavelength shorter than 400 nm;

b.2.g. Electron beam, ion beam or X-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometer;

NOTE: For focused, deflected-beam systems (direct write systems), see 3B991.b.1.j or b.10.

b.2.h. Equipment using ''lasers'' for direct write on wafers capable of producing patterns less than 2.5 micrometer.

b.3. Equipment for the assembly of integrated circuits, as follows:

b.3.a. ''Stored program controlled'' die bonders having all of the following characteristics:

b.3.a.1. Specially designed for ''hybrid integrated circuits'';

b.3.a.2. X–Y stage positioning travel exceeding 37.5 x 37.5 mm; *and*

b.3.a.3. Placement accuracy in the X–Y plane of finer than ±10 micrometer;

b.3.b. ''Stored program controlled'' equipment for producing multiple bonds in a single operation (*e.g.*, beam lead bonders, chip carrier bonders, tape bonders);

b.3.c. Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled by 3A001 and that have a throughput equal to or more than one package per minute.

NOTE: 3B991.b.3 does not control general purpose resistance type spot welders.

b.4. Filters for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometer or smaller per 0.02832 m^3 and filter materials therefor.

3B992 Equipment not controlled by 3B002 for the inspection or testing of electronic components and materials, and specially designed components and accessories therefor;

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1.

See §§740.19 and 742.20 of the EAR for additional information on Libya.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Equipment specially designed for the inspection or testing of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the inspection or testing of semiconductor devices, integrated circuits and ''electronic assemblies'', as follows, and systems incorporating or having the characteristics of such equipment:

NOTE: 3B992.b also controls equipment used or modified for use in the inspection or testing of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. ''Stored program controlled'' inspection equipment for the automatic detection of defects, errors or contaminants of 0.6 micrometer or less in or on processed wafers, ''substrates'', other than printed circuit boards or chips, using optical image acquisition techniques for pattern comparison;

NOTE: 3B992.b.1 does not control general purpose scanning electron microscopes, except when specially designed and instrumented for automatic pattern inspection.

b.2. Specially designed ''stored program controlled'' measuring and analysis equipment, as follows:

b.2.a. Specially designed for the measurement of oxygen or carbon content in semiconductor materials;

b.2.b. Equipment for line width measurement with a resolution of 1 micrometer or finer;

b.2.c. Specially designed flatness measurement instruments capable of measuring deviations from flatness of 10 micrometer or less with a resolution of 1 micrometer or finer.

b.3. ''Stored program controlled'' wafer probing equipment having any of the following characteristics:

b.3.a. Positioning accuracy finer than 3.5 micrometer;

b.3.b. Capable of testing devices having more than 68 terminals; *or*

b.3.c. Capable of testing at a frequency exceeding 1 GHz;

b.4. Test equipment as follows:

b.4.a. ''Stored program controlled'' equipment specially designed for testing discrete semiconductor devices and unencapsulated dice, capable of testing at frequencies exceeding 18 GHz;

TECHNICAL NOTE: Discrete semiconductor devices include photocells and solar cells.

b.4.b. ''Stored program controlled'' equipment specially designed for testing integrated circuits and ''electronic assemblies'' thereof, capable of functional testing:

b.4.b.1. At a 'pattern rate' exceeding 20 MHz; *or*

b.4.b.2. At a 'pattern rate' exceeding 10 MHz but not exceeding 20 MHz and capable of testing packages of more than 68 terminals.

NOTES: 3B992.b.4.b does not control test equipment specially designed for testing:

1. memories;

2. ''Assemblies'' or a class of ''electronic assemblies'' for home and entertainment applications; and

3. Electronic components, ''assemblies'' and integrated circuits not controlled by 3A001 or 3A991 provided such test equipment does not incorporate computing facilities with ''user accessible programmability''.

TECHNICAL NOTE: For purposes of 3B992.b.4.b, 'pattern rate' is defined as the maximum frequency of digital operation of a tester. It is therefore equivalent to the highest data rate that a tester can provide in non-multiplexed mode. It is also referred to as test speed, maximum digital frequency or maximum digital speed.

b.4.c. Equipment specially designed for determining the performance of focal-plane arrays at wavelengths of more than 1,200 nm, using ''stored program controlled'' measurements or computer aided evaluation and having any of the following characteristics:

b.4.c.1. Using scanning light spot diameters of less than 0.12 mm;

b.4.c.2. Designed for measuring photosensitive performance parameters and for evaluating frequency response, modulation transfer function, uniformity of responsivity or noise; *or*

b.4.c.3. Designed for evaluating arrays capable of creating images with more than 32 x 32 line elements;

b.5. Electron beam test systems designed for operation at 3 keV or below, or ''laser'' beam systems, for non-contactive probing of powered-up semiconductor devices having any of the following:

b.5.a. Stroboscopic capability with either beam blanking or detector strobing;

b.5.b. An electron spectrometer for voltage measurements with a resolution of less than 0.5 V; *or*

b.5.c. Electrical tests fixtures for performance analysis of integrated circuits;

NOTE: 3B992.b.5 does not control scanning electron microscopes, except when specially designed and instrumented for non-contactive probing of a powered-up semiconductor device.

b.6. ''Stored program controlled'' multifunctional focused ion beam systems specially designed for manufacturing, repairing, physical layout analysis and testing of

masks or semiconductor devices and having either of the following characteristics:

b.6.a. Target-to-beam position feedback control precision of 1 micrometer or finer; *or*

b.6.b. Digital-to-analog conversion accuracy exceeding 12 bit;

b.7. Particle measuring systems employing ''lasers'' designed for measuring particle size and concentration in air having both of the following characteristics:

b.7.a. Capable of measuring particle sizes of 0.2 micrometer or less at a flow rate of 0.02832 m^3 per minute or more; *and*

b.7.b. Capable of characterizing Class 10 clean air or better.

C. MATERIALS

3C001 Hetero-epitaxial materials consisting of a "substrate" having stacked epitaxially grown multiple layers of any of the following (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: This entry does not control equipment or material whose functionality has been unalterably disabled are not controlled.

Related Definitions: III/V compounds are polycrystalline or binary or complex monocrystalline products consisting of elements of groups IIIA and VA of Mendeleyev's periodic classification table (e.g., gallium arsenide, gallium-aluminium arsenide, indium phosphide).

Items:

a. Silicon;

b. Germanium;

c. Silicon Carbide; *or*

d. III/V compounds of gallium or indium.

3C002 Resist material and "substrates" coated with controlled resists.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: Yes for positive resists not optimized for photolithography at a wavelength of less than 365 nm, provided that they are not controlled by 3C002.b through .d.
CIV: Yes for positive resists not optimized for photolithography at a wavelength of less than 365 nm, provided that they are not controlled by 3C002.b through .d.

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: Silylation techniques are defined as processes incorporating oxidation of the resist surface to enhance performance for both wet and dry developing.

Items:

a. Positive resists designed for semiconductor lithography specially adjusted (optimized) for use at wavelengths below 350 nm;

b. All resists designed for use with electron beams or ion beams, with a sensitivity of 0.01 µcoulomb/mm^2 or better;

c. All resists designed for use with X-rays, with a sensitivity of 2.5 mJ/mm^2 or better;

d. All resists optimized for surface imaging technologies, including silylated resists.

3C003 Organo-inorganic compounds, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: This entry controls only compounds whose metallic, partly metallic or non-metallic element is directly linked to carbon in the organic part of the molecule.

Related Definition: N/A

Items: a. Organo-metallic compounds of aluminium, gallium or indium having a purity (metal basis) better than 99.999%;

b. Organo-arsenic, organo-antimony and organo-phosphorus compounds having a purity (inorganic element basis) better than 99.999%.

3C004 Hydrides of phosphorus, arsenic or antimony, having a purity better than 99.999%, even diluted in inert gases or hydrogen.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: N/A
Items:

The list of items controlled is contained in the ECCN heading.

NOTE: This entry does not control hydrides containing 20% molar or more of inert gases or hydrogen.

3C992 Positive resists designed for semiconductor lithography specially adjusted (optimized) for use at wavelengths between 370 and 350 nm.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS
LVS: N/A
GBS: N/A
CIV: N/A
LIST OF ITEMS CONTROLLED
Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

D. SOFTWARE

3D001 "Software" specially designed for the "development" or "production" of equipment controlled by 3A001.b to 3A002.g or 3B (except 3B991 and 3B992).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to ''software'' for equipment controlled by 3A001.b to 3A001.f, 3A002, and 3B.	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except for ''software'' specially designed for the ''development'' or ''production'' of Traveling Wave Tube Amplifiers described in 3A001.b.8 having operating frequencies exceeding 18 GHz.

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: ''Software'' specially designed for the ''development'' or ''production'' of the following equipment is under the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121): (a) When operating at frequencies higher than 31 GHz and ''space qualified'': Helix tubes (traveling wave tubes (TWT)) defined in 3A001.b.1.a.4.c; microwave solid state amplifiers defined in 3A001.b.4.b; microwave ''assemblies'' defined in 3A001.b.6; and traveling wave tube amplifiers (TWTA) defined in 3A001.b.8; (b) ''Space qualified'' and radiation hardened photovoltaic arrays defined in 3A001.e.1.c (*i.e.*, not having silicon cells or single, dual or triple junction solar cells that have gallium arsenide as one of the junctions), spacecraft/satellite solar concentrators and batteries; and (c) ''Space qualified'' atomic frequency standards defined in 3A002.g.2. See also 3D101

Related Definitions: For purposes of photovoltaic arrays in 3A001.e.1.c, an array predominately consists of: a substrate; solar cells having silicon cells or having single, dual, and or triple junction solar cells that have gallium arsenide as one of the junctions; coverglass; ultra-violet coating(s); and bonding agent(s). Spacecraft/satellite: solar concentrators, power conditioners and or controllers, bearing and power transfer assembly, and or deployment hardware/systems are controlled under the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121).

Items: The list of items controlled is contained in the ECCN heading.

3D002 "Software" specially designed for the "use" of any of the following (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Equipment controlled by 3B001.a. to f.; *or*
b. Equipment controlled by 3B002.

3D003 Physics-based simulation "software" specially designed for the "development" of lithographic, etching or deposition processes for translating masking patterns into specific topographical patterns in conductors, dielectrics or semiconductor materials.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: N/A
Related Definitions: (1) Libraries, design attributes or associated data for the design of semiconductor devices or integrated circuits are considered as ''technology''. (2) 'Physics-based' in 3D003 means using computations to determine a sequence of physical cause and effect events based on physical properties (*e.g.*, temperature, pressure, diffusion constants and semiconductor materials properties).
Items: The list of items controlled is contained in the ECCN heading.

3D004 "Software" specially designed for the "development" of the equipment controlled by 3A003.

LICENSE REQUIREMENTS
Reason for Control: NS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS
CIV: N/A
TSR: Yes
LIST OF ITEMS CONTROLLED
Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3D101 "Software" specially designed or modified for the "use" of equipment controlled by 3A101.b.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3D980 "Software" specially designed for the "development", "production", or "use" of items controlled by 3A980 and 3A981.

LICENSE REQUIREMENTS

Reason for Control: CC, AT

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

3D991 "Software" specially designed for the "development", "production", or "use" of electronic devices or components controlled by 3A991, general purpose electronic equipment controlled by 3A992, or manufacturing and test equipment controlled by 3B991 and 3B992; or "software" specially designed for the "use" of equipment controlled by 3B001.g and .h.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

3E001 "Technology" according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 or 3B992) or 3C.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, AT

Control(s)	Country chart
NS applies to ''technology'' for items controlled by 3A001, 3A002, 3B001, 3B002, or 3C001 to 3C004.	NS Column 1.
MT applies to ''technology'' for equipment controlled by 3A001 or 3A101 for MT reasons.	MT Column 1.
NP applies to ''technology'' for equipment controlled by 3A001, 3A201, or 3A225 to 3A233 for NP reasons.	NP Column 1.
AT applies to entire entry	AT Column 1.

License Requirement Note: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: Yes for deemed exports, as described in §734.2(b)(2)(ii) of the EAR, of technology for the development or production of microprocessor microcircuits, micro-computer microcircuits, and microcontroller microcircuits having the characteristics described in 3A001.a.3.c with a CTP less than or equal to 40,000 MTOPS (regardless of word length or access width). Deemed exports under License Exception CIV are subject to a Foreign National Review (FNR) requirement, see §740.5 of the EAR for more information about the FNR. License Exception CIV does not apply to ECCN 3E001 technology for 3A001.a.3.c required for the development or production of other items controlled under ECCNs beginning with 3A, 3B, or 3C, or to ECCN 3E001 technology also controlled under ECCN 3E003.

TSR: Yes, except N/A for MT, and ''technology'' specially designed for the ''development'' or ''production'' of Traveling Wave Tube Amplifiers described in 3A001.b.8 having operating frequencies exceeding 18 GHz.

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: (1.) See also 3E101 and 3E201. (2.) 3E001 does not control ''technology'' for the ''development'' or ''production'' of: (a) Microwave transistors operating at frequencies below 31 GHz; (b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following: 1. Using ''technology'' of 0.7 micrometer or more, AND 2. Not incorporating multi-layer structures. (3.) The term multi-layer structures in this entry does not include devices incorporating a maximum of two metal layers and two polysilicon layers. (4.) ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of the following commodities is under the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121): (a) When operating at frequencies higher than 31 GHz and ''space qualified'': helix tubes (traveling wave tubes (TWT)) defined in 3A001.b.1.a.4.c; microwave solid state amplifiers defined in 3A001.b.4.b; microwave ''assemblies'' defined in 3A001.b.6; or traveling wave tube amplifiers (TWTA) defined in 3A001.b.8; (b) ''Space qualified'' and radiation hardened photovoltaic arrays defined in 3A001.e.1.c (*i.e.,* not having silicon cells or single, dual or triple junction solar cells that have gallium arsenide as one of the junctions), and spacecraft/satellite solar concentrators and batteries; and (b) ''Space qualified'' atomic frequency standards defined in 3A002.g.2.

Related Definition: For purposes of photovoltaic arrays in 3A001.e.1.c, an array predominately consists of: a substrate; solar cells having silicon cells or having single, dual, and or triple junction solar cells that have gallium arsenide as one of the junctions; coverglass; ultra-violet coating(s); and bonding agent(s). Spacecraft/satellite: solar concentrators, power conditioners and or controllers, bearing and power transfer assembly, and or deployment hardware/systems are controlled under the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121).

Items: The list of items controlled is contained in the ECCN heading.

NOTE 1: 3E001 does not control ''technology'' for the ''development'' or ''production'' of integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(a) Using ''technology'' of 0.5 μm or more; *and*

(b) Not incorporating multi-layer structures.

TECHNICAL NOTE: The term multi-layer structures in Note b does not include devices incorporating a maximum of three metal layers and three polysilicon layers.

NOTE 2: 3E001 does not control ''technology'' for the ''production'' of equipment or components controlled by 3A003.

3E002 "Technology" according to the General Technology Note other than that controlled in 3E001 for the "development" or "production" of "microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits having a "composite theoretical performance" ("CTP") of 530 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bits or more.

LICENSE REQUIREMENTS

Reason for Control: NS, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: Yes, for deemed exports, as described in §734.2(b)(2)(ii) of the EAR, of ''technology'' for the ''development'' or ''production'' of general purpose microprocessors with a CTP less than or equal to 40,000 MTOPS (regardless of word length or access width). Deemed exports under License Exception CIV are subject to a Foreign National Review (FNR) requirement, see §740.5 of the EAR for more information about the FNR. License Exception CIV does not apply to ECCN 3E002 technology also required for the development or production of items controlled under ECCNs beginning with 3A, 3B, or 3C, or to ECCN 3E002 technology also controlled under ECCN 3E003.

TSR: Yes.

LIST OF ITEMS CONTROLLED

Unit: N/A.

Related Controls: N/A.

Related Definitions: N/A.

Items: The list of items controlled is contained in the ECCN heading.

NOTE: 3E002 does not control ''technology'' for the ''development'' or ''production'' of integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(a) Using ''technology'' of 0.5 µm or more; *and*

(b) Not incorporating multi-layer structures.

TECHNICAL NOTE: The term multi-layer structures in Note b does not include devices incorporating a maximum of three metal layers and three polysilicon layers.

3E003 Other "Technology" for the "Development" or "Production" of Items Described in the List of Items Controlled

LICENSE REQUIREMENTS

Reason for Control: NS, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A.

TSR: Yes, except .f. and .g

LIST OF ITEMS CONTROLLED

Unit: N/A.

Related Controls: (1) Technology for the ''development'' or ''production'' of ''space qualified'' electronic vacuum tubes operating at frequencies of 31.8 GHz or higher, described in 3E003.g, is under the export license authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121); (2) See 3E001 for silicon-on-insulation (SOI) technology for the ''development'' or ''production'' related to radiation hardening of integrated circuits.

Related Definitions: N/A.

Items:

a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;

NOTE: 3E003.b does not control technology for high electron mobility transistors (HEMT) operating at frequencies lower than 31.8 GHz and hetero-junction bipolar transistors (HBT) operating at frequencies lower than 31.8 GHz.

c. ''Superconductive'' electronic devices;

d. Substrates of films of diamond for electronic components;

e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;

f. Substrates of silicon carbide for electronic components;

g. Electronic vacuum tubes operating at frequencies of 31.8 GHz or higher.

3E101 "Technology" according to the General Technology Note for the "use" of equipment or "software" controlled by 3A001.a.1 or .2, 3A101, or 3D101.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

3E102 "Technology" according to the General Technology Note for the "development" of "software" controlled by 3D101.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

3E201 "Technology" according to the General Technology Note for the "use" of equipment controlled by 3A001.e.2 or .e.3, 3A201 or 3A225 to 3A233.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	Country chart
NP applies to ''technology'' for equipment controlled by 3A001.e.2, or .e.3, 3A201 or 3A225 to 3A233 for NP reasons.	NP Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

3E292 "Technology" according to the General Technology Note for the "development", "production", or "use" of equipment controlled by 3A292.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

3E980 "Technology" specially designed for "development", "production", or "use" of items controlled by 3A980 and 3A981.

LICENSE REQUIREMENTS

Reason for Control: CC, AT

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

3E991 "Technology" for the "development", "production", or "use" of electronic devices or components controlled by 3A991, general purpose electronic equipment controlled by 3A992, or manufacturing and test equipment controlled by 3B991 or 3B992.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

Category 4—Computers

NOTE 1: Computers, related equipment and ''software'' performing telecommunications or ''local area network'' functions must also be evaluated against the performance characteristics of Category 5, Part 1 (Telecommunications).

NOTE 2: Control units that directly interconnect the buses or channels of central processing units, ''main storage'' or disk controllers are not regarded as telecommunications equipment described in Category 5, Part 1 (Telecommunications).

N.B: For the control status of ''software'' specially designed for packet switching, see ECCN 5D001. (Telecommunications).

NOTE 3: Computers, related equipment and ''software'' performing cryptographic, cryptoanalytic, certifiable multi-level security or certifiable user isolation functions, or that limit electromagnetic compatibility (EMC), must also be evaluated against the performance characteristics in Category 5, Part 2 (''Information Security'').

A. SYSTEMS, EQUIPMENT AND COMPONENTS

4A001 Electronic computers and related equipment, and "electronic assemblies" and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT, NP, XP

Control(s)	*Country chart*
NS applies to entire entry	NS Column 2.
MT applies to items in 4A001.a when the parameters in 4A101 are met or exceeded.	MT Column 1.
AT applies to entire entry	AT Column 1.

NP applies, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to electronic computers with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See §742.12 of the EAR for additional information.

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $5000 for 4A001.a; N/A for MT and 4A001.b

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: See also 4A101 and 4A994. Equipment designed or rated for transient ionizing radiation is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.)

Related Definitions: For the purposes of integrated circuits in 4A001.a.2, 5×10^3 Gy(Si) = 5×10^5 Rads (Si); 5×10^6 Gy (Si)/s = 5×10^8 Rads (Si)/s.

Items:

a. Specially designed to have either of the following characteristics:

a.1. Rated for operation at an ambient temperature below 228 K (−45 °C) or above 358 K (85 °C);

NOTE: 4A001.a.1. does not apply to computers specially designed for civil automobile or railway train applications.

a.2. Radiation hardened to exceed any of the following specifications:

a.2.a. A total dose of 5×10^3 Gy (Si);

a.2.b. A dose rate upset of 5×10^6 Gy (Si)/s; *or*

a.2.c. Single Event Upset of 1 × 10–7 Error/bit/day;

b. Having characteristics or performing functions exceeding the limits in Category 5, Part 2 (''Information Security'').

4A003 "Digital computers", "electronic assemblies", and related equipment therefor, as follows, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	Country chart
NS applies to 4A003.b and .c	NS Column 1.
NS applies to 4A003.a, .e, and .g	NS Column 2.
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006.	MT Column 1.
CC applies to ''digital computers'' for computerized finger-print equipment.	CC Column 1.
AT applies to entire entry (refer to 4A994 for controls on ''digital computers'' with a CTP ≥6 but ≤ to 190,000 MTOPS).	AT Column 1.

NP applies, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''digital computers'' with a CTP greater than 190,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See §742.12 of the EAR for additional information.

NOTE: For all destinations, except those countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, no license is required (NLR) for computers with a CTP not greater than 190,000 MTOPS and for ''electronic assemblies'' described in 4A003.c that are not capable of exceeding a CTP greater than 190,000 MTOPS in aggregation, except certain transfers as set forth in §746.3 (Iraq). Computers controlled in this entry for MT reasons are not eligible for NLR.

LICENSE EXCEPTIONS

LVS: $5000; N/A for MT, b. and .c.

GBS: Yes, for 4A003.e, and .g and specially designed components therefor, exported separately or as part of a system.

CTP: Yes, for computers controlled by 4A003.a or .b, and ''electronic assemblies'' controlled by 4A003.c, to the exclusion of other technical parameters, with the exception of parameters specified as controlled for Missile Technology (MT) concerns and 4A003.e (equipment performing analog-to-digital conversions exceeding the limits of 3A001.a.5.a). See §740.7 of the EAR.

CIV: Yes, for .e, and .g.

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: See also 4A994 and 4A980

Related Definitions: N/A

Items:

NOTE 1: 4A003 includes the following:

a. Vector processors;

b. Array processors;

c. Digital signal processors;

d. Logic processors;

e. Equipment designed for ''image enhancement'';

f. Equipment designed for ''signal processing''.

NOTE 2: The control status of the ''digital computers'' and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:

a. The ''digital computers'' or related equipment are essential for the operation of the other equipment or systems;

b. The ''digital computers'' or related equipment are not a ''principal element'' of the other equipment or systems; *and*

N.B. 1: The control status of ''signal processing'' or ''image enhancement'' equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the ''principal element'' criterion.

N.B. 2: For the control status of ''digital computers'' or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).

c. The ''technology'' for the ''digital computers'' and related equipment is determined by 4E.

a. Designed or modified for ''fault tolerance'';

NOTE: For the purposes of 4A003.a., ''digital computers'' and related equipment are not considered to be designed or modified for ''fault tolerance'' if they utilize any of the following:

1. Error detection or correction algorithms in ''main storage'';

2. The interconnection of two ''digital computers'' so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;

3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; *or*

4. The synchronization of two central processing units by ''software'' so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. ''Digital computers'' having a ''composite theoretical performance'' (''CTP'') exceeding 190,000 million theoretical operations per second (MTOPS);

c. ''Electronic assemblies'' specially designed or modified to be capable of enhancing performance by aggregation of ''computing elements'' (''CEs'') so that the ''CTP'' of the aggregation exceeds the limit in 4A003.b.;

NOTE 1: 4A003.c applies only to ''electronic assemblies'' and programmable interconnections not exceeding the limit in 4A003.b. when shipped as unintegrated ''electronic assemblies''. It does not apply to ''electronic assemblies'' inherently limited by nature of their design for use as related equipment controlled by 4A003.e.

NOTE 2: 4A003.c does not control ''electronic assemblies'' specially designed for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

d. [Reserved]

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;

f. [Reserved]

g. Equipment specially designed to provide external interconnection of ''digital computers'' or associated equipment that allows communications at data rates exceeding 1.25 Gbyte/s.

NOTE: 4A003.g does not control internal interconnection equipment (*e.g.*, backplanes, buses) passive interconnection equipment, ''network access controllers'' or ''communication channel controllers''.

4A004 Computers, as follows (see List of Items Controlled) and specially designed related equipment, "electronic assemblies" and components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. ''Systolic array computers'';

b. ''Neural computers'';

c. ''Optical computers''.

4A101 Analog computers, "digital computers" or digital differential analyzers, other than those controlled by 4A001 designed or modified for use in "missiles", having any of the following (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: a. Rated for continuous operation at temperatures from below 228 K (−45° C) to above 328 K (+55° C); or

b. Designed as ruggedized or ''radiation hardened''.

4A102 "Hybrid computers" specially designed for modelling, simulation or design integration of "missiles". (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

4A980 Computers for fingerprint equipment, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC, AT

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

4A994 Computers, "electronic assemblies", and related equipment not controlled by 4A001, or 4A003, and specially designed components therefore.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1.

See §§740.19 and 742.20 of the EAR for additional information on Libya.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: ''*Two dimensional vector rate*'' is the number vectors generated per second that have 10 pixel poly line vectors, clip tested, randomly oriented, with either integer or floating point X-Y coordinate values (whichever produces the maximum rate) (see paragraph (g) of this ECCN).

Items:

NOTE 1: The control status of the ''digital computers'' and related equipment described in 4A994 is determined by the control status of other equipment or systems provided:

a. The ''digital computers'' or related equipment are essential for the operation of the other equipment or systems;

b. The ''digital computers'' or related equipment are not a ''principal element'' of the other equipment or systems; and

N.B. 1: The control status of ''signal processing'' or ''image enhancement'' equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the ''principal element'' criterion.

N.B. 2: For the control status of ''digital computers'' or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).

c. The ''technology'' for the ''digital computers'' and related equipment is determined by 4E.

a. Electronic computers and related equipment, and ''electronic assemblies'' and specially designed components therefor, rated for operation at an ambient temperature above 343 K (70 °C);

b. ''Digital computers'' having a ''composite theoretical performance'' (''CTP'') equal to or greater than 6 million theoretical operations per second (MTOPS);

c. ''Electronic assemblies'' that are specially designed or modified to enhance performance by aggregation of ''computing elements'' (''CEs''), as follows:

c.1. Designed to be capable of aggregation in configurations of 16 or more ''computing elements'' (''CEs''); *or*

c.2. Having a sum of maximum data rates on all channels available for connection to associated processors exceeding 40 million Byte/s;

NOTE 1: 4A994.c applies only to ''electronic assemblies'' and programmable interconnections with a ''CTP'' not exceeding the limits in 4A994.b, when shipped as unintegrated ''electronic assemblies''. It does not apply to ''electronic assemblies'' inherently limited by nature of their design for use as related equipment controlled by 4A994.g and 4A994.k.

NOTE 2: 4A994.c does not control any ''electronic assembly'' specially designed for a

product or family of products whose maximum configuration does not exceed the limits of 4A994.b.

d. Disk drives and solid state storage equipment:

d.1. Magnetic, erasable optical or magneto-optical disk drives with a ''maximum bit transfer rate'' exceeding 25 million bit/s;

d.2. Solid state storage equipment, other than ''main storage'' (also known as solid state disks or RAM disks), with a ''maximum bit transfer rate'' exceeding 36 million bit/s;

e. Input/output control units designed for use with equipment controlled by 4A994.d;

f. Equipment for ''signal processing'' or ''image enhancement'' having a ''composite theoretical performance'' (''CTP'') exceeding 8.5 million theoretical operations per second (MTOPS);

g. Graphics accelerators or graphics co-processors that exceed a ''three dimensional vector rate'' of 400,000 or, if supported by 2–D vectors only, a ''two dimensional vector rate'' of 600,000;

NOTE: The provisions of 4A994.g do not apply to work stations designed for and limited to:

a. Graphic arts (*e.g.*, printing, publishing); and

b. The display of two-dimensional vectors.

h. Color displays or monitors having more than 120 resolvable elements per cm in the direction of the maximum pixel density;

NOTE 1: 4A994.h does not control displays or monitors not specially designed for electronic computers.

NOTE 2: Displays specially designed for air traffic control (ATC) systems are treated as specially designed components for ATC systems under Category 6.

i. Equipment containing ''terminal interface equipment'' exceeding the limits in 5A991.

NOTE: For the purposes of 4A994.i, ''terminal interface equipment'' includes ''local area network'' interfaces, modems and other communications interfaces. ''Local area network'' interfaces are evaluated as ''network access controllers''.

j. Equipment specially designed to provide external interconnection of ''digital computers'' or associated equipment that allows communications at data rates exceeding 80 Mbyte/s.

NOTE: 4A994.j does not control internal interconnection equipment (*e.g.*, backplanes, buses) passive interconnection equipment, ''network access controllers'' or ''communication channel controllers''.

k. ''Hybrid computers'' and ''electronic assemblies'' and specially designed components therefor, as follows:

k.1. Containing ''digital computers'' controlled by 4A003;

k.2. Containing analog-to-digital converters having all of the following characteristics:

k.2.a. 32 channels or more; *and*

k.2.b. A resolution of 14 bit (plus sign bit) or more with a conversion rate of 200,000 conversions/s or more.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

4B994 Equipment for the "development" and "production" of magnetic and optical storage equipment.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: This entry does not control general-purpose sputtering equipment.
Related Definition: N/A
Items: a. Equipment specially designed for the application of magnetic coating to controlled non-flexible (rigid) magnetic or magneto-optical media;

b. ''Stored program controlled'' equipment specially designed for monitoring, grading, exercising or testing controlled rigid magnetic media;

c. Equipment specially designed for the ''production'' or alignment of heads or head/disk assemblies for controlled rigid magnetic and magneto-optical storage, and electromechanical or optical components therefor.

C. MATERIALS

4C994 Materials specially formulated for and required for the fabrication of head/disk assemblies for controlled magnetic and magneto-optical hard disk drives.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

D. SOFTWARE

NOTE: The control status of ''software'' for the ''development'', ''production'', or ''use'' of equipment described in other Categories is dealt with in the appropriate Category. The control status of ''software'' for equipment described in this Category is dealt with herein.

4D001 "Software" specially designed or modified for the "development", "production" or "use" of equipment or "software" controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994), and other specified software, see List of Items Controlled.

LICENSE REQUIREMENTS

Reason for Control: NS, CC, AT, NP, XP.

Control(s)	Country chart
NS applies to ''software'' for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1.
CC applies to ''software'' for computerized finger-print equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.

NP applies, unless a License Exception is available. *See* §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''software'' for computers with a CTP greater than 190,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. *See* §742.12 of the EAR for additional information.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except software for commodities controlled by ECCN 4A003.b or ECCN 4A003.c is limited to software for computers or electronic assemblies with a CTP equal to or less than 190,000 MTOPS.

CTP: Yes to specific countries (see §740.7 of the EAR for eligibility criteria)

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items:

a. ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment or ''software'' controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994).

b. ''Software'', other than that controlled by 4D001.a, specially designed or modified for the ''development'' or ''production'' of:

b.1. ''Digital computers'' having a ''composite theoretical performance'' (''CTP'') exceeding 75,000 MTOPS; *or*

b.2. ''Electronic assemblies'' specially designed or modified for enhancing performance by aggregation of ''computing elements'' (''CEs'') so that the ''CTP'' of the aggregation exceeds the limit in 4D001.b.1.

4D002 "Software" specially designed or modified to support "technology" controlled by 4E (except 4E980, 4E992, and 4E993).

LICENSE REQUIREMENTS

Reason for Control: NS, AT, NP, XP

Control(s)	Country chart
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

NP applies, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''software'' for computers with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See §742.12 of the EAR for additional information.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except N/A for ''software'' specifically designed or modified to support ''technology'' for computers requiring a license.

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

4D003 Specific "software", as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except 4D003.c

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Operating system ''software'', ''software'' development tools and compilers specially designed for ''multi-data-stream processing'' equipment, in ''source code'';

b. [Reserved]

c. ''Software'' having characteristics or performing functions exceeding the limits in Category 5, Part 2 (''Information Security'').

4D980 "Software" specially designed for the "development", "production", or "use" of items controlled by 4A980.

LICENSE REQUIREMENTS

Reason for Control: CC, AT

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

4D993 "Program" proof and validation "software", "software" allowing the automatic generation of "source codes", and operating system "software" not controlled by 4D003 that are specially designed for real time processing equipment.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: ''Global interrupt latency time'' is the time taken by the computer system to recognize an interrupt due to the event, service the interrupt and perform a context switch to an alternate memory-resident task waiting on the interrupt.
Items:

a. ''Program'' proof and validation ''software'' using mathematical and analytical techniques and designed or modified for ''programs'' having more than 500,000 ''source code'' instructions;

b. ''Software'' allowing the automatic generation of ''source codes'' from data acquired on line from external sensors described in the Commerce Control List;

c. Operating system ''software'' specially designed for ''real time processing'' equipment that guarantees a ''global interrupt latency time'' of less than 20 microseconds.

4D994 "Software" other than that controlled in 4D001 specially designed or modified for the "development", "production", or "use" of equipment controlled by 4A101, 4A994, 4B994, and materials controlled by 4C994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

4E001 "Technology" according to the General Technology Note, for the "development", "production" or "use" of equipment or "software" controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994), and other specified technology, see List of Items Controlled.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, CC, AT, NP, XP.

Control(s)	Country chart
NS applies to ''technology'' for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1.
MT applies to ''technology'' for items controlled by 4A001.a and 4A101 for MT reasons.	MT Column 1.
CC applies to ''technology'' for computerized fingerprint equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.

NP applies, unless a License Exception is available. *See* §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''technology'' for computers with a CTP greater than 190,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use, however, XP does not apply to Canada. *See* §742.12 of the EAR for additional information.

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes, except technology for commodities controlled by ECCN 4A003.b or ECCN 4A003.c is limited to technology for computers or electronic assemblies with a CTP equal to or less than 190,000 MTOPS.
CTP: Yes to specific countries (see §740.7 of the EAR for eligibility criteria)

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items:

a. ''Technology'' according to the General Technology Note, for the ''development,'' ''production,'' or ''use'' of equipment or ''software'' controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994).

b. ''Technology'', other than that controlled by 4E001.a, specially designed or modified for the ''development'' or ''production'' of:

b.1. ''Digital computers'' having a ''composite theoretical performance'' (''CTP'') exceeding 75,000 MTOPS; or

b.2. ''Electronic assemblies'' specially designed or modified for enhancing performance by aggregation of ''computing elements'' (''CEs'') so that the ''CTP'' of the aggregation exceeds the limit in 4E001.b.1.

4E980 "Technology" for the "development", "production", or "use" of items controlled by 4A980.

LICENSE REQUIREMENTS

Reason for Control: CC, AT

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

4E992 "Technology" other than that controlled in 4E001 for the "development", "production", or "use" of equipment controlled by 4A994 and 4B994, materials controlled by 4C994, or "software" controlled by 4D993 or 4D994.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: See also 4E994
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

4E993 Other "Technology" for the "development" or "production" of graphics accelerators or equipment designed for "multi-data-stream processing" and "technology" "required" for the "development" or "production" of magnetic hard disk drives.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. ''Technology'' for the ''development'' or ''production'' of graphics accelerators;

b. ''Technology'', for the ''development'' or ''production'' of equipment designed for ''multi-data-stream processing'';

c. ''Technology'', ''required'' for the ''development'' or ''production'' of magnetic hard disk drives with a ''maximum bit transfer rate'' (''MBTR'') exceeding 11 Mbit/s.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

Information on How to Calculate ''Composite Theoretical Performance (''CTP'')

N.B. *See* Interpretation 12: ''Computers'', §770.2(1)(3), to find guidance as to how to calculate the Composite Theoretical Performance (CTP) for computer systems with 'Non-Uniform Memory Access' (NUMA) architecture, and obtain a definition for NUMA.

TECHNICAL NOTE: ''COMPOSITE THEORETICAL PERFORMANCE'' (''CTP'')

Abbreviations used in this Technical Note

''CE''	''computing element'' (typically an arithmetic logical unit)
FP	floating point
XP	fixed point
t	execution time
XOR	exclusive OR

CPU	central processing unit
TP	theoretical performance (of a single ''CE'')
''CTP''	''composite theoretical performance'' (multiple ''CEs'')
R	effective calculating rate
WL	word length
L	word length adjustment
*	multiply

Execution time t is expressed in microseconds, TP and ''CTP'' are expressed in millions of theoretical operations per second (Mtops) and WL is expressed in bits.

Outline of ''CTP'' calculation method

''CTP'' is a measure of computational performance given in Mtops. In calculating the ''CTP'' of an aggregation of ''CEs'' the following three steps are required:

1. Calculate the effective calculating rate R for each ''CE'';
2. Apply the word length adjustment (L) to the effective calculating rate (R), resulting in a Theoretical Performance (TP) for each ''CE'';
3. If there is more than one ''CE'', combine the TPs, resulting in a ''CTP'' for the aggregation.

Details for these steps are given in the following sections.

NOTE 1: For aggregations of multiple ''CEs'' that have both shared and unshared memory subsystems, the calculation of ''CTP'' is completed hierarchically, in two steps: first, aggregate the groups of ''CEs'' sharing memory; second, calculate the ''CTP'' of the groups using the calculation method for multiple ''CEs'' not sharing memory.

NOTE 2: ''CEs'' that are limited to input/output and peripheral functions (e.g., disk drive, communication and video display controllers) are not aggregated into the ''CTP'' calculation.

The following table shows the method of calculating the Effective Calculating Rate R for each ''CE'':

Step 1: The effective calculating rate R

For "CEs" Implementing: **Note:** Every "CE" must be evaluated independently.	Effective calculating Rate, R
XP only (R_{xp})	1 ---------- $3 * (t_{xp\ add})$ if no add is implemented use: 1 ---------- $(t_{xp\ mult})$ If neither add nor multiply is implemented use the fastest available arithmetic operation as follows: 1 ------- $3 * t_{xp}$ See Notes X & Z
FP only (R_{fp})	1 1 max ------- , -------- $t_{fp\ add}$ $t_{fp\ mult}$ See Notes X & Y
Both FP and XP (R)	Calculate both R_{xp}, R_{fp}

For simple logic processors not implementing any of the specified arithmetic operations.	1 -------- $3 * t_{log}$ Where t_{log} is the execute time of the XOR, or for logic hardware not implementing the XOR, the fastest simple logic operation. See Notes X & Z
For special logic processors not using any of the specified arithmetic or logic operations.	R = R' * WL/64 Where R' is the number of results per second, WL is the number of bits upon which the logic operation occurs, and 64 is a factor to normalize to a 64 bit operation.

NOTE W: For a pipelined "CE" capable of executing up to one arithmetic or logic operation every clock cycle after the pipeline is full, a pipelined rate can be established. The effective calculating rate (R) for such a "CE" is the faster of the pipelined rate or non-pipelined execution rate.

NOTE X: For a "CE" that performs multiple operations of a specific type in a single cycle (e.g., two additions per cycle or two identical logic operations per cycle), the execution time t is given by:

$$t = \frac{\text{cycle time}}{\text{the number of identical operations per machine cycle}}$$

"CEs" that perform different types of arithmetic or logic operations in a single machine cycle are to be treated as multiple separate "CEs" performing simultaneously (e.g., a "CE" performing an addition and a multiplication in one cycle is to be treated as two "CEs", the first performing an addition in one cycle and the second performing a multiplication in one cycle). If a single "CE" has both scalar function and vector function, use the shorter execution time value.

NOTE Y: For the "CE" that does not implement FP add or FP multiply, but that performs FP divide:

$$R_{fp} = \frac{1}{t_{fpdivide}}$$

If the ''CE'' implements FP reciprocal but not FP add, FP multiply or FP divide, then

$$R_{fp} = \frac{1}{t_{fpreciprocal}}$$

If none of the specified instructions is implemented, the effective FP rate is 0.

NOTE Z: In simple logic operations, a single instruction performs a single logic manipulation of no more than two operands of given lengths. In complex logic operations, a single instruction performs multiple logic manipulations to produce one or more results from two or more operands.

Rates should be calculated for all supported operand lengths considering both pipelined operations (if supported), and nonpipelined operations using the fastest executing instruction for each operand length based on:

1. Pipelined or register-to-register operations. Exclude extraordinarily short execution times generated for operations on a predetermined operand or operands (for example, multiplication by 0 or 1). If no register-to-register operations are implemented, continue with (2).
2. The faster of register-to-memory or memory-to-register operations; if these also do not exist, then continue with (3).
3. Memory-to-memory.

In each case above, use the shortest execution time certified by the manufacturer.

Step 2: *TP for each supported operand length WL*

Adjust the effective rate R (or R) by the word length adjustment L as follows:

P = R * L, where L = (1/3 + WL/96)

NOTE: The word length WL used in these calculations is the operand length in bits. (If an operation uses operands of different lengths, select the largest word length.) The combination of a mantissa ALU and an exponent ALU of a floating point processor or unit is considered to be one ''CE'' with a Word Length (WL) equal to the number of bits in the data representation (typically 32 or 64) for purposes of the ''CTP'' calculation.

This adjustment is not applied to specialized logic processors that do not use XOR instructions. In this case TP = R.

Select the maximum resulting value of TP for:

Each XP-only ''CE'' (R_{xp});

Each FP-only ''CE'' (R_{fp});

Each combined FP and XP ''CE'' (R);

Each simple logic processor not implementing any of the specified arithmetic operations; *and*

Each special logic processor not using any of the specified arithmetic or logic operations.

Step 3: *''CTP'' for aggregations of ''CEs'', including CPUs.*

For a CPU with a single ''CE'', ''CTP'' = TP (for ''CEs'' performing both fixed and floating point operations TP = max (TP_{fp}, TP_{xp}))

''CTP'' for aggregations of multiple ''CEs'' operating simultaneously is calculated as follows:

NOTE 1: For aggregations that do not allow all of the ''CEs'' to run simultaneously, the possible combination of ''CEs'' that provides the largest ''CTP'' should be used. The TP of each contributing ''CE'' is to be calculated at its maximum value theoretically possible before the ''CTP'' of the combination is derived.

N.B.: To determine the possible combinations of simultaneously operating ''CEs'',

generate an instruction sequence that initiates operations in multiple ''CEs'', beginning with the slowest ''CE'' (the one needing the largest number of cycles to complete its operation) and ending with the fastest ''CE''. At each cycle of the sequence, the combination of ''CEs'' that are in operation during that cycle is a possible combination. The instruction sequence must take into account all hardware and/or architectural constraints on overlapping operations.

NOTE 2: A single integrated circuit chip or board assembly may contain multiple ''CEs''.

NOTE 3: Simultaneous operations are assumed to exist when the computer manufacturer claims concurrent, parallel or simultaneous operation or execution in a manual or brochure for the computer.

NOTE 4: ''CTP'' values are not to be aggregated for ''CE'' combinations (inter)connected by ''Local Area Networks'', Wide Area Networks, I/O shared connections/devices, I/O controllers and any communication interconnection implemented by ''software''.

NOTE 5: ''CTP'' values must be aggregated for multiple ''CEs'' specially designed to enhance performance by aggregation, operating simultaneously and sharing memory,-or multiple memory/''CE''-combinations operating simultaneously utilizing specially designed hardware.

This aggregation does not apply to ''electronic assemblies'' described by 4A003.c.

''CTP''$=TP_1+C_2*TP_2+\ldots+C_n*TP_n$,

Where the TPs are ordered by value, with TP_1 being the highest, TP_2 being the second highest, ..., and TP_n being the lowest. C_i is a coefficient determined by the strength of the interconnection between ''CEs'', as follows:

For multiple ''CEs'' operating simultaneously and sharing memory:

$C_2=C_3=C_4=\ldots=C_n=0.75$

NOTE 1: When the ''CTP'' calculated by the above method does not exceed 194 Mtops, the following formula may be used to calculate C_i:

$$C_i = \frac{0.75}{\sqrt{m}} \qquad (i = 2, \ldots, n)$$

Where m=the number of ''CEs'' or groups of ''CEs'' sharing access.

provided:

1. The TP_1 of each ''CE'' or group of ''CEs'' does not exceed 30 Mtops;

2. The ''CEs'' or groups of ''CEs'' share access to main memory (excluding cache memory) over a single channel; *and*

3. Only one ''CE'' or group of ''CEs'' can have use of the channel at any given time.

N.B.: This does not apply to items controlled under Category 3.

NOTE 2: ''CEs'' share memory if they access a common segment of solid state memory. This memory may include cache memory, main memory or other internal memory. Peripheral memory devices such as disk drives, tape drives or RAM disks are not included.

For Multiple ''CEs'' or groups of ''CEs'' not sharing memory, interconnected by one or more data channels:

$C_i=0.75*k_i$ (i=2,..., 32) (see Note below)

$=0.60*k_i$ (i=33,..., 64)

$=0.45*k_i$ (i=65,..., 256)

$=0.30 * k_i$ (i >256)

The value of C_i is based on the number of ''CE''s, not the number of nodes.

Where $k_i=\min(S_i/K_r, 1)$, and

K_r=normalizing factor of 20 MByte/s.

S_i = sum of the maximum data rates (in units of MByte/s) for all data channels connected to the ith ''CE'' or group of ''CEs'' sharing memory.

When calculating a C_i for a group of ''CEs'', the number of the first ''CE'' in a group determines the proper limit for C_i. For example, in an aggregation of groups consisting of 3 ''CEs'' each, the 22nd group will contain ''CE''$_{64}$, ''CE''$_{65}$ and ''CE''$_{66}$. The proper limit for C_i for this group is 0.60.

Aggregation (of ''CEs'' or groups of ''CEs'') should be from the fastest-to-slowest; i.e.: $TP_1 \geq TP_2 \geq \ldots \geq TP_n$, and

in the case of $TP_i=TP_{i+1}$, from the largest to smallest; i.e.: $C_i \geq C_{i+1}$

NOTE: The k_i factor is not to be applied to ''CEs'' 2 to 12 if the TP_i of the ''CE'' or group of ''CEs'' is more than 50 Mtops; i.e., C_i for ''CEs'' 2 to 12 is 0.75.

Category 5—Telecommunications and ''Information Security''

I. TELECOMMUNICATIONS

NOTES: 1. The control status of components, ''lasers'', test and ''production'' equipmentand ''software'' therefor which are specially designed for telecommunications equipment or systems is determined in Category 5, Part I.

2. ''Digital computers'', related equipment or ''software'', when essential for the operation and support of telecommunications equipment described in this Category, are regarded as specially designed components, provided they are the standard models customarily supplied by the manufacturer. This includes operation, administration, maintenance, engineering or billing computer systems.

A. SYSTEMS, EQUIPMENT AND COMPONENTS

5A001 Telecommunications systems, equipment, and components.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	Country chart
NS applies to 5A001.a, and .e	NS Column 1.
NS applies to 5A001.b, .c, or .d ..	NS Column 2.
AT applies to entire entry	AT Column 1.

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: N/A for 5A001.a, b.5, .e $5000 for 5A001b.1, b.2, b.3, b.6, and .d $3000 for 5A001.c.

GBS: Yes, except 5A001.a, b.5, .e.

CIV: Yes, except 5A001.a, b.3, b.5, .e.

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; cable and fiber in meters/feet, components and accessories in $ value.

Related Controls: Telecommunications equipment defined in 5A001.a.1 through A001.a.3 for use on board satellites is subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121). Direction finding equipment defined in 5A001.e is subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121). See also 5A101 and 5A991.

Related Definitions: N/A

Items:

a. Any type of telecommunications equipment having any of the following characteristics, functions or features:

a.1. Specially designed to withstand transitory electronic effects or electromagnetic pulse effects, both arising from a nuclear explosion;

a.2. Specially hardened to withstand gamma, neutron or ion radiation; or

a.3. Specially designed to operate outside the temperature range from 218 K (−55 °C) to 397 K (124 °C).

NOTE: 5A001.a.3 applies only to electronic equipment.

NOTE: 5A001.a.2 and 5A001.a.3 do not apply to equipment on board satellites.

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

b.1 Being underwater communications systems having any of the following characteristics:

b.1.a. An acoustic carrier frequency outside the range from 20 kHz to 60 kHz;

b.1.b. Using an electromagnetic carrier frequency below 30 kHz; or

b.1.c. Using electronic beam steering techniques;

b.2. Being radio equipment operating in the 1.5 MHz to 87.5 MHz band and having any of the following characteristics:

b.2.a. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal; *or*

b.2.b. Having all of the following:

b.2.b.1. Automatically predicting and selecting frequencies and ''total digital transfer rates'' per channel to optimize the transmission; *and*

b.2.b.2. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the frequency range of 1.5 MHz or more but less than 30 MHz, or 250 W or more in the frequency range of 30 MHz or more but not exceeding 87.5 MHz, over an ''instantaneous bandwidth'' of one octave or more and with an output harmonic and distortion content of better than -80 dB;

b.3. Being radio equipment employing ''spread spectrum'' techniques, including ''frequency hopping'' techniques, having any of the following characteristics:

b.3.a. User programmable spreading codes; *or*

b.3.b. A total transmitted bandwidth which is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

NOTE: 5A001.b.3.b does not control radio equipment specially designed for use with civil cellular radio-communications systems.

NOTE: 5A001.b.3 does not control equipment operating at an output power of 1.0 Watt or less.

b.4 Being radio equipment employing ''time-modulated ultra-wideband'' techniques, having user programmable channelizing or scrambling codes;

b.5. Being digitally controlled radio receivers having all of the following:

b.5.a. More than 1,000 channels;

b.5.b. A ''frequency switching time'' of less than 1 ms;

b.5.c. Automatic searching or scanning of a part of the electromagnetic spectrum; *and*

b.5.d. Identification of the received signals or the type of transmitter; *or*

NOTE: 5A001.b.5 does not control radio equipment specially designed for use with civil cellular radio-communications systems.

b.6. Employing functions of digital ''signal processing'' to provide voice coding output at rates of less than 2,400 bit/s.

TECHNICAL NOTE: For variable rate voice coding, 5A001.b.6 applies to the voice coding output of continuous speech.

c. Optical fiber communication cables, optical fibers and accessories, as follows:

c.1. Optical fibers of more than 500 m in length specified by the manufacturer as being capable of withstanding a proof test tensile stress of 2×10^9 N/m^2 or more;

TECHNICAL NOTE: Proof Test: On-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20 °C) and relative humidity 40%. Equivalent national standards may be used for executing the proof test.

c.2. Optical fiber cables and accessories designed for underwater use.

NOTE: 5A001.c.2 does not control standard civil telecommunication cables and accessories.

N.B. 1: For underwater umbilical cables, and connectors thereof, see 8A002.a.3.

N.B. 2: For fiber-optic hull penetrators or connectors, see 8A002.c.

d. ''Electronically steerable phased array antennae'' operating above 31.8 GHz.

NOTE: 5A001.d does not control ''electronically steerable phased array antennae'' for landing systems with instruments meeting ICAO standards covering microwave landing systems (MLS).

e. Direction finding equipment operating at frequencies above 30 MHz and having all of the following characteristics, and specially designed components therefor:

e.1. ''Instantaneous bandwidth'' of 1 MHz or more;

e.2. Parallel processing of more than 100 frequency channels; and

e.3. Processing rate of more than 1,000 direction finding results per second and per frequency channel.

5A101 Telemetering and telecontrol equipment, including ground equipment, designed or modified for unmanned aerial vehicles or rocket systems (including ballistic missile systems, space launch vehicles, sounding rockets, cruise missile systems, target drones, and reconnaissance drones) capable of a maximum "range" equal to or greater than 300km.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

NOTE: 5A101 does not control: 1. Telecontrol equipment specially designed to be used for remote control of recreational model planes, boats or vehicles and having an electric field strength of not more than 200 microvolts per meter at a distance of 500 meters;

2. Equipment designed or modified for manned aircraft or satellites;

3. Ground based equipment designed or modified for terrestrial or marine applications;

4. Equipment designed for commercial, civil, or safety of life (*e.g.*, data integrity or flight safety) Global Navigation Satellite System services.

NOTE: Item 5A101 does not include items not designed or modified for unmanned aerial vehicles or rocket systems (including ballistic missile systems, space launch vehicles, sounding rockets, cruise missile systems, target drones, and reconnaissance drones) capable of a maximum ''range'' equal to or greater than 300km (*e.g.*, telemetry circuit cards limited by design to reception only and designed for use in personal computers).

5A980 Communications intercepting devices; and parts and accessories therefor.

LICENSE REQUIREMENTS

Reason for Control: Controls on equipment described in this entry are maintained in accordance with the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90–351). A license is required for ALL destinations, regardless of end-use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See §742.13 of the EAR for additional information on the scope of this control.)

NOTE: These items are subject to the United Nations Security Council arms embargo against Rwanda described in §746.8 of the EAR.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5A991 Telecommunication equipment, not controlled by 5A001.

LICENSE REQUIREMENTS
Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1.

See §§740.19 and 742.20 of the EAR for additional information on Libya.

LICENSE EXCEPTIONS
LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: Telecommunication equipment defined in 5A991 for use on board satellites is subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121). *See also* 5E101 and 5E991.
Related Definitions: (1) *'Bandwidth of one voice channel'* is data communication equipment designed to operate in one voice channel of 3,100 Hz, as defined in CCITT Recommendation G.151. (2) *'Communications channel controller'* is the physical interface that controls the flow of synchronous or asynchronous digital information. It is an assembly that can be integrated into computer or telecommunications equipment to provide communications access. (3) *'Datagram'* is a self-contained, independent entity of data carrying sufficient information to be routed from the source to the destination data terminal equipment without reliance on earlier exchanges between this source and destination data terminal equipment and the transporting network. (4) *'Fast select'* is a facility applicable to virtual calls that allows data terminal equipment to expand the possibility to transmit data in call set-up and clearing 'packets' beyond the basic capabilities of a virtual call. (5) *'Gateway'* is the function, realized by any combination of equipment and ''software'', to carry out the conversion of conventions for representing, processing or communicating information used on one system into the corresponding, but different conventions used in another system. (6) *'Integrated Services Digital Network'* (ISDN) is a unified end-to-end digital network, in which data originating from all types of communication (*e.g.*, voice, text, data, still and moving pictures) are transmitted from one port (terminal) in the exchange (switch) over one access line to and from the subscriber.(7) *'Packet'* is a group of binary digits including data and call control signals that is switched as a composite whole. The data, call control signals, and possible error control information are arranged in a specified format.
Items:

a. Any type of telecommunications equipment, not controlled by 5A001.a, specially designed to operate outside the temperature range from 219 K (−54 °C) to 397 K (124 °C).

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

NOTE: Telecommunication transmission equipment:

a. Categorized as follows, or combinations thereof:

1. Radio equipment (*e.g.*, transmitters, receivers and transceivers);
2. Line terminating equipment;
3. Intermediate amplifier equipment;
4. Repeater equipment;
5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical mutiplex included);
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G701);
10. ''Stored program controlled'' digital crossconnection equipment;
11. ''Gateways'' and bridges;
12. ''Media access units''; and

b. Designed for use in single or multi-channel communication via any of the following:

1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation; or
5. Underwater acoustic wave propagation.

b.1. Employing digital techniques, including digital processing of analog signals, and designed to operate at a ''digital transfer rate'' at the highest multiplex level exceeding 45 Mbit/s or a ''total digital transfer rate'' exceeding 90 Mbit/s;

NOTE: 5A991.b.1 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b.2. Modems using the ''bandwidth of one voice channel'' with a ''data signaling rate'' exceeding 9,600 bits per second;

b.3. Being ''stored program controlled'' digital cross connect equipment with ''digital transfer rate'' exceeding 8.5 Mbit/s per port.

b.4. Being equipment containing any of the following:

b.4.a. ''Network access controllers'' and their related common medium having a

''digital transfer rate'' exceeding 33 Mbit/s; *or*

b.4.b. ''Communication channel controllers'' with a digital output having a ''data signaling rate'' exceeding 64,000 bit/s per channel;

NOTE: If any uncontrolled equipment contains a ''network access controller'', it cannot have any type of telecommunications interface, except those described in, but not controlled by 5A991.b.4.

b.5. Employing a ''laser'' and having any of the following characteristics:

b.5.a. A transmission wavelength exceeding 1,000 nm; *or*

b.5.b. Employing analog techniques and having a bandwidth exceeding 45 MHz;

NOTE: 5A991.b.5.b does not control commercial TV systems.

b.5.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

b.5.d. Employing wavelength division multiplexing techniques; *or*

b.5.e. Performing ''optical amplification''

b.6. Radio equipment operating at input or output frequencies exceeding:

b.6.a. 31 GHz for satellite-earth station applications; *or*

b.6.b. 26.5 GHz for other applications;

NOTE: 5A991.b.6. does not control equipment for civil use when conforming with an International Telecommunications Union (ITU) allocated band between 26.5 GHz and 31 GHz.

b.7. Being radio equipment employing any of the following:

b.7.a. Quadrature-amplitude-modulation (QAM) techniques above level 4 if the ''total digital transfer rate'' exceeds 8.5 Mbit/s;

b.7.b. QAM techniques above level 16 if the ''total digital transfer rate'' is equal to or less than 8.5 Mbit/s; *or*

b.7.c. Other digital modulation techniques and having a ''spectral efficiency'' exceeding 3 bit/s/Hz;

NOTES: 1. 5A991.b.7 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

2. 5A991.b.7 does not control radio relay equipment for operation in an ITU allocated band:

a. Having any of the following:

a.1. Not exceeding 960 MHz; or

a.2. With a ''total digital transfer rate'' not exceeding 8.5 Mbit/s; and

b. Having a ''spectral efficiency'' not exceeding 4 bit/s/Hz.

b.8. Providing functions of digital ''signal processing'' as follows:

b.8.a. Voice coding at rates less than 2,400 bit/s;

b.8.b. Employing circuitry that incorporates ''user-accessible programmability'' of digital ''signal processing'' circuits exceeding the limits of 4A003.b.

c. ''Stored program controlled'' switching equipment and related signaling systems, having any of the following characteristics, functions or features, and specially designed components and accessories therefor:

NOTE: Statistical multiplexers with digital input and digital output which provide switching are treated as ''stored program controlled'' switches.

c.1. ''Data (message) switching'' equipment or systems designed for ''packet-mode operation'' and assemblies and components therefor, n.e.s.

c.2. Containing ''Integrated Services Digital Network'' (ISDN) functions and having any of the following:

c.2.a. Switch-terminal (*e.g.*, subscriber line) interfaces with a ''digital transfer rate'' at the highest multiplex level exceeding 192,000 bit/s, including the associated signaling channel (*e.g.*, 2B+D); or

c.2.b. The capability that a signaling message received by a switch on a given channel that is related to a communication on another channel may be passed through to another switch.

NOTE: 5A991.c does not preclude the evaluation and appropriate actions taken by the receiving switch or unrelated user message traffic on a D channel of ISDN.

c.3. Routing or switching of ''datagram'' packets;

c.4. Routing or switching of ''fast select'' packets;

NOTE: The restrictions in 5A991.c.3 and c.4 do not apply to networks restricted to using only ''network access controllers'' or to ''network access controllers'' themselves.

c.5. Multi-level priority and pre-emption for circuit switching;

NOTE: 5A991.c.5 does not control single-level call preemption.

c.6. Designed for automatic hand-off of cellular radio calls to other cellular switches or automatic connection to a centralized subscriber data base common to more than one switch;

c.7. Containing ''stored program controlled'' digital cross connect equipment with ''digital transfer rate'' exceeding 8.5 Mbit/s per port.

c.8. ''Common channel signaling'' operating in either non-associated or quasi-associated mode of operation;

c.9. ''Dynamic adaptive routing''

NOTE: 5A991.c.10 does not control packet switches or routers with ports or lines not exceeding the limits in 5A991.c.10.

c.10. Being packet switches, circuit switches and routers with ports or lines exceeding any of the following:

c.10.a. A ''data signaling rate'' of 64,000 bit/s per channel for a ''communications channel controller'' *or*

NOTE: 5A991.c.10.a does not control multiplex composite links composed only of communication channels not individually controlled by 5A991.b.1.

c.10.b. A ''digital transfer rate'' of 33 Mbit/s for a ''network access controller'' and related common media;

c.11. ''Optical switching'';

c.12. Employing ''Asynchronous Transfer Mode (''ATM'') techniques.

d. Optical fibers and optical fiber cables of more than 50 m in length designed for single mode operation;

e. Centralized network control having all of the following characteristics:

e.1. Receives data from the nodes; *and*

e.2. Process these data in order to provide control of traffic not requiring operator decisions, and thereby performing ''dynamic adaptive routing'';

NOTE: 5A991.e does not preclude control of traffic as a function of predictable statistical traffic conditions.

f. Phased array antennae, operating above 10.5 GHz, containing active elements and distributed components, and designed to permit electronic control of beam shaping and pointing, except for landing systems with instruments meeting International Civil Aviation Organization (ICAO) standards (microwave landing systems (MLS)).

g. Mobile communications equipment, n.e.s., and assemblies and components therefor; *or*

h. Radio relay communications equipment designed for use at frequencies equal to or exceeding 19.7 GHz and assemblies and components therefor, n.e.s.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

5B001 Telecommunication test, inspection and production equipment, as follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

License Requirement Notes: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $5000

GBS: Yes

CIV: Yes

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: See also 5B991.

Related Definition: N/A.

Items:

a. Equipment and specially designed components or accessories therefor, specially designed for the ''development'', ''production'' or ''use'' of equipment, functions or features controlled by 5A001, 5D001 or 5E001.

NOTE: 5B001.a. does not control optical fiber characterization equipment.

b. Equipment and specially designed components or accessories therefor, specially designed for the ''development'' of any of the following telecommunication transmission or switching equipment:

b.1. Equipment employing digital techniques designed to operate at a ''total digital transfer rate'' exceeding 15 Gbit/s;

TECHNICAL NOTE: For switching equipment the ''total digital transfer rate'' is measured at the highest speed port or line.

b.2. Equipment employing a ''laser'' and having any of the following:

b.2.a. A transmission wavelength exceeding 1750 nm;

b.2.b. Performing ''optical amplification'';

b.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques); *or*

b.2.d. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

NOTE: 5B001.b.2.d. does not include equipment specially designed for the ''development'' of commercial TV systems.

b.3. Equipment employing ''optical switching'';

b.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 256; *or*

b.5. Equipment employing ''common channel signaling'' operating in non-associated mode of operation.

5C991 Preforms of glass or of any other material optimized for the manufacture of optical fibers controlled by 5A991.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

D. SOFTWARE

5D001 "Software", as described in the List of Items Controlled.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: Yes, except for ''software'' controlled by 5D001.a and specially designed for the ''development'' or ''production'' of items controlled by 5A001.b.5 TSR: Yes, except for exports and reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''software'' controlled by 5D001.a and specially designed for items controlled by 5A001.b.5.

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: See also 5D991.
Related Definitions: N/A.
Items:

a. ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment, functions or features controlled by 5A001 or 5B001.

b. ''Software'' specially designed or modified to support ''technology'' controlled by 5E001.

c. Specific ''software'' as follows:

c.1. ''Software'' specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001;

c.2. [Reserved];

c.3. ''Software'', other than in machine-executable form, specially designed for ''dynamic adaptive routing''.

d. ''Software'' specially designed or modified for the ''development'' of any of the following telecommunication transmission or switching equipment:

d.1. Equipment employing digital techniques, including designed to operate at a ''total digital transfer rate'' exceeding 15 Gbit/s;

TECHNICAL NOTE: For switching equipment the ''total digital transfer rate'' is measured at the highest speed port or line.

d.2. Equipment employing a ''laser'' and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm; *or*

d.2.b. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

NOTE: 5D001.d.2.b. does not control ''software'' specially designed or modified for the ''development'' of commercial TV systems.

d.3. Equipment employing ''optical switching''; *or*

d.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 256.

5D101 "Software" specially designed or modified for the "use" of items controlled by 5A101.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

5D991 "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 5A991 and 5B991.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

5E001 "Technology", (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except for exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' controlled by 5E001.a for the

''development'' or ''production'' of the following:

(1) Items controlled by 5A001.b.5; or

(2) ''Software'' controlled by 5D001.a that is specially designed for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.b.5.

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: Technology defined in 5E001.b.1, 5E001.b.2, 5E001.b.4, or 5E001.c for use on board satellites is subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121). See also 5E101 and 5E991

Related Definitions: N/A.

Items:

a. ''Technology'' according to the General Technology Note for the ''development'', ''production'' or ''use'' (excluding operation) of equipment, functions or features or ''software'' controlled by 5A001, 5B001 or 5D001.

b. Specific ''technologies'', as follows:

b.1. ''Required'' ''technology'' for the ''development'' or ''production'' of telecommunications equipment specially designed to be used on board satellites;

b.2. ''Technology'' for the ''development'' or ''use'' of ''laser'' communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. ''Technology'' for the ''development'' of digital cellular radio base station receiving equipment whose reception capabilities that allow multi-band, multi-channel, multi-mode, multi-coding algorithm or multi-protocol operation can be modified by changes in ''software'';

b.4. ''Technology'' for the ''development'' of ''spread spectrum'' techniques, including ''frequency hopping'' techniques.

c. ''Technology'' according the General Technology Note for the ''development'' or ''production'' of any of the following telecommunication transmission or switching equipment, functions or features:

c.1. Equipment employing digital techniques designed to operate at a ''total digital transfer rate'' exceeding 15 Gbit/s;

TECHNICAL NOTE: For switching equipment the ''total digital transfer rate'' is measured at the highest speed port or line.

c.2. Equipment employing a ''laser'' and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing ''optical amplification'' using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; *or*

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

NOTE: 5E001.c.2.e. does not control ''technology'' for the ''development'' or ''production'' of commercial TV systems.

c.3. Equipment employing ''optical switching''; *or*

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 256; *or*

c.4.b. Operating at input or output frequencies exceeding 31.8 GHz; *or*

NOTE: 5E001.c.4.b. does not control ''technology'' for the ''development'' or ''production'' of equipment designed or modified for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

c.5. Equipment employing ''common channel signaling'' operating in non-associated mode of operation.

5E101 "Technology" according to the General Technology Note for the "development," "production" or "use" of equipment or software controlled by 5A101 or 5D101.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

5E991 "Technology" for the "Development", "Production" or "Use" of Equipment Controlled by 5A991 or 5B991, or "Software" Controlled by 5D991, and Other "Technologies" as Follows (see List of Items Controlled)

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: N/A.

Related Definitions: (1) ''Synchronous digital hierarchy'' (SDH) is a digital hierarchy providing a means to manage, multiplex, and access various forms of digital traffic using a synchronous transmission format on different types of media. The format is based on the Synchronous Transport Module (STM) that is defined by CCITT Recommendation G.703, G.707, G.708, G.709 and others yet to be published. The first level rate of 'SDH' is 155.52 Mbits/s. (2) 'Synchronous optical network' (SONET) is a network providing a means to manage, multiplex and access various forms of digital traffic using a synchronous transmission format on fiber optics. The format is the North America version of 'SDH' and also uses the Synchronous Transport Module (STM). However, it uses the Synchronous Transport Signal (STS) as the basic transport module with a first level rate of 51.81 Mbits/s. The SONET standards are being integrated into those of 'SDH'.

Items:

a. Specific ''technologies'' as follows:

a.1. ''Technology'' for the processing and application of coatings to optical fiber specially designed to make it suitable for underwater use;

a.2. ''Technology'' for the ''development'' of equipment employing 'Synchronous Digital Hierarchy' ('SDH') or 'Synchronous Optical Network' ('SONET') techniques.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

II. ''INFORMATION SECURITY''

NOTE 1: The control status of ''information security'' equipment, ''software'', systems, application specific ''electronic assemblies'', modules, integrated circuits, components, or functions is determined in Category 5, Part 2 even if they are components or ''electronic assemblies'' of other equipment.

N.B. TO NOTE 1: Commodities and software specially designed for medical end-use that incorporate an item in Category 5, part 2 are not classified in any ECCN in Category 5, part 2.

NOTE 2: Category 5, part 2, encryption products, when accompanying their user for the user's personal use or as tools of trade, are eligible for License Exceptions TMP or BAG, subject to the terms and conditions of these License Exceptions.

NOTE 3: Cryptography Note: ECCNs 5A002 and 5D002 do not control items that meet all of the following:

a. Generally available to the public by being sold, without restriction, from stock at retail selling points by means of any of the following:

1. Over-the-counter transactions;
2. Mail order transactions;
3. Electronic transactions; or
4. Telephone call transactions;

b. The cryptographic functionality cannot be easily changed by the user;

c. Designed for installation by the user without further substantial support by the supplier; and

d. When necessary, details of the items are accessible and will be provided, upon request, to the appropriate authority in the exporter's country in order to ascertain compliance with conditions described in paragraphs (a) through (c) of this note.

N.B. TO CRYPTOGRAPHY NOTE: Mass market encryption commodities and software eligible for the Cryptography Note are subject to the notification or review requirements described in §742.15(b)(1) and (b)(2) of the EAR, unless specifically excluded from these requirements by §742.15(b)(3) of the EAR. Mass market commodities and software employing a key length greater than 64 bits for the symmetric algorithm must be reviewed in accordance with the requirements of §742.15(b)(2) of the EAR in order to be released from the ''EI'' and ''NS'' controls of ECCN 5A002 or 5D002. All other mass market commodities and software eligible for the Cryptography Note are controlled under ECCN 5A992 or 5D992 (without review) and may be exported or reexported to most destinations without a license, following notification, in accordance with the requirements of §742.15(b)(1) of the EAR.

A. SYSTEMS, EQUIPMENT AND COMPONENTS

5A002 Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", as follows (see List of Items Controlled), and other specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT, EI

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.

EI applies to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. Refer to §742.15 of this subchapter.

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports of commodities controlled under 5A002 and exported under License Exceptions LVS or GOV.

LICENSE EXCEPTIONS

LVS: Yes: $500 for components and spare parts only. N/A for equipment.

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: $ value.

Related Controls: 5A002 does not control the items listed in paragraphs (a) through (f) in the Note in the items paragraph of this entry. These items are instead controlled under ECCN 5A992.

Related Definitions: N/A

Items:

NOTE: 5A002 does not control the following. However, these items are instead controlled under 5A992:

(a) ''Personalized smart cards'':

(1) Where the cryptographic capability is restricted for use in equipment or systems excluded from control paragraphs (b) through (f) of this Note; *or*

(2) For general public-use applications where the cryptographic capability is not user-accessible and it is specially designed and limited to allow protection of personal data stored within.

N.B.: If a ''personalized smart card'' has multiple functions, the control status of each function is assessed individually.

(b) Receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type, without digital encryption except that exclusively used for sending the billing or program-related information back to the broadcast providers.

(c) Equipment where the cryptographic capability is not user-accessible and which is specially designed and limited to allow any of the following:

(1) Execution of copy-protected ''software''

(2) Access to any of the following:

(a) Copy-protected contents stored on read-only media; or

(b) Information stored in encrypted form on media (*e.g.*, in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets to the public; *or*

(3) Copying control of copyright protected audio/video data.

(d) Cryptographic equipment specially designed and limited for banking use or money transactions;

(e) Portable or mobile radiotelephones for civil use (*e.g.*, for use with commercial civil cellular radio communications systems) that are not capable of end-to-end encryption.

N.B.: The term ''money transactions'' includes the collection and settlement of fares or credit functions.

(f) Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*e.g.*, a single, unrelayed hop between terminal and home basestation) is less than 400 meters according to the manufacturer's specifications.

TECHNICAL NOTE: Parity bits are not included in the key length.

a. Systems, equipment, application specific ''electronic assemblies'', modules and integrated circuits for ''information security'', as follows, and other specially designed components therefor:

N.B.: For the control of global navigation satellite systems receiving equipment containing or employing decryption (*e.g.*, GPS or GLONASS) *see* 7A005.

a.1. Designed or modified to use ''cryptography'' employing digital techniques performing any cryptographic function other than authentication or digital signature having any of the following:

TECHNICAL NOTES: 1. Authentication and digital signature functions include their associated key management function.

2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

3. ''Cryptography'' does not include ''fixed'' data compression or coding techniques.

NOTE: 5A002.a.1 includes equipment designed or modified to use ''cryptography'' employing analog principles when implemented with digital techniques.

a.1.a. A ''symmetric algorithm'' employing a key length in excess of 56-bits; *or*

a.1.b. An ''asymmetric algorithm'' where the security of the algorithm is based on any of the following:

a.1.b.1. Factorization of integers in excess of 512 bits (*e.g.*, RSA);

a.1.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (*e.g.*, Diffie-Hellman over Z/pZ); *or*

a.1.b.3. Discrete logarithms in a group other than mentioned in 5A002.a.1.b.2 in excess of 112 bits (*e.g.*, Diffie-Hellman over an elliptic curve);

a.2. Designed or modified to perform cryptanalytic functions;

a.3. [Reserved]

a.4. Specially designed or modified to reduce the compromising emanations of information-bearing signals beyond what is necessary for health, safety or electromagnetic interference standards;

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for ''spread spectrum'' systems, including the hopping code for ''frequency hopping'' systems;

a.6. Designed or modified to use cryptographic techniques to generate channelizing or scrambling codes for ''time-modulated ultra-wideband'' systems;

a.7. [Reserved]

a.8. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

PART 2—INFORMATION SECURITY

5A992 Equipment not controlled by 5A002.

LICENSE REQUIREMENTS
Reason for Control: AT

Control(s)	*Country Chart*
AT applies to 5A992.a	AT Column 1.
AT applies to 5A992.b	AT Column 2.

See §§740.19 and 742.20 of the EAR for additional information on Libya.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED
Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items:

a. Telecommunications and other information security equipment containing encryption.

b. ''Information security'' equipment, n.e.s., (*e.g.*, cryptographic, cryptanalytic, and cryptologic equipment, n.e.s.) and components therefor.

5B002 Information Security—test, inspection and "production" equipment.

LICENSE REQUIREMENTS
Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry.	NS Column 1
AT applies to entire entry.	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Equipment specially designed for:

a.1. The ''development'' of equipment or functions controlled by 5A002, 5B002, 5D002 or 5E002, including measuring or test equipment;

a.2. The ''production'' of equipment or functions controlled by 5A002, 5B002, 5D002, or 5E002, including measuring, test, repair or production equipment;

b. Measuring equipment specially designed to evaluate and validate the ''information security'' functions controlled by 5A002 or 5D002.

C. MATERIALS [RESERVED]

D. SOFTWARE

5D002 Information Security—"Software"

LICENSE REQUIREMENTS
Reason for Control: NS, AT, EI

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.

''EI'' applies to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with Executive Order 13026 of November 15, 1996 (3 CFR, 1996 Comp., p.228) and pursuant to the Presidential Memorandum of that date. Refer to §742.15 of the EAR.

NOTE: Encryption software is controlled because of its functional capacity, and not because of any informational value of such software; such software is not accorded the same treatment under the EAR as other ''software'; and for export licensing purposes, encryption software is treated under the EAR in the same manner as a commodity included in ECCN 5A002.

NOTE: Encryption software controlled for ''EI'' reasons under this entry remains subject to the EAR even when made publicly available in accordance with part 734 of the EAR. See §740.13(e) of the EAR for information on releasing certain source code (and corresponding object code) which would be considered publicly available from ''EI'' controls.

NOTE: After notification to BIS, 56-bit encryption items (including key management products not exceeding 512 bits) and up to (and including) 64-bit mass market encryption commodities and software are released from ''EI'' and ''NS'' controls. After a review by BIS, all other mass market encryption commodities and software eligible for the Cryptography Note also may be released from ''EI'' and ''NS'' controls. See §742.15(b)(1) and (b)(2) of the EAR.

License Exceptions
CIV: N/A
TSR: N/A
List of Items Controlled

Unit: $ value.

Related Controls: This entry does not control ''software'' ''required'' for the ''use'' of equipment excluded from control under the Related Controls paragraph or the Technical Notes in ECCN 5A002 or ''software'' providing any of the functions of equipment excluded from control under ECCN 5A002. These items are controlled under ECCN 5D992.

Related Definitions: 5D002.a controls ''software'' designed or modified to use ''cryptography'' employing digital or analog techniques to ensure ''information security'.

Items:

a. ''Software'' specially designed or modified for the ''development'', ''production'', or ''use'' of equipment or ''software'' controlled by 5A002, 5B002, or 5D002.

b. ''Software'' specially designed or modified to support ''technology'' controlled by 5E002.

c. Specific ''software'' as follows:

c.1. ''Software'' having the characteristics, or performing or simulating the functions of the equipment controlled by 5A002 or 5B002;

c.2. ''Software'' to certify ''software'' controlled by 5D002.c.1.

5D992 "Information Security" "software" not controlled by 5D002.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to 5D992.a.1 and .b.1 ..	AT Column 1.
AT applies to 5D992.a.2, b.2 and c	AT Column 2.

See §§740.19 and 742.20 of the EAR for additional information on Libya.

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: 1

a. ''Software'', as follows:

a.1 ''Software'' specially designed or modified for the ''development'', ''production'', or ''use'' of telecommunications and other information security equipment containing encryption (*e.g.,* equipment controlled by 5A992.a);

a.2. ''Software'' specially designed or modified for the ''development'', ''production:, or ''use'' of information security or cryptologic equipment (*e.g.,* equipment controlled by 5A992.b).

b. ''Software'', as follows:

b.1. ''Software'' having the characteristics, or performing or simulating the functions of the equipment controlled by 5A992.a.

b.2. ''Software'' having the characteristics, or performing or simulating the functions of the equipment controlled by 5A992.b.

c. ''Software'' designed or modified to protect against malicious computer damage, *e.g.,* viruses.

E. TECHNOLOGY

5E002 "Technology" according to the General Technology Note for the "development", "production" or "use" of equipment controlled by 5A002 or 5B002 or "software" controlled by 5D002.

LICENSE REQUIREMENTS

Reason for Control: NS, AT, EI

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

EI applies to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date.

Refer to §742.15 of the EAR

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: See also 5E992

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

5E992 "Information Security" "technology", not controlled by 5E002.

LICENSE REQUIREMENTS

Reason for Control: AT

CONTROL(S)	*Country Chart*
AT applies to 5E992.a	AT Column 1
AT applies to 5E992.b	AT Column 2

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items:

a. ''Technology'' n.e.s., for the ''development'', ''production'' or ''use'' of telecommunications equipment and other information security and containing encryption (*e.g.,* equipment controlled by 5A992.a) or ''software'' controlled by 5D992.a.1 or b.1.

b. ''Technology'', n.e.s., for the ''development'', ''production'' or ''use'' of ''information security'' or cryptologic equipment (*e.g.,* equipment controlled by 5A992.b), or ''software'' controlled by 5D992.a.2, b.2, or c.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

Category 6—Sensors and Lasers

A. SYSTEMS, EQUIPMENT AND COMPONENTS

6A001 Acoustics.

LICENSE REQUIREMENTS

Reason for Control: NS, ATO

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $3000; N/A for 6A001.a.1.b.1 object detection and location systems having a transmitting frequency below 5 kHz or a sound pressure level exceeding 210 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 30 kHz to 2 kHz inclusive; 6A001.a.2.a.1, a.2.a.2, 6A001.a.2.a.3, a.2.a.5, a.2.a.6, 6A001.a.2.b; processing equipment controlled by 6A001.a.2.c, and specially designed for real time application with towed acoustic hydrophone arrays; a.2.e.1, a.2.e.2; and bottom or bay cable systems controlled by 6A001.a.2.f and having processing equipment specially designed for real time application with bottom or bay cable systems.

GBS: Yes for 6A001.a.1.b.4.

CIV:Yes for 6A001.a.1.b.4.

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: See also 6A991.

Related Definitions: N/A.

Items:

a. Marine acoustic systems, equipment and specially designed components therefor, as follows:

a.1. Active (transmitting or transmitting-and-receiving) systems, equipment and specially designed components therefor, as follows:

NOTE: 6A001.a.1 does not control:

a. Depth sounders operating vertically below the apparatus, not including a scanning function exceeding ±20°, and limited to measuring the depth of water, the distance of submerged or buried objects or fish finding;

b. Acoustic beacons, as follows:

1. Acoustic emergency beacons;

2. Pingers specially designed for relocating or returning to an underwater position.

a.1.a. Wide-swath bathymetric survey systems designed for sea bed topographic mapping, having all of the following:

a.1.a.1. Being designed to take measurements at an angle exceeding 20° from the vertical;

a.1.a.2. Being designed to measure depths exceeding 600 m below the water surface; *and*

a.1.a.3. Being designed to provide any of the following:

a.1.a.3.a. Incorporation of multiple beams any of which is less than 1.9°; *or*

a.1.a.3.b. Data accuracies of better than 0.3% of water depth across the swath averaged over the individual measurements within the swath;

a.1.b. Object detection or location systems having any of the following:

a.1.b.1. A transmitting frequency below 10 kHz;

a.1.b.2. Sound pressure level exceeding 224dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

a.1.b.3. Sound pressure level exceeding 235 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

a.1.b.4. Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

a.1.b.5. Designed to operate with an unambiguous display range exceeding 5,120 m; *or*

a.1.b.6. Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

a.1.b.6.a. Dynamic compensation for pressure; *or*

a.1.b.6.b. Incorporating other than lead zirconate titanate as the transduction element;

a.1.c. Acoustic projectors, including transducers, incorporating piezoelectric, magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination, having any of the following:

NOTES: 1. The control status of acoustic projectors, including transducers, specially designed for other equipment is determined by the control status of the other equipment.

2. 6A001.a.1.c does not control electronic sources that direct the sound vertically only, or mechanical (*e.g.*, air gun or vapor-shock gun) or chemical (*e.g.*, explosive) sources.

a.1.c.1. An instantaneous radiated acoustic power density exceeding 0.01 mW/mm²/Hz for devices operating at frequencies below 10 kHz;

a.1.c.2. A continuously radiated acoustic power density exceeding 0.001 Mw/mm²/Hz for devices operating at frequencies below 10 kHz; *or*

TECHNICAL NOTE: Acoustic power density is obtained by dividing the output acoustic power by the product of the area of the radiating surface and the frequency of operation.

a.1.c.3. Side-lobe suppression exceeding 22 dB;

a.1.d. Acoustic systems, equipment and specially designed components for determining the position of surface vessels or underwater vehicles designed to operate at a

range exceeding 1,000 m with a positioning accuracy of less than 10 m rms (root mean square) when measured at a range of 1,000 m;

NOTE: 6A001.a.1.d includes:

a. Equipment using coherent ''signal processing'' between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle;

b. Equipment capable of automatically correcting speed-of-sound propagation errors for calculation of a point.

a.2. Passive (receiving, whether or not related in normal application to separate active equipment) systems, equipment and specially designed components therefor, as follows:

a.2.a. Hydrophones having any of the following characteristics:

NOTE: The control status of hydrophones specially designed for other equipment is determined by the control status of the other equipment.

a.2.a.1. Incorporating continuous flexible sensing elements;

a.2.a.2. Incorporating flexible assemblies of discrete sensing elements with either a diameter or length less than 20 mm and with a separation between elements of less than 20 mm;

a.2.a.3. Having any of the following sensing elements:

a.2.a.3.a. Optical fibers; *or*

a.2.a.3.b. Piezoelectric polymer films other than polyvinylidene-fluoride (PVDF) and its co-polymers {P(VDF–TrFE) and P(VDF–TFE)}; *or*

a.2.a.3.c. Flexible piezoelectric composites;

a.2.a.4. A hydrophone sensitivity better than −180dB at any depth with no acceleration compensation;

a.2.a.5. When designed to operate at depths exceeding 35 m with acceleration compensation; *or*

a.2.a.6. Designed for operation at depths exceeding 1,000 m;

TECHNICAL NOTES: 1. ''Piezoelectric polymer film'' sensing elements consist of polarized polymer film that is stretched over and attached to a supporting frame or spool (mandrel).

2. 'Flexible piezoelectric composite' sensing elements consist of piezoelectric ceramic particles or fibers combined with an electrically insulating, acoustically transparent rubber, polymer or epoxy compound, where the compound is an integral part of the sensing elements.

3. Hydrophone sensitivity is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms reference, when the hydrophone sensor, without a pre-amplifier, is placed in a plane wave acoustic field with an rms pressure of 1 μPa. For example, a hydrophone of −160 dB (reference 1 V per μPa) would yield an output voltage of 10^{-8} V in such a field, while one of −180 dB sensitivity would yield only 10^{-9} V output. Thus, −160 dB is better than −180 dB.

a.2.b. Towed acoustic hydrophone arrays having any of the following:

a.2.b.1. Hydrophone group spacing of less than 12.5 m or ''able to be modified'' to have hydrophone group spacing of less than 12.5 m;

a.2.b.2. Designed or 'able to be modified' to operate at depths exceeding 35m;

TECHNICAL NOTE: ''Able to be modified'' in 6A001.a.2.b means having provisions to allow a change of the wiring or interconnections to alter hydrophone group spacing or operating depth limits. These provisions are: spare wiring exceeding 10% of the number of wires, hydrophone group spacing adjustment blocks or internal depth limiting devices that are adjustable or that control more than one hydrophone group.

a.2.b.3. Heading sensors controlled by 6A001.a.2.d;

a.2.b.4. Longitudinally reinforced array hoses;

a.2.b.5. An assembled array of less than 40 mm in diameter;

a.2.b.6. Multiplexed hydrophone group signals designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m; *or*

a.2.b.7. Hydrophone characteristics controlled by 6A001.a.2.a;

a.2.c. Processing equipment, specially designed for towed acoustic hydrophone arrays, having ''user accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

a.2.d. Heading sensors having all of the following:

a.2.d.1. An accuracy of better than ±0.5°; *and*

a.2.d.2. Designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m;

a.2.e. Bottom or bay cable systems having any of the following:

a.2.e.1. Incorporating hydrophones controlled by 6A001.a.2.a; *or*

a.2.e.2. Incorporating multiplexed hydrophone group signal modules having all of the following characteristics:

a.2.e.2.a. Designed to operate at depths exceeding 35 m or having an adjustable or removal depth sensing device in order to operate at depths exceeding 35 m; *and*

a.2.e.2.b. Capable of being operationally interchanged with towed acoustic hydrophone array modules;

a.2.f. Processing equipment, specially designed for bottom or bay cable systems, having ''user accessible programmability'' and time or frequency domain processing and

correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

b. Correlation-velocity sonar log equipment designed to measure the horizontal speed of the equipment carrier relative to the sea bed at distances between the carrier and the sea bed exceeding 500 m.

6A002 Optical sensors.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, CC, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
MT applies to optical detectors in 6A002.a.1, a.3, or .e that are specially designed or modified to protect ''missiles'' against nuclear effects (*e.g.*, Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for ''missiles''.	MT Column 1.
RS applies to 6A002.a.1, a.2, a.3, .c, and .e.	RS Column 1.
CC applies to police-model infrared viewers in 6A002.c.	CC Column 1.
AT applies to entire entry	AT Column 1.
UN applies to 6A002.a.1, a.2 a.3 and c.	Iraq and Rwanda.

LICENSE REQUIREMENT NOTES: *See* §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $3000, *except* N/A for MT and for 6A002.a.1, a.2, a.3, .c, and .e

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: The following commodities are subject to the export licensing authority of U.S. Department of State, Directorate of Defense Trade Controls (22 CFR part 121): 1.) ''Image intensifiers'' defined in 6A002.a.2 and ''focal plane arrays'' defined in 6A002.a.3 specially designed, modified, or configured for military use and not part of civil equipment; 2.) ''Space qualified'' solid-state detectors defined in 6A002.a.1, ''space qualified'' imaging sensors (*e.g.*, ''monospectral imaging sensors'' and ''multispectral imaging sensors'') defined in 6A002.b.2.b.1, and ''space qualified'' cryocoolers defined in 6A002.d.1, unless, on or after September 23, 2002, the Department of State issues a commodity jurisdiction determination assigning the export licensing authority to the Department of Commerce, Bureau of Industry and Security. See also 6A102, 6A202, and 6A992

NOTE: Exporters may apply for a commodity jurisdiction request with the Department of State, Directorate of Defense Trade Controls for ''space qualified'' solid-state detectors defined in 6A002.a.1 and imaging sensors (*e.g.*, ''monospectral imaging sensors'' and ''multispectral imaging sensors'') defined in 6A002.b.2.b.1 that may have predominant civil application(s).

Related Definitions: N/A

Items:

a. Optical detectors, as follows:

NOTE: 6A002.a does not control germanium or silicon photodevices.

N.B. Silicon and other material based ''microbolometer'' non ''space-qualified'' ''focal plane arrays'' are only specified under 6A002.a.3.f.

a.1. ''Space-qualified'' solid-state detectors, as follows:

a.1.a. ''Space-qualified'' solid-state detectors, having all of the following:

a.1.a.1. A peak response in the wavelength range exceeding 10 nm but not exceeding 300 nm; *and*

a.1.a.2. A response of less than 0.1% relative to the peak response at a wavelength exceeding 400 nm;

a.1.b. ''Space-qualified'' solid-state detectors, having all of the following:

a.1.b.1. A peak response in the wavelength range exceeding 900 nm but not exceeding 1,200 nm; *and*

a.1.b.2. A response ''time constant'' of 95 ns or less;

a.1.c. ''Space-qualified'' solid-state detectors having a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

a.2. Image intensifier tubes and specially designed components therefor, as follows:

a.2.a. Image intensifier tubes having all of the following:

a.2.a.1. A peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm;

a.2.a.2. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of 12 µm or less; *and*

a.2.a.3. Any of the following photocathodes:

a.2.a.3.a. S-20, S-25 or multialkali photocathodes with a luminous sensitivity exceeding 350 µA/lm;

a.2.a.3.b. GaAs or GaInAs photocathodes; *or*

a.2.a.3.c. Other III–V compound semiconductor photocathodes;

NOTE: 6A002.a.2.a.3.c does not apply to compound semiconductor photocathodes with a maximum radiant sensitivity of 10 mA/W or less.

a.2.b. Specially designed components, as follows:

a.2.b.1. Microchannel plates having a hole pitch (center-to-center spacing) of 12 µm or less;

a.2.b.2. GaAs or GaInAs photocathodes;

a.2.b.3. Other III–V compound semiconductor photocathodes;

NOTE: 6A002.a.2.b.3 does not control compound semiconductor photocathodes with a maximum radiant sensitivity of 10 mA/W or less.

a.3. Non-''space-qualified'' ''focal plane arrays'', as follows:

N.B. Silicon and other material based 'microbolometer' non ''space-qualified'' ''focal plane arrays'' are only specified in 6A002.a.3.f.

TECHNICAL NOTES:

1. Linear or two-dimensional multi-element detector arrays are referred to as ''focal plane arrays''.

2. For the purposes of 6A002.a.3. 'cross scan direction' is defined as the axis parallel to the linear array of detector elements and the 'scan direction' is defined as the axis perpendicular to the linear array of detector elements.

NOTE 1: 6A002.a.3 includes photoconductive arrays and photovoltaic arrays.

NOTE 2: 6A002.a.3 does not control:

a. Multi-element (not to exceed 16 elements) encapsulated photoconductive cells using either lead sulphide or lead selenide;

b. Pyroelectric detectors using any of the following:

b.1. Triglycine sulphate and variants;

b.2. Lead-lanthanum-zirconium titanate and variants;

b.3. Lithium tantalate;

b.4. Polyvinylidene fluoride and variants; *or*

b.5. Strontium barium niobate and variants.

a.3.a. Non-''space-qualified'' ''focal plane arrays'', having all of the following:

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 900 nm but not exceeding 1,050 nm; *and*

a.3.a.2. A response ''time constant'' of less than 0.5 ns;

a.3.b. Non-''space-qualified'' ''focal plane arrays'', having all of the following:

a.3.b.1. Individual elements with a peak response in the wavelength range exceeding 1,050 nm but not exceeding 1,200 nm; *and*

a.3.b.2. A response ''time constant'' of 95 ns or less;

a.3.c. Non-''space-qualified'' non-linear (2-dimensional) ''focal plane arrays'', having individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

N.B. Silicon and other material based 'microbolometer' non-''space-qualified'' ''focal plane arrays'' are only specified in 6A002.a.3.f.

a.3.d. Non-''space-qualified'' linear (1-dimensional) ''focal plane arrays'', having all of the following :

a.3.d.1. Individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 2,500 nm; *and*

a.3.d.2. Any of the following:

a.3.d.2.a. A ratio of scan direction dimension of the detector element to the cross-scan direction dimension of the detector element of less than 3.8; *or*

a.3.d.2.b. Signal processing in the element (SPRITE);

a.3.e. Non-''space-qualified'' linear (1-dimensional) ''focal plane arrays'', having individual elements with a peak response in the wavelength range exceeding 2,500 nm but not exceeding 30,000 nm.

a.3.f. Non-''space-qualified'' non-linear (2-dimensional) infrared ''focal plane arrays'' based on 'microbolometer' material having individual elements with an unfiltered response in the wavelength range equal to or exceeding 8,000 nm but not exceeding 14,000 nm.

TECHNICAL NOTES:

1. For the purposes of 6A002.a.3.f. 'microbolometer' is defined as a thermal imaging detector that, as a result of a temperature change in the detector caused by the absorption of infrared radiation, is used to generate any usable signal.

2. Non-imaging thermal detectors are not controlled by 6A002.a.3. Imaging thermal detectors are a multi-element array of thermal detectors with the capacity to form a visual, electronic or other representation of an object with sufficient fidelity to enable understanding of its shape or other spatial characteristics, such as height, width, or area. A multi-element array of thermal detectors without the capacity to form spatial representation of an object is non-imaging.

3. 6A002.a.3.f captures all non-''space-qualified'' non-linear (2-dimensional) infrared ''focal plane arrays'' based on microbolometer material having individual elements with any unfiltered response between 8,000 nm and 14,000 nm.

b. ''Monospectral imaging sensors'' and ''multispectral imaging sensors'' designed for remote sensing applications, having any of the following:

b.1. An Instantaneous-Field-Of-View (IFOV) of less than 200 µrad (microradians); *or*

b.2. Being specified for operation in the wavelength range exceeding 400 nm but not exceeding 30,000 nm and having all the following;

b.2.a. Providing output imaging data in digital format; *and*

b.2.b. Being any of the following:

b.2.b.1. ''Space-qualified'; *or*

b.2.b.2. Designed for airborne operation, using other than silicon detectors, and having an IFOV of less than 2.5 mrad (milliradians).

c. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating any of the following:

c.1. Image intensifier tubes having the characteristics listed in 6A002.a.2.a; *or*

c.2. ''Focal plane arrays'' having the characteristics listed in 6A002.a.3.

TECHNICAL NOTE: ''Direct view'' refers to imaging equipment, operating in the visible or infrared spectrum, that presents a visual image to a human observer without converting the image into an electronic signal for television display, and that cannot record or store the image photographically, electronically or by any other means.

NOTE: 6A002.c does not control the following equipment incorporating other than GaAs or GaInAs photocathodes:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Medical equipment;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Flame detectors for industrial furnaces;

e. Equipment specially designed for laboratory use.

d. Special support components for optical sensors, as follows:

d.1. ''Space-qualified'' cryocoolers;

d.2. Non-''space-qualified'' cryocoolers, having a cooling source temperature below 218 K (−55 °C), as follows:

d.2.a. Closed cycle type with a specified Mean-Time-To-Failure (MTTF), or Mean-Time-Between-Failures (MTBF), exceeding 2,500 hours;

d.2.b. Joule-Thomson (JT) self-regulating minicoolers having bore (outside) diameters of less than 8 mm;

d.3. Optical sensing fibers specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive.

e. ''Space qualified'' ''focal plane arrays'' having more than 2,048 elements per array and having a peak response in the wavelength range exceeding 300 nm but not exceeding 900 nm.

6A003 Cameras.

LICENSE REQUIREMENTS

Reason for Control: NS, NP, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
NP applies to items controlled in paragraphs 6A003.a.2, a.3 and a.4.	NP Column 1.
RS applies to items controlled in 6A003.b.3 and b.4.	RS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to items controlled in 6A003.b.3 and b.4.	Iraq and Rwanda.

LICENSE EXCEPTIONS

LVS: $1500, except N/A for 6A003.a.2 through a.6, b.1, b.3 and b.4.

GBS: Yes for 6A003.a.1.

CIV: Yes for 6A003.a.1.

LIST OF ITEMS CONTROLLED

Unit: Number.

Related Controls: (1) See ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry. (2) Also see ECCN 6A203. (3) See ECCN 8A002.d and .e for cameras specially designed or modified for underwater use.

Related Definitions: N/A.

Items:

a. Instrumentation cameras and specially designed components therefor, as follows:

NOTE: Instrumentation cameras, controlled by 6A003.a.3 to 6A003.a.5, with modular structures should be evaluated by their maximum capability, using plug-ins available according to the camera manufacturer's specifications.

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

NOTE: 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras having writing speeds exceeding 10 mm/μs;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras, having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1 μs per full frame; *and*

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second.

a.6. Plug-ins, having all of the following characteristics:

a.6.a. Specially designed for instrumentation cameras which have modular structures and that are controlled by 6A003.a; *and*

a.6.b. Enabling these cameras to meet the characteristics specified in 6A003.a.3, 6A003.a.4 or 6A003.a.5, according to the manufacturer's specifications.

b. Imaging cameras, as follows:

NOTE: 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having a peak response in the wavelength range exceeding 10nm, but not exceeding 30,000 nm and having all of the following:

b.1.a. Having any of the following:

b.1.a.1. More than 4×10^6 ''active pixels'' per solid state array for monochrome (black and white) cameras;

b.1.a.2. More than 4×10^6 ''active pixels'' per solid state array for color cameras incorporating three solid state arrays; *or*

b.1.a.3. More than 12×10^6 ''active pixels'' for solid state array color cameras incorporating one solid state array; *and*

b.1.b. Having any of the following:

b.1.b.1. Optical mirrors controlled by 6A004.a.;

b.1.b.2. Optical control equipment controlled by 6A004.d.; *or*

b.1.b.3. The capability for annotating internally generated camera tracking data.

TECHNICAL NOTES:

1. For the purposes of this entry, digital video cameras should be evaluated by the maximum number of ''active pixels'' used for capturing moving images.

2. For the purpose of this entry, camera tracking data is the information necessary to define camera line of sight orientation with respect to the earth. This includes: (1) the horizontal angle the camera line of sight makes with respect to the earth's magnetic field direction and; (2) the vertical angle between the camera line of sight and the earth's horizon.

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a. A peak response in the wavelength range exceeding 10 nm, but not exceeding 30,000 nm;

b.2.b. Linear detector arrays with more than 8,192 elements per array; *and*

b.2.c. Mechanical scanning in one direction;

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a;

b.4. Imaging cameras incorporating ''focal plane arrays'' having any of the following:

b.4.a. Incorporating ''focal plane arrays'' controlled by 6A002.a.3.a. to 6A002.a.3.e.; or

b.4.b. Incorporating ''focal plane arrays'' controlled by 6A002.a.3.f.

NOTE 1: ''Imaging cameras'' described in 6A003.b.4 include ''focal plane arrays'' combined with sufficient signal processing electronics, beyond the read out integrated circuit, to enable as a minimum the output of an analog or digital signal once power is supplied.

NOTE 2: 6A003.b.4.a does not control imaging cameras incorporating linear ''focal plane arrays'' with twelve elements or fewer, not employing time-delay-and-integration within the element, designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; or

e. Medical equipment.

NOTE 3: 6A003.b.4.b. does not control imaging cameras having any of the following characteristics:

a. A maximum frame rate equal to or less than 9 Hz;

b. Having all of the following:

1. Having a minimum horizontal or vertical Instantaneous-Field-of-View (IFOV) of at least 10 mrad/pixel (milliradians/pixel);

2. Incorporating a fixed focal-length lens that is not designed to be removed;

3. Not incorporating a direct view display, *and*

TECHNICAL NOTE: ''Direct view'' refers to an imaging camera operating in the infrared spectrum that presents a visual image to a human observer using a near-to-eye micro display incorporating any light-security mechanism.

4. Having any of the following:

a. No facility to obtain a viewable image of the detected field-of-view, *or*

b. The camera is designed for a single kind of application and designed not to be user modified, *or*

TECHNICAL NOTE: Instantaneous Field of View (IFOV) specified in Note 3.b is the lesser figure of the Horizontal FOV or the Vertical FOV.

Horizontal IFOV = horizontal Field of View (FOV)/number of horizontal detector elements

Vertical IFOV = vertical Field of View (FOV)/number of vertical detector elements

c. Where the camera is specially designed for installation into a civilian passenger land vehicle of less than three tons (gross vehicle weight) and having all of the following:

1. Is operable only when installed in any of the following:

a. The civilian passenger land vehicle for which it was intended; *or*

b. A specially designed, authorized maintenance test facility; *and*

2. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended.

NOTE: When necessary, details of the items will be provided, upon request, to the Bureau of Industry and Security in order to ascertain compliance with the conditions described in Note 3.b.4. and Note 3.c. in this Note to 6A003.b.4.b.

6A004 Optics.

LICENSE REQUIREMENTS

Reason for Control: NS, AT.

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2.
AT applies to entire entry	AT Column 1.

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $3000
GBS: Yes for 6A004.a.1, a.2, a.4, b, d.2, and d.4
CIV: Yes for 6A004.a.1, a.2, a.4, b, d.2, and d.4

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; cable in meters/feet; components in $ value.

Related Controls: ''Space qualified'' components for optical systems defined in 6A004.c and optical control equipment defined in 6A004.d.1 are subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121). See also 6A994

Related Definitions: N/A.

Items:

a. Optical mirrors (reflectors), as follows:

a.1. ''Deformable mirrors'' having either continuous or multi-element surfaces, and specially designed components therefor, capable of dynamically repositioning portions of the surface of the mirror at rates exceeding 100 Hz;

a.2. Lightweight monolithic mirrors having an average ''equivalent density'' of less than 30 kg/m^2 and a total mass exceeding 10 kg;

a.3. Lightweight ''composite'' or foam mirror structures having an average ''equivalent density'' of less than 30 kg/m^2 and a total mass exceeding 2 kg;

a.4. Beam steering mirrors more than 100 mm in diameter or length of major axis, that maintain a flatness of lambda/2 or better (lambda is equal to 633 nm) having a control bandwidth exceeding 100 Hz.

b. Optical components made from zinc selenide (ZnSe) or zinc sulphide (ZnS) with transmission in the wavelength range exceeding 3,000 nm but not exceeding 25,000 nm and having any of the following:

b.1. Exceeding 100 cm3 in volume; *or*

b.2. Exceeding 80 mm in diameter or length of major axis and 20 mm in thickness (depth).

c. ''Space-qualified'' components for optical systems, as follows:

c.1. Lightweighted to less than 20% ''equivalent density'' compared with a solid blank of the same aperture and thickness;

c.2. Substrates, substrates having surface coatings (single-layer or multi-layer, metallic or dielectric, conducting, semiconducting or insulating) or having protective films;

c.3. Segments or assemblies of mirrors designed to be assembled in space into an optical system with a collecting aperture equivalent to or larger than a single optic 1 m in diameter;

c.4. Manufactured from ''composite'' materials having a coefficient of linear thermal expansion equal to or less than 5×10^{-6} in any coordinate direction.

d. Optical control equipment, as follows:

d.1. Specially designed to maintain the surface figure or orientation of the ''space-qualified'' components controlled by 6A004.c.1 or 6A004.c.3;

d.2. Having steering, tracking, stabilization or resonator alignment bandwidths equal to or more than 100 Hz and an accuracy of 10 μrad (microradians) or less;

d.3. Gimbals having all of the following:

d.3.a. A maximum slew exceeding 5°;

d.3.b. A bandwidth of 100 Hz or more;

d.3.c. Angular pointing errors of 200 μrad (microradians) or less; *and*

d.3.d. Having any of the following:

d.3.d.1. Exceeding 0.15 m but not exceeding 1 m in diameter or major axis length and capable of angular accelerations exceeding 2 rad (radians)/s^2; *or*

d.3.d.2. Exceeding 1 m in diameter or major axis length and capable of angular accelerations exceeding 0.5 rad (radians)/s^2;

d.4. Specially designed to maintain the alignment of phased array or phased segment mirror systems consisting of mirrors with a segment diameter or major axis length of 1 m or more.

e. Aspheric optical elements having all of the following characteristics:

e.1. The largest dimension of the optical-aperture is greater than 400 mm;

e.2. The surface roughness is less than 1 nm (rms) for sampling lengths equal to or greater than 1 mm; *and*

e.3. The coefficient of linear thermal expansion's absolute magnitude is less than 3×10^{-6}/K at 25 °C;

TECHNICAL NOTES: 1. An ''aspheric optical element'' is any element used in an optical system whose imaging surface or surfaces are designed to depart from the shape of an ideal sphere.

2. Manufacturers are not required to measure the surface roughness listed in 6A004.e.2 unless the optical element was designed or manufactured with the intent to meet, or exceed, the control parameter.

NOTE: 6A004.e does not control aspheric optical elements having any of the following:

a. A largest optical-aperture dimension less than 1 m and a focal length to aperture ratio equal to or greater than 4.5:1;

b. A largest optical-aperture dimension equal to or greater than 1 m and a focal length to aperture ratio equal to or greater than 7:1;

c. Being designed as Fresnel, flyeye, stripe, prism or diffractive optical elements;

d. Being fabricated from borosilicate glass having a coefficient of linear thermal expansion greater than 2.5×10^{-6}/K at 25 °C; or

e. Being an x-ray optical element having inner mirror capabilities (*e.g.*, tube-type mirrors).

N.B.: For aspheric optical elements specially designed for lithographic equipment, see 3B001.

6A005 "Lasers" (other than those described in 0B001.g.5 or .h.6), components and optical equipment, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, NP, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
NP applies to "lasers" controlled by 6A005.a.1.c, a.2.a, a.4.c., a.6, c.1.b, c.2.b.2.a, c.2.b.2.b, c.2.c.2, or d.2.c, as described in the following License Requirements Note.	NP Column 1.
AT applies to entire entry	AT Column 1.

License Requirements Note: NP controls apply to the following "lasers" controlled by 6A005:

(a) Pulsed excimer "lasers" controlled by 6A005.a.1.c having all of the following characteristics:

(1) Operating at wavelengths between 240 and 360 nm;

(2) A repetition rate > 250 Hz; *and*

(3) An average output power > 500 W;

(b) Copper vapor "lasers" controlled by 6A005.a.2.a having all of the following characteristics:

(1) Operating at wavelengths between 500 and 600 nm; *and*

(2) An average output power ≥ 40 W;

(c) Pulsed carbon dioxide "lasers" controlled by 6A005.a.4.c (except industrial CO_2 lasers used in applications such as cutting and welding) having all of the following characteristics:

(1) Operating at wavelengths between 9,000 and 11,000 nm;

(2) A repetition rate > 250 Hz;

(3) An average output power > 500 W; *and*

(4) A pulse width < 200 ns;

(d) Argon ion "lasers" controlled by 6A005.a.6 having all of the following characteristics:

(1) Operating at wavelengths between 400 and 515 nm; *and*

(2) An average output power > 40 W;

(e) Alexandrite "lasers" controlled by 6A005.c.1.b having all of the following characteristics:

(1) Operating at wavelengths between 720 and 800 nm;

(2) A bandwidth ≤ 0.005 nm;

(3) A repetition rate > 125 Hz; *and*

(4) Average output power > 30 W;

(f) Single-transverse mode output neodymium-doped (other than glass) "lasers" controlled by 6A005.c.2.b.2.a with an average output power > 40 W;

(g) Multiple-transverse mode output neodymium-doped (other than glass) "lasers" controlled by 6A005.c.2.b.2.b with an average output power > 50 W;

(h) Neodymium-doped (other than glass) "lasers" controlled by 6A005.c.2.c.2 having all of the following characteristics:

(1) Incorporating frequency doubling for output wavelength between 500 and 550 nm; *and*

(2) Average output power > 40 W;

(i) Tunable pulsed single-mode dye "lasers" controlled by 6A005.d.2.c operating at wavelengths between 300 and 800 nm.

LICENSE EXCEPTIONS

LVS: N/A for NP items. $3000 for all other items.

GBS: Yes, for 6A005.d (except d.2.c), CO_2 or CO/CO_2 "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; CO "lasers" having a CW maximum rated single or multimode output power not exceeding 10 kW; CO_2 "lasers" controlled by 6A005.a.4 that operate in CW multiple-transverse mode; and having a CW output power not exceeding 15 kW; Neodymium-doped (other than glass), pulse-excited, "Q-switched lasers" controlled by 6A005.c.2.b.2.b having a pulse duration equal to or more than 1 ns; and a multiple-transverse mode output with a "peak power" not exceeding 400 MW; Neodymium-doped (other than glass) "lasers" controlled by 6A005.c.2.b.3.b or 6A005.c.2.b.4.b that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; and an average or CW output power not exceeding 2 kW; and operate in a pulse-excited, non-"Q-switched" multiple-transverse mode; or in a continuously excited, multiple-transverse mode; and 6A005.f.1.

CIV: Yes, for 6A005.d (except d.2.c), CO_2 or CO/CO_2 "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; CO "lasers" having a CW maximum rated single or multimode output power not exceeding 10 kW; CO_2 "lasers" controlled by 6A005.a.4 that operate in CW multiple-transverse mode; and having a CW output power not exceeding 15 kW; Neodymium-doped (other than glass), pulse-excited, "Q-switched lasers" controlled by 6A005.c.2.b.2.b having a pulse duration equal to or more than 1 ns; and a multiple-transverse mode output with a "peak power" not exceeding 400 MW; Neodymium-doped (other than glass) "lasers" controlled by 6A005.c.2.b.3.b or

6A005.c.2.b.4.b that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; and an average or CW output power not exceeding 2 kW; and operate in a pulse-excited, non-''Q-switched'' multiple-transverse mode; or in a continuously excited, multiple-transverse mode; and 6A005.f.1.

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components and accessories in $ value.

Related Controls: (1) See ECCN 6D001 for ''software'' for items controlled under this entry. (2) See ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry. (3) Also see ECCNs 6A205 and 6A995. (4) See ECCN 3B001 for excimer ''lasers'' specially designed for lithography equipment. (5) ''Lasers'' specially designed or prepared for use in isotope separation are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (6) Shared aperture optical elements, capable of operating in ''super-high power laser'' applications, are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: (1.) Pulsed ''lasers'' include those that run in a continuous wave (CW) mode with pulses superimposed. (2.) Pulse-excited ''lasers'' include those that run in a continuously excited mode with pulse excitation superimposed. (3.) The control status of Raman ''lasers'' is determined by the parameters of the pumping source ''lasers''. The pumping source ''lasers'' can be any of the ''lasers'' described as follows:

Items:

a. Gas ''lasers'', as follows:

a.1. Excimer ''lasers'', having any of the following:

a.1.a. An output wavelength not exceeding 150 nm and having any of the following:

a.1.a.1. An output energy exceeding 50 mJ per pulse; *or*

a.1.a.2. An average output power exceeding 1 W;

a.1.b. An output wavelength exceeding 150 nm but not exceeding 190 nm and having any of the following:

a.1.b.1. An output energy exceeding 1.5 J per pulse; *or*

a.1.b.2. An average output power exceeding 120 W;

a.1.c. An output wavelength exceeding 190 nm but not exceeding 360 nm and having any of the following:

a.1.c.1. An output energy exceeding 10 J per pulse; *or*

a.1.c.2. An average output power exceeding 500 W; *or*

a.1.d. An output wavelength exceeding 360 nm and having any of the following:

a.1.d.1. An output energy exceeding 1.5 J per pulse; *or*

a.1.d.2. An average output power exceeding 30 W;

N.B.: For excimer ''lasers'' specially designed for lithography equipment, *see* 3B001.

a.2. Metal vapor ''lasers'', as follows:

a.2.a. Copper (Cu) ''lasers'' having an average output power exceeding 20 W;

a.2.b. Gold (Au) ''lasers'' having an average output power exceeding 5 W;

a.2.c. Sodium (Na) ''lasers'' having an output power exceeding 5 W;

a.2.d. Barium (Ba) ''lasers'' having an average output power exceeding 2 W;

a.3. Carbon monoxide (CO) ''lasers'' having any of the following:

a.3.a. An output energy exceeding 2 J per pulse and a pulsed ''peak power'' exceeding 5 kW; *or*

a.3.b. An average or CW output power exceeding 5 kW;

a.4. Carbon dioxide (CO_2) ''lasers'' having any of the following:

a.4.a. A CW output power exceeding 15 kW;

a.4.b. A pulsed output having a ''pulse duration'' exceeding 10 μs and having any of the following:

a.4.b.1. An average output power exceeding 10 kW; *or*

a.4.b.2. A pulsed ''peak power'' exceeding 100 kW; *or*

a.4.c. A pulsed output having a ''pulse duration'' equal to or less than 10 μs; and having any of the following:

a.4.c.1. A pulse energy exceeding 5 J per pulse; *or*

a.4.c.2. An average output power exceeding 2.5 kW;

a.5. ''Chemical lasers'', as follows:

a.5.a. Hydrogen Fluoride (HF) ''lasers'';

a.5.b. Deuterium Fluoride (DF) ''lasers'';

a.5.c. ''Transfer lasers'', as follows:

a.5.c.1. Oxygen Iodine (O_2-I) ''lasers'';

a.5.c.2. Deuterium Fluoride-Carbon dioxide (DF-CO_2) ''lasers'';

a.6. Krypton ion or argon ion ''lasers'' having any of the following:

a.6.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 50 W; *or*

a.6.b. An average or CW output power exceeding 50 W;

a.7. Other gas ''lasers'', having any of the following:

NOTE: 6A005.a.7 does not control nitrogen ''lasers''.

a.7.a. An output wavelength not exceeding 150 nm and having any of the following:

a.7.a.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

a.7.a.2. An average or CW output power exceeding 1 W;

a.7.b. An output wavelength exceeding 150 nm but not exceeding 800 nm and having any of the following:

a.7.b.1. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 30 W; *or*

a.7.b.2. An average or CW output power exceeding 30 W;

a.7.c. An output wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

a.7.c.1. An output energy exceeding 0.25 J per pulse and a pulsed ''peak power'' exceeding 10 W; *or*

a.7.c.2. An average or CW output power exceeding 10 W; *or*

a.7.d. An output wavelength exceeding 1,400 nm and an average or CW output power exceeding 1 W.

b. Semiconductor ''lasers'', as follows:

NOTE 1: 6A005.b. includes semiconductor ''lasers'' having optical output connectors (*e.g.*, fiber optic pigtails).

NOTE 2: The control status of semiconductor ''lasers'' specially designed for other equipment is determined by the control status of the other equipment.

b.1. Individual single-transverse mode semiconductor ''lasers'' having any of the following:

b.1.a. A wavelength equal to or less than 1510 nm, and having an average or CW output power exceeding 1.5 W; *or*

b.1.b. A wavelength greater than 1510 nm, and having an average or CW output power exceeding 500 mW;

b.2. Individual, multiple-transverse mode semiconductor ''lasers'' , having any of the following:

b.2.a. A wavelength of less than 1400 nm, and having an average or CW output power exceeding 10W;

b.2.b. A wavelength equal to or greater than 1400 nm and less than 1900 nm, and having an average or CW output power exceeding 2.5 W; *or*

b.2.c. A wavelength equal to or greater than 1900 nm and having an average or CW output power exceeding 1 W.

b.3. Individual semiconductor ''laser'' arrays, having any of the following:

b.3.a. A wavelength of less than 1400 nm and having an average or CW output power exceeding 80 W; *or*

b.3.b. A wavelength equal to or greater than 1400 nm and less than 1900 nm, and having an average or CW output power exceeding 25 W; *or*

b.3.c. A wavelength equal to or greater than 1900 nm, and having an average or CW output power exceeding 10 W.

b.4. Array stacks of semiconductor ''lasers'' containing at least one array that is controlled under 6A005.b.3.

TECHNICAL NOTES: 1. Semiconductor ''lasers'' are commonly called ''laser'' diodes.

2. An ''array'' consists of multiple semiconductor ''laser'' emitters fabricated as a single chip so that the centers of the emitted light beams are on parallel paths.

3. An ''array stack'' is fabricated by stacking, or otherwise assembling, ''arrays'' so that the centers of the emitted light beams are on parallel paths.

c. Solid state ''lasers'', as follows:

c.1. ''Tunable'' ''lasers'' having any of the following:

NOTE: 6A005.c.1 includes titanium-sapphire (Ti: Al_2O_3), thulium-YAG (Tm: YAG), thulium-YSGG (Tm: YSGG), alexandrite (Cr: $BeAl_2O_4$) and color center ''lasers''.

c.1.a. An output wavelength less than 600 nm and having any of the following:

c.1.a.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

c.1.a.2. An average or CW output power exceeding 1 W;

c.1.b. An output wavelength of 600 nm or more but not exceeding 1,400 nm and having any of the following:

c.1.b.1. An output energy exceeding 1 J per pulse and a pulsed ''peak power'' exceeding 20 W; *or*

c.1.b.2. An average or CW output power exceeding 20 W; *or*

c.1.c. An output wavelength exceeding 1,400 nm and having any of the following:

c.1.c.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

c.1.c.2. An average or CW output power exceeding 1 W;

c.2. Non-''tunable'' ''lasers'', as follows:

NOTE: 6A005.c.2 includes atomic transition solid state ''lasers''.

c.2.a. Neodymium glass ''lasers'', as follows:

c.2.a.1. ''Q-switched lasers'' having any of the following:

c.2.a.1.a. An output energy exceeding 20 J but not exceeding 50 J per pulse and an average output power exceeding 10 W; *or*

c.2.a.1.b. An output energy exceeding 50 J per pulse;

c.2.a.2. Non-''Q-switched lasers'' having any of the following:

c.2.a.2.a. An output energy exceeding 50 J but not exceeding 100 J per pulse and an average output power exceeding 20 W; *or*

c.2.a.2.b. An output energy exceeding 100 J per pulse;

c.2.b. Neodymium-doped (other than glass) ''lasers'', having an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm, as follows:

N.B.: For neodymium-doped (other than glass) ''lasers'' having an output wavelength not exceeding 1,000 nm or exceeding 1,100 nm, *see* 6A005.c.2.c.

c.2.b.1. Pulse-excited, mode-locked, ''Q-switched lasers'' having a ''pulse duration'' of less than 1 ns and having any of the following:

c.2.b.1.a. A ''peak power'' exceeding 5 GW;

c.2.b.1.b. An average output power exceeding 10 W; *or*

c.2.b.1.c. A pulsed energy exceeding 0.1 J;

c.2.b.2. Pulse-excited, ''Q-switched lasers'' having a pulse duration equal to or more than 1 ns, and having any of the following:

c.2.b.2.a. A single-transverse mode output having:

c.2.b.2.a.1. A ''peak power'' exceeding 100 MW;

c.2.b.2.a.2. An average output power exceeding 20 W; *or*

c.2.b.2.a.3. A pulsed energy exceeding 2 J; *or*

c.2.b.2.b. A multiple-transverse mode output having:

c.2.b.2.b.1. A ''peak power'' exceeding 400 MW;

c.2.b.2.b.2. An average output power exceeding 2 kW; *or*

c.2.b.2.b.3. A pulsed energy exceeding 2 J;

c.2.b.3. Pulse-excited, non-''Q-switched lasers'', having:

c.2.b.3.a. A single-transverse mode output having:

c.2.b.3.a.1. A ''peak power'' exceeding 500 kW; *or*

c.2.b.3.a.2. An average output power exceeding 150 W; *or*

c.2.b.3.b. A multiple-transverse mode output having:

c.2.b.3.b.1. A ''peak power'' exceeding 1 MW; *or*

c.2.b.3.b.2. An average power exceeding 2 kW;

c.2.b.4. Continuously excited ''lasers'' having:

c.2.b.4.a. A single-transverse mode output having:

c.2.b.4.a.1. A ''peak power'' exceeding 500 kW; *or*

c.2.b.4.a.2. An average or CW output power exceeding 150 W; *or*

c.2.b.4.b. A multiple-transverse mode output having:

c.2.b.4.b.1. A ''peak power'' exceeding 1 MW; *or*

c.2.b.4.b.2. An average or CW output power exceeding 2 kW;

c.2.c. Other non-''tunable'' ''lasers'', having any of the following:

c.2.c.1. A wavelength less than 150 nm and having any of the following:

c.2.c.1.a. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

c.2.c.1.b. An average or CW output power exceeding 1 W;

c.2.c.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

c.2.c.2.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 30 W; *or*

c.2.c.2.b. An average or CW output power exceeding 30 W;

c.2.c.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm, as follows:

c.2.c.3.a. ''Q-switched lasers'' having:

c.2.c.3.a.1. An output energy exceeding 0.5 J per pulse and a pulsed ''peak power'' exceeding 50 W; *or*

c.2.c.3.a.2. An average output power exceeding:

c.2.c.3.a.2.a. 10 W for single-mode ''lasers'';

c.2.c.3.a.2.b. 30 W for multimode ''lasers'';

c.2.c.3.b. Non-''Q-switched lasers'' having:

c.2.c.3.b.1. An output energy exceeding 2 J per pulse and a pulsed ''peak power'' exceeding 50 W; *or*

c.2.c.3.b.2. An average or CW output power exceeding 50 W; *or*

c.2.c.4. A wavelength exceeding 1,400 nm and having any of the following:

c.2.c.4.a. An output energy exceeding 100 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

c.2.c.4.b. An average or CW output power exceeding 1 W;

d. Dye and other liquid ''lasers'', having any of the following:

d.1. A wavelength less than 150 nm and;

d.1.a. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

d.1.b. An average or CW output power exceeding 1 W;

d.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

d.2.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 20 W;

d.2.b. An average or CW output power exceeding 20 W; *or*

d.2.c. A pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the ''pulse duration'' is less than 100 ns;

d.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

d.3.a. An output energy exceeding 0.5 J per pulse and a pulsed ''peak power'' exceeding 10 W; *or*

d.3.b. An average or CW output power exceeding 10 W; *or*

d.4. A wavelength exceeding 1,400 nm and having any of the following:

d.4.a. An output energy exceeding 100 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

d.4.b. An average or CW output power exceeding 1 W;

e. Components, as follows:

e.1. Mirrors cooled either by active cooling or by heat pipe cooling;

TECHNICAL NOTE: Active cooling is a cooling technique for optical components using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical

components specially designed for use with controlled ''lasers'';

f. Optical equipment, as follows:

N.B.: For shared aperture optical elements, capable of operating in ''Super-High Power Laser'' (''SHPL'') applications, see the U.S. Munitions List (22 CFR part 121).

f.1. Dynamic wavefront (phase) measuring equipment capable of mapping at least 50 positions on a beam wavefront having any of the following:

f.1.a. Frame rates equal to or more than 100 Hz and phase discrimination of at least 5% of the beam's wavelength; *or*

f.1.b. Frame rates equal to or more than 1,000 Hz and phase discrimination of at least 20% of the beam's wavelength;

f.2. ''Laser'' diagnostic equipment capable of measuring ''SHPL'' system angular beam steering errors of equal to or less than 10 µrad;

f.3. Optical equipment and components specially designed for a phased-array ''SHPL'' system for coherent beam combination to an accuracy of lambda/10 at the designed wavelength, or 0.1 µm, whichever is the smaller;

f.4. Projection telescopes specially designed for use with ''SHPL'' systems.

6A006 "Magnetometers", "magnetic gradiometers", "intrinsic magnetic gradiometers" and compensation systems, and specially designed components therefor, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $1500, N/A for 6A006.a.1; ''Magnetometers'' and subsystems defined in 6A006.a.2 using optically pumped or nuclear precession (proton/Overhauser) having a ''noise level'' (sensitivity) lower (better) than 2 pT rms per square root Hz; and 6A006.c.

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See also 6A996. This entry does not control instruments specially designed for biomagnetic measurements for medical diagnostics.

Related Definitions: N/A

Items:

a. ''Magnetometers'' and subsystems, as follows:

a.1. Using ''superconductive'' (SQUID) ''technology'' and having any of the following characteristics:

a.1.a. SQUID systems designed for stationary operation, without specially designed subsystems designed to reduce in-motion noise, and having a ''noise level'' (sensitivity) equal to or lower (better) than 50 fT (rms) per square root Hz at a frequency of 1 Hz; *or*

a.1.b. SQUID systems having an in-motion-magnetometer ''noise level'' (sensitivity) lower (better) than 20 pT (rms) per square root Hz at a frequency of 1 Hz and specially designed to reduce in-motion noise;

a.2. Using optically pumped or nuclear precession (proton/Overhauser) ''technology'' having a ''noise level'' (sensitivity) lower (better) than 20 pT (rms) per square root Hz;

a.3. Using fluxgate ''technology'' having a ''noise level'' (sensitivity) equal to or lower (better) than 10 pT (rms) per square root Hz at a frequency of 1 Hz;

a.4. Induction coil ''magnetometers'' having a ''noise level'' (sensitivity) lower (better) than any of the following:

a.4.a. 0.05 nT rms/square root Hz at frequencies of less than 1 Hz;

a.4.b. 1×10^{-3} nT rms/square root Hz at frequencies of 1 Hz or more but not exceeding 10 Hz; *or*

a.4.c. 1×10^{-4} nT rms/square root Hz at frequencies exceeding 10 Hz;

a.5. Fiber optic ''magnetometers'' having a ''noise level'' (sensitivity) lower (better) than 1 nT rms per square root Hz;

b. Magnetic gradiometers, as follows:

b.1. ''Magnetic gradiometers'' using multiple ''magnetometers'' controlled by 6A006.a;

b.2. Fiber optic ''intrinsic magnetic gradiometers'' having a magnetic gradient field ''noise level'' (sensitivity) lower (better) than 0.3 nT/m rms per square root Hz;

b.3. ''Intrinsic magnetic gradiometers'', using ''technology'' other than fiber-optic ''technology'', having a magnetic gradient field ''noise level'' (sensitivity) lower (better) than 0.015 nT/m rms per square root Hz; *and*

c. Magnetic compensation systems for magnetic sensors designed for operation on mobile platforms.

6A007 Gravity meters (gravimeters) and gravity gradiometers, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to 6A007.b and .c when the accuracies in 6A007.b.1 and b.2 are met or exceeded.	MT Column 1

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000; N/A for MT
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 6A107 and 6A997
Related Definitions: N/A
Items: a. Gravity meters designed or modified for ground use having a static accuracy of less (better) than 10 µgal;

NOTE: 6A007.a does not control ground gravity meters of the quartz element (Worden) type.

b. Gravity meters designed for mobile platforms for ground, marine, submersible, space or airborne use, having all of the following:

b.1. A static accuracy of less (better) than 0.7 mgal; *and*

b.2. An in-service (operational) accuracy of less (better) than 0.7 mgal having a time-to-steady-state registration of less than 2 minutes under any combination of attendant corrective compensations and motional influences;

c. Gravity gradiometers.

6A008 Radar systems, equipment and assemblies having any of the following characteristics (see List of Items Controlled), and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, RS, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
MT applies to items that are designed for airborne applications and that are usable in systems controlled for MT reasons.	MT Column 1.
RS applies to 6A008.j.1	RS Column 1.
AT applies to entire entry	AT Column 1.

License Requirement Notes: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $5000; N/A for MT and for 6A008.j.1 and 6A008.1.3
GBS: Yes, for 6A008.b, .c, and l.1 only.
CIV: Yes, for 6A008.b, .c, and l.1 only.

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: This entry does not control: Secondary surveillance radar (SSR); Car radar designed for collision prevention; Displays or monitors used for Air Traffic Control (ATC) having no more than 12 resolvable elements per mm; Meteorological (weather) radar. See also 6A108 and 6A998. ECCN 6A998 controls, *inter alia*, the LIDAR equipment excluded by the note to paragraph j of this ECCN (6A008).
Related Definitions: N/A.
Items:

a. Operating at frequencies from 40 GHz to 230 GHz and having an average output power exceeding 100 mW;

b. Having a tunable bandwidth exceeding ±6.25% of the center operating frequency;

TECHNICAL NOTE: The center operating frequency equals one half of the sum of the highest plus the lowest specified operating frequencies.

c. Capable of operating simultaneously on more than two carrier frequencies;

d. Capable of operating in synthetic aperture (SAR), inverse synthetic aperture (ISAR) radar mode, or sidelooking airborne (SLAR) radar mode;

e. Incorporating ''electronically steerable phased array antennae'';

f. Capable of heightfinding non-cooperative targets;

NOTE: 6A008.f does not control precision approach radar (PAR) equipment conforming to ICAO standards.

g. Specially designed for airborne (balloon or airframe mounted) operation and having Doppler ''signal processing'' for the detection of moving targets;

h. Employing processing of radar signals using any of the following:

h.1. ''Radar spread spectrum'' techniques; *or*

h.2. ''Radar frequency agility'' techniques;

i. Providing ground-based operation with a maximum ''instrumented range'' exceeding 185 km;

NOTE: 6A008.i does not control:

a. Fishing ground surveillance radar;

b. Ground radar equipment specially designed for en route air traffic control, provided that all the following conditions are met:

1. It has a maximum ''instrumented range'' of 500 km or less;

2. It is configured so that radar target data can be transmitted only one way from the radar site to one or more civil ATC centers;

3. It contains no provisions for remote control of the radar scan rate from the en route ATC center; and

4. It is to be permanently installed;

c. Weather balloon tracking radars.

j. Being ''laser'' radar or Light Detection and Ranging (LIDAR) equipment, having any of the following:

j.1. ''Space-qualified''; *or*

j.2. Employing coherent heterodyne or homodyne detection techniques and having an angular resolution of less (better) than 20 µrad (microradians);

NOTE: 6A008.j does not control LIDAR equipment specially designed for surveying or for meteorological observation.

k. Having ''signal processing'' sub-systems using ''pulse compression'', with any of the following:

k.1. A ''pulse compression'' ratio exceeding 150; *or*

k.2. A pulse width of less than 200 ns; *or*

l. Having data processing sub-systems with any of the following:

l.1. ''Automatic target tracking'' providing, at any antenna rotation, the predicted target position beyond the time of the next antenna beam passage;

NOTE: 6A008.l.1 does not control conflict alert capability in ATC systems, or marine or harbor radar.

l.2. Calculation of target velocity from primary radar having non-periodic (variable) scanning rates;

l.3. Processing for automatic pattern recognition (feature extraction) and comparison with target characteristic data bases (waveforms or imagery) to identify or classify targets; *or*

l.4. Superposition and correlation, or fusion, of target data from two or more ''geographically dispersed'' and ''interconnected radar sensors'' to enhance and discriminate targets.

NOTE: 6A008.l.4 does not control systems, equipment and assemblies designed for marine traffic control.

6A102 Radiation hardened detectors, other than those controlled by 6A002, specially designed or modified for protecting against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects) and usable for "missiles," designed or rated to withstand radiation levels which meet or exceed a total irradiation dose of 5×10^5 rads (silicon).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Components in number
Related Controls: N/A
Related Definitions: In this entry, a detector is defined as a mechanical, electrical, optical or chemical device that automatically identifies and records, or registers a stimulus such as an environmental change in pressure or temperature, an electrical or electromagnetic signal or radiation from a radioactive material.
Items: The list of items controlled is contained in the ECCN heading.

6A103 Radomes designed to withstand a combined thermal shock greater than 100 cal/sq cm accompanied by a peak over pressure of greater than 50 kPa, usable in protecting "missiles" against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for "missiles." (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

6A107 Gravity meters (gravimeters) and specially designed components for gravity meters and gravity gradiometers, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items:

a. Gravity meters (gravimeters), other than those controlled by 6A007.b, designed or modified for airborne or marine use, and having a static or operational accuracy of 7×10^{-6} m/s^2 (0.7 milligal) or better, and having a time to steady-state registration of two minutes or less, usable for ''missiles'';

b. Specially designed components for gravity meters controlled in 6A007. b or 6A107.a and gravity gradiometers controlled in 6A007.c.

6A108 Radar systems and tracking systems, other than those controlled by 6A008, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) This entry does not control airborne civil weather radar conforming to international standards for civil weather

radars provided that they do not incorporate any of the following: (a) Phased array antennas; (b) Frequency agility; (c) Spread spectrum; or (d) Signal processing specially designed for the tracking of vehicles. (2) Items in 6A108.a that are specially designed or modified for ''missiles'' or for items on the U.S. Munitions List are subject to the export licensing authority of the U.S. Department of State, Defense Trade Controls (see 22 CFR part 121).

Related Definitions: Laser radar systems are defined as those that embody specialized transmission, scanning, receiving and signal processing techniques for utilization of lasers for echo ranging, direction finding and discrimination of targets by location, radial speed and body reflection characteristics.

Items:

a. Radar and laser radar systems designed or modified for use in ''missiles'';

NOTE: 6A108.a includes the following:

a. Terrain contour mapping equipment;

b. Imaging sensor equipment;

c. Scene mapping and correlation (both digital and analog) equipment;

d. Doppler navigation radar equipment.

b. Precision tracking systems, usable for ''missiles'', as follows:

b.1. Tracking systems which use a code translator installed on the rocket or unmanned air vehicle in conjunction with either surface or airborne references or navigation satellite systems to provide real-time measurements of in-flight position and velocity;

b.2. Range instrumentation radars including associated optical/infrared trackers with all of the following capabilities:

b.2.a. Angular resolution better than 3 milliradians (0.5 mils);

b.2.b. Range of 30 km or greater with a range resolution better than 10 m rms;

b.2.c. Velocity resolution better than 3 m/s.

6A202 Photomultiplier tubes having both of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number

Related Controls: See ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry.

Related Definitions: N/A

Items:

a. Photocathode area of greater than 20 cm^2; *and*

b. Anode pulse rise time of less than 1 ns.

6A203 Cameras and components, other than those controlled by 6A003, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment and components in number; parts and accessories in $ value

Related Controls: (1) See ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry. (2) Also see ECCN 6A003.a.2, a.3, and a.4.

Related Definitions: N/A

Items:

a. Mechanical rotating mirror cameras, as follows, and specially designed components therefor:

a.1. Framing cameras with recording rates greater than 225,000 frames per second;

a.2. Streak cameras with writing speeds greater than 0.5 mm per microsecond;

NOTE: Components of cameras controlled by 6A203.a include their synchronizing electronics units and rotor assemblies consisting of turbines, mirrors and bearings.

b. Electronic streak cameras, electronic framing cameras, tubes and devices, as follows:

b.1. Electronic streak cameras capable of 50 ns or less time resolution;

b.2. Streak tubes for cameras controlled by 6A203.b.1;

b.3. Electronic (or electronically shuttered) framing cameras capable of 50 ns or less frame exposure time;

b.4. Framing tubes and solid-state imaging devices for use with cameras controlled by 6A203.b.3, as follows:

b.4.a. Proximity focused image intensifier tubes having the photocathode deposited on a transparent conductive coating to decrease photocathode sheet resistance;

b.4.b. Gated silicon intensifier target (SIT) videcon tubes, where a fast system allows gating the photoelectrons from the photocathode before they impinge on the SIT plate;

b.4.c. Kerr or Pockels cell electro-optical shuttering;

b.4.d. Other framing tubes and solid-state imaging devices having a fast-image gating time of less than 50 ns specially designed for cameras controlled by 6A203.b.3.

c. Radiation-hardened TV cameras, or lenses therefor, specially designed or rated as radiation hardened to withstand a total radiation dose greater than 50×10^3 Gy (silicon) (5×10^6 rad (silicon)) without operational degradation.

Technical Note: The term Gy (silicon) refers to the energy in Joules per kilogram absorbed by an unshielded silicon sample when exposed to ionizing radiation.

6A205 "Lasers", "laser" amplifiers and oscillators, other than those controlled by 6A005 or described in 0B001.g.5 or h.6, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: (1) *See* ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry. (2) Also see ECCNs 6A005 and 6A995. (3) ''Lasers'' specially designed or prepared for use in isotope separation are subject to the export licensing authority of the Nuclear Regulatory Commission (*see* 10 CFR part 110).

Related Definitions: N/A

Items:

a. Argon ion ''lasers'' having both of the following characteristics:

a.1. Operating at wavelengths between 400 nm and 515 nm; *and*

a.2. An average output power greater than 40 W;

b. Tunable pulsed single-mode dye laser oscillators having all of the following characteristics:

b.1. Operating at wavelengths between 300 nm and 800 nm;

b.2. An average output power greater than 1 W;

b.3. A repetition rate greater than 1 kHz; *and*

b.4. Pulse width less than 100 ns;

c. Tunable pulsed dye laser amplifiers and oscillators having all of the following characteristics:

c.1. Operating at wavelengths between 300 nm and 800 nm;

c.2. An average output power greater than 30 W;

c.3. A repetition rate greater than 1 kHz; *and*

c.4. Pulse width less than 100 ns;

NOTE: 6A205.c does not control single mode oscillators.

d. Pulsed carbon dioxide ''lasers'' having all of the following characteristics:

d.1. Operating at wavelengths between 9,000 nm and 11,000 nm;

d.2. A repetition rate greater than 250 Hz;

d.3. An average output power greater than 500 W; *and*

d.4. Pulse width of less than 200 ns;

e. Para-hydrogen Raman shifters designed to operate at 16 micrometer output wavelength and at a repetition rate greater than 250 Hz;

f. Pulse-excited, Q-switched neodymium-doped (other than glass) ''lasers'' having all of the following characteristics:

f.1. An output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm;

f.2. A pulse duration equal to or more than 1 ns; *and*

f.3. A multiple-transverse mode output having an average power exceeding 50 W.

6A225 Velocity interferometers for measuring velocities exceeding 1 km/s during time intervals of less than 10 microseconds.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: See ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry.

Related Definitions: N/A

ECCN Controls: 6A225 includes velocity interferometers, such as VISARs (Velocity interferometer systems for any reflector) and DLIs (Doppler laser interferometers).

Items: The list of items controlled is contained in the ECCN heading.

6A226 Pressure sensors, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: See ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry.
Related Definitions: N/A
Items: a. Manganin gauges for pressures greater than 100 kilobars; *or*

b. Quartz pressure transducers for pressures greater than 100 kilobars.

6A991 Marine or terrestrial acoustic equipment, n.e.s., capable of detecting or locating underwater objects or features or positioning surface vessels or underwater vehicles; and specially designed components, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 2

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6A992 Optical Sensors, not controlled by 6A002.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	Country Chart
AT applies to entire entry	AT Column 1 and Iraq.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items:

a. Image intensifier tubes and specially designed components therefor, as follows:

a.1. Image intensifier tubes having all the following:

a.1.a. A peak response in wavelength range exceeding 400 nm, but not exceeding 1,050 nm;

a.1.b. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of less than 25 micrometers; *and*

a.1.c. Having any of the following:

a.1.c.1. An S–20, S–25 or multialkali photocathode; *or*

a.1.c.2. A GaAs or GaInAs photocathode;

a.2. Specially designed microchannel plates having both of the following characteristics:

a.2.a. 15,000 or more hollow tubes per plate; *and*

a.2.b. Hole pitch (center-to-center spacing) of less than 25 micrometers.

b. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating image intensifier tubes having the characteristics listed in 6A992.a.1.

6A993 Cameras, not controlled by 6A003 or 6A203, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items:

a. Cameras that meet the criteria of Note 3 to 6A003.b.4.

b. [Reserved]

6A994 Optics, not controlled by 6A004.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A

Related Definitions: N/A
Items: a. Optical filters:

a.1. For wavelengths longer than 250 nm, comprised of multi-layer optical coatings and having either of the following:

a.1.a. Bandwidths equal to or less than 1 nm Full Width Half Intensity (FWHI) and peak transmission of 90% or more; or

a.1.b. Bandwidths equal to or less than 0.1 nm FWHI and peak transmission of 50% or more;

NOTE: 6A994 does not control optical filters with fixed air gaps or Lyot-type filters.

a.2. For wavelengths longer than 250 nm, and having all of the following:

a.2.a. Tunable over a spectral range of 500 nm or more;

a.2.b. Instantaneous optical bandpass of 1.25 nm or less;

a.2.c. Wavelength resettable within 0.1 ms to an accuracy of 1 nm or better within the tunable spectral range; and

a.2.d. A single peak transmission of 91% or more;

a.3. Optical opacity switches (filters) with a field of view of 30° or wider and a response time equal to or less than 1 ns;

b. ''Fluoride fiber'' cable, or optical fibers therefor, having an attenuation of less than 4 dB/km in the wavelength range exceeding 1,000 nm but not exceeding 3,000 nm.

6A995 "Lasers", not controlled by 6A005 or 6A205.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Carbon dioxide (CO_2) ''lasers'' having any of the following:

a.1. A CW output power exceeding 10 kW;

a.2. A pulsed output with a ''pulse duration'' exceeding 10 microseconds; and

a.2.a. An average output power exceeding 10 kW; or

a.2.b. A pulsed ''peak power'' exceeding 100 kW; or

a.3. A pulsed output with a ''pulse duration'' equal to or less than 10 microseconds; and

a.3.a. A pulse energy exceeding 5 J per pulse and ''peak power'' exceeding 2.5 kW; or

a.3.b. An average output power exceeding 2.5 kW;

b. Semiconductor lasers, as follows:

b.1. Individual, single-transverse mode semiconductor ''lasers'' having:

b.1.a. An average output power exceeding 100 mW; or

b.1.b. A wavelength exceeding 1,050 nm;

b.2. Individual, multiple-transverse mode semiconductor ''lasers'', or arrays of individual semiconductor ''lasers'', having a wavelength exceeding 1,050 nm;

c. Solid state, non-''tunable'' ''lasers'', as follows:

c.1. Ruby ''lasers'' having an output energy exceeding 20 J per pulse;

c.2. Neodymium-doped (other than glass) ''lasers'', as follows, with an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm:

c.2.a. Pulse-excited, ''Q-switched lasers'', with a pulse duration equal to or more than 1 ns, and a multiple-transverse mode output with any of the following:

c.2.a.1. A ''peak power'' exceeding 200 MW; or

c.2.a.2. An average output power exceeding 50 W;

c.2.b. Pulse-excited, non-''Q-switched lasers'', having a multiple-transverse mode output with an average power exceeding 500 W; or

c.2.c. Continuously excited ''lasers'' having a multiple-transverse mode output with an average or CW output power exceeding 500 W;

d. Free electron ''lasers''.

6A996 "Magnetometers" not controlled by ECCN 6A006, "Superconductive" electromagnetic sensors, and specially designed components therefor, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items:

a. ''Magnetometers'', n.e.s., having a ''noise level'' (sensitivity) lower (better) than 1.0 nT rms per square root Hz.

b. ''Superconductive'' electromagnetic sensors, components manufactured from ''superconductive'' materials:

b.1. Designed for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents

(including Josephson effect devices or ''superconductive'' quantum interference devices (SQUIDS));

b.2. Designed for sensing electromagnetic field variations at frequencies of 1 KHz or less; *and*

b.3. Having any of the following characteristics:

b.3.a. Incorporating thin-film SQUIDS with a minimum feature size of less than 2 µm and with associated input and output coupling circuits;

b.3.b. Designed to operate with a magnetic field slew rate exceeding 1×10^6 magnetic flux quanta per second;

b.3.c. Designed to function without magnetic shielding in the earth's ambient magnetic field; *or*

b.3.d. Having a temperature coefficient less (smaller) than 0.1 magnetic flux quantum/K.

6A997 Gravity meters (gravimeters) for ground use, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Having a static accuracy of less (better) than 100 microgal; or

b. Being of the quartz element (Worden) type.

6A998 Radar Systems, Equipment and Assemblies, n.e.s., (See List of Items Controlled), and Specially Designed Components Therefor.

LICENSE REQUIREMENTS

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to paragraph .b	RS Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Airborne radar equipment, n.e.s., and specially designed components therefor.

b. ''Space-qualified'' ''laser'' radar or Light Detection and Ranging (LIDAR) equipment specially designed for surveying or for meteorological observation.

6A999 Specific Processing Equipment, as Follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT.
Control(s).
Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 of the EAR for additional information.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: See also 6A203.
Related Definitions: N/A.
Items:

a. Seismic detection equipment;

b. Radiation hardened TV cameras, n.e.s.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

6B004 Optical equipment, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: Yes for 6B004.b
CIV: Yes for 6B004.b

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: This entry does not control microscopes.
Related Definitions: N/A
Items: a. Equipment for measuring absolute reflectance to an accuracy of ±0.1% of the reflectance value;

b. Equipment other than optical surface scattering measurement equipment, having an unobscured aperture of more than 10 cm, specially designed for the non-contact optical measurement of a non-planar optical surface figure (profile) to an ''accuracy'' of 2 nm or less (better) against the required profile.

6B007 Equipment to produce, align and calibrate land-based gravity meters with a static accuracy of better than 0.1 mgal.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6B008 Pulse radar cross-section measurement systems having transmit pulse widths of 100 ns or less and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: See also 6B108
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6B108 Systems, other than those controlled by 6B008, specially designed for radar cross section measurement usable for "missiles" and their subsystems.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: r
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6B995 Specially designed or modified equipment, including tools, dies, fixtures or gauges, and other specially designed components and accessories therefor:

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. For the manufacture or inspection of:

a.1. Free electron ''laser'' magnet wigglers;
a.2. Free electron ''laser'' photo injectors;
b. For the adjustment, to required tolerances, of the longitudinal magnetic field of free electron ''lasers''.

C. MATERIALS

6C002 Optical sensor materials, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number.
Related Controls: See also 6C992.
Related Definitions: N/A.
Items:

a. Elemental tellurium (Te) of purity levels of 99.9995% or more;
b. Single crystals (including epitaxial wafers) of any of the following:
b.1. Cadmium zinc telluride (CdZnTe), with zinc content less than 6% by mole fraction;
b.2. Cadmium telluride (CdTe) of any purity level; *or*
b.3. Mercury cadmium telluride (HgCdTe) of any purity level.

TECHNICAL NOTE: Mole fraction is defined as the ratio of moles of ZnTe to the sum of the moles of CdTe and ZnTe present in the crystal.

6C004 Optical materials, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500
GBS: Yes for 6C004.a and .e
CIV: Yes for 6C004.a and .e

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 6C994
Related Definitions: N/A
Items: a. Zinc selenide (ZnSe) and zinc sulphide (ZnS) ''substrate blanks'' produced by the chemical vapor deposition process, having any of the following:

a.1. A volume greater than 100 cm3; or

a.2. A diameter greater than 80 mm having a thickness of 20 mm or more;

b. Boules of the following electro-optic materials:

b.1. Potassium titanyl arsenate (KTA);

b.2. Silver gallium selenide ($AgGaSe_2$);

b.3. Thallium arsenic selenide (Tl_3AsSe_3, also known as TAS;

c. Non-linear optical materials, having all of the following:

c.1. Third order susceptibility (chi 3) of 10^{-6} m^2/V^2 or more; and

c.2. A response time of less than 1 ms;

d. ''Substrate blanks'' of silicon carbide or beryllium beryllium (Be/Be) deposited materials exceeding 300 mm in diameter or major axis length;

e. Glass, including fused silica, phosphate glass, fluorophosphate glass, zirconium fluoride (ZrF_4) and hafnium fluoride (HfF_4), having all of the following:

e.1. A hydroxyl ion (OH-) concentration of less than 5 ppm;

e.2. Integrated metallic purity levels of less than 1 ppm; and

e.3. High homogeneity (index of refraction variance) less than 5×10^{-6};

f. Synthetically produced diamond material with an absorption of less than 10^{-5} cm^{-1} for wavelengths exceeding 200 nm but not exceeding 14,000 nm.

6C005 Synthetic crystalline "laser" host material in unfinished form, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $1500
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items: a. Titanium doped sapphire;

b. Alexandrite.

6C992 Optical sensing fibers not controlled by 6A002.d.3 which are modified structurally to have a 'beat length' of less than 500 mm (high birefringence) or optical sensor materials not described in 6C002.b and having a zinc content of equal to or more than 6% by 'mole fraction'.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value.
Related Controls: N/A.
Related Definitions: (1) 'Mole fraction' is defined as the ratio of moles of ZnTe to the sum of the moles of CdTe and ZnTe present in the crystal. (2) 'Beat length' is the distance over which two orthogonally polarized signals, initially in phase, must pass in order to achieve a 2 Pi radian(s) phase difference.
Items:

The list of items controlled is contained in the ECCN heading.

6C994 Optical materials.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: (1) 'Fluoride fibers' are fibers manufactured from bulk fluoride compounds. (2) 'Optical fiber preforms' are bars, ingots, or rods of glass, plastic or other materials that have been specially

processed for use in fabricating optical fibers. The characteristics of the preform determine the basic parameters of the resultant drawn optical fibers.

Items:

a. Low optical absorption materials, as follows:

a.1. Bulk fluoride compounds containing ingredients with a purity of 99.999% or better; *or*

NOTE: 6C994.a.1 controls fluorides of zirconium or aluminum and variants.

a.2. Bulk fluoride glass made from compounds controlled by 6C004.e.1;

b. 'Optical fiber preforms' made from bulk fluoride compounds containing ingredients with a purity of 99.999% or better, specially designed for the manufacture of 'fluoride fibers' controlled by 6A994.b.

D. SOFTWARE

6D001 "Software" Specially Designed for the "Development" or "Production" of Equipment Controlled by 6A004, 6A005, 6A008, or 6B008.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, RS, AT.

Control(s)	Country chart
NS applies to ''software'' for equipment controlled by 6A004, 6A005, 6A008 or 6B008.	NS Column 1.
MT applies to ''software'' for equipment controlled by 6A008 or 6B008 for MT reasons.	MT Column 1.
NP applies to ''software'' for equipment controlled by 6A005 for NP reasons.	NP Column 1.
RS applies to ''software'' for equipment controlled by 6A008.j.1.	RS Column 1.
AT applies to entire entry	AT Column 1.

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) ''Software'' specially designed for the ''development'' or ''production'' of ''space qualified'' ''laser'' radar or Light Detection and Ranging (LIDAR) equipment defined in 6A008.j.1; or

(3) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''software'' specially designed for the ''development'' or ''production'' of equipment controlled by 6A008.1.3 or 6B008.

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: ''Software'' specially designed for the ''development'' or ''production'' of ''space qualified'' components for optical systems defined in 6A004.c and ''space qualified'' optical control equipment defined in 6A004.d.1 is subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121). See also 6D991, and ECCNs 6E001 (''development'') and 6E102 (''use'') for ''technology'' for items controlled under this entry.

Related Definitions: N/A.

Items:

The list of items controlled is contained in the ECCN heading.

6D002 "Software" specially designed for the "use" of equipment controlled by 6A002.b, 6A008, or 6B008.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, RS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to ''software'' for equipment controlled by 6A008 or 6B008 for MT reasons.	MT Column 1.
RS applies to ''software'' for equipment controlled by 6A008.j.1.	RS Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except N/A for the following

(1) Items controlled for MT reasons; or

(2) ''Software'' specially designed for the ''use'' of ''space qualified'' ''laser'' radar or Light Detection and Ranging (LIDAR) equipment defined in 6A008.j.1.

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: ''Software'' specially designed for the ''use'' of ''space qualified'' imaging sensors (*e.g.*, ''monospectral imaging sensors'' and ''multispectral imaging sensors'') defined in 6A002.b.2.b.1 is subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121), unless, on or after September 23, 2002, the Department of State issues a commodity jurisdiction determination assigning the export licensing authority to the Department of Commerce, Bureau of Industry and Security. ''Software'' specially designed for the ''use'' of ''space qualified'' LIDAR equipment specially designed for surveying or for meteorological observation, released from control under the note in 6A008.j, is controlled in 6D991. See also 6D102, 6D991, and 6D992

Related Definitions: N/A.

Items:

The list of items controlled is contained in the ECCN heading.

6D003 Other "software", as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: Yes for 6D003.h.1

TSR: Yes, except for the following:

(1) Items controlled for MT reasons; or

(2) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''software'' for items controlled by 6D003.a.

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See also 6D103 and 6D993

Related Definitions: N/A

Items:

a. Acoustics ''software'', as follows:

a.1. ''Software'' specially designed for acoustic beam forming for the ''real time processing'' of acoustic data for passive reception using towed hydrophone arrays;

a.2. ''Source code'' for the ''real time processing'' of acoustic data for passive reception using towed hydrophone arrays;

a.3. ''Software'' specially designed for acoustic beam forming for the ''real time processing'' of acoustic data for passive reception using bottom or bay cable systems;

a.4. ''Source code'' for the ''real time processing'' of acoustic data for passive reception using bottom or bay cable systems;

b. Optical sensors. None.

c. Cameras. None.

d. Optics. None.

e. Lasers. None

f. Magnetometers.

f.1. ''Software'' specially designed for magnetic compensation systems for magnetic sensors designed to operate on mobile platforms;

f.2. ''Software'' specially designed for magnetic anomaly detection on mobile platforms;

g. Gravimeters. ''Software'' specially designed to correct motional influences of gravity meters or gravity gradiometers;

h. Radar ''software'', as follows:

h.1. Air Traffic Control ''software'' application ''programs'' hosted on general purpose computers located at Air Traffic Control centers and capable of any of the following:

h.1.a. Processing and displaying more than 150 simultaneous ''system tracks''; *or*

h.1.b. Accepting radar target data from more than four primary radars;

h.2. ''Software'' for the design or ''production'' of radomes which:

h.2.a. Are specially designed to protect the ''electronically steerable phased array antennae'' controlled by 6A008.e.; *and*

h.2.b. Result in an antenna pattern having an ''average side lobe level'' more than 40 dB below the peak of the main beam level.

TECHNICAL NOTE: ''Average side lobe level'' in 6D003.h.2.b is measured over the entire array excluding the angular extent of the main beam and the first two side lobes on either side of the main beam.

6D102 "Software" specially designed or modified for the "use" of goods controlled by 6A108.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

6D103 Software" that processes post-flight, recorded data, enabling determination of vehicle position throughout its flight path, specially designed or modified for "missiles".

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

The list of items controlled is contained in the ECCN heading.

6D991 "Software" Specially Designed for the "Development", "Production", or "Use" of Equipment Controlled by 6A002.e, 6A991, 6A996, 6A997, or 6A998.

LICENSE REQUIREMENTS

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to ''software'' for equipment controlled by 6A002.e or 6A998.b.	RS Column 1.
AT applies to entire entry, except ''software'' for equipment controlled by 6A991.	AT Column 1.
AT applies to ''software'' for equipment controlled by 6A991.	AT Column 2.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:
The list of items controlled is contained in the ECCN heading.

6D992 "Software" specially designed for the "development" or "production" of equipment controlled by 6A992, 6A994, or 6A995.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6D993 Other "software" not controlled by 6D003.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Air Traffic Control (ATC) ''software'' application ''programs'' hosted on general purpose computers located at Air Traffic Control centers, and capable of automatically handing over primary radar target data (if not correlated with secondary surveillance radar (SSR) data) from the host ATC center to another ATC center;

E. TECHNOLOGY

6E001 "Technology" according to the General Technology Note for the "development" of equipment, materials or "software" controlled by 6A (except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (except 6B995), 6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, RS, CC, AT, UN.

Control(s)	Country chart
NS applies to ''technology'' for items controlled by 6A001 to 6A008, 6B004 to 6B008, 6C002 to 6C005, or 6D001 to 6D003.	NS Column 1.
MT applies to ''technology'' for items controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B008, 6B108, 6D001, 6D002, 6D102 or 6D103 for MT reasons.	MT Column 1.
NP applies to ''technology'' for items controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225, 6A226, or 6D001 for NP reasons.	NP Column 1.
RS applies to ''technology'' for equipment controlled by 6A002.a.1, .a.2, .a.3, .c, or .e, 6A003.b.3 or .b.4, or 6A008.j.1.	RS Column 1.
CC applies to ''technology'' for equipment controlled by 6A002 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.
UN applies to ''technology'' for equipment controlled by 6A002 or 6A003 for UN reasons.	Iraq and Rwanda.

LICENSE REQUIREMENT NOTES: *See* §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) ''Technology'' for commodities controlled by 6A002.e, 6A004.e, or 6A008.j.1;

(3) ''Technology'' for ''software'' specially designed for ''space qualified'' ''laser'' radar or Light Detection and Ranging (LIDAR) equipment defined in 6A008.j.1 and controlled by 6D001 or 6D002;

(4) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' for the ''development'' of the following: (a) Items controlled by 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6,6A001.a.2.b, 6A001.a.2.e.,

6A002.a.1.c, 6A008.l.3, 6B008, 6D003.a; (b) Equipment controlled by 6A001.a.2.c or 6A001.a.2.f when specially designed for real time applications; *or* (c) ''Software'' controlled by 6D001 and specially designed for the ''development'' or ''production'' of equipment controlled by 6A008.l.3 or 6B008; or

(5) Exports or reexports to Rwanda.

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: ''Technology'' according to the General Technology Note for the ''development'' of the following commodities is subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121): ''Space qualified'' (1.) Components for optical systems defined in 6A004.c and optical control equipment defined in 6A004.d.1.; (2.) Solid-state detectors defined in 6A002.a.1, ''imaging sensors'' (e.g., ''monospectral imaging sensors'' and ''multispectral imaging sensors'') defined in 6A002.b.2.b.1, and cryocoolers defined in 6A002.d.1 unless on or after September 23, 2002, the Department of State issues a commodity jurisdiction determination assigning the export licensing authority to the Department of Commerce, Bureau of Industry and Security. See also 6E101, 6E201, and 6E991.

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

6E002 "Technology" according to the General Technology Note for the "production" of equipment or materials controlled by 6A (except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997 or 6A998), 6B (except 6B995) or 6C (except 6C992 or 6C994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, NP, RS, CC, AT, UN.

Control(s)	Country chart
NS applies to ''technology'' for equipment controlled by 6A001 to 6A008, 6B004 to 6B008, or 6C002 to 6C005.	NS Column 1.
MT applies to ''technology'' for equipment controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B008, or 6B108 for MT reasons.	MT Column 1.
NP applies to ''technology'' for equipment controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225 or 6A226 for NP reasons.	NP Column 1.
RS applies to ''technology''for equipment controlled by 6A002.a.1, .a.2, .a.3, .c, or .e, 6A003.b.3 or .b.4, or 6A008.j.1.	RS Column 1.
CC applies to ''technology'' for equipment controlled by 6A002 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.
UN applies to ''technology'' for equipment controlled by 6A002 or 6A003 for UN reasons.	Iraq and Rwanda.

LICENSE REQUIREMENT NOTES: *See* §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) ''Technology'' for commodities controlled by 6A002.e, 6A004.e, 6A008.j.1;

(3) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' for the ''development'' of the following: (a) Items controlled by 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, and 6A001.a.2.c; and (b) Equipment controlled by 6A001.a.2.e and 6A001.a.2.f when specially designed for real time applications; or (c) ''Software'' controlled by 6D001 and specially designed for the ''development'' or ''production'' of equipment controlled by 6A002.a.1.c, 6A008.l.3 or 6B008; or

(4) Exports or reexports to Rwanda.

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: ''Technology'' according to the General Technology Note for the ''production'' of the following commodities is subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121) when intended for use on a satellite: ''Space qualified'' (1.) Components for optical systems defined in 6A004.c and optical control equipment defined in 6A004.d.1.; (2.) Solid-state detectors defined in 6A002.a.1, ''imaging sensors'' (e.g., ''monospectral imaging sensors'' and ''multispectral imaging sensors'') defined in 6A002.b.2.b.1, and cryocoolers defined in 6A002.d.1 unless on or after September 23, 2002, the Department of State issues a commodity jurisdiction determination assigning the export licensing authority to the Department of Commerce, Bureau of Industry and Security. See also 6E992.

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

6E003 Other "technology", as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: See also 6E993
Related Definitions: N/A
Items:
a. Acoustics. None.
b. Optical sensors. None.
c. Cameras. None.
d. Optics, ''technology'', as follows:
d.1. Optical surface coating and treatment ''technology'' ''required'' to achieve uniformity of 99.5% or better for optical coatings 500 mm or more in diameter or major axis length and with a total loss (absorption and scatter) of less than 5×10^{-3};
N.B.: See also 2E003.f.
d.2. Optical fabrication ''technology'' using single point diamond turning techniques to produce surface finish accuracies of better than 10 nm rms on non-planar surfaces exceeding 0.5 m^2;
e. Lasers. ''Technology'' ''required'' for the ''development'', ''production'' or ''use'' of specially designed diagnostic instruments or targets in test facilities for ''SHPL'' testing or testing or evaluation of materials irradiated by ''SHPL'' beams;
f. Magnetometers. None
g. Gravimeters. None
h. Radar. None

6E101 "Technology" according to the General Technology Note for the "use" of equipment or "software" controlled by 6A002, 6A007.b and .c, 6A008, 6A102, 6A107, 6A108, 6B108, 6D102 or 6D103.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: (1) This entry only controls ''technology'' for equipment controlled by 6A008 when it is designed for airborne applications and is usable in ''missiles''. (2) This entry only controls ''technology'' for items in 6A002.a.1, a.3, and .e that are specially designed or modified to protect ''missiles'' against nuclear effects (*e.g.*, Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for ''missiles.'' (3) This entry only controls ''technology'' for items in 6A007.b and .c when the accuracies in 6A007.b.1 and b.2 are met or exceeded.
Items: The list of items controlled is contained in the ECCN heading.

6E201 "Technology" according to the General Technology Note for the "use" of equipment controlled by 6A003.a.2. 6A003.a.3, 6A003.a.4, 6A005.a.1.c, 6A005.a.2.a, 6A005.a.4.c, 6A005.a.6, 6A005.c.1.b, 6A005.c.2.b.2.a, 6A005.c.2.b.2.b, 6A005.c.2.c.2, or 6A005.d.2.c., 6A202, 6A203, 6A205, 6A225 or 6A226.

LICENSE REQUIREMENTS

Reason for Control: NP, AT

Control(s)	*Country Chart*
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
ECCN Controls: This entry only controls ''technology'' for ''lasers'' in 6A005 that are controlled for NP reasons.
Items: The list of items controlled is contained in the ECCN heading.

6E991 "Technology" for the "development", "production" or "use" of equipment controlled by 6A991, 6A996, 6A997, or 6A998.

LICENSE REQUIREMENTS

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to ''technology'' for equipment controlled by 6A998.b.	RS Column 1.
AT applies to entire entry except ''technology'' for equipment controlled by 6A991.	AT Column 1.
AT applies to ''technology'' for equipment controlled by 6A991.	AT Column 2.

LICENSE EXCEPTIONS

CIV: N/A.
TSR: N/A.

LIST OF ITEMS CONTROLLED

Unit: N/A.
Related Controls: N/A.
Related Definitions: N/A.
Items:
The list of items controlled is contained in the ECCN heading.

6E992 "Technology" for the "development" or "production" of equipment, materials or "software" controlled by 6A992, 6A994, or 6A995, 6B995, 6C992, 6C994, or 6D993.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

6E993 Other "technology", not controlled by 6E003, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: a. Optical fabrication technologies for serially producing optical components at a rate exceeding 10 m^2 of surface area per year on any single spindle and with:

a.1. An area exceeding 1 m^2; *and*

a.2. A surface figure exceeding lambda/10 rms at the designed wavelength;

b. ''Technology'' for optical filters with a bandwidth equal to or less than 10 nm, a field of view (FOV) exceeding 40° and a resolution exceeding 0.75 line pairs per milliradian;

c. ''Technology'' for the ''development'' or ''production'' of cameras controlled by 6A993;

d. ''Technology'' ''required'' for the ''development'' or ''production'' of non-triaxial fluxgate ''magnetometers'' or non-triaxial fluxgate ''magnetometer'' systems, having any of the following:

d.1. A ''noise level'' of less than 0.05 nT rms per square root Hz at frequencies of less than 1 Hz; *or*

d.2. A ''noise level'' of less than 1×10^{-3} nT rms per square root Hz at frequencies of 1 Hz or more.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

Category 7—Navigation and Avionics

A. SYSTEMS, EQUIPMENT AND COMPONENTS

N.B. 1: For automatic pilots for underwater vehicles, see Category 8. For radar, see Category 6.

7A001 Linear Accelerometers Designed for Use in Inertial Navigation or Guidance Systems and Having Any of the Following Characteristics (See List of Items Controlled), and Specially Designed Components Therefor

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: See also 7A101 and 7A994. For angular or rotational accelerometers, see 7A002. MT controls do not apply to accelerometers that are specially designed and developed as Measurement While Drilling (MWD) sensors for use in downhole well service applications.
Related Definitions: N/A.
Items:

a. A ''bias'' ''stability'' of less (better) than 130 micro g with respect to a fixed calibration value over a period of one year;

b. A ''scale factor'' ''stability'' of less (better) than 130 ppm with respect to a fixed calibration value over a period of one year; or

c. Specified to function at linear acceleration levels exceeding 100 g.

7A002 Gyros, and Angular or Rotational Accelerometers, Having Any of the Following Characteristics (See List of Items Controlled), and Specially Designed Components Therefor

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to, commodities described in this entry that meet the parameters of 7A102.	MT Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: See also 7A102 and 7A994. For linear accelerometers, see 7A001.

Related Definitions: N/A.

Items:

a. A ''drift rate'' ''stability'', when measured in a 1 g environment over a period of one month and with respect to a fixed calibration value, of:

a.1. Less (better) than 0.1 degree per hour when specified to function at linear acceleration levels below 12 g; *or*

a.2. Less (better) than 0.5 degree per hour when specified to function at linear acceleration levels from 12 g to 100 g inclusive;

b. An angle random walk of less (better) than or equal to 0.0035 degree per square root hour; *or*

NOTE: 7A002.b does not control spinning mass gyros (spinning mass gyros are gyros which use a continually rotating mass to sense angular motion).

TECHNICAL NOTE: For the purpose of 7A002.b, ''angle random walk'' is the angular error buildup with time that is due to white noise in angular rate. (IEEE STD 528–2001).

c. Specified to function at linear acceleration levels exceeding 100 g.

7A003 Inertial Systems and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See also 7A103 and 7A994. Inertial Navigation Systems (INS) and inertial equipment, and specially designed components therefor specifically designed, modified or configured for military use are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (*See* 22 CFR part 121.)

Related Definitions: ''Data-Based Referenced Navigation'' (''DBRN'') systems are systems which use various sources of previously measured geo-mapping data integrated to provide accurate navigation information under dynamic conditions. Data sources include bathymetric maps, stellar maps, gravity maps, magnetic maps or 3–D digital terrain maps.

Items: a. Inertial Navigation Systems (INS) (gimballed or strapdown) and inertial equipment designed for ''aircraft'', land vehicles, vessels (surface or underwater) or ''spacecraft'' for attitude, guidance or control, having any of the following characteristics, and specially designed components therefor:

a.1. Navigation error (free inertial) subsequent to normal alignment of 0.8 nautical mile per hour (nm/hr) Circular Error Probable (CEP) or less (better); *or*

a.2. Specified to function at linear acceleration levels exceeding 10 g.

b. Hybrid Inertial Navigation Systems embedded with Global Navigation Satellite System(s) (GNSS) or with ''Data-Based Referenced Navigation'' (''DBRN'') System(s) for attitude, guidance or control, subsequent to normal alignment, having an INS navigation position accuracy, after loss of GNSS or ''DBRN'' for a period of up to 4 minutes, of less (better) than 10 meters Circular Error Probable (CEP).

c. Inertial Equipment for Azimuth, Heading, or North Pointing having any of the following characteristics, and specially designed components therefor:

c.1. Designed to have an Azimuth, Heading, or North Pointing accuracy equal to, or less (better) than 6 arc minutes RMS at 45 degrees latitude; *or*

c.2. Designed to have a non-operating shock level of 900 g or greater at a duration of 1-msec, or greater.

NOTE 1: The parameters of 7A003.a and 7A003.b are applicable with any of the following environmental conditions:

1. Input random vibration with an overall magnitude of 7.7 g rms in the first half hour and a total test duration of one and one half hour per axis in each of the three perpendicular axes, when the random vibration meets the following:

a. A constant power spectral density (PSD) value of 0.04 g^2/Hz over a frequency interval of 15 to 1,000 Hz; *and*

b. The PSD attenuates with frequency from 0.04 g^2/Hz to 0.01 g^2/Hz over a frequency interval from 1,000 to 2,000 Hz;

2. A roll and yaw rate of equal to or more than +2.62 rad/s (150 deg/s); *or*

3. According to national standards equivalent to 1. or 2. of this note.

NOTE 2: 7A003 does not control inertial navigation systems that are certified for use on ''civil aircraft'' by civil authorities of a country in Country Group A:1.

NOTE 3: 7A003.c.1 does not control theodolite systems incorporating inertial equipment specially designed for civil surveying purposes.

TECHNICAL NOTES: 1. 7A003.b refers to systems in which an INS and other independent navigation aids are built into a single unit (embedded) in order to achieve improved performance.

2. ''Circular Error Probable'' (''CEP'')—In a circular normal distribution, the radius of the circle containing 50 percent of the individual measurements being made, or the radius of the circle within which there is a 50 percent probability of being located.

7A004 Gyro-astro compasses, and other devices which derive position or orientation by means of automatically tracking celestial bodies or satellites, with an azimuth accuracy of equal to or less (better) than 5 seconds of arc.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 7A104 and 7A994
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

7A005 Global navigation satellite systems (i.e. GPS or GLONASS) receiving equipment, and specially designed components therefor. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

NOTE TO 7A005: *See* also 7A105 and 7A994.

7A006 Airborne altimeters operating at frequencies other than 4.2 to 4.4 GHz inclusive, having any of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 7A106, 7A994 and Category 6 for controls on radar.
Related Definitions: N/A
Items: a. ''Power management''; or

b. Using phase shift key modulation.

7A102 All types of gyros, other than those controlled by 7A002, usable in "missiles", with a rated "drift rate" "stability" of less than 0.5° (1 sigma or rms) per hour in a 1 g environment and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: (1) Drift rate is defined as the time rate of output deviation from the desired output. It consists of random and systematic components and is expressed as an equivalent angular displacement per unit time with respect to inertial space. (2) Stability is defined as standard deviation (1 sigma) of the variation of a particular parameter from its calibrated value measured under stable temperature conditions. This can be expressed as a function of time.
Items: The list of items controlled is contained in the ECCN heading.

7A103 Instrumentation, navigation equipment and systems, other than those controlled by 7A003, and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) Items described in 7A103.b are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (See 22 CFR part 121). (2) Inertial navigation systems and inertial equipment, and specially designed components therefor specifically designed, modified or configured for military use are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.)
Related Definitions: N/A

Items: a. Inertial or other equipment using accelerometers or gyros controlled by 7A001, 7A002, 7A101 or 7A102 and systems incorporating such equipment;

NOTE: 7A103.a does not control equipment containing accelerometers specially designed and developed as MWD (Measurement While Drilling) sensors for use in down-hole well services operations.

b. Integrated flight instrument systems, which include gyrostabilizers or automatic pilots, designed or modified for use in ''missiles''.

c. Integrated Navigation Systems, designed or modified for use in ''missiles'' and capable of providing a navigational accuracy of 200m Circular Error Probable (CEP) or less.

Technical Note: An 'integrated navigation system' typically incorporates the following components:

1. An inertial measurement device (*e.g.*, an attitude and heading reference system, inertial reference unit, or inertial navigation system);

2. One or more external sensors used to update the position and/or velocity, either periodically or continuously throughout the flight (*e.g.*, satellite navigation receiver, radar altimeter, and/or Doppler radar); and

3. Integration hardware and software.

7A104 Gyro-astro compasses and other devices, other than those controlled by 7A004, which derive position or orientation by means of automatically tracking celestial bodies or satellites and specially designed components therefor.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: This entry controls specially designed components for gyro-astro compasses and other devices controlled by 7A004

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

7A105 Receiving equipment for Global Navigation Satellite Systems (GNSS) (e.g. GPS, GLONASS, or Galileo) having any of the following characteristics, and specially designed components therefor. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

1. Designed or modified for use in ''missiles''; or

2. Designed or modified for airborne applications and having any of the following:

a. Capable of providing navigation information at speeds in excess of 600 m/s (1,165 nautical mph).

b. Employing decryption, designed or modified for military or governmental services, to gain access to GNSS secured signal/data; or

c. Being specially designed to employ anti-jam features (*e.g.* null steering antenna or electronically steerable antenna) to function in an environment of active or passive countermeasures.

NOTE TO 7A105: *See* also 7A005 and 7A994.

7A106 Altimeters, other than those controlled by 7A006, of radar or laser radar type, designed or modified for use in "missiles". (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

7A115 Passive sensors for determining bearing to specific electromagnetic source (direction finding equipment) or terrain characteristics, designed or modified for use in "missiles". (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

7A116 Flight control systems (hydraulic, mechanical, electro-optical, or electro-mechanical flight control systems (including fly-by-wire systems) and attitude control equipment) designed or modified for "missiles". (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

7A117 "Guidance sets" capable of achieving system accuracy of 3.33% or less of the range (e.g., a "CEP" of 10 km or less at a range of 300 km). (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

7A994 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including parts and components, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to QRS11–00100–100/101 Micromachined Angular Rate Sensors when exported solely for integration into a CSIS controlled in this entry.	RS Column 1
AT applies to entire entry	AT Column 1

License Requirement Notes: There is no de minimis level for foreign-made Commercial Standby Instrument Systems (CSIS) that integrate QRS11–00100–100/101 Micromachined Angular Rate Sensors (*see* §734.4(a) of the EAR).

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: QRS11 Micromachined Angular Rate Sensors are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls, unless the QRS11–00100–100/101 is integrated into and included as an integral part of a CSIS of the type described in ECCN 7A994 or aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or is exported solely for integration into such a system (*See* 22 CFR Part 121). In the latter case, such items are subject to the licensing jurisdiction of the Department of Commerce. Technology specific to the development and production of QRS11 sensors remains subject to the licensing jurisdiction of the Department of State.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

7B001 Test, calibration or alignment equipment specially designed for equipment controlled by 7A (except 7A994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) See also 7B101, 7B102 and 7B994.

(2) This entry does not control test, calibration or alignment equipment for Maintenance level I.

Related Definition: (1) Maintenance Level I: The failure of an inertial navigation unit is detected on the aircraft by indications from the Control and Display Unit (CDU) or by the status message from the corresponding sub-system. By following the manufacturer's manual, the cause of the failure may be localized at the level of the malfunctioning line replaceable unit (LRU). The operator then removes the LRU and replaces it with a spare. (2) Maintenance Level II: The defective LRU is sent to the maintenance workshop (the manufacturer's or that of the operator responsible for level II maintenance). At the maintenance workshop, the malfunctioning LRU is tested by various appropriate means to verify and localize the defective shop replaceable assembly (SRA) module responsible for the failure. This SRA is removed and replaced by an operative spare. The defective SRA (or possibly the complete LRU) is then shipped to the manufacturer. Maintenance Level II does not include the removal of controlled accelerometers or gyro sensors from the SRA.
Items: The list of items controlled is contained in the ECCN heading.

7B002 Equipment, as follows (see List of Items Controlled), specially designed to characterize mirrors for ring "laser" gyros.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 7B102 and 7B994
Related Definitions: N/A
Items: a. Scatterometers having a measurement accuracy of 10 ppm or less (better);

b. Profilometers having a measurement accuracy of 0.5 nm (5 angstrom) or less (better).

7B003 Equipment specially designed for the "production" of equipment controlled by 7A (except 7A994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: (1) See also 7B103, (this entry is subject to the licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (*see* 22 CFR part 121)) and 7B994.

(2) This entry includes: Inertial Measurement Unit (IMU module) tester; IMU platform tester; IMU stable element handling fixture; IMU platform balance fixture; gyro tuning test station; gyro dynamic balance station; gyro run-in/motor test station; gyro evacuation and fill station; centrifuge fixtures for gyro bearings; accelerometer axis align station; and accelerometer test station.

Related Definitions: N/A.

Items: The list of items controlled is contained in the ECCN heading.

7B101 Production equipment", and other test, calibration, and alignment equipment, other than that described in 2B119 to 2B122, 7B003, and 7B102, designed or modified to be used with equipment controlled by 7A001 to 7A004 or 7A101 to 7A104.

LICENSE REQUIREMENTS

Reason for Control: MT, AT.

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: (1) *See also* 2B119 to 2B122, 7B003, 7B102, and 7B994.

(2) This entry includes: inertial measurement unit (IMU module) tester; IMU platform tester; IMU stable element handling fixture; IMU platform balance fixture; gyro tuning test station; gyro dynamic balance stations; gyro run-in/motor test stations; gyro evacuation and filling stations; centrifuge fixtures for gyro bearings; accelerometer axis align stations; and accelerometer test stations.

Related Definitions: N/A.

Items: The list of items controlled is contained in the ECCN heading.

7B102 Equipment, other than those controlled by 7B002, designed or modified to characterize mirrors, for laser gyro equipment, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Scatterometers having a threshold accuracy of 10 ppm or less (better).

b. Reflectometers having a threshold accuracy of 50 ppm or less (better).

c. Prolifometers having a threshold accuracy of 0.5nm (5 angstrom) or less (better).

7B103 Specially designed "production facilities" for equipment controlled by 7A117. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

7B994 Other equipment for the test, inspection, or "production" of navigation and avionics equipment.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

C. MATERIALS [RESERVED]

D. SOFTWARE

7D001 "Software" specially designed or modified for the "development" or "production" of equipment controlled by 7A (except 7A994) or 7B (except 7B994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, RS, AT

Control(s)	*Country Chart*
NS applies to ''software'' for equipment controlled by 7A001 to 7A004, 7A006, 7B001, 7B002 or 7B003.	NS Column 1
MT applies to entire entry	MT Column 1
RS applies to ''software'' for inertial navigation systems inertial equipment, and specially designed components therefor, for ''civil aircraft''	DRS Column 1.
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) See also 7D101 and 7D994. (2) The ''software'' related to 7A003.b, 7A005, 7A007, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, or 7B103 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.) (3) ''Software'' for inertial navigation systems and inertial equipment, and specially designed components therefor, not for use on civil aircraft are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.)
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

7D002 "Source code" for the "use" of any inertial navigation equipment including inertial equipment not controlled by 7A003 or 7A004, or Attitude and Heading Reference Systems (AHRS) (except gimballed AHRS).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) See also 7D102 and 7D994. (2) This entry does not control ''source code'' for the ''use'' of gimballed AHRS
Related Definition: AHRS generally differ from inertial navigation systems (INS) in that an AHRS provides attitude and heading information and normally does not provide the acceleration, velocity and position information associated with an INS
Items: The list of items controlled is contained in the ECCN heading

7D003 Other "software", as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

IV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 7D103 and 7D994
Related Definitions: 'Data-Based Referenced Navigation' ('DBRN') systems are systems which use various sources of previously measured geo-mapping data integrated to provide accurate navigation information under dynamic conditions. Data sources include bathymetric maps, stellar maps, gravity maps, magnetic maps or 3–D digital terrain maps.
Items:

a. ''Software'' specially designed or modified to improve the operational performance or reduce the navigational error of systems to the levels controlled by 7A003 or 7A004;

b. ''Source code'' for hybrid integrated systems that improves the operational performance or reduces the navigational error of systems to the level controlled by 7A003 by continuously combining inertial data with any of the following:

b.1. Doppler radar velocity data;

b.2. Global navigation satellite systems (*i.e.*, GPS or GLONASS) reference data; *or*

b.3. Data from 'Data-Based Referenced Navigation' ('DBRN') systems;

c. ''Source code'' for integrated avionics or mission systems that combine sensor data and employ ''expert systems'';

d. ''Source code'' for the ''development'' of any of the following:

d.1. Digital flight management systems for ''total control of flight'';

d.2. Integrated propulsion and flight control systems;

d.3. Fly-by-wire or fly-by-light control systems;

d.4. Fault-tolerant or self-reconfiguring ''active flight control systems'';

d.5. Airborne automatic direction finding equipment;

d.6. Air data systems based on surface static data; *or*

d.7. Raster-type head-up displays or three dimensional displays;

e. Computer-aided-design (CAD) ''software'' specially designed for the ''development'' of ''active flight control systems'',

helicopter multi-axis fly-by-wire or fly-by-light controllers or helicopter ''circulation controlled anti-torque or circulation-controlled direction control systems'' whose ''technology'' is controlled by 7E004.b, 7E004.c.1 or 7E004.c.2.

7D101 "Software" specially designed or modified for the "use" of equipment controlled by 7A001 to 7A006, 7A101 to 7A106, 7A115, 7A116, 7B001, 7B002, 7B003, 7B101, 7B102, or 7B103.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: (1) The ''software'' related to 7A003.b, 7A005, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, or 7B103 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.) (2) ''Software'' for inertial navigation systems and inertial equipment, and specially designed components therefor, not designed for use on civil aircraft by civil aviation authorities of a country listed in Country Group A:1 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.)
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

7D102 Integration "software", as follows (See List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: The ''software'' related to 7A003.b or 7A103.b are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.)
Related Definitions: N/A
Items:

a. Integration ''software'' for the equipment controlled by 7A103.b.

b. Integration ''software'' specially designed for the equipment controlled by 7A003 or 7A103.a.

7D103 "Software" specially designed for modelling or simulation of the "guidance sets" controlled by 7A117 or for their design integration with "missiles". (This entry is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

7D994 "Software", n.e.s., for the "development", "production", or "use" of navigation, airborne communication and other avionics.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

E. TECHNOLOGY

7E001 "Technology" according to the General Technology Note for the "development" of equipment or "software" controlled by 7A (except 7A994), 7B (except 7B994) or 7D (except 7D994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, RS, AT

Control(s)	*Country Chart*
NS applies to ''technology'' for items controlled by 7A001 to 7A004, 7A006, 7B001 to 7B003, 7D001 to 7D003.	NS Column 1
MT applies to entire entry	MT Column 1
RS applies to ''technology'' for inertial navigation systems, inertial equipment and specially designed components therefor, for civil aircraft.	RS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: (1) See also 7E101 and 7E994. (2) The ''technology'' related to 7A003.b,

7A005, 7A007, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, 7B103, software in 7D101 specified in the Related Controls paragraph of ECCN 7D101, 7D102.a, or 7D103 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

7E002 "Technology" according to the General Technology Note for the "production" of equipment controlled by 7A (except 7A994) or 7B (except 7B994).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, RS, AT

Control(s)	*Country Chart*
NS applies to ''technology'' for equipment controlled by 7A001 to 7A004, 7A006 or 7B001 to 7B003.	NS Column 1
MT applies to entire entry	MT Column 1
RS applies to ''technology'' for inertial navigation systems, inertial equipment and specially designed components therefor, for civil aircraft.	RS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: (1) See also 7E102 and 7E994. (2) The ''technology'' related to 7A003.b, 7A005, 7A007, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, or 7B103 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121)

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

7E003 "Technology" according to the General Technology Note for the repair, refurbishing or overhaul of equipment controlled by 7A001 to 7A004.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: See also 7E994. This entry does not control maintenance ''technology'' directly associated with calibration, removal or replacement of damaged or unserviceable LRUs and SRAs of a ''civil aircraft'' as described in Maintenance Level I or Maintenance Level II

Related Definition: Refer to the Related Definitions for 7B001

Items: The list of items controlled is contained in the ECCN heading

7E004 Other "technology", as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: See also 7E104 and 7E994

Related Definitions: ''*Primary flight control*'' means an ''aircraft'' stability or maneuvering control using force/moment generators, i.e., aerodynamic control surfaces or propulsive thrust vectoring.

Items: a. ''Technology'' for the ''development'' or ''production'' of:

a.1. Airborne automatic direction finding equipment operating at frequencies exceeding 5 MHz;

a.2. Air data systems based on surface static data only, i.e., that dispense with conventional air data probes;

a.3. Raster-type head-up displays or three dimensional displays for ''aircraft'';

a.4. Inertial navigation systems or gyro-astro compasses containing accelerometers or gyros controlled by 7A001 or 7A002;

a.5. Electric actuators (i.e., electromechanical, electrohydrostatic and integrated actuator package) specially designed for ''primary flight control'';

a.6. ''Flight control optical sensor array'' specially designed for implementing ''active flight control systems'';

b. ''Development'' ''technology'', as follows, for ''active flight control systems'' (including fly-by-wire or fly-by-light):

b.1. Configuration design for interconnecting multiple microelectronic processing elements (on-board computers) to achieve ''real time processing'' for control law implementation;

b.2. Control law compensation for sensor location or dynamic airframe loads, i.e., compensation for sensor vibration environment or for variation of sensor location from the center of gravity;

b.3. Electronic management of data redundancy or systems redundancy for fault detection, fault tolerance, fault isolation or reconfiguration;

NOTE: 7E004.b.3. does not control ''technology'' for the design of physical redundancy.

b.4. Flight controls that permit inflight reconfiguration of force and moment controls for real time autonomous air vehicle control;

b.5. Integration of digital flight control, navigation and propulsion control data into a digital flight management system for ''total control of flight'';

NOTE: 7E004.b.5 does not control:

1. ''Development'' ''technology'' for integration of digital flight control, navigation and propulsion control data into a digital flight management system for ''flight path optimization'';

2. ''Development'' ''technology'' for ''aircraft'' flight instrument systems integrated solely for VOR, DME, ILS or MLS navigation or approaches.

b.6. Full authority digital flight control or multisensor mission management systems employing ''expert systems'';

N.B.: For ''technology'' for Full Authority Digital Engine Control (''FADEC''), see 9E003.a.9.

c. ''Technology'' for the ''development'' of helicopter systems, as follows:

c.1. Multi-axis fly-by-wire or fly-by-light controllers that combine the functions of at least two of the following into one controlling element:

c.1.a. Collective controls;

c.1.b. Cyclic controls;

c.1.c. Yaw controls;

c.2. ''Circulation-controlled anti-torque or circulation-controlled directional control systems'';

c.3. Rotor blades incorporating ''variable geometry airfoils'' for use in systems using individual blade control.

7E101 ""Technology", according to the General Technology Note for the "use" of equipment controlled by 7A001 to 7A006, 7A101 to 7A106, 7A115 to 7A117, 7B001, 7B002, 7B003, 7B101, 7B102, 7B103, or 7D101 to 7D103.

LICENSE REQUIREMENTS

Reason for Control: MT, RS, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
RS applies to ''use'' of inertial navigation systems, inertial equipment and specially designed components therefor, for civil aircraft.	RS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: (1) The ''technology'' related to 7A003.b, 7A005, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, 7B103, software specified in the Related Controls paragraph of ECCN 7D101, 7D102.a, or 7D103 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.) (2) ''Technology'' for inertial navigation systems and inertial equipment, and specially designed components therefor, not for use on civil aircraft are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.)

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

7E102 "Technology" for protection of avionics and electrical subsystems against electromagnetic pulse (EMP) and electromagnetic interference (EMI) hazards, from external sources, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: a. Design ''technology'' for shielding systems;

b. Design ''technology'' for the configuration of hardened electrical circuits and subsystems;

c. Design ''technology'' for the determination of hardening criteria of .a and .b of this entry.

7E104 Design "Technology" for the integration of the flight control, guidance, and propulsion data into a flight management system, designed or modified for "missiles", for optimization of rocket system trajectory. (This entry is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

7E994 "Technology", n.e.s., for the "development", "production", or "use" of navigation, airborne communication, and other avionics equipment.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: Technology specific to the development and production of QRS11 sensors remains subject to the licensing jurisdiction of the Department of State (see ECCN 7A994, Related Controls).
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

Category 8—Marine

A. SYSTEMS, EQUIPMENT AND COMPONENTS

8A001 Submersible vehicles and surface vessels, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $5000; N/A for 8A001.b and .d
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: For the control status of equipment for submersible vehicles, see: Category 5, Part 2 ''Information Security'' for encrypted communication equipment; Category 6 for sensors; Categories 7 and 8 for navigation equipment; Category 8A for underwater equipment.
Related Definitions: N/A
Items: a. Manned, tethered submersible vehicles designed to operate at depths exceeding 1,000 m;

b. Manned, untethered submersible vehicles, having any of the following:

b.1. Designed to operate autonomously and having a lifting capacity of all the following:

b.1.a. 10% or more of their weight in air; *and*

b.1.b. 15 kN or more;

b.2. Designed to operate at depths exceeding 1,000 m; *or*

b.3. Having all of the following:

b.3.a. Designed to carry a crew of 4 or more;

b.3.b. Designed to operate autonomously for 10 hours or more;

b.3.c. Having a range of 25 nautical miles or more; *and*

b.3.d. Having a length of 21 m or less;

TECHNICAL NOTES: 1. For the purposes of 8A001.b, ''operate autonomously'' means fully submerged, without snorkel, all systems working and cruising at minimum speed at which the submersible can safely control its depth dynamically by using its depth planes only, with no need for a support vessel or support base on the surface, sea-bed or shore, and containing a propulsion system for submerged or surface use.

2. For the purposes of 8A001.b, ''range'' means half the maximum distance a submersible vehicle can cover.

c. Unmanned, tethered submersible vehicles designed to operate at depths exceeding 1,000 m, having any of the following:

c.1. Designed for self-propelled manoeuvre using propulsion motors or thrusters controlled by 8A002.a.2; or

c.2. Having a fiber optic data link;

d. Unmanned, untethered submersible vehicles, having any of the following:

d.1. Designed for deciding a course relative to any geographical reference without real-time human assistance;

d.2. Having an acoustic data or command link; or

d.3. Having a fiber optic data or command link exceeding 1,000 m;

e. Ocean salvage systems with a lifting capacity exceeding 5 MN for salvaging objects from depths exceeding 250 m and having any of the following:

e.1. Dynamic positioning systems capable of position keeping within 20 m of a given point provided by the navigation system; or

e.2. Seafloor navigation and navigation integration systems for depths exceeding 1,000 m with positioning accuracies to within 10 m of a predetermined point;

f. Surface-effect vehicles (fully skirted variety) having all of the following characteristics:

f.1. A maximum design speed, fully loaded, exceeding 30 knots in a significant wave height of 1.25 m (Sea State 3) or more;

f.2. A cushion pressure exceeding 3,830 Pa; and

f.3. A light-ship-to-full-load displacement ratio of less than 0.70;

g. Surface-effect vehicles (rigid sidewalls) with a maximum design speed, fully loaded, exceeding 40 knots in a significant wave height of 3.25 m (Sea State 5) or more;

h. Hydrofoil vessels with active systems for automatically controlling foil systems, with a maximum design speed, fully loaded, of 40 knots or more in a significant wave height of 3.25 m (Sea State 5) or more;

i. Small waterplane area vessels having any of the following:

i.1. A full load displacement exceeding 500 tons with a maximum design speed, fully loaded, exceeding 35 knots in a significant wave height of 3.25 m (Sea State 5) or more; or

i.2. A full load displacement exceeding 1,500 tons with a maximum design speed, fully loaded, exceeding 25 knots in a significant wave height of 4 m (Sea State 6) or more.

TECHNICAL NOTE: A small waterplane area vessel is defined by the following formula: waterplane area at an operational design draught less than 2 × (displaced volume at the operational design draught)$^{2/3}$.

8A002 Systems and equipment, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $5000; N/A for 8A002.o.3.b

GBS: Yes for 8A002.e.2 and manipulators for civil end-uses (e.g., underwater oil, gas or mining operations) controlled by 8A002.i.2 and having 5 degrees of freedom of movement

CIV: Yes for 8A002.e.2 and manipulators for civil end-uses (e.g., underwater oil, gas or mining operations) controlled by 8A002.i.2 and having 5 degrees of freedom of movement

LIST OF ITEMS CONTROLLED

Unit: Equipment in number

Related Controls: See also 8A992 and for underwater communications systems, *see* Category 5, Part I—Telecommunications). 8A002 does not control closed and semi-closed circuit (rebreathing) apparatus that is controlled under 8A018.a. See also 8A992 for self-contained underwater breathing apparatus that is not controlled by 8A002 or released for control by the 8A002.q Note.

Related Definitions: N/A

Items:

a. Systems and equipment, specially designed or modified for submersible vehicles, designed to operate at depths exceeding 1,000 m, as follows:

a.1. Pressure housings or pressure hulls with a maximum inside chamber diameter exceeding 1.5 m;

a.2. Direct current propulsion motors or thrusters;

a.3. Umbilical cables, and connectors therefor, using optical fiber and having synthetic strength members;

b. Systems specially designed or modified for the automated control of the motion of submersible vehicles controlled by 8A001 using navigation data and having closed loop servo-controls:

b.1. Enabling a vehicle to move within 10 m of a predetermined point in the water column;

b.2. Maintaining the position of the vehicle within 10 m of a predetermined point in the water column; *or*

b.3. Maintaining the position of the vehicle within 10 m while following a cable on or under the seabed;

c. Fiber optic hull penetrators or connectors;

d. Underwater vision systems, as follows:

d.1. Television systems and television cameras, as follows:

d.1.a. Television systems (comprising camera, monitoring and signal transmission equipment) having a limiting resolution when measured in air of more than 800 lines and specially designed or modified for remote operation with a submersible vehicle;

d.1.b. Underwater television cameras having a limiting resolution when measured in air of more than 1,100 lines;

d.1.c. Low light level television cameras specially designed or modified for underwater use containing all of the following:

d.1.c.1. Image intensifier tubes controlled by 6A002.a.2.a; *and*

d.1.c.2. More than 150,000 ''active pixels'' per solid state area array;

TECHNICAL NOTE: Limiting resolution in television is a measure of horizontal resolution usually expressed in terms of the maximum number of lines per picture height discriminated on a test chart, using IEEE Standard 208/1960 or any equivalent standard.

d.2. Systems, specially designed or modified for remote operation with an underwater vehicle, employing techniques to minimize the effects of back scatter, including range-gated illuminators or ''laser'' systems;

e. Photographic still cameras specially designed or modified for underwater use below 150 m having a film format of 35 mm or larger, and having any of the following:

e.1. Annotation of the film with data provided by a source external to the camera;

e.2. Automatic back focal distance correction; *or*

e.3. Automatic compensation control specially designed to permit an underwater

camera housing to be usable at depths exceeding 1,000 m;

f. Electronic imaging systems, specially designed or modified for underwater use, capable of storing digitally more than 50 exposed images;

g. Light systems, as follows, specially designed or modified for underwater use:

g.1. Stroboscopic light systems capable of a light output energy of more than 300 J per flash and a flash rate of more than 5 flashes per second;

g.2. Argon arc light systems specially designed for use below 1,000 m;

h. ''Robots'' specially designed for underwater use, controlled by using a dedicated computer, having any of the following:

h.1. Systems that control the ''robot'' using information from sensors which measure force or torque applied to an external object, distance to an external object, or tactile sense between the ''robot'' and an external object; *or*

h.2. The ability to exert a force of 250 N or more or a torque of 250 Nm or more and using titanium based alloys or ''fibrous or filamentary'' ''composite'' materials in their structural members;

i. Remotely controlled articulated manipulators specially designed or modified for use with submersible vehicles, having any of the following:

i.1. Systems which control the manipulator using the information from sensors which measure the torque or force applied to an external object, or tactile sense between the manipulator and an external object; *or*

i.2. Controlled by proportional master-slave techniques or by using a dedicated computer, and having 5 degrees of freedom of movement or more;

NOTE: Only functions having proportional control using positional feedback or by using a dedicated computer are counted when determining the number of degrees of freedom of movement.

j. Air independent power systems, specially designed for underwater use, as follows:

j.1. Brayton or Rankine cycle engine air independent power systems having any of the following:

j.1.a. Chemical scrubber or absorber systems specially designed to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.1.b. Systems specially designed to use a monoatomic gas;

j.1.c. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; *or*

j.1.d. Systems specially designed:

j.1.d.1. To pressurize the products of reaction or for fuel reformation;

j.1.d.2. To store the products of the reaction; *and*

j.1.d.3. To discharge the products of the reaction against a pressure of 100 kPa or more;

j.2. Diesel cycle engine air independent systems, having all of the following:

j.2.a. Chemical scrubber or absorber systems specially designed to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.2.b. Systems specially designed to use a monoatomic gas;

j.2.c. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; *and*

j.2.d. Specially designed exhaust systems that do not exhaust continuously the products of combustion;

j.3. Fuel cell air independent power systems with an output exceeding 2 kW having any of the following:

j.3.a. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; *or*

j.3.b. Systems specially designed:

j.3.b.1. To pressurize the products of reaction or for fuel reformation;

j.3.b.2. To store the products of the reaction; *and*

j.3.b.3. To discharge the products of the reaction against a pressure of 100 kPa or more;

j.4. Stirling cycle engine air independent power systems, having all of the following:

j.4.a. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; *and*

j.4.b. Specially designed exhaust systems which discharge the products of combustion against a pressure of 100 kPa or more;

k. Skirts, seals and fingers, having any of the following:

k.1. Designed for cushion pressures of 3,830 Pa or more, operating in a significant wave height of 1.25 m (Sea State 3) or more and specially designed for surface effect vehicles (fully skirted variety) controlled by 8A001.f; *or*

k.2. Designed for cushion pressures of 6,224 Pa or more, operating in a significant wave height of 3.25 m (Sea State 5) or more and specially designed for surface effect vehicles (rigid sidewalls) controlled by 8A001.g;

l. Lift fans rated at more than 400 kW specially designed for surface effect vehicles controlled by 8A001.f or 8A001.g;

m. Fully submerged subcavitating or supercavitating hydrofoils specially designed for vessels controlled by 8A001.h;

n. Active systems specially designed or modified to control automatically the sea-induced motion of vehicles or vessels controlled by 8A001.f, 8A001.g, 8A001.h or 8A001.i;

o. Propellers, power transmission systems, power generation systems and noise reduction systems, as follows:

o.1. Water-screw propeller or power transmission systems, as follows, specially designed for surface effect vehicles (fully skirted or rigid sidewall variety), hydrofoils or small waterplane area vessels controlled by 8A001.f, 8A001.g, .8A001.h or 8A001.i:

o.1.a. Supercavitating, super-ventilated, partially-submerged or surface piercing propellers rated at more than 7.5 MW;

o.1.b. Contrarotating propeller systems rated at more than 15 MW;

o.1.c. Systems employing pre-swirl or post-swirl techniques for smoothing the flow into a propeller;

o.1.d. Light-weight, high capacity (K factor exceeding 300) reduction gearing;

o.1.e. Power transmission shaft systems, incorporating ''composite'' material components, capable of transmitting more than 1 MW;

o.2. Water-screw propeller, power generation systems or transmission systems designed for use on vessels, as follows:

o.2.a. Controllable-pitch propellers and hub assemblies rated at more than 30 MW;

o.2.b. Internally liquid-cooled electric propulsion engines with a power output exceeding 2.5 MW;

o.2.c. ''Superconductive'' propulsion engines, or permanent magnet electric propulsion engines, with a power output exceeding 0.1 MW;

o.2.d. Power transmission shaft systems, incorporating ''composite'' material components, capable of transmitting more than 2 MW;

o.2.e. Ventilated or base-ventilated propeller systems rated at more than 2.5 MW;

o.3. Noise reduction systems designed for use on vessels of 1,000 tons displacement or more, as follows:

o.3.a. Systems that attenuate underwater noise at frequencies below 500 Hz and consist of compound acoustic mounts for the acoustic isolation of diesel engines, diesel generator sets, gas turbines, gas turbine generator sets, propulsion motors or propulsion reduction gears, specially designed for sound or vibration isolation, having an intermediate mass exceeding 30% of the equipment to be mounted;

o.3.b. Active noise reduction or cancellation systems, or magnetic bearings, specially designed for power transmission systems, and incorporating electronic control systems capable of actively reducing equipment vibration by the generation of anti-noise or anti-vibration signals directly to the source;

p. Pumpjet propulsion systems having a power output exceeding 2.5 MW using divergent nozzle and flow conditioning vane techniques to improve propulsive efficiency or reduce propulsion-generated underwater-radiated noise.

q. Self-contained, closed or semi-closed circuit (rebreathing) diving and underwater swimming apparatus.

NOTE: 8A002.q does not control an individual apparatus for personal use when accompanying its user.

8A018 Items on the International Munitions List.

LICENSE REQUIREMENTS

Reason for Control: NS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

LVS: $5000, except N/A for Rwanda
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 8A002 and 8A992.
Related Definitions: N/A
Items: a. Closed and semi-closed circuit (rebreathing) apparatus specially designed for military use, and specially designed components for use in the conversion of open-circuit apparatus to military use;

b. Naval equipment, as follows:

b.1. Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over specially designed for submarines;

b.2. Electric motors specially designed for submarines, *i.e.*, over 1,000 hp, quick reversing type, liquid cooled, and totally enclosed;

b.3. Nonmagnetic diesel engines, 50 hp and over, specially designed for military purposes. (An engine shall be presumed to be specially designed for military purposes if it has nonmagnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines, or its nonmagnetic content exceeds 75 percent of total weight.);

b.4. Submarine and torpedo nets; and

b.5. Components, parts, accessories, and attachments for the above.

8A918 Marine Boilers.

LICENSE REQUIREMENTS

REASON FOR CONTROL: RS, AT, UN.

Control(s)	Country chart
RS applies to entire entry	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS
LVS: $5000, except N/A for Rwanda
GBS: N/A
CIV: N/A
LIST OF ITEMS CONTROLLED
Unit: $ value
Related Controls: N/A
Related Definitions: N/A

Items: a. Marine boilers designed to have any of the following characteristics:

a.1. Heat release rate (at maximum rating) equal to or in excess of 190,000 BTU per hour per cubic foot of furnace volume; *or*

a.2. Ratio of steam generated in pounds per hour (at maximum rating) to the dry weight of the boiler in pounds equal to or in excess of 0.83.

b. Components, parts, accessories, and attachments for the above.

8A992 Vessels, marine systems or equipment, not controlled by 8A001, 8A002 or 8A018, and specially designed parts therefor.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 8A002 and 8A018
Related Definitions: N/A
Items: a. Underwater vision systems, as follows:

a.1. Television systems (comprising camera, lights, monitoring and signal transmission equipment) having a limiting resolution when measured in air of more than 500 lines and specially designed or modified for remote operation with a submersible vehicle; *or*

a.2. Underwater television cameras having a limiting resolution when measured in air of more than 700 lines;

TECHNICAL NOTE: Limiting resolution in television is a measure of horizontal resolution usually expressed in terms of the maximum number of lines per picture height discriminated on a test chart, using IEEE Standard 208/1960 or any equivalent standard.

b. Photographic still cameras specially designed or modified for underwater use, having a film formate of 35 mm or larger, and having autofocussing or remote focussing specially designed for underwater use;

c. Stroboscopic light systems, specially designed or modified for underwater use, capable of a light output energy of more than 300 J per flash;

d. Other underwater camera equipment, n.e.s.;

e. Other submersible systems, n.e.s.;

(f) Vessels, n.e.s., including inflatable boats, and specially designed components therefor, n.e.s.

g. Marine engines (both inboard and outboard) and submarine engines, n.e.s.; and specially designed parts therefor, n.e.s.;

h. Other self-contained underwater breathing apparatus (scuba gear) and related equipment, n.e.s.;

i. Life jackets, inflation cartridges, compasses, wetsuits, masks, fins, weight belts, and dive computers;

j. Underwater lights and propulsion equipment;

k. Air compressors and filtration systems specially designed for filling air cylinders.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

8B001 Water tunnels, having a background noise of less than 100 dB (reference 1 μPa, 1 Hz) in the frequency range from 0 to 500 Hz, designed for measuring acoustic fields generated by a hydro-flow around propulsion system models.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

C. MATERIALS

8C001 Syntactic foam designed for underwater use, having all of the following (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definition: Syntactic foam consists of hollow spheres of plastic or glass embedded in a resin matrix

Items: a. Designed for marine depths exceeding 1,000 m; *and*

b. A density less than 561 kg/m³.

D. SOFTWARE

8D001 "Software" specially designed or modified for the "development", "production" or "use" of equipment or materials controlled by 8A (except 8A018 or 8A992), 8B or 8C.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except for the following:

(1) Items controlled for MT reasons; or

(2) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''software'' specially designed for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b.

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

8D002 Specific "software" specially designed or modified for the "development", "production", repair, overhaul or refurbishing (re-machining) of propellers specially designed for underwater noise reduction.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: See also 8D992

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

8D992 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 8A992.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

E. TECHNOLOGY

8E001 "Technology" according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 8A (except 8A018 or 8A992), 8B or 8C.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes, except for the following:

(1) Items controlled for MT reasons; or

(2) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' for items controlled by 8A001.b, 8A001.d or 8A002.o.3.b.

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

8E002 Other "technology", as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A
TSR: Yes

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: See also 8E992
Related Definitions: N/A
Items: a. ''Technology'' for the ''development'', ''production'', repair, overhaul or refurbishing (re-machining) of propellers specially designed for underwater noise reduction;

b. ''Technology'' for the overhaul or refurbishing of equipment controlled by 8A001, 8A002.b, 8A002.j, 8A002.o or 8A002.p.

8E992 "Technology" for the "development", "production" or "use" of equipment controlled by 8A992.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

Category 9—Propulsion Systems, Space Vehicles and Related Equipment

A. SYSTEMS, EQUIPMENT AND COMPONENTS

N.B.: For propulsion systems designed or rated against neutron or transient ionizing, see the U.S. Munitions List, 22 CFR part 121.

9A001 Aero gas turbine engines incorporating any of the "technologies" controlled by 9E003.a, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to only to those engines that meet the characteristics listed in 9A101.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: See also 9A101 and 9A991
Related Definitions: N/A
Items: a. Incorporating any of the technologies controlled by 9E003.a.; *or*

NOTE: 9A001.a. does not control aero gas turbine engines which meet all of the following:

1. Certified by the civil aviation authority in a country listed in Supplement No. 1 to part 743; and

2. Intended to power non-military manned aircraft for which a civil Type Certificate has been issued by a country listed in Supplement No. 1 to part 743.

b. Designed to power an aircraft designed to cruise at Mach 1 or higher for more than 30 minutes.

9A002 Marine gas turbine engines with an ISO standard continuous power rating of 24,245 kW or more and a specific fuel consumption not exceeding 0.219 kg/kWh in the power range from 35 to 100%, and specially designed assemblies and components therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definition: The term ''marine gas turbine engines'' includes those industrial, or aero-derivative, gas turbine engines adapted for a ship's electric power generation or propulsion
Items: The list of items controlled is contained in the ECCN heading

9A003 Specially designed assemblies and components, incorporating any of the "technologies" controlled by 9E003.a, for

gas turbine engine propulsion systems, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definition: N/A
Items: a. Controlled by 9A001;

b. Whose design or production origins are either countries in Country Group D:1 or unknown to the manufacturer.

9A004 Space launch vehicles and "spacecraft".

LICENSE REQUIREMENTS

Reason for Control: NS and AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS
LVS: N/A
GBS: N/A
CIV: N/A
LIST OF ITEMS CONTROLLED

Unit: Equipment in number. Components, parts and accessories in $ value. Related Controls: (1.) See also 9A104. (2.) Space launch vehicles are under the jurisdiction of the Department of State. (3.) Effective March 15, 1999, all satellites, including commercial communications satellites, are subject to the ITAR. Effective March 15, 1999, all license applications for the export of commercial communications satellites will be processed by the State Department, Directorate of Defense Trade Controls. Retransfer of jurisdiction for commercial communications satellites and related items shall not affect the validity of any export license issued by the Department of Commerce prior to March 15, 1999, or of any export license application filed under the Export Administration Regulations on or before March 14, 1999, and subsequently issued by the Department of Commerce. Commercial communications satellites licensed by the Department of Commerce, including those already exported, remain subject to the EAR and all terms and conditions of issued export licenses until their stated expiration date. All licenses issued by the Department of Commerce for commercial communications satellites, including licenses issued after March 15, 1999, remain subject to SI controls throughout the validity of the license. Effective March 15, 1999, Department of State jurisdiction shall apply to any instance where a replacement license would normally be required from the Department of Commerce. Transferring registration or operational control to any foreign person of any item controlled by this entry must be authorized on a license issued by the Department of State, Directorate of Defense Trade Controls. This requirement applies whether the item is physically located in the United States or abroad. (4.) All other ''spacecraft'' not controlled under 9A004 and their payloads, and specifically designed or modified components, parts, accessories, attachments, and associated equipment, including ground support equipment, are subject to the export licensing authority of the Department of State unless otherwise transferred to the Department of Commerce via a commodity jurisdiction determination by the Department of State. (5.) Exporters requesting a license from the Department of Commerce for ''spacecraft'' and their associated parts and components, other than the international space station, must provide a statement from the Department of State, Directorate of Defense Trade Controls, verifying that the item intended for export is under the licensing jurisdiction of the Department of Commerce. All specially designed or modified components, parts, accessories, attachments, and associated equipment for ''spacecraft'' that have been determined by the Department of State through the commodity jurisdiction process to be under the licensing jurisdiction of the Department of Commerce and that are not controlled by any other ECCN on the Commerce Control List will be assigned a classification under this ECCN 9A004. (6.) Technical data required for the detailed design, development, manufacturing, or production of the international space station (to include specifically designed parts and components) remains under the jurisdiction of the Department of State. This control by the ITAR of detailed design, development, manufacturing or production technology for NASA's international space station does not include that level of technical data necessary and reasonable for assurance that a U.S.-built item intended to operate on NASA's international space station has been designed, manufactured, and tested in conformance with specified requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations). All technical data and all defense services, including all technical assistance, for launch of the international space station, including launch vehicle compatibility, integration, or processing data, are controlled and subject to the jurisdiction of the Department of State, in accordance with 22 CFR parts 120 through 130.

Items: a. The international space station being developed, launched and operated under the supervision of the U.S. National Aeronautics and Space Administration. Hardware specific to the international space station transferred to the Department of Commerce by commodity jurisdiction action is also included.

b. Specific items as may be determined to be not subject to the ITAR through the commodity jurisdiction procedure administered by the Department of State after March 15, 1999.

9A005 Liquid rocket propulsion systems containing any of the systems or components controlled by 9A006. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A006 Systems and components specially designed for liquid rocket propulsion systems. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A007 Solid rocket propulsion systems. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A008 Components specially designed for solid rocket propulsion systems. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A009 Hybrid rocket propulsion systems. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A010 Specially designed components, systems and structures for launch vehicles, launch vehicle propulsion systems or "spacecraft". (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A011 Ramjet, scramjet or combined cycle engines and specially designed components therefor. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A012 Non-military unmanned aerial vehicles, having any of the following characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	Country Chart
NS applies to entire entry	NS Column 1
MT applies to non-military unmanned air vehicle systems (UAVs) and remotely piloted vehicles (RPVs) that are capable of a maximum range of at least 300 kilometers (km), regardless of payload.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: See the U.S. Munitions List Category VIII (22 CFR part 121).

Related Definitions: N/A

Items:

a. An autonomous flight control and navigation capability (*e.g.*, an autopilot with an Inertial Navigation System); *or*

b. Capability of controlled-flight out of the direct vision range involving a human operator (*e.g.*, televisual remote control).

NOTE: 9A012 does not control model aircraft.

9A018 Equipment on the Wassenaar Arrangement Munitions List

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
RS applies to 9A018.a and b	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

LVS: $1500, except N/A for Rwanda
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: (a) Parachute systems designed for use in dropping military equipment, braking military aircraft, slowing spacecraft descent, or retarding weapons delivery; (b) Instrument flight trainers for combat simulation; and (c) military ground armed or armored vehicles and parts and components specific thereto described in 22 CFR part 121, Category VII; and all-wheel drive vehicles capable of off-

road use that have been armed or armored with articles described in 22 CFR part 121, Category XIII (See §770.2(h)—Interpretation 8) are all subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls.

Related Definition: This entry controls parachute systems designed for use in dropping personnel only.

Items: a. Military trainer aircraft bearing ''T'' designations:

a.1. Using reciprocating engines; or

a.2. Turbo prop engines with less than 600 horse power (h.p.);

a.3. T–37 model jet trainer aircraft; and

a.4. Specially designed component parts.

b. Ground transport vehicles (including trailers) and parts and components therefor designed or modified for non-combat military use and unarmed all-wheel drive vehicles capable of off-road use which have been manufactured or fitted with materials to provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better. (See §770.2(h)—Interpretation 8).

c. Pressure refuelers, pressure refueling equipment, and equipment specially designed to facilitate operations in confined areas; and ground equipment, n.e.s, developed specially for military aircraft and helicopters, and specially designed parts and accessories, n.e.s.;

d. Pressurized breathing equipment specially designed for use in military aircraft and helicopters;

e. Military parachutes and complete canopies, harnesses, and platforms and electronic release mechanisms therefor, except such types as are in normal sporting use;

f. Military instrument flight trainers, except for combat simulation; and components, parts, attachments and accessories specially designed for such equipment.

9A101 Lightweight turbojet and turbofan engines (including turbocompound engines) usable in "missiles", other than those controlled by 9A001, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value

Related Controls: 9A101.b controls only engines for non-military unmanned air vehicles [UAVs] or remotely piloted vehicles [RPVs], and does not control other engines designed or modified for use in ''missiles'', which are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: N/A

Items:

a. Engines having both of the following characteristics:

a.1. Maximum thrust value greater than 400 N (achieved un-installed) excluding civil certified engines with a maximum thrust value greater than 8,890 N (achieved un-installed), *and*

a.2. Specific fuel consumption of 0.15 kg/N/hr or less (at maximum continuous power at sea level static and standard conditions); *or*

b. Engines designed or modified for use in ''missiles'', regardless of thrust or specific fuel consumption.

9A104 Sounding rockets, capable of a range of at least 300 km. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A105 Liquid propellant rocket engines. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A106 Systems or components, other than those controlled by 9A006, usable in "missiles", as follows (see List of Items Controlled), and specially designed for liquid rocket propulsion systems.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment and components in number; parts and accessories in $ value

Related Controls: Items described in 9A106.a, .b, and .c are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (See 22 CFR part 121)

Related Definitions: N/A

Items:

a. Ablative liners for thrust or combustion chambers;

b. Rocket nozzles;

c. Thrust vector control sub-systems;

TECHNICAL NOTE: Examples of methods of achieving thrust vector control controlled by 9A106.c includes:

1. Flexible nozzle;
2. Fluid or secondary gas injection;
3. Movable engine or nozzle;
4. Deflection of exhaust gas steam (jet vanes or probes); or
5. Thrust tabs.

d. Liquid and slurry propellant (including oxidizers) control systems, and specially designed components therefor, designed or modified to operate in vibration environments greater than 10 g rms between 20 Hz and 2000 Hz.

NOTE: The only servo valves and pumps controlled by 9A106.d, are the following:

a. Servo valves designed for flow rates equal to or greater than 24 liters per minute, at an absolute pressure equal to or greater than 7 MPa, that have an actuator response time of less than 100 ms;

b. Pumps, for liquid propellants, with shaft speeds equal to or greater than 8,000 rpm or with discharge pressures equal to or greater than 7 MPa.

e. Flight control servo valves designed or modified for use in ''missiles'' and designed or modified to operate in a vibration environment greater than 10g rms over the entire range between 20Hz and 2 kHz.

9A107 Solid Propellant Rocket Engines, Usable in Rockets With a Range Capability of 300 Km or Greater, Other Than Those Controlled by 9A007, Having Total Impulse Capacity Equal to or Greater Than 8.41×10^5 Ns, but less than 1.1×10^6 (These Items are Subject to the Export Licensing Authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A108 Solid rocket propulsion components, other than those controlled by 9A008, usable in rockets with a range capability of 300 Km or greater. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A109 Hybrid rocket motors, usable in rockets with a range capability of 300 Km or greater, other than those controlled by 9A009, and specially designed components therefor. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A110 Composite structures, laminates and manufactures thereof, other than those controlled by entry 9A010, specially designed for use in "missiles" or the subsystems controlled by entries 9A005, 9A007, 9A105.a, 9A106 to 9A108, 9A116, or 9A119.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms

Related Controls: (1) See also 1A002. (2) ''Composite structures, laminates, and manufactures thereof, specially designed for use in missile systems are under the licensing authority of the Directorate of Defense Trade Controls, U.S. Department of State, except those specially designed for non-military unmanned air vehicles controlled in 9A012.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

9A111 Pulse jet engines, usable in "missiles", and specially designed components therefor. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A115 Apparatus, devices and vehicles, designed or modified for the transport, handling, control, activation and launching of rockets, missiles, and unmanned aerial vehicles capable of achieving a "range" equal to or greater than 300 km. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. *See* 22 CFR part 121.)

9A116 Reentry vehicles, usable in "missiles", and equipment designed or modified therefor. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A117 Staging mechanisms, separation mechanisms, and interstages therefor, usable in "missiles". (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A118 Devices to regulate combustion usable in engines which are usable in rockets with a range capability greater than 300 Km or greater, controlled by 9A011 or 9A111. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A119 Individual rocket stages, usable in rockets with a range capability greater than 300 Km or greater, other than those controlled by 9A005, 9A007, 9A009, 9A105, 9A107 and 9A109. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9A120 Complete unmanned aerial vehicles designed or modified to dispense an aerosol, capable of carrying elements of a payload in the form of a particulate or liquid other than fuel components of such vehicles of a volume greater than 20 liters, and having any of the following:

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: See ECCN 9A012 or the U.S. Munitions List Category VIII (22 CFR part 121). Also see ECCN 2B352.h for controls on certain spraying or fogging systems, and components therefor, specially designed or modified for fitting to aircraft, ''lighter than air vehicles,'' or ''UAVs.''

Related Definitions: N/A.

Items:

a. An autonomous flight control and navigation capability (*e.g.*, an autopilot with an inertial navigation system); or

b. Capability of controlled-flight out of the direct vision range involving a human operator (*e.g.*, televisual remote control).

NOTE: 1. Item does not control model aircraft intended for recreational or competition purposes.

2. Item does not control UAVs designed to accept payloads (such as remote sensing equipment or communications equipment), that lack an aerosol dispensing system/mechanism.

TECHNICAL NOTES: 1. Complete systems comprise those unmanned air vehicles (UAVs) already configured with, or already modified to incorporate, an aerosol delivery mechanism.

2. An aerosol consists of a particulate or liquid dispersed in the atmosphere. Examples of aerosols include liquid pesticides for crop dusting and dry chemicals for cloud seeding.

3. The phrase ''elements of a payload in the form of a particulate or liquid'' refers to the particulate or liquid being a part (possibly one of many parts) of the payload.

4. The phrase ''particulate or liquid other than fuel components'' was added to ensure such items as exhaust vapour (a byproduct of combustion in the form of a particulate) and liquid fuel and its components (*e.g.* additives such as oil) were not considered as control criteria when evaluating UAVs against this control.

5. This item does not control UAVs that are exported without the aerosol dispensing system/mechanism included at time of export.

9A980 Nonmilitary mobile crime science laboratories; and parts and accessories, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: CC

Control(s)	*Country Chart*
CC applies to entire entry	CC Column 1

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

9A990 Diesel engines, n.e.s., and tractors and specially designed parts therefor, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry except 9A990.a.	AT Column 1.
AT applies to 9A990.a only	AT Column 2.

See §§740.19 and 742.20 of the EAR for additional information on Libya.

LICENSE EXCEPTIONS

LVS: N/A

GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: a. Diesel engines, n.e.s., for trucks, tractors, and automotive applications of continuous brake horsepower of 400 BHP (298 kW) or greater (performance based on SAE J1349 standard conditions of 100 Kpa and 25°)

b. Off highway wheel tractors of carriage capacity 9 mt (20,000 lbs) or more; and parts and accessories, n.e.s.

c. On-Highway tractors, with single or tandem rear axles rated for 9 mt per axel (20,000 lbs.) or greater and specially designed parts.

9A991 "Aircraft", n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT, UN.

Control(s)	Country chart
AT applies to entire entry	AT Column 1.
UN applies to 9A991.a	Iraq and Rwanda.

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: QRS11 Micromachined Angular Rate Sensors are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls, unless the QRS11–00100–100/101 is integrated into and included as an integral part of a CSIS of the type described in ECCN 7A994 or aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or is exported solely for integration into such a system (*See* 22 CFR part 121). In the latter case, such items are subject to the licensing jurisdiction of the Department of Commerce. Technology specific to the development and production of QRS11 sensors remains subject to the licensing jurisdiction of the Department of State.
Related Definitions: N/A
Items: a. Military aircraft, demilitarized (not specifically equipped or modified for military operation), as follows:

a.1. Cargo, ''C–45 through C–118'' inclusive, and ''C–121,''

a.2. Trainers, bearing a ''T'' designation and using piston engines,

a.3. Utility, bearing a ''U'' designation and using piston engines,

a.4. Liaison, bearing an ''L'' designation, and

a.5. Observation, bearing an ''O'' designation and using piston engines;

b. Civil aircraft; *and*

NOTE: Specify make and model of aircraft and type of avionic equipment on aircraft.

c. Aero gas turbine engines, and specially designed parts therefor.

NOTE: 9A991.c does not control aero gas turbine engines that are destined for use in civil ''aircraft'' and that have been in use in bona fide civil ''aircraft'' for more than eight years.

d. Aircraft parts and components, n.e.s.

e. Pressurized aircraft breathing equipment, n.e.s.; and specially designed parts therefor, n.e.s.

9A992 Complete canopies, harnesses, and platforms and electronic release mechanisms therefor, except such types as are in normal sporting use.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

9B001 Specially Designed Equipment, Tooling and Fixtures, As Follows (See List of Items Controlled), for Manufacturing Gas Turbine Blades, Vanes or Tip Shroud Castings

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies only to equipment for engines that meet the characteristics described in 9A001.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

LVS: $5000, except N/A for MT
GBS: Yes, except N/A for MT
CIV: Yes, except N/A for MT

LIST OF ITEMS CONTROLLED

Unit: $ value.

Related Controls: For specially designed production equipment of systems, sub-systems and components controlled by 9A005 to 9A009, 9A011, 9A101, 9A105 to 9A109, 9A111, and 9A116 to 9A119 usable in ''missiles'' see 9B115. See also 9B991.
Related Definitions: N/A.
Items:
a. Directional solidification or single crystal casting equipment;
b. Ceramic cores or shells.

9B002 On-line (real time) control systems, instrumentation (including sensors) or automated data acquisition and processing equipment, specially designed for the "development" of gas turbine engines, assemblies or components incorporating "technologies" controlled by 9E003.a.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies only to equipment for engines that meet the characteristics described in 9A001.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000, except N/A for MT
GBS: Yes, except N/A for MT
CIV: Yes, except N/A for MT

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9B003 Equipment specially designed for the "production" or test of gas turbine brush seals designed to operate at tip speeds exceeding 335 m/s, and temperatures in excess of 773 K (500°C), and specially designed components or accessories therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies only to equipment for engines that meet the characteristics described in 9A001.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000, except N/A for MT
GBS: Yes, except N/A for MT
CIV: Yes, except N/A for MT

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 9B115
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9B004 Tools, dies or fixtures for the solid state joining of "superalloy", titanium or intermetallic airfoil-to-disk combinations described in 9E003.a.3 or 9E003.a.6 for gas turbines.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies only to equipment for engines that meet the characteristics described in 9A001.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000, except N/A for MT
GBS: Yes, except N/A for MT
CIV: Yes, except N/A for MT

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9B005 On-line (real time) control systems, instrumentation (including sensors) or automated data acquisition and processing equipment, specially designed for use with any of the following wind tunnels or devices (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 9B105
Related Definitions: N/A
Items: a. Wind tunnels designed for speeds of Mach 1.2 or more, except those specially designed for educational purposes and having a test section size (measured laterally) of less than 250 mm;

TECHNICAL NOTE: Test section size in 9B005.a means the diameter of the circle, or the side of the square, or the longest side of the rectangle, at the largest test section location.

b. Devices for simulating flow-environments at speeds exceeding Mach 5, including hot-shot tunnels, plasma arc tunnels, shock tubes, shock tunnels, gas tunnels and light gas guns; *or*

c. Wind tunnels or devices, other than two-dimensional sections, capable of simulating Reynolds number flows exceeding 25×10^6.

9B006 Acoustic vibration test equipment capable of producing sound pressure levels of 160 Db or more (referenced to 20 uPa) with a rated output of 4 kW or more at a test cell temperature exceeding 1,273 K (1,000 °C), and specially designed quartz heaters therefor.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $3000
GBS: Yes
CIV: Yes

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: See also 9B106. Note that some items in 9B006 may also be controlled under 9B106
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9B007 Equipment specially designed for inspecting the integrity of rocket motors using non-destructive test (NDT) techniques other than planar X-ray or basic physical or chemical analysis.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GSB N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9B008 Transducers specially designed for the direct measurement of the wall skin friction of the test flow with a stagnation temperature exceeding 833 K (560 °C).

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GSB N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Number
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9B009 Tooling specially designed for producing turbine engine powder metallurgy rotor components capable of operating at stress levels of 60% of ultimate tensile strength (UTS) or more and metal temperatures of 873 K (600 °C) or more.

LICENSE REQUIREMENTS

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: $5000
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; parts and accessories in $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9B105 Wind tunnels for speeds of Mach 0.9 or more, usable for "missiles" and their subsystems.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 9B005
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9B106 Environmental chambers and anechoic chambers, as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items:

a. Environmental chambers capable of simulating all of the following flight conditions:

a.1. Vibration environments equal to or greater than 10 g rms, measured ''bare table'', between 20 Hz and 2,000 Hz imparting forces equal to or greater than 5 kN; and

a.2. Any of the following:

a.2.a. Altitude equal to or greater than 15,000 m; or

a.2.b. Temperature range of at least 223 K (−50 °C) to 398 K (+125 °C);

TECHNICAL NOTE: Item 9B106.a describes systems that are capable of generating a vibration environment with a single wave (e.g., a sine wave) and systems capable of generating a broad band random vibration (*i.e.*, power spectrum).

b. Environmental chambers capable of simulating all of the following flight conditions:

b.1. Acoustic environments at an overall sound pressure level of 140 dB or greater (referenced to 2×10^{-5} N/m^2) or with a total rated acoustic power output of 4kW or greater; and

b.2. Any of the following:

b.2.a. Altitude equal to or greater than 15,000 m; or

b.2.b. Temperature range of at least 223K (−50 °C) to 398 K (+125 °C).

9B115 Specially designed "production equipment" for the systems, sub-systems and components controlled by 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109, 9A111, 9A116 to 9A119.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components in $ value

Related Controls: Although items described in ECCNs 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109; 9A111, 9A116 to 9A119 are subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121), the ''production equipment'' controlled in this entry that is related to these items is subject to the export licensing authority of BIS.

Related Definitions: NA.

Items: The list of items controlled is contained in the ECCN heading.

9B116 Specially designed "production facilities" for the systems, sub-systems, and components controlled by 9A004 to 9A009, 9A011, 9A012, 9A101, 9A104 to 9A109, 9A111, 9A116 to 9A119.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Equipment in number; components in $ value

Related Controls: Although items described in ECCNs 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109; 9A111, 9A116 to 9A119 are subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121), the ''production equipment'' controlled in this entry that is related to these items is subject to the export licensing authority of BIS.

Related Definitions: NA.

Items: The list of items controlled is contained in the ECCN heading.

9B117 Test Benches and Test Stands for Solid or Liquid Propellant Rockets, Motors or Rocket Engines, Having Either of the Following Characteristics (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A

CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: See also 9B990
Related Definitions: N/A
Items:

a. The capacity to handle solid or liquid propellant rocket motors or rocket engines having a thrust greater than 90 kN; or

b. Capable of simultaneously measuring the three axial thrust components.

9B990 Vibration test equipment and specially designed parts and components, n.e.s.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9B991 Specially designed equipment, tooling or fixtures, not controlled by 9B001, as described in the List of Items Controlled, for manufacturing or measuring gas turbine blades, vanes or tip shroud castings.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Automated equipment using non-mechanical methods for measuring airfoil wall thickness;

b. Tooling, fixtures or measuring equipment for the ''laser'', water jet or ECM/EDM hole drilling processes controlled by 9E003.c;

c. Ceramic core leaching equipment;

d. Ceramic core manufacturing equipment or tools;

e. Ceramic shell wax pattern preparation equipment;

f. Ceramic shell burn out or firing equipment.

C. MATERIALS

9C110 Resin impregnated fiber prepregs and metal coated fiber preforms therefor, for composite structures, laminates and manufactures specified in 9A110, made either with organic matrix or metal matrix utilizing fibrous or filamentary reinforcements having a specific tensile strength greater than 7.62×10^4 m and a specific modulus greater than 3.18×10^6 m.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

LVS: N/A
GBS: N/A
CIV: N/A

LIST OF ITEMS CONTROLLED

Unit: Kilograms
Related Controls: (1) See also 1C010 and 1C210.c.

(2) The only resin impregnated fiber prepregs controlled by entry 9C110 are those using resins with a glass transition temperature (T_g), after cure, exceeding 418 K (145 °C) as determined by ASTM D4065 or national equivalents.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

D. SOFTWARE

9D001 "Software" specially designed or modified for the "development" of equipment or "technology" controlled by 9A (except 9A018, 9A990 or 9A991), 9B (except 9B990 or 9B991) or 9E003.

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	Country chart
NS applies to ''software'' for items controlled by 9A001 to 9A003, 9A012, 9B001 to 9B009, and 9E003.	NS Column 1
MT applies to ''software'' for equipment controlled by 9A106.a and .b, or 9B116 for MT reasons.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) ''Software'' ''required'' for the ''development'' of items controlled by 9A004 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (*See* 22 CFR part 121.)

(2) ''Software'' ''required'' for the ''development'' of equipment or ''technology'' subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls is also subject to the same licensing jurisdiction. (*See* 22 CFR part 121.)

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

9D002 "Software" specially designed or modified for the "production" of equipment controlled by 9A (except 9A018, 9A990, or 9A991) or 9B (except 9B990 or 9B991).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	Country chart
NS applies to "software" for equipment controlled by 9A001 to 9A003, 9A012, 9B001 to 9B009, or 9E003.	NS Column 1
MT applies to "software" for equipment controlled by 9B116 for MT reasons.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) ''Software'' ''required'' for the ''production'' of items controlled by 9A004 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.) (2) ''Software'' ''required'' for the ''production'' of equipment or ''technology'' subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls is also subject to the same licensing jurisdiction. (See 22 CFR part 121.)

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

9D003 "Software" specially designed or modified for the "use" of full authority digital electronic engine controls (FADEC) for propulsion systems controlled by 9A (except 9A018, 9A990 or 9A991) or equipment controlled by 9B (except 9B990 or 9B991), as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to ''software'' for ''use'' of FADEC for equipment controlled by 9A001 to 9A003.	NS Column 1
MT applies to ''software'' required for the ''use'' of FADEC for gas turbine engines controlled by 9A101, 9A106, or 9A110.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: Yes, except N/A for MT

TSR: Yes, except N/A for MT

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: (1) See also 9D103. (2) ''Software'' ''required'' for the ''use'' of equipment or ''technology'' subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls is also subject to the same licensing jurisdiction. (See 22 CFR part 121.)

Related Definitions: N/A

Items: a. ''Software'' in digital electronic controls for propulsion systems, aerospace test facilities or air breathing aero-engine test facilities;

b. Fault-tolerant ''software'' used in ''FADEC'' systems for propulsion systems and associated test facilities.

9D004 Other "software", as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: a. 2D or 3D viscous ''software'' validated with wind tunnel or flight test data required for detailed engine flow modelling;

b. ''Software'' for testing aero gas turbine engines, assemblies or components, specially designed to collect, reduce and analyze data in real time, and capable of feedback control,

including the dynamic adjustment of test articles or test conditions, as the test is in progress;

c. ''Software'' specially designed to control directional solidification or single crystal casting;

d. ''Software'' in ''source code'', ''object code'' or machine code required for the ''use'' of active compensating systems for rotor blade tip clearance control.

NOTE: 9D004.d does not control ''software'' embedded in uncontrolled equipment or required for maintenance activities associated with the calibration or repair or updates to the active compensating clearance control system.

9D018 "Software" for the "use" of equipment controlled by 9A018.

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
RS applies to 9A018.a and .b	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Iraq and Rwanda.

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes for Australia, Japan, New Zealand, and NATO countries that are also listed in Country Group B of Supplement No. 1 to part 740 of the EAR.

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

9D101 "Software" specially designed or modified for the "use" of commodities controlled by 9B105, 9B106, 9B116, or 9B117.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

9D103 "Software" specially designed for modelling, simulation or design integration of "missiles", or the subsystems controlled by 9A005, 9A007, 9A105.a, 9A106, 9A108, 9A116 or 9A119. (This entry is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9D104 "Software" specially designed and modified for the "use" of equipment controlled by 9A001, 9A005, 9A006.d, 9A006.g, 9A007.a, 9A008.d, 9A009.a, 9A010.d, 9A011, 9A012 (for MT controlled items only), 9A101, 9A105, 9A106.c and .d, 9A107, 9A108.c, 9A109, 9A111, 9A115.a, 9A116.d, 9A117, or 9A118.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	Country chart
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: ''Software'' for commodities controlled by 9A005 to 9A011, 9A105, 9A106.c, 9A107 to 9A109, 9A111, 9A115, 9A116, 9A117, and 9A118 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

9D105 "Software" that coordinates the function of more than one subsystem, specially designed or modified for "use" in "missiles." (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

9D990 "Software", n.e.s., for the "development" or "production" of equipment controlled by 9A990 or 9B990.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to ''software'' for equipment under 9A990 except 9A990.a.	AT Column 1
AT applies to ''software'' for equipment under 9A990.a only.	AT Column 2

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value

Related Controls: N/A

Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9D991 "Software", for the "development" or "production" of equipment controlled by 9A991 or 9B991.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

E. TECHNOLOGY

NOTE: ''Development'' or ''production'' ''technology'' controlled by 9E001 to 9E003 for gas turbine engines remains controlled when used as ''use'' ''technology'' for repair, rebuild and overhaul. Excluded from control are: technical data, drawings or documentation for maintenance activities directly associated with calibration, removal or replacement of damaged or unserviceable line replaceable units, including replacement of whole engines or engine modules.

9E001 "Technology" according to the General Technology Note for the "development" of equipment or "software" controlled by 9A001.c, 9A004 to 9A011, 9B (except 9B990 or 9B991), or 9D (except 9D990 or 9D991).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to ''technology'' for items controlled by 9A001.c, 9B001 to 9B009, 9D001 to 9D004.	NS Column 1
MT applies to ''technology'' for items controlled by 9B001, 9B002, 9B003, 9B004 9B005, 9B007, 9B105, 9B106, 9B116, 9B117, 9D001, 9D002, 9D003, and 9D004 for MT reasons.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: (1) See also 9E101 and 1E002.f (for controls on ''technology'' for the repair of controlled structures, laminates or materials). (2) The ''technology'' required for the ''development'' of equipment controlled by 9A004 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.) (3) ''Technology'', required for the ''development'' of equipment or ''software'' subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls, is also subject to the same licensing jurisdiction. (See 22 CFR part 121)
Related Definitions: ''Development'' or ''production'' ''technology'' controlled by 9E for gas turbine engines remains controlled when used as ''use'' ''technology'' for repair, rebuild and overhaul. Excluded from control are: technology, drawings or documentation for maintenance activities directly associated with calibration, removal or replacement of damaged or unserviceable line replaceable units, including replacement of whole engines or engine modules
Items: The list of items controlled is contained in the ECCN heading

9E002 "Technology" according to the General Technology Note for the "production" of equipment controlled by 9A001.c, 9A004 to 9A011 or 9B (except 9B990 or 9B991).

LICENSE REQUIREMENTS

Reason for Control: NS, MT, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 1
MT applies to ''technology'' for equipment controlled by 9B001, 9B002, 9B003, 9B004, 9B005, 9B007, 9B105, 9B106, 9B116, and 9B117 for MT reasons.	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE REQUIREMENT NOTES: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A.
Related Controls: (1) See also 9E102. (2) See also 1E002.f for ''technology'' for the repair of controlled structures, laminates or materials. (3) The ''technology'' required for the ''development'' of equipment controlled by 9A004 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.) (4) ''Technology'', required for the ''development'' of

equipment or ''software'' subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls, is also subject to the same licensing jurisdiction. (See 22 CFR part 121).

Related Definitions: N/A.

Items:

The list of items controlled is contained in the ECCN heading.

9E003 Other "technology", as follows (see List of Items Controlled).

LICENSE REQUIREMENTS

Reason for Control: NS, SI, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
SI applies to 9E003.a.1 through a.11, and h. See §742.14 of the EAR for additional information..	
AT applies to entire entry	AT Column 1.

License Requirement Notes: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

LICENSE EXCEPTIONS

CIV: N/A

TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A.

Related Controls: (1.) Hot section ''technology'' specifically designed, modified, or equipped for military uses or purposes, or developed principally with U.S. Department of Defense funding, is subject to the licensing authority of the U.S. Department of State. (2.) ''Technology'' is subject to the EAR when actually applied to a commercial aircraft engine program. Exporters may seek to establish commercial application either on a case-by-case basis through submission of documentation demonstrating application to a commercial program in requesting an export license from the Department Commerce in respect to a specific export, or in the case of use for broad categories of aircraft, engines, or components, a commodity jurisdiction determination from the Department of State.

Related Definitions: N/A.

Items:

a. ''Technology'' ''required'' for the ''development'', ''production''of any of the following gas turbine engine components or systems:

a.1. Gas turbine blades, vanes or tip shrouds made from directionally solidified (DS) or single crystal (SC) alloys having (in the 001 Miller Index Direction) a stress-rupture life exceeding 400 hours at 1,273 K (1,000 °C) at a stress of 200 MPa, based on the average property values;

a.2. Multiple domed combustors operating at average burner outlet temperatures exceeding 1,813 K (1,540 °C) or combustors incorporating thermally decoupled combustion liners, non-metallic liners or non-metallic shells;

a.3. Components manufactured from any of the following:

a.3.a. Organic ''composite'' materials designed to operate above 588 K (315 °C);

a.3.b. Metal ''matrix'' ''composite'', ceramic ''matrix'', intermetallic or intermetallic reinforced materials controlled by 1C007; or

a.3.c. ''Composite'' material controlled by 1C010 and manufactured with resins controlled by 1C008.

a.4. Uncooled turbine blades, vanes, tip-shrouds or other components designed to operate at gas path temperatures of 1,323 K (1,050 °C) or more;

a.5. Cooled turbine blades, vanes or tip-shrouds, other than those described in 9E003.a.1, exposed to gas path temperatures of 1,643 K (1,370 °C) or more;

a.6. Airfoil-to-disk blade combinations using solid state joining;

a.7. Gas turbine engine components using ''diffusion bonding'' ''technology'' controlled by 2E003.b;

a.8. Damage tolerant gas turbine engine rotating components using powder metallurgy materials controlled by 1C002.b;

a.9. Full authority digital electronic engine control (FADEC) for gas turbine and combined cycle engines and their related diagnostic components, sensors and specially designed components;

a.10. Adjustable flow path geometry and associated control systems for:

a.10.a. Gas generator turbines;

a.10.b. Fan or power turbines;

a.10.c. Propelling nozzles; *or*

NOTE 1: Adjustable flow path geometry and associated control systems in 9E003.a.10 do not include inlet guide vanes, variable pitch fans, variable stators or bleed valves for compressors.

NOTE 2: 9E003.a.10 does not control ''development'' or ''production'' ''technology'' for adjustable flow path geometry for reverse thrust.

a.11. Wide chord hollow fan blades without part-span support;

b. ''Technology'' ''required'' for the ''development'' or ''production'' of any of the following:

b.1. Wind tunnel aero-models equipped with non-intrusive sensors capable of transmitting data from the sensors to the data acquisition system; or

b.2. ''Composite'' propeller blades or propfans capable of absorbing more than 2,000 kW at flight speeds exceeding Mach 0.55;

c. ''Technology'' ''required'' for the ''development'' or ''production'' of gas turbine engine components using ''laser'', water jet, ECM or EDM hole drilling processes to produce holes having any of the following sets of characteristics:

c.1. All of the following:

c.1.a. Depths more than four times their diameter;

c.1.b. Diameters less than 0.76 mm; and

c.1.c. Incidence angles equal to or less than 25°; or

c.2. All of the following:

c.2.a. Depths more than five times their diameter;

c.2.b. Diameters less than 0.4 mm; and

c.2.c. Incidence angles of more than 25°;

TECHNICAL NOTE: For the purposes of 9E003.c, incidence angle is measured from a plane tangential to the airfoil surface at the point where the hole axis enters the airfoil surface.

d. ''Technology'' ''required'' for the ''development'' or ''production'' of helicopter power transfer systems or tilt rotor or tilt wing ''aircraft'' power transfer systems;

e. ''Technology'' for the ''development'' or ''production'' of reciprocating diesel engine ground vehicle propulsion systems having all of the following:

e.1. A box volume of 1.2 m^3 or less;

e.2. An overall power output of more than 750 kW based on 80/1269/EEC, ISO 2534 or national equivalents; and

e.3. A power density of more than 700 kW/m^3 of box volume;

TECHNICAL NOTE: Box volume: the product of three perpendicular dimensions measured in the following way:

Length: The length of the crankshaft from front flange to flywheel face;

Width: The widest of the following:

a. The outside dimension from valve cover to valve cover;

b. The dimensions of the outside edges of the cylinder heads; or

c. The diameter of the flywheel housing;

Height: The largest of the following:

a. The dimension of the crankshaft centerline to the top plane of the valve cover (or cylinder head) plus twice the stroke; or

b. The diameter of the flywheel housing.

f. ''Technology'' ''required'' for the ''production'' of specially designed components, as follows, for high output diesel engines:

f.1. ''Technology'' ''required'' for the ''production'' of engine systems having all of the following components employing ceramics materials controlled by 1C007:

f.1.a Cylinder liners;

f.1.b. Pistons;

f.1.c. Cylinder heads; and

f.1.d. One or more other components (including exhaust ports, turbochargers, valve guides, valve assemblies or insulated fuel injectors);

f.2. ''Technology'' ''required'' for the ''production'' of turbocharger systems, with single-stage compressors having all of the following:

f.2.a. Operating at pressure ratios of 4:1 or higher;

f.2.b. A mass flow in the range from 30 to 130 kg per minute; and

f.2.c. Variable flow area capability within the compressor or turbine sections;

f.3. ''Technology'' ''required'' for the ''production'' of fuel injection systems with a specially designed multifuel (e.g., diesel or jet fuel) capability covering a viscosity range from diesel fuel (2.5 cSt at 310.8 K (37.8 °C)) down to gasoline fuel (0.5 cSt at 310.8 K (37.8 °C)), having both of the following:

f.3.a. Injection amount in excess of 230 mm^3 per injection per cylinder; and

f.3.b. Specially designed electronic control features for switching governor characteristics automatically depending on fuel property to provide the same torque characteristics by using the appropriate sensors;

g. ''Technology'' ''required'' for the development'' or ''production'' of high output diesel engines for solid, gas phase or liquid film (or combinations thereof) cylinder wall lubrication, permitting operation to temperatures exceeding 723 K (450 °C), measured on the cylinder wall at the top limit of travel of the top ring of the piston.

h. ''Technology'' not otherwise controlled in 9E003.a.1 through a.10 and currently used in the ''development'', ''production'', or overhaul of hot section parts and components of civil derivatives of military engines controlled on the U.S. Munitions List.

9E018 "Technology" for the "development", "production", or "use" of equipment controlled by 9A018.

LICENSE REQUIREMENTS

Reason for Control: NS, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to 9A018.a and .b	RS Column 2
AT applies to entire entry	AT Column 1
UN applies to entire entry	Iraq and Rwanda

LICENSE EXCEPTIONS

CIV: N/A

TSR: Yes for Australia, Japan, New Zealand, and NATO countries that are also listed in Country Group B of Supplement No. 1 to part 740 of the EAR.

LIST OF ITEMS CONTROLLED

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading

9E101 "Technology" according to the General Technology Note for the "development" or "production" of commodities or software controlled by 9A012, 9A101, 9A104 to 9A111, 9A115 to 9A119, 9D101, 9D103, 9D104 or 9D105.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: ''Technology'' controlled by 9E101 for items in 9A012, 9A101.b, 9A104, 9A105, to 9A109, 9A110 that are specially designed for use in missile systems and subsystems, 9A111, 9A115, 9A116 to 9A119, 9D103, and 9D105 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9E102 "Technology" according to the General Technology Note for the "use" of space launch vehicles specified in 9A004, or commodities or software controlled by 9A005 to 9A012, 9A101, 9A104 to 9A111, 9A115 to 9A119, 9B105, 9B106, 9B115, 9B116, 9B117, 9D101, 9D103, 9D104 or 9D105.

LICENSE REQUIREMENTS

Reason for Control: MT, AT

Control(s)	*Country Chart*
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: N/A
Related Controls: (1) For the purpose of this entry, ''use'' ''technology'' is limited to items controlled for MT and their subsystems.

(2) ''Technology'' controlled by 9E102 for commodities or software subject to the export licensing jurisdiction of the Department of State in 9A004 to 9A012, 9A101.b, 9A104, 9A105, 9A106.a to .c, 9A107 to 9A109, 9A110 that are specially designed for use in missile systems and subsystems, 9A111, 9A115 to 9A119, 9B115, 9B116, 9D103, specified software in 9D104, and 9D105 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121).
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9E990 "Technology", n.e.s., for the "development" or "production" or "use" of equipment controlled by 9A990 or 9B990.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to ''technology'' for equipment under 9A990 and 9B990 except 9A990.a.	AT Column 1
AT applies to ''technology'' for equipment under 9A990.a only.	AT Column 2

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9E991 "Technology", for the "development", "production" or "use" of equipment controlled by 9A991 or 9B991.

LICENSE REQUIREMENTS

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading

9E993 Other "technology", not described by 9E003, as follows (see List of Items Controlled)

LICENSE REQUIREMENTS

Reason for Control: AT.

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

LICENSE EXCEPTIONS

CIV: N/A
TSR: N/A

LIST OF ITEMS CONTROLLED

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Rotor blade tip clearance control systems employing active compensating casing ''technology'' limited to a design and development data base; *or*

b. Gas bearing for turbine engine rotor assemblies.

EAR99 Items subject to the EAR that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number EAR99.

[63 FR 2459, Jan. 15, 1998]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Supplement No. 1 to Part 774, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

SUPPLEMENT NO. 2 TO PART 774—GENERAL TECHNOLOGY AND SOFTWARE NOTES

1. *General Technology Note.* The export of ''technology'' that is ''required'' for the ''development'', ''production'', or ''use'' of items on the Commerce Control List is controlled according to the provisions in each Category.

''Technology'' ''required'' for the ''development'', ''production'', or ''use'' of a controlled product remains controlled even when applicable to a product controlled at a lower level.

License Exception TSU is available for ''technology'' that is the minimum necessary for the installation, operation, maintenance (checking), and repair of those products that are eligible for License Exceptions or that are exported under a license.

N.B.: This does not allow release under a License Exception of the repair ''technology'' controlled by 1E002.e, 1E002.f, 8E002.a, or 8E002.b.

N.B.: The ''minimum necessary'' excludes ''development'' or ''production'' technology and permits ''use'' technology only to the extent ''required'' to ensure safe and efficient use of the product. Individual ECCNs may further restrict export of ''minimum necessary'' information.

2. *General Software Note.* License Exception TSU (''mass market'' software) is available to all destinations, except countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, for release of software that is generally available to the public by being:

a. Sold from stock at retail selling points, without restriction, by means of:

1. Over the counter transactions;
2. Mail order transactions;
3. Electronic transactions; *or*
4. Telephone call transactions; *and*

b. Designed for installation by the user without further substantial support by the supplier.

NOTE: The General Software Note does not apply to ''software'' controlled by Category 5—part 2 (''Information Security''). For ''software'' controlled by Category 5, part 2, see Supplement No. 1 to part 774, Category 5, part 2, Note 3—Cryptography Note.

[69 FR 46087, July 30, 2004]

SUPPLEMENT NO. 3 TO PART 774—STATEMENTS OF UNDERSTANDING

Statement of Understanding—medical equipment: Commodities that are ''specially designed for medical end-use'' that ''incorporate'' commodities or software on the Commerce Control List (Supplement No. 1 to part 774 of the EAR) that do not have a reason for control of Nuclear Nonproliferation (NP), Missile Technology (MT), or Chemical & Biological Weapons (CB) are designated by the number EAR99 (i.e., are not elsewhere specified on the Commerce Control List).

NOTES APPLICABLE TO STATE OF UNDERSTANDING RELATED TO MEDICAL EQUIPMENT: (1) ''Specially designed for medical end-use'' means designed for medical treatment or the practice of medicine (does not include medical research).

(2) ''Incorporate'' into medical equipment means to integrate with, or work indistinguishably into such equipment.

(3) Except for such software that is made publicly available consistent with §734.3(b)(3) of the EAR, commodities and software ''specially designed for medical end-use'' remain subject to the EAR.

(4) See also §770.2(b) interpretation 2, for other types of equipment that incorporate items on the Commerce Control List that are subject to the EAR.

(5) For computers used with medical equipment, see also ECCN 4A003 note 2 regarding the ''principal element'' rule.

(6) For commodities and software specially designed for medical end-use that incorporate an encryption or other ''information security'' item subject to the EAR, see also Note 1 to Category 5, Part II of the Commerce Control List.

[68 FR 68996, Dec. 10, 2003]

PARTS 775–799 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Title 5—Administrative Personnel—Continued

Chap.	
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301.3 (d) amended; (f) redesignated as (g); new (f) added 28833
301.4 (a)(1) and (2) revised; (a)(3) amended 28833
301.5 (a)(1), (2), (3), (4)(v), (6), (c)(2), (3), (d)(1)(i), (ii) and (e)(5) amended; (a)(5), (b), (e) introductory text, (2) and (3) revised; (a)(7) and (e)(9) removed; (d)(5) added 28833
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301.9 (a) introductory text amended 28834
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736.2 (b)(7)(i)(B) and (C) revised 49523
738 Authority citation revised 12846, 18402, 49523
738 Supplement No. 1 amended 12846, 18402, 49523
740 Authority citation revised 5444, 6465, 12846, 18402, 36680, 49523
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742 Authority citation revised 16479, 23629, 36010, 46075, 71363
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746.7 Introductory text revised 5690
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766.3 (a) revised 7870
766.18 (f) added 7870
766 Supplement No. 1 added 7870
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