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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) Commodities or software are considered “incorporated” if the commodity or software is: Essential to the functioning of the medical equipment; customarily included in the sale of the medical equipment; and exported or reexported with the medical equipment.

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(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.

Statement of Understanding—Source Code For the purpose of national security controlled items, “source code” items are controlled either by “software” or by “software” and “technology” controls, except when such “source code” items are explicitly decontrolled.

[68 FR 68996, Dec. 10, 2003, as amended at 72 FR 62551, Nov. 5, 2007; 73 FR 56970, Oct. 1, 2008]

PARTS 775–780 [RESERVED]