

(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 8, 2013, 78 FR 49107 (August 12, 2013).

§ 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 Number (ECCN) 2A001 (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) [Reserved]

(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 other-

wise 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 as “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 vehicles specified in 9A018.b.2, if they do not have armor described in 22 CFR 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.1. Unarmed vehicles specified in 9A018.b.2 that are not described in paragraph (h)(4) of this section. ECCN 9A018.b does not cover civil vehicles designed or modified for transporting money or valuables even if such vehicles incorporate items described in paragraphs (h)(2)(i), (ii), or (iii) 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 compo-

nents 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)—(j) [Reserved]

(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 chlorohydrin

Ethylene chlorohydrin

Glycol chlorohydrin

Glycol monochlorohydrin

2-Hydroxyethyl chloride

§ 770.2

15 CFR Ch. VII (1–14 Edition)

- (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
 Methyl-diethoxyphosphine
 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
 Diethoxy 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-diisopropylethanolamine
 1-Chloro-N,N-diisopropylaminoethane
- 2-Chloro-N,N-diisopropylethylamine
 N-(2-chloroethyl)-N-(1-methylethyl)-2-propanamine
- N-(2-Chloroethyl) diisopropylamine
 N,N-Diisopropyl-2-chloroethylamine
 1-(Diisopropylamino)-2-chloroethane
 2-(Diisopropylamino)ethyl chloride
 Diisopropylaminoethyl chloride
 .beta.-Diisopropylaminoethyl chloride
- (14) (C.A.S. #108-18-9) Diisopropylamine
 N,N-Diisopropylamine
 N-(1-Methylethyl)-2-propanamine
- (15) (C.A.S. #6163-75-3) Dimethyl ethylphosphonate
 Dimethyl ethanephosphonate
 Ethylphosphonic acid dimethyl ester
- (16) (C.A.S. #756-79-6) Dimethyl methylphosphonate
 Dimethoxymethyl phosphine oxide
 Dimethyl methanephosphonate
 Methanephosphonic acid dimethyl ester
 Methylphosphonic acid dimethyl ester
- (17) (C.A.S. #868-85-9) Dimethyl phosphite
 Dimethoxyphosphine oxide
 Dimethyl acid phosphite
 Dimethyl hydrogen phosphite
 Dimethyl phosphonate
 Hydrogen dimethyl phosphite
 Methyl phosphate
- (18) (C.A.S. #124-40-3) Dimethylamine
 N-Methyl methanamine
- (19) (C.A.S. #506-59-2) Dimethylamine hydrochloride
 Dimethylammonium chloride
 N-Methyl methanamine hydrochloride
- (20) [Reserved]
- (21) (C.A.S. #1498-40-4) Ethylphosphonous dichloride
 Dichloroethylphosphine
 Ethyl phosphonous dichloride
 Ethyldichlorophosphine
- (22) (C.A.S. #430-78-4) Ethylphosphonous 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

Bureau of Industry and Security, Commerce

§ 770.2

Anhydrous hydrofluoric acid	Pinacolin
Fluorhydric acid	Pinacoline
Fluorine monohydride	1,1,1-Trimethylacetone
Hydrofluoric acid gas	(37) (C.A.S. #464-07-3) Pinacolyl alco-
(26) (C.A.S. #3554-74-3) 3-Hydroxyl-1-	hol
methylpiperidine	tert-Butyl methyl carbinol
3-Hydroxy-N-methylpiperidine	2,2-Dimethyl-3-butanol
1-Methyl-3-hydroxypiperidine	3,3-Dimethyl-2-butanol
N-Methyl-3-hydroxypiperidine	1-Methyl-2,2-dimethylpropanol
1-Methyl-3-piperidinol	(38) (C.A.S. #151-50-8) Potassium cya-
N-Methyl-3-piperidinol	nide
(27) (C.A.S. #76-89-1) Methyl benzilate	(39) (C.A.S. #7789-23-3) Potassium fluo-
Benzilic acid methyl ester	ride
.alpha.-Hydroxy-.alpha.-	Potassium monofluoride
phenylbenzeneacetic acid methyl	(40) (C.A.S. #7789-29-9) Potassium hy-
ester	drogen fluoride
Methyl .alpha.-phenylmandelate	Hydrogen potassium difluoride
Methyl diphenylglycolate	Hydrogen potassium fluoride
(28)-(31) [Reserved]	Potassium acid fluoride
(32) (C.A.S. #10025-87-3) Phosphorus	Potassium bifluoride
oxychloride	Potassium hydrogen difluoride
Phosphonyl trichloride	Potassium monohydrogen difluoride
Phosphoric chloride	(41) (C.A.S. #1619-34-7) 3-
Phosphoric trichloride	Quinuclidinol
Phosphoroychloride	1-Azabicyclo(2.2.2)octan-3-ol
Phosphoroxyltrichloride	3-Hydroxyquinuclidine
Phosphorus chloride oxide	(42) (C.A.S. #3731-38-2) 3-
Phosphorus monoxide trichloride	Quinuclidinone
Phosphorus oxide trichloride	1-Azabicyclo(2.2.2)octan-3-one
Phosphorus oxytrichloride	3-Oxyquinuclidine
Phosphorus trichloride oxide	Quinuclidone
Phosphoryl trichloride	(43) (C.A.S.) #1333-83-1) Sodium
Trichlorophosphine oxide	bifluoride
Trichlorophosphorus oxide	Sodium hydrogen difluoride
(33) (C.A.S. #10026-13-8) Phosphorus	Sodium hydrogen fluoride
pentachloride	(44) (C.A.S. #143-33-9) Sodium cyanide
Pentachlorophosphorane	(45) (C.A.S. #7681-49-4) Sodium fluo-
Pentachlorophosphorus	ride
Phosphoric chloride	Sodium monofluoride
Phosphorus(V) chloride	(46) (C.A.S. #1313-82-2) Sodium sulfide
Phosphorus perchloride	Disodium monosulfide
(34) (C.A.S. #1314-80-3) Phosphorus	Disodium sulfide
pentasulfide	Sodium monosulfide
Diphosphorus pentasulfide	Sodium sulphide
Phosphoric sulfide	(47) (C.A.S. #10025-67-9) Sulfur
Phosphorus persulfide	Monochloride
Phosphorus sulfide	(48) (C.A.S. #10545-99-0) Sulfur
(35) (C.A.S. #7719-12-2) Phosphorus	dichloride
trichloride	(49) (C.A.S. #111-48-8) Thiodiglycol
Phosphorus chloride	Bis(2-hydroxyethyl) sulfide
Trichlorophosphine	Bis(2-hydroxyethyl) thioether
(36) C.A.S. #75-97-8) Pinacolone	Di(2-hydroxyethyl) sulfide
tert-Butyl methyl ketone	Diethanol sulfide
2,2-Dimethyl-3-butanone	2,2'-Dithiobis-(ethanol)
3,3-Dimethyl-2-butanone	3-Thiapentane-1,5-diol
2,2-Dimethylbutanone	2,2'-Thiobisethanol
3,3-Dimethylbutanone	2,2'-Thiodiethanol
1,1-Dimethylethyl methyl ketone	Thiodiethylene glycol
Methyl tert-butyl ketone	2,2'-Thiodiglycol

§ 770.3

(50) C.A.S. #7719-09-7) Thionyl chloride

Sulfinyl chloride
Sulfinyl dichloride
Sulfur chloride oxide
Sulfur oxychloride
Sulfurous dichloride
Sulfurous oxychloride
Thionyl dichloride

(51) (C.A.S. #102-71-6) Triethanolamine

Alkanolamine 244
Nitrilotriethanol
2,2',2''-Nitrilotriethanol
2,2',2''-Nitrilotris(ethanol)
TEA
TEA (amino alcohol)
Tri (2-hydroxyethyl) amine
Triethanolamin
Tris (.beta.-hydroxyethyl) amine
Tris (2-hydroxyethyl) amine
Trolamine

(52) (C.A.S. #637-39-8) Triethanolamine hydrochloride

(53) (C.A.S. #122-52-1) Triethyl phosphite

Phosphorous acid triethyl ester
Triethoxyphosphine
Tris(ethoxy)phosphine

(54) (C.A.S. #121-45-9) Trimethyl phosphite

Phosphorus acid trimethyl ester
Trimethoxyphosphine

(1) *Interpretation 12: Computers.*

(1) *Interpretation 12: Computers.* (1)

Digital computers or computer systems classified under ECCN 4A003.b or .c, that qualify for “No License Required” (NLR) must be evaluated on the basis of Adjusted Peak Performance (APP) alone, to the exclusion of all other technical parameters. Digital computers or computer systems classified under ECCN 4A003.b or .c that qualify for License Exception APP must be evaluated on the basis of APP, to the exclusion of all other technical parameters, except for ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a). Assemblies performing analog-to-digital conversions are evaluated under Category 3—Electronics, ECCN 3A001.a.5.a.

(2) Related equipment classified under ECCN 4A003.e or .g may be exported or reexported under License Exceptions GBS or CIV. When related equipment is exported or reexported as

15 CFR Ch. VII (1-1-14 Edition)

part of a computer system, NLR or License Exception APP is available for the computer system and the related equipment, as appropriate.

(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.

[61 FR 12920, Mar. 25, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 770.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EFFECTIVE DATE NOTE: At 78 FR 40911, July 8, 2013, § 770.2 was amended by removing and reserving paragraph (h), effective Jan. 6, 2014.

§ 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