

## DEPARTMENT OF COMMERCE

## Bureau of Export Administration

15 CFR Parts 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, and 774

[Docket No. 950407094-5094-01]

RIN 0694-AA67

**Export Administration Regulation;  
Simplification of Export Administration  
Regulations**

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Bureau of Export Administration (BXA) is proposing a comprehensive revision and reorganization of its Export Administration Regulations (EAR), the regulatory regime through which BXA imposes export and reexport controls on those items and activities within its jurisdiction. This proposed rule would clarify the language of the EAR, simplify their application, and generally make the export control regulatory regime more user-friendly.

**DATES:** Written comments on this proposed rule must be received on or before July 10, 1995.

**ADDRESSES:** Written comments should be sent to Cecil Hunt, Deputy Chief Counsel for Export Administration, United States Department of Commerce, Bureau of Export Administration, Fourteenth Street and Constitution Avenue, N.W., Room 3839, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Larry E. Christensen, Acting Director, Regulatory Policy Division, Bureau of Export Administration, (202) 482-2440.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 30, 1993, the Secretary of Commerce submitted to the Congress a report of the Trade Promotion Coordinating Committee (TPCC), entitled *Toward a National Export Strategy*. The report included the following among its goals:

Undertake a comprehensive review of the Export Administration Regulations to simplify, clarify, and make the regulations more user-friendly.

In November 1993, BXA organized a Task Group, drawn from several of its offices, to carry out the TPCC recommendation. The Task Group launched its review project by publishing an advance notice of

proposed rulemaking (ANPRM) in the **Federal Register** on February 10, 1994 (59 FR 6528). This notice was designed to solicit comments from industry and the interested public. The ANPRM asked for suggestions concerning improvements BXA could make to the EAR and described several specific issues on which BXA was particularly interested in receiving public input.

Over seven months during the development of this proposed regulation, BXA shared four discussion packages with Regulations & Procedures Technical Advisory Committee (RPTAC), an advisory committee consisting of industry representatives. This was to seek the comments of a working group of persons intimately familiar with the private sector's role in using the EAR. The packages were also made available to other interested members of the public, with the last two being made available electronically on FedWorld. The four discussion Packages were dated August 2, 1994, September 29, 1994, January 12, 1995, and February 28, 1995.

Based on the comments received from the public and from the RPTAC and its own assessment of how the EAR could be improved, the Task Force determined that the EAR should be entirely reorganized and streamlined. The Task Force accomplished this through the development of innovations that resulted in the following important features, among others:

- No license or other authorization would be required for any transaction under BXA jurisdiction unless the regulations *affirmatively* state the requirement. (Current regulations state that *all* exports are *prohibited* unless an applicable general license has been established or a validated license or other authorization has been granted by BXA.)

- The terms "general" license and "validated" license would be dropped. The term "license" would be used to refer only to authorization issued by BXA upon application. The proposed regulations would convert the many current general licenses into a smaller number of "exceptions", set forth in the proposed regulations, to the obligation to seek a license when the control list indicates that the particular item going to the stated country generally requires a license.

- The chapters of the regulations would be arranged to give the exporter and reexporter a logical path to follow.

- The affirmative statements of the need to obtain a license, currently scattered throughout the regulations, would be consolidated into ten general prohibitions. One chapter would contain the license review policy for all list-based license requirements; another would provide for the requirements and review policies of licenses based on the end-use or end-user involved in a proposed export or reexport; and the list-

based license requirements are contained in the Commerce Control List (CCL) indicating the reason for control and the Country Chart indicating the country scope of each reason for control.

- The Country Groups used in the current regulations would be revised in favor of Groups which better reflect post-Cold War circumstances.

- The CCL would be redesigned to state the reasons for control more specifically within each Export Control Classification Number (ECCN).

- The redesigned CCL would be used in tandem with a new Country Chart that would indicate whether a license is required for any ECCN to any country in the world and the reason or reasons for control.

Set forth below is a detailed part-by-part description of the proposed rule and a review of comments received pursuant to the ANPRM, along with BXA's responses.

**Part-by-Part Analysis**

*Part 730—General Information*

This Part is designed to provide a convenient introduction and orientation for readers of the EAR, particularly those who are not used to dealing with such regulations. This Part briefly indicates the types of controls contained in the EAR (export and reexport controls and antiboycott regulations), identifies the key statutes involved, and alerts the reader to the fact that jurisdiction over some exports and reexports is exercised by agencies other than BXA.

Part 730 notes the basic control purposes and the relationship of some of the controls to multilateral arrangements. It points out that only a small percentage of exports, reexports, and other transactions subject to the EAR involve the need to apply to BXA for a license. Many items (commodities, technology, and software) listed on the CCL may be exported and reexported without a license due to License Exceptions that can be used simply by meeting the terms of the EAR.

Further, this Part 730 notes that this proposed re-write of the EAR is designed to enhance the ability of exporters and reexporters to find the rules on their own, but also advises on the availability of help. It also highlights the benefits to exporters and reexporters from the precision, completeness, and objective character of the detailed provisions of the EAR.

Part 730 relates the antiboycott provisions of the EAR to the Internal Revenue Code provisions that deny certain tax benefits for boycott-related reasons.

Part 730 closes by cautioning that its brief descriptions are solely for convenience and that readers must look to the body of the EAR and elsewhere

for the actual rules. The regulations being replaced do not contain material comparable to Part 730.

#### *Part 732—Scope of the Export Administration Regulations*

The proposed regulation would introduce the term “subject to the EAR” to define the scope of the regulations. The term would be used in the rule to describe those items and activities over which BXA exercises regulatory jurisdiction under the EAR. Conversely, items and activities that are *not* subject to the EAR would be outside the regulatory jurisdiction of the EAR and not affected by the proposed regulations. It should be noted that the term “subject to the EAR” is not to be confused with licensing or other requirements imposed in other parts of the EAR. The fact that 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 would apply only in those cases where the EAR impose a licensing or other requirement on such items or activities.

Items previously included on the CCL under ECCNs ending in the letter “G” were known as basket categories. Under this rule, the basket categories would be included within the term “subject to the EAR,” even though they are not listed on the CCL.

The proposed rule would make clear that items and activities subject to the EAR are not necessarily exempted from the control programs of other agencies. Although BXA and other agencies try to minimize overlapping jurisdiction, situations might occur in which an exporter and a reexporter would have to comply with more than one regulatory program. Moreover, items not subject to the EAR may or may not be subject to licensing by other agencies.

Generally, all *U.S. origin* items, items exported from the United States, and certain foreign-made products, as described in § 732.4, would be subject to the EAR. However, certain items, such as items that are exclusively controlled for export by another department or agency of the U.S. Government, would be explicitly excepted from the EAR. Further, technology and software that are already publicly available or will be made publicly available, as described in § 732.7; arise during or result from fundamental research, as described in § 732.8; are educational, as described in § 732.9; or are included in certain patent applications, as described in § 732.10, would *not* be subject to the EAR.

Certain foreign-made products would be subject to the EAR. Controlled U.S. origin parts, components, materials, or

other commodities incorporated abroad into foreign-made products, if they exceed certain *de minimis* levels. For the first time, the proposed rule includes technology and software in the calculation of *de minimis* values. BXA especially invites substantive comments and suggestions on calculating such values for technology and software. BXA is considering requirements that such calculations be made in accordance with United States accounting standards including the rulings of the Financial Accounting Standards Board and that calculations be based solely upon cost records maintained in the normal course of business. BXA is also considering whether to require a one-time report of such calculations in advance of any reliance upon the *de minimis* exclusion for technology and software. BXA also urges exporters to provide substantive comments and suggestions on this option. In addition, foreign-made direct products of U.S. origin technology or software and any commodity produced by any plant or major component of a plant which is a direct product of U.S. origin technology or software, would be subject to the EAR as provided in the current regulations.

The proposed regulations make clear that certain activities would also be subject to the EAR. The activities subject to the EAR would include certain proliferation-related activities by any person, as set forth in Part 744. Activities prohibited by any order issued under the EAR, including a denial order, would also be subject to the EAR.

Part 732 would also contain rules governing other exports and reexports subject to the EAR. The rule would continue the general policy of permitting most shipments to Canada without a license. Further, items exported from U.S. foreign trade zones would be subject to the EAR, as would items moving intransit through the United States. Finally, the proposed regulations would state that neither a license nor other authorization would be required for shipments from the United States to Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any other territory, dependency, or possession of the United States.

BXA would offer assistance to a potential exporter, or other interested party, in determining whether an item is subject to the EAR.

#### *Part 734—General Prohibitions*

If an export, reexport, or activity is subject to the EAR, the general prohibitions contained in Part 734 and

the exceptions set forth in Part 740 must be reviewed to determine if a license is necessary. However, no license or other authorization would be required for any transaction subject to the EAR unless the regulations *affirmatively* state the requirement.

Part 734 would contain the rules for ascertaining when an export or reexport subject to the EAR requires a license. This would involve determining whether a transaction subject to the EAR is subject to a general prohibition. Specifically, if an export or reexport subject to the EAR is also subject to a general prohibition, then a license would be required in order to undertake the export or reexport, unless an exception to the prohibition applies.

This part would set forth ten general prohibitions, listed in the proposed regulations at §§ 734.2(b)(1)–(10). The CCL in Part 774 and the Country Chart in Part 738 when taken together define the scope of General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign Produced Direct Product Reexports). General Prohibitions Four through Ten are not so limited, these general prohibitions apply to all items subject to the EAR unless otherwise specified, and these general prohibitions apply to all items subject to the EAR whether or not listed on the CCL.

BXA especially invites substantive comments concerning the controls on foreign produced direct products of U.S. technology and software provided at General Prohibition Three. The term “duties” is used in the proposed regulation to mean responsibilities. One early comment suggested that some readers might confuse this with the term “duties” meaning a tax on the importation of items. BXA invites comments on the use of the term.

#### *Part 736—Steps You May Follow in Determining Your Licensing Requirements*

Part 736 would provide a logical step-by-step path exporters and reexporters may follow in discerning their license requirements and prohibitions under the EAR. These steps would explain the relationship among the scope of the EAR, the general prohibitions, the License Exceptions, and other chapters of the EAR. BXA is considering the possibility of merging the text regarding steps into the introductory portions of the “General Prohibitions” chapter (Part 734). BXA invites specific comments on such a reorganization.

*Part 738—Commerce Control List and the Country Chart*

BXA maintains the Commerce Control List (CCL), located in Supplement No. 1 to Part 774, which includes listed items subject to the EAR. Individual items are identified on the CCL under an Export Control Classification Number (ECCN).

An ECCN contains several items of information that the exporter and reexporter must have in order to determine whether a license is required by the CCL for a particular item. As revised by the proposed rule, the "License Requirements" section of each ECCN contains two columns entitled "Controls" and "Country Chart". The "Controls" column lists 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 items requiring licenses for a greater number of countries and/or items are listed first. The "Country Chart" column identifies, for each applicable Reason for Control, a column name and number. This column information is used in the Country Chart to identify the list of countries requiring a license.

The proposed rule also adds a "License Alternatives" section to each ECCN. The "License Alternatives" section identifies ECCN-driven alternatives to applying for a license and a brief eligibility statement for each. The alternatives consist of ECCN-driven License Exceptions (Part 740) and the Special Comprehensive License (Part 752). The information in this section is provided to assist in deciding which alternative related to a particular item and destination would be explored prior to submitting an application for a license to BXA. This section would be consulted only AFTER an exporter or reexporter has determined that a license is required based on an analysis of the ECCN and the Country Chart.

The proposed rule also introduces the Commerce Country Chart (Country Chart). The Country Chart, located in Supplement No. 1 to Part 738, contains licensing requirements based on the export's destination and "Reason for Control." In combination with the CCL, the Country Chart allows an exporter and reexporter to refer to one place in the EAR and determine whether a license is required for the export or reexport of any item on the CCL to any country in the world.

*Part 740—License Exceptions*

Part 740 of the proposed rule provides for exceptions from license requirements similar to many of the general licenses contained in the current

regulations. It consolidates exceptions into one chapter; the current regulation deals with commodities in one chapter and technology and software in another. This Part also organizes the exceptions in more transaction-oriented groupings, e.g., all exceptions dealing with parts are included in License Exception PTS. License Exceptions contained in this Part of the proposed rule permit the export or reexport without a license required by the CCL provided the conditions for the use of the License Exception are met.

Eligibility for a License Exception would be based upon the item to be exported or reexported, the country of ultimate destination, the end-use of the item, and the end-user. If a License Exception is available, the exporter or reexporter may proceed with the export or reexport without a license. However, the exporter and reexporter would be required to meet *all* the terms and conditions required by the License Exception for the export or reexport to be authorized without a license. By using a License Exception, the exporter or reexporter would be self-certifying that all terms, conditions, and provisions for the use of that License Exception have been met. Including the appropriate License Exception symbol on the Shippers Export Declaration, e.g., "TMP" for temporary exports, would constitute such a certification.

Items that are listed on the CCL but do not require a license by reason of the Country Chart at Part 738 must be certified by entering the symbol "NLR" in the appropriate place on the Shippers Export Declaration. This constitutes representations of the exporter that the listed item does not require a license under General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign Produced Direct Product Reexports); that General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and that the item is subject to the EAR.

BXA solicits comments on the incorporation of proliferation controls into License Exceptions. Many General Licenses and Permissive Reexports originally focused on national security controls. BXA would like public input on the extent to which proliferation concerns have, or have not, been addressed by License Exceptions.

*Part 742—Control Policy—CCL Based Controls*

This Part contains licensing review policies and certain requirements for all items listed on the CCL. It consolidates most of current Part 785, and substantial

portions of Parts 776 and 778. In addition to providing the license policies and certain license requirements, it notes any contract sanctity dates that may have been established for particular export or reexport control programs and describes any multilateral cooperation in particular export or reexport control programs.

The proposed regulation tracks the reasons for control listed in the Country Chart by providing the licensing policy for every column on the chart. In addition, this Part includes two control policies for items included on the CCL, but not reflected in the Country Chart; it includes provisions for supercomputers and communications intercepting devices.

This proposed rule, consistent with the National Defense Authorization Act (NDAA) for fiscal year 1993 entitled the "Iran-Iraq Arms Non-Proliferation Act of 1992", would codify the current statutory policy of denial for all items that require a license for Iran. The reader should note that additional unilateral trade restrictions on Iran are currently under review within the Administration.

The reader should also note that controls for Libya are currently under review within the Administration.

This proposed rule would reflect the Secretary of State's 6(j) determination of August 12, 1993, that the Government of Sudan has repeatedly provided support for acts of international terrorism. This rule would also reflect the Acting Secretary of State's determination of December 28, 1993, that five categories of multilaterally controlled items would be controlled under section 6(j). License applications for the following items would be reviewed under the 6(j) procedures:

All items subject to national security controls, except national security controlled digital computers with a Composite Theoretical Performance (CTP) of 500 Million Theoretical Operations Per Second (MTOPS) or less. Such items will generally be denied if destined to a military end-user or for military end-use. Applications for non-military end-users or end-uses will be considered on a case-by-case basis;

All items subject to chemical and biological weapons proliferation controls. Such items will generally be denied;

All dual-use items subject to missile proliferation controls. Such items will generally be denied;

All items subject to nuclear weapons proliferation controls. Such items will generally be considered on a case-by-case basis; and

All military related items (items controlled by the Commerce Control List (CCL) entries ending with the number 18. Such items will generally be denied.

This proposed rule does not reflect these 6(j) controls for Sudan on either the Country Chart or on the CCL. However, they will be incorporated into the final rule.

Additional unilateral trade restrictions under 6(a) for Sudan are currently under review within the Administration.

This Part would *not* include controls and licensing policies that apply to exports and reexports to embargoed destinations and additional controls under the EAR implementing U.N. sanctions. Currently, the embargoed countries include Cuba, Libya, North Korea, the Federal Republic of Yugoslavia (Serbia and Montenegro), and Iraq. An exporter or reexporter seeking to export or reexport items to these countries should first review Part 746, Embargoes and Other Special Controls.

Additionally, this Part would not address controls and licensing policies for items controlled for "short supply" reasons. These would be covered in Part 754, Short Supply Controls.

*Part 744—Control Policy—End-User/End-Use Based*

This part contains prohibitions against exports, reexports, and activities related to certain end-uses and end-users. Specifically, § 744.2 would prohibit exports and reexports of items subject to the EAR, without a validated license, if at the time of the export or reexport you know or have reason to know, that the item will be used in nuclear explosive, or other safeguarded or unsafeguarded, nuclear activities. Section 744.3 would prohibit the export or reexport, without a validated license, of certain items to be used for missile end-uses. Similarly, section § 744.4 would prohibit the export or reexport of items with certain chemical and biological weapon end-uses. Next, § 744.5 would prohibit the export or reexport of items to be used for specified nuclear maritime end-uses. Finally, § 744.6 would place restrictions on certain proliferation-related activities of U.S. persons. For purposes of this prohibition the term "U.S. person" would mean citizens, permanent resident aliens, or protected individuals as defined in the immigration laws; any judicial person organized under the laws of the United States or any U.S. jurisdiction; and any person physically in the United States.

This part would also contain prohibitions against exports, reexports, and certain transfers to specified end-users.

*Part 746—Embargoes and Other Special Controls*

Part 746 of the proposed regulations contains all the control requirements that apply to embargoed destinations, including Cuba, the Federal Republic of Yugoslavia (Serbia and Montenegro), Iraq, Libya, and North Korea. It also contains the control requirements implementing U.N. sanctions that result in additional EAR controls on certain countries, such as Rwanda.

In addition, Part 746 would add provisions to reflect current policy on exports and reexports to Cuba of medical items and telecommunications equipment, and reexports to Libya of items covered by United Nations Resolutions. This Part also would include new Department of Commerce license requirements that codify existing United States policy implemented by the Treasury Department for exports and reexports to Iraq. It would also reflect current policy by clarifying certain eligibility requirements for the Humanitarian License Procedure. BXA is considering eliminating the Humanitarian License Procedure, and would therefore be particularly interested in comments on its usefulness. Finally, this Part would include Supplements containing general information on embargoes and sanctions administered by other federal agencies.

*Part 748—Applications (Classification, Advisory, and License) and Documentation*

Part 748 describes the process for applying for a classification request, advisory opinion, or a license. All such requests and license applications (for both exports and reexports) would be submitted on a new form, BXA-748P. The BXA-748P would replace the BXA-622P and the BXA-699P. The Form BXA-648P has been eliminated along with the Form BXA-685P. Form BXA-648P was used for notification of Delivery Verification requirement, while Form BXA-685P was required for certain amendments to outstanding licenses. When this rule becomes final, with certain exceptions, exporters and reexporters would now be required to submit a new license application when requesting modification to an outstanding license.

This change would allow BXA to ensure a complete electronic record is maintained of all licenses, classification requests, and advisory opinions. Instructional information contained on

Form BXA-648P has been incorporated into the text of the regulations. BXA would notify exporters of the requirement for a Delivery Verification directly on the license, instead of a separate piece of paper. No changes have been made to the structure of the requirement.

The requirement for exporters to obtain Form BXA-629P from their purchaser and consignees would be modified under this proposed rule. BXA would permit you to obtain either a new Form BXA-711 or a letter with the same certifications that appear on the new Form BXA-711. The new Form BXA-711 would be a one-sided redraft of the current Form BXA-629P.

Items currently captured by the current basket categories, i.e., ECCNs ending in the letter "G," will remain subject to the EAR as defined in Part 732 in this proposed rule even though they are not listed on the CCL at Part 774. For such items, BXA will respond to a classification request by indicating that though they are subject to the EAR, they are not listed in the CCL. This will be noted by the symbol "NOL", which means the items are "not on the list" but are subject to the EAR. For items listed on the CCL under this proposed rule, BXA will continue to respond to classification requests by indicating the appropriate ECCN. Under this Part 748 of the proposed regulation, unless items are subject to General Prohibitions Four through Ten, you need not apply for a license to export or reexport such items that are not on the list (NOL).

BXA specifically invites comments on the question of how BXA should respond to classification requests for items that are not listed on the CCL but that are subject to the EAR. Does the designator "NOL" appropriately replace the current ECCNs ending in the letter "G"? Should this be the appropriate entry for the Shippers' Export Declaration (SED) as proposed? Readers should note that this topic is related to the proposed requirement to indicate "NLR" on the SED for listed items that do not require a license to the specific country of destination as indicated on the Country Chart.

A Supplement No. 4 to Part 748 would be added. This supplement would replace current Part 768. There are no revisions at this time to the existing text contained in this Part, which is being incorporated into this proposed rule by reference. The current Part 768 is at 15 CFR 768, and you may obtain a copy of Supplement No. 4 to Part 748 by downloading it electronically from FedWorld via Internet or through your modem by dialing (703) 321-3339. This service is

free, except for long distance telephone charges and any standard charges you already incur for the use of the Internet or other commercial online service. The current Antiboycott Regulations are not on FedWorld.

#### *Part 750—License Processing*

Part 750 describes the processing procedures of any application submitted to BXA, whether for a classification request, advisory opinion, or a license. In addition to procedures specific to each type of application, time frames (established in the draft 1994 Export Administration Act bill) associated with each are provided. This part also would provide a clear description of the interagency dispute resolution process and the interrelationship between all agencies and departments reviewing license applications. All aspects of license issuance would be addressed including, actual issuance of the license, validity periods, transfers, revocations, suspensions, and shipping tolerances.

The licensing processing procedures remain under review within the Administration and will be the subject of a separate **Federal Register** notice once a final policy is completed.

Validity periods for the various types of licenses would be synchronized. The new validity period for all licenses (except those issued for items subject to short supply controls, or those processed under emergency handling procedures) would be 2 years. This alignment would result in a validity period for all reexport and parts and components licenses, and an increase in the validity period for licenses authorizing temporary exports of items.

#### *Part 752—Special Comprehensive License*

Part 752 describes the provisions of the Special Comprehensive License (SCL). The SCL would consolidate the activities currently authorized under the Project, Distribution, Service Supply, Service Facilities, and Special Chemical Licenses and would provide for additional flexibility to BXA in shaping appropriate SCLs and internal control programs. For example, the Project and Service Supply Licenses currently authorize exports and reexports to countries of the former Soviet Union, Eastern European, and the People's Republic of China (PRC), but the Distribution License, which includes an extensive mandatory Internal Control Program that is not required for the Project License and the Service Supply Procedure, does not allow exports and reexports for distribution in these same countries. The SCL would also conform item and country eligibility.

All items subject to the EAR would be eligible for export and reexport under the SCL, except:

Items identified by the letters MT in the "Reason for Control" paragraph on the Commerce Control List (CCL);

Biologicals, or equipment and materials that can be used in the production of biologicals (items identified under ECCNs 1C61, 1B71, 1E61, and 1E70);

Communication intercepting devices identified under ECCN 5A80 on the CCL;

Chemicals and chemical equipment and materials that can be used in the production of chemical weapons to destinations listed in Country Group D:3; (items identified under ECCNs 1C60, 1E60, 1B70, and 1D60);

Maritime (civil) nuclear propulsion systems or associated design or production software and technology identified in § 774.5;

Items specifically identified as ineligible by BXA on your approved SCL, and

Additional items may be excluded consistent with multilateral obligations.

Exports and reexports of items identified as NP in the "Reason for Control" paragraph on the CCL will not generally be authorized under an approved SCL for export or reexport to countries listed in Country Group D:2.

All countries are eligible to receive exports and reexports under the SCL except:

Countries designated by the Secretary of State that have repeatedly provided support for acts of international terrorism (Cuba, Libya, Iran, Iraq, North Korea, Sudan, Syria).

Countries listed in Country Group E; and

Other countries that BXA may declare on a case-by-case basis.

SCLs are designed to allow multiple exports and reexports of controlled items. Because BXA does not review each individual transaction covered by a SCL, parties to the SCL would be required to have the mechanisms in place to ensure that each export and reexport made under a SCL meets all the terms and conditions of the license, as well as the EAR. It is through Internal Control Programs (ICPs) that the Special Comprehensive License Holder (SLH) and the Special License Consignee (SLC) assure that exports and reexports are not made contrary to the national security, nonproliferation, and foreign policy objectives of the EAR. ICPs are designed to provide that mechanism and are a pre-requisite to approval of a SCL.

There are three levels, or examples, of ICPs provided for in Part 752. The

elements of each ICP would reflect the complexity of the activities authorized under the SCL, the countries involved, and the relationship between the SLH and the approved consignees. A general description of the elements of each of the three of ICPs is included, as well as guidance on which ICP you would need to establish before using the SCL.

To ensure that exports under the SCL do not jeopardize our national security and foreign policy interests, BXA would review each application for a SCL on a case-by-case basis, and may limit the scope of eligible items, countries, end-users, and end-uses. In addition, BXA may require inclusion in an ICP of any combination of elements from one or more levels, depending upon the nature of each SCL request.

The provisions of this Part would also require participating entities to audit their export control programs, and authorize BXA to conduct systems reviews. These audits and review would ensure that the exporter and any authorized consignees have fulfilled all the requirements of the SCL, and that any exports and reexports made under the SCL have not and will not jeopardize national security interests.

#### *Part 754—Short Supply*

This part would continue to implement the provisions of Section 7, "Short Supply Controls", of the Export Administration Act of 1979, and similar provisions in other laws that are not based on national security and foreign policy reasons. Provisions in this part include controls and licensing policies on crude oil, petroleum products, unprocessed western red cedar timber, and exports and reexports of horses by sea. This part also would include certain License Exceptions that would permit exports and reexports without a license of western red cedar and petroleum products. Provisions in the current regulations dealing with petitions for monitoring or controls on recyclable metallic materials and registration of agricultural commodities would be removed but would be incorporated in the EAR by reference.

The provisions concerning exports and reexports of crude oil and petroleum products have been reorganized and revised for clarity. Certain archaic provisions have been removed.

A recent final rule regarding certain exports of crude oil is not incorporated into the draft rule, but it will be incorporated into the final rule.

#### *Part 756—Appeals*

This part describes the procedures that would be applicable to appeals

from administrative actions taken by BXA. Administrative action is any action (not including an administrative enforcement proceeding) taken under the EAA or EAR with respect to a particular person, including denial of a license application, return of a license application for other than procedural deficiencies or additional information, or classification of an appellant's commodity. Essentially, any person directly and adversely affected by an administrative action would be allowed to appeal to the Under Secretary for Export Administration for reconsideration of that administrative action. The procedures for such an appeal would be unchanged from that currently existing in the EAR.

#### *Part 758—General Export Clearance Requirements*

This part deals with requirements imposed on exporters and others regarding the movement of items subject of the EAR out of the country. The purpose of this part would be to ensure that the movement of items subject to the EAR conforms to the requirements of the export license or other authorization for their export. Under this proposed regulation, certain items are subject to the EAR as defined in Part 732 even though they are not listed on the CCL at Part 774. If such items are not subject to any of the ten general prohibitions, the symbol "NOL" must be entered in the appropriate place on the Shippers Export Declaration.

Under this proposed rule, certain items are listed on the CCL but do not require a license to all destinations under General Prohibitions One, (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign Produced Direct Product Reexports). If General Prohibitions Four through Ten also do not apply, the symbol "NLR" must be entered in the appropriate place on the Shippers Export Declaration. The term "NLR" represents exports of listed items when no license is required.

BXA specifically invites comments on the use of the designators "NOL" and "NLR" for the SED. BXA currently feels that this distinction allows a separate classification of "NOL" for items currently in ECCNs ending in the letter "G", which items would not be listed on the CCL in this proposed rule. This is the rationale for distinguishing "NOL" from "NLR", which merely refers to an item on the CCL that does not require a license to the specific destination in a given export or reexport. One early comment suggested that the term "NLR" be the only entry required on the SED for both of these sets of items. If BXA

adopted such an approach, what would then be the best alternative for classifying items subject to the EAR but not listed on the CCL, i.e. items under current ECCNs ending in the letter "G"?

This Part imposes specific responsibilities on the persons involved in export or reexport transactions to ensure compliance with other provisions of the EAR and of the Foreign Trade Statistics Regulations (15 CFR Part 30), including exporters, freight forwarders, exporters' agents, carriers and all other persons. It prohibits any person from engaging in certain proscribed conduct.

Part 758 imposes specific responsibilities for assuring that Shipper's Export Declarations, bills of lading and air waybills are accurately filled out and are consistent with the export license or other authorization for the export to which they correspond. It restricts the conduct of exporters, forwarders, carriers and others to assure that the delivery abroad of items subject to the EAR is in accordance with the terms of the export license, exception to the licensing requirement, or other authorization. In some cases, it imposes duties on parties to the transaction to return the items to the United States or take steps to prevent them from entering the commerce of a foreign country.

This proposed rule makes several changes to the existing rule. In several instances the existing regulations require carriers to conform their documents or their routing to statements made on Shipper's Export Declarations. In recent years, more exceptions to the Shipper's Export Declaration filing requirement have been created. This proposed rule deals with the exceptions by requiring carriers to conform their documents and routing to the Shipper's Letters of Instruction if there is no Shipper's Declaration or to other written instructions if there is no Shipper's Letter of Instruction.

This proposed rule does not contain some of the specific provisions relating to who may sign the Shipper's Export Declaration, the status and duties of forwarding agents, requirements for power of attorney currently found in 15 CFR §§ 786.3(d) & (e) which duplicate provisions of the Foreign Trade Statistics Regulations.

This proposed rule replaces the terms "commodity" or "commodities" with the terms "item" or "items" in several places to reflect coverage of technology and software under the EAR. The Foreign Trade Statistics Regulations and the Shipper's Export Declaration form still refer to "commodity" or "commodities", but they are being reviewed by the Bureau of the Census

for conforming changes. For shipments where items requiring a license for export are listed on the same Shipper's Export Declaration as items not requiring an export license this proposed rule eliminates the requirement that the person filling out the declaration place an asterisk next to the items being shipped under a general license and replaces it with a requirement that the license number and expiration date or symbol authorizing export without a license be shown below the description of the item. This change would make the EAR consistent with the corresponding portions of the Foreign Trade Statistics Regulations which require that the license number and expiration date or general license symbol be shown below the commodity to which it applies.

Current regulations require an exporter whose shipment under a validated export license is unloaded at an unscheduled stop to notify the Office of Export Licensing of the proposed disposition of the items. The proposed rule changes the term "validated license" to "export license" and requires the exporter to wait for a response from the Office of Exporter Services before proceeding with the disposition.

The proposed rule revises the destination control statements that exporters must place on shipping documents to place other parties to a transaction on notice of U.S. export control regulations. The revisions make the destination control statements conform with the country groups elsewhere in the proposed regulations instead of with the country groups contained in the existing regulations. The revisions would also make the destination control statements conform with the concept of export licenses, License Exceptions and other authorizations (e.g. NOL and NLR) rather than the concept of general licenses and validated licenses.

#### *Part 760—Restrictive Trade Practices or Boycotts*

This Part would replace current Part 769. There are no revisions to the existing text contained in this Part, which is being incorporated into this proposed rule by reference. The current Part 769 is at 15 CFR 769, and you may obtain a copy of Part 760 by downloading it electronically from FedWorld via Internet or through your modem by dialing (703) 321-3339. This service is free, except for long distance telephone charges and any standard charges you already incur for the use of the Internet. The current Antiboycott Regulations are not on FedWorld.

*Part 762—Recordkeeping*

This part has been reorganized and restated to eliminate the requirement that the regulated persons obtain BXA approval prior to destroying original documents and replacing them with electronic, magnetic, photographic or other images. It would set standards for retrieving and legibility of such records. This part would also make it clear that regulated entities may always keep the records that must be kept pursuant to this part in the form in which that person receives or creates it. In addition, this part would extend the recordkeeping to five years to coincide with the applicable statute of limitations.

*Part 764—Enforcement*

Part 764 has been reorganized to deal primarily with violations and sanctions. The description of sanctions has been broadened to state that conduct which constitutes a violation of the EAA or EAR may also be prosecuted under certain other sections of the United States Code (§ 764.3(b)), and such violative conduct may be subject to statutory or other sanctions or protective measures under the EAA or under other statutory or regulatory provisions (§ 764.3(c)).

Provisions dealing with denial of export privileges would be clarified so that almost all relevant information can be found in Part 764 of the EAR. Part 764 provisions are organized by violation (§ 764.2(k)), description of sanction (§ 764.3(a)(2)) and terms of a standard denial order (Supplement No. 1), and reference to the Denied Persons List (Supplement No. 2). This method of organization makes it easier for the world to understand how to comply with denial orders.

The former frequently-used § 787.6 violation of "export, diversion, reexport, transshipment" has been replaced by the new § 764.2(a) violation entitled "engaging in prohibited conduct." The formulation of the new violation is intended to take into account the new EAR Part 734 - General Prohibitions, as well as to encompass the former § 787.6. It provides that no person may engage in any conduct prohibited by, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.

The detailed provisions that set forth recordkeeping requirements have been moved to Part 762, while the violation for failing or refusing to comply with recordkeeping requirements appears in § 764.2(i), along with other defined violations.

*Part 766—Administrative Enforcement Proceedings*

Part 766 has been reorganized to remove descriptions of sanctions available for violations, placing them instead in Part 764 (Enforcement), and to separate the procedures for imposing sanctions for violations from the procedures for taking protective enforcement measures (temporary denial orders and denial orders authorized by § 11(h) of the EAA). Further, this Part has been re-designed to simplify and expedite proceedings, including the addition of sections specifically authorizing interlocutory review of rulings by the Under Secretary (§ 766.14) and permitting cases to be disposed of through "summary decisions," such as through motions for summary judgment (§ 766.8).

Significant changes would be made to simplify and clarify the process by which cases are settled (§ 766.18). To avoid the impression that settlements are in any way one-sided, BXA would substitute the term "settlement agreement" for the term "consent agreement." Virtually all orders approving settlement agreements would be entered by the Assistant Secretary for Export Enforcement, obviating the need for Administrative Law Judge (ALJ) and Under Secretary review. The proposal makes clear that cases can be settled even if they are before the Under Secretary for decision, and codifies case law holding that cases may be settled without a finding that violations occurred. Finally, the proposed rule would add specific guidance that any settlement relates only to claims at issue in the administrative enforcement proceeding and has no impact on any criminal prosecution.

A new section (§ 766.23) would consolidate all procedures that apply when naming or adding related persons to orders issued under Part 766. It codifies the current practice of permitting BXA to name related persons when the order is first issued and continues BXA's authority to add related persons to an order at a later date through a "show cause" procedure. The proposal would also provide procedures whereby related persons may appeal to the ALJ any finding that they are related to the respondent.

*Part 768—Foreign Availability Determination Procedures and Criteria*

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 an export 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 goods or technology that would make a significant contribution to the military potential of the controlled country or combination of countries that would prove detrimental to the national security of the United States.

There are two types of foreign availability, foreign availability to a controlled country; and foreign availability to a non-controlled country.

A foreign availability assessment is an evidentiary analysis that BXA conducts to assess the foreign availability of a given item under the assessment criteria. BXA 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 or approve the license in question, unless the President exercises a National Security Override.

The procedures by which BXA would conduct a foreign availability assessment, the criteria for control, and a National Security Override would be unchanged from that currently existing in the EAR.

*Part 770—Interpretations*

This part would provide commodity, technology, and software interpretations. These interpretations would clarify the scope of controls where such controls are not readily apparent for the Commerce Control List and from other provisions of the EAA.

*Part 772—Definitions*

This part would define terms as used in the Export Administration Regulations. Many of the terms currently defined in the EAR would be used in this part, including the addition of several new terms, such as "export", "Advisory Committee on Export Policy (ACEP)", "Export Administration Review Board (EARB)", and other terms that would define new concepts, such as "License Alternatives".

BXA is particularly interested in comments from the business community on what terms they would like defined that are not already included in this part.

*Part 774—The Commerce Control List*

Former Supplements 1, 2, and 3 to § 779.1 (the Commerce Control List,

General Technology and Software Notes, and Definitions to the CCL, respectively) would become Supplements 1, 2, and 3 to Part 774. Supplement No. 1 would be amended by removing the references to ECCN's ending in the letter "G" (basket categories). Such ECCNs would continue to remain subject to the EAR, even though they would not appear on the CCL. In addition, Supplement No. 1 would be amended by revising the "Requirements" section of each ECCN to reflect the new structure of the EAR. The "List of Items Controlled" section and Supplement Nos. 2 and 3 would not be revised and will be included with the publication of the final rule.

The current "List of Items Controlled" sections of each ECCN on the CCL and Supplement Nos. 2 and 3 are at 15 CFR 779, and you may obtain a copy of Part 774 by downloading it electronically from FedWorld via Internet or through your modem by dialing (703) 321-3339. This service is free, except for long distance telephone charges and any standard charges you already incur for the use of the Internet.

#### **Summary of Comments to the ANPRM Rulemaking Requirements**

1. For purposes of Executive Order 12866, this proposed rule has been determined to be significant.

2. This proposed rule contains two new collections of information subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. ch. 35. The new "Multipurpose Application" replaces the "Application for Export License", "Request for Reexport Authorization", and the "Request for Amendment Action" forms. The "Statement by Ultimate Consignee and Purchaser" form has also been revised. There is a new "Special Comprehensive License" which consolidates the procedures for applying for the former project, distribution, service supply and chemical licenses. All other collections of information contained in the rulemaking have been previously approved by OMB. The public reporting burdens for the new collections of information are estimated to average 45 minutes for the Multipurpose Application and between 20 and 40 hours for the Special Comprehensive License. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including

suggestions for reducing the burden, to Larry E. Christensen, Acting Director, Regulatory Policy Division, Bureau of Export Administration, (202) 482-2440.

3. For purposes of Executive Order 12612, this proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment.

4. Pursuant to authority at 5 U.S.C. 553(a)(1) and section 13(a) of the Export Administration Act, 50 U.S.C. 2401-2420 *et seq.*, though prior notice and an opportunity for public comment are provided, such procedures are not required for this regulatory action. As such, no Initial or Final Regulatory Flexibility Analysis is required under sections 3 and 4 of the Regulatory Flexibility Act, 5 U.S.C. 603(a) and 604(a), and none has been prepared.

5. Although the Export Administration Act expired on August 20, 1994, the President invoked his authority under the International Emergency Economic Powers Act, through Executive Order 12924, August 19, 1994, and determined that, to the extent permitted by law, the provisions of the Export Administration Act shall be extended so as to continue in full force and effect and amend, as necessary, the export control system previously implemented, as the Export Administration Regulations, pursuant to the Export Administration Act.

#### **List of Subjects**

##### *15 CFR Part 730*

Administrative practice and procedure, Advisory committees, Exports, Foreign trade, Reporting and recordkeeping requirements, Strategic and critical materials.

##### *15 CFR Part 732*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

##### *15 CFR Part 734*

Administrative practice and procedure, Exports, Foreign trade.

##### *15 CFR Part 736*

Exports, Foreign trade.

##### *15 CFR Part 738*

Exports, Foreign trade.

##### *15 CFR Part 740*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

##### *15 CFR Part 742*

Exports, Foreign trade.

##### *15 CFR Part 744*

Exports, Foreign trade, Reporting and recordkeeping requirements.

##### *15 CFR Part 746*

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

##### *15 CFR Part 748*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

##### *15 CFR Part 750*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

##### *15 CFR Part 752*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

##### *15 CFR Part 754*

Exports, Foreign trade, Forests and forest products, Petroleum, Reporting and recordkeeping requirements.

##### *15 CFR Part 756*

Administrative practice and procedure, Exports, Foreign trade, Penalties.

##### *15 CFR Part 758*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

##### *15 CFR Part 760*

Boycotts, Exports, Foreign trade, Reporting and recordkeeping requirements.

##### *15 CFR Part 762*

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Foreign trade, Reporting and recordkeeping requirements.

##### *15 CFR Part 764*

Administrative practice and procedure, Exports, Foreign trade, Law enforcement, Penalties.

##### *15 CFR Part 766*

Administrative practice and procedure, Confidential business information, Exports, Foreign trade, Law enforcement, Penalties.

##### *15 CFR Part 768*

Administrative practice and procedure, Exports, Foreign trade,



Reporting and recordkeeping requirements.

*15 CFR Part 770*

Exports, Foreign trade.

*15 CFR Part 772*

Exports, Foreign trade.

*15 CFR Part 774*

Exports, Foreign trade.

Dated: April 10, 1995.

**Sue E. Eckert,**

*Assistant Secretary for Export Administration.*

For the reasons set forth in the preamble, Subchapter C, Chapter 7 of Title 15, Code of Federal Regulations is proposed to be amended as follows:

1. Parts 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756 and 758 are added to read as follows:

**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 Boycott.

730.10 Caution.

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7429; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

**§ 730.1 What these regulations cover.**

These Export Administration Regulations (EAR) (15 CFR, subchapter C, chapter 7) are issued by the Bureau of Export Administration (BXA) of the United States Department of Commerce under laws relating to the control of certain exports, reexports, and activity. 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.

**§ 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** Notices promulgating the EAR and at

the beginning of each Part of the EAR in the Code of Federal Regulations. 15 CFR parts 730–774. 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 due to the failure to enact a timely extension, 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 export licensing agencies. In general, the term dual-use serves to distinguish EAR-controlled items that can be used both in sensitive (e.g., military or nuclear) and other, non-sensitive applications from those that are (a) weapons or military-related in use or design and subject to the controls of the Department of State (22 CFR parts 120 through 130) or (b) subject to the nuclear-related controls of the Department of Energy or the Nuclear Regulatory Commission (10 CFR part 110). 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 agencies mentioned in the preceding section that license the export of nuclear and military-related items, there are other agencies with jurisdiction over certain narrower classes of exports. These include the Department of Treasury’s Office of Foreign Assets Control (OFAC) (31 CFR parts 500 through 590), which administers controls against certain countries which are the object of sanctions affecting not only exports, but also imports and financial dealings. (Some OFAC regulations provide for the licensing by BXA of exports and reexports which are permitted as exceptions to the embargo.) For your convenience, the list that follows identifies agencies with regulatory jurisdiction over certain types of exports and reexports. This is not a comprehensive list, and the brief descriptions are intended are only generally indicative of the types of controls administered and/or enforced by each agency.

**Defense Services and Defense Articles**

Department of State, Office of Defense Trade Controls, Tel. (703) 875–6644, 22 CFR parts 120 through 130

**Foreign Assets and Transactions Controls**

Department of Treasury, Office of Foreign Assets Control, Tel. (202) 622–2420, 31 CFR parts 500 through 590

**Narcotics, Dangerous Drugs, Processing Equipment**

Drug Enforcement Administration, Tel. (703) 307–1000, 21 CFR parts 1311 through 1313

**Natural Gas and Electric Power**

Department of Energy, Tel. (202) 586–1000, 10 CFR Part 305, 320 [reserved]; 18 CFR Part 34

**Nuclear; Nuclear Materials, Reactor Vessels, Specially Designed Commodities**

Nuclear Regulatory Commission, Tel. (301) 492–7000, 10 CFR Part 110

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

Department of Energy, Tel. (202) 586–5000, 10 CFR Part 810

**Patent Filing Data Sent Abroad**

Patent and Trademark Office, Tel. (703) 557–4636, 37 CFR 5.11; 15 CFR 732.3(b)(4) and 732.10

**Watercraft**

U.S. Coast Guard documented watercraft of 5 net tons or more—export or transfer to foreign interest, U.S. Maritime Administration, Tel. (202) 366–5807, 46 App. U.S.C. 808, 839

**§ 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, technology, and software (referred to collectively in the EAR as “items”) that have been exported from the United States are generally subject to the EAR with respect to reexport. Many such reexports, however, 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 BXA.

(c) *Deemed exports.* Certain actions that you might not regard as an “export” in other contexts do constitute an export subject to the EAR. For example: the electronic transmission of non-public

data that will be received abroad; the release of technology to a foreign national in the United States through such means as demonstration or oral briefing; shipments that might not be deemed "exports" for other purposes, such as the return of foreign equipment to its country of origin after repair in the United States or shipments from a U.S. foreign trade zone.

(d) *U.S. person activities.* To counter the proliferation of weapons of mass destruction, the EAR restrict the involvement of "United States persons" (as defined in the EAR) anywhere in the world in exports of foreign-origin items, or in providing services or support, that may contribute to such proliferation.

#### § 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 designated by reason of their support of terrorist activity. The effectiveness of many of the controls under the EAR is enhanced by their being maintained as part of a multilateral system of controls. 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 includes some export controls to protect the United States from the adverse impact of the unrestricted export of commodities in short supply.

#### § 730.7 License requirements and exceptions.

A relatively small percentage of exports and reexports subject to the EAR require an application to BXA for a License. Most such activity is permitted by one or more of the License Exceptions described in the EAR, in which case no application need be made to BXA. In such a case, reference to the pertinent License Exception is to be entered on the Shipper's Export Declaration, a document that is to be submitted to the Customs office at the port of export.

#### § 730.8 How to proceed and where to get help.

(a) *Self-help.* 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. By referring next to part 736, Steps for Determining Licensing Requirements, 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.

(b) *Why the EAR are so detailed.* Some people will find the great length of the EAR and their extensive use of technical terms intimidating. BXA believes, however, that such detail and precision can and does serve the interests of the public. The detailed listing of technical parameters in the Commerce Control List (contained in Supplement No. 1 to part 774 of this subchapter) establishes precise, objective, criteria. This, should, in most cases, enable the exporter to ascertain control status. Broader, more subjective criteria would leave exporters more dependent upon interpretations and rulings by BXA officials. Moreover, much of the detail in the Commerce Control List is derived from multilaterally adopted lists, and the specificity serves to enhance the uniformity and effectiveness of international control practices and to promote the "level playing field." The detailed presentation of such elements as licensing and export clearance procedures enables exporters to find in one place what they need to know to comply with pertinent requirements. Of special importance is the detailed listing of License Exception criteria, as these enable an exporter to determine quickly, and with confidence, that a transaction can go forward 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, information on how to obtain forms and publications, and information on training programs offered by BXA, is available from the Office of Exporter Services through both its:

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

and Western Regional Office, U.S. Department of Commerce, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660-3198, Telephone number (714) 660-0144, FAX number (714) 660-9347.

#### § 730.9 Boycott.

Part 760, Restrictive Trade Practices or Boycotts, implements the antiboycott provisions of the EAA. There are also boycott-related rules in section 999 of the Internal Revenue Code which deny tax benefits for certain types of boycott-related agreements. The EAR prohibits certain discriminatory or boycott-supporting conduct, including the furnishing of information in a boycott context. The Internal Revenue Code penalizes many of the same activities by denying the benefit of certain tax code provisions otherwise available for foreign operations. The EAA and Internal Revenue Code provisions are not completely parallel. Both laws also require reporting of boycott-related requests. The Internal Revenue Code, additionally, requires reports of operations in, with, or related to a boycotting country or its nationals.

#### § 730.10 Caution.

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. You should not take any action based solely on what you read in this Part.

### PART 732—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

Sec.

- 732.1 Introduction.
- 732.2 Important EAR terms and principles.
- 732.3 Items subject to the EAR.
- 732.4 Foreign-made products subject to the EAR.
- 732.5 Activities of U.S. and foreign persons subject to the EAR.
- 732.6 Assistance available from BXA for determining licensing and other requirements.
- 732.7 Publicly available.
- 732.8 Information resulting from fundamental research.
- 732.9 Educational information.
- 732.10 Patent applications.
- 732.11 Government-sponsored research covered by contract controls.
- 732.12 Exports involving Canada.
- 732.13 Exports from U.S. foreign trade zones.

732.14 Intransit shipments through the United States.

732.15 Shipments to territories, possessions, dependencies, or departments.

732.16 Effect on foreign laws and regulations.

**Supplement No. 1 to Part 732—Questions and Answers—Technology and Software Subject to the EAR**

**Supplement No. 2 to Part 732—Other Departments and Agencies With Foreign Policy and National Security Based Controls**

**Supplement No. 3 to Part 732—Calculation of Values for De Minimis Rules**

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7429; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

**§ 732.1 Introduction.**

(a) This part sets forth the scope of the Export Administration Regulations (EAR) (15 CFR, subchapter C, chapter 7). Specifically, this part covers the following subjects:

(1) It explains the usage in the EAR of the terms “subject to the EAR,” “item,” “you,” and “export and reexport of technology and software.” (§ 732.2 of this part)

(2) It describes the kinds of items of U.S. origin that are subject to the EAR (§§ 732.3, 732.7, 732.8, 732.9, 732.10, and 732.11 of this part). It also describes when foreign-made products are subject to the EAR and sets forth specific guidance for determining whether certain technology and software are subject to the EAR. (§ 732.4 of this part)

(3) It describes the activities of U.S. persons and foreign persons that are subject to the EAR. (§ 732.5 of this part)

(4) It notes that assistance to the public is available from BXA for determining whether an item or activity is within BXA’s jurisdiction. (§ 732.6 of this part)

(5) It sets forth the special policies under the EAR that apply to exports involving Canada. (§§ 732.6 and 732.12 of this part) (§ 748.3 of this subchapter)

(6) It describes how the EAR deal with exports from U.S. foreign trade zones. (§ 732.13 of this part)

(7) It makes clear that items moving in transit through the United States are subject to the EAR. (§ 732.14 of this part)

(8) It describes how the EAR deal with shipments to the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and U.S. territories, dependencies, and possessions. (§ 732.15 of this part)

(9) It makes clear that compliance with the EAR does not relieve any

responsibilities under foreign laws or regulations. (§ 732.16 of this part)

(b) This part does not address any of the provisions set forth in Part 760 of this subchapter, 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.

**§ 732.2 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 BXA 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 the regulations in this subchapter. The items and activities subject to the EAR are described in § 732.2 through § 732.5 of this part. You should review the Commerce Control List 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 § 732.6 of this part. Publicly available technology and software not subject to the EAR are described in § 732.7 through § 732.11 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 BXA and other agencies which maintain controls for national security and foreign policy reasons (see Supplement No. 2 to Part 732) 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) *Use of the term “item”.* The term “item” is used in the EAR to mean “commodities, technology, and software.” The two terms are used

interchangeably. When the EAR intend to refer specifically to commodities, technology, or software, the text will use the specific reference.

(c) *Use of the term “you”.* Unless otherwise indicated, the prohibitions and duties under the regulations in this subchapter apply to all persons and firms and the term “you” means any person, including a natural person or a firm. Moreover, firms are responsible for the acts of their employees and agents that violate the prohibitions and duties imposed by the EAR; and persons acting as employees or agents are also individually liable for such violations.

(d) *Export and reexport of technology and software.* (1) “Export” of technology or software means:

(i) An actual shipment or transmission of technology or software out of the United States;

(ii) Any release of technology or source code 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 or reason to know a violation is about to occur is prohibited by § 734.2(b)(8) of this subchapter; or

(iii) Any release of technology or software of U.S.-origin in a foreign country.

(2) “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.

(3) “Reexport” of technology or software means an actual shipment or transmission from one foreign country to another. In addition, any release of technology or source code 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 (d)(2) 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 § 734.2(b)(8) of this subchapter.

**§ 732.3 Items subject to the EAR.**

All U.S. origin items and certain foreign-made products as described in § 732.4 of this Part, are subject to the EAR, *except* the following:

(a) Items that are exclusively controlled for export or reexport by another department or agency of the U.S. Government which regulates exports or reexports for national security or foreign policy purposes (see Supplement No. 2 to part 742). For assistance in determining whether an item is subject to the EAR, see § 732.6 of this part. See part 730 of this subchapter for a listing of other departments and agencies that administer export and reexport controls.

(b) Technology and software that:

- (1) Are already publicly available or will be made publicly available as described in § 732.7 of this part;
- (2) Arise during or result from fundamental research, as described in § 732.8 of this part;
- (3) Are educational, as described in § 732.9 of this part;
- (4) Are included in certain patent applications, as described in § 732.10 of this part; or
- (5) Are classified by being assigned a security classification (e.g., "top secret," "secret," or "confidential") by an officer or agency of the U.S. government.<sup>1</sup>

**§ 732.4 Foreign-made products subject to the EAR.**

(a) *Items subject to the EAR.* The following are included among the items that are subject to the EAR:

(1) U.S.-origin parts, components, materials, or other commodities incorporated abroad into foreign-made products, in quantities exceeding *de minimis* levels as set forth in paragraph (b) of this section;

(2) Certain foreign-made direct products of U.S. origin technology or software, as set forth in § 734.2(b)(3) of this subchapter. The term "direct product" means the immediate product (including processes and services) produced directly by the use of technology or software; and

(3) Certain commodities produced by any plant or major component of a plant that is a direct product of U.S. origin technology or software, as set forth in § 734.2(b)(3) of this subchapter.

(b) *De minimis U.S. content.* (1) There is no *de minimis* level for the export from a foreign country of a foreign-made supercomputer containing U.S. origin parts, components, or materials that are controlled to the new destination.

(2) Except for supercomputers, for embargoed countries at part 746 of this subchapter and for countries named as terrorist-supporting countries at part 744 of this subchapter the following are *not* subject to the EAR:

(i) 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;

(ii) 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

(iii) 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.

(3) Except for supercomputers, for all other countries, the following are *not* subject to the EAR:

(i) 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;

(ii) 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

(iii) 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.

(4) 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.

(5) You are responsible for making the necessary calculations to determine whether the *de minimis* provisions apply to your situation. See Supplement No. 3 to part 742 for guidance regarding calculation of U.S. controlled content.

**§ 732.5 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 chemical or biological weapons or of missile technology as set forth in § 744.6 of this subchapter.

(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 this subchapter.

**§ 732.6 Assistance available from BXA for determining licensing and other requirements.**

(a) If you are not sure whether a commodity, technology, or software, or activity is subject to the EAR, or is subject to licensing or other requirements under the EAR, you may ask BXA 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 to 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, Office 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, BXA 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 BXA licensing or other requirements you may ask BXA for help by following the procedures set forth in § 748.3 of this subchapter.

**§ 732.7 Publicly available.**

(a) Information is made public and so becomes "publicly available" 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 part 732, Questions A(1) through A(6));

(2) Ready availability at libraries open to the public or at university libraries (See Supplement No. 1 to part 732, Question A(6));

<sup>1</sup> The export of classified technology and software is controlled by the Center for Defense Trade of the U.S. Department of State or the U.S. Department of Energy.

(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) 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 Part 732, Questions B(1) through B(6)).

(B) Reserved.

(iii) "Publicly available" 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 Part 732, Questions A(1) and A(3)).

(b) Reserved.

#### § 732.8 Information resulting from fundamental research.

(a) *Fundamental research.* Paragraphs (b) through (d) of this section and § 732.11 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 those provisions 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 § 732.10 of this part. (See Supplement No. 1 to part 732, Question D(8)).

(b) *University based research.* (1) Research conducted by scientists, engineers, or students at a university

normally will be considered fundamental research, as described in this paragraph (b). ("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 part 732, 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) However, 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 part 732, Questions D(7) and D(9)).

(6) The provisions of § 732.11 of this part will apply if a university or its researchers accept specific national security controls (as defined in § 732.11 of this part) on a research project or activity sponsored by the U.S. Government. (See Supplement No. 1 to part 732, 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 part 732, 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 § 732.11 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 part 732, 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 part 732, Question D(8)).

#### § 732.9 Educational information.

"Educational information" referred to in § 732.3(b)(3) 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 § 732.8(b) of this part. (See Supplement No. 1 to part 732, Questions C(1) through C(6)).

#### § 732.10 Patent applications.

The information referred to in § 732.3(b)(4) 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;<sup>2</sup> or

(3) 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.

**§ 732.11 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, § 732.3(b)(2) 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 part 732, Questions E(1) and E(2).)

**§ 732.12 Exports involving Canada.**

(a) Exports of items to Canada are subject to the EAR.

(b) Recognizing the special relationship between the United States and Canada, the general policy under the EAR is to permit most shipments of

items to Canada for consumption or use in that country without a license.

(c) When the items leaving the United States will transit Canada or are intended for reexport from Canada to another foreign destination and such shipment would require a license if made directly from the United States to that destination, a license is required under the EAR. The licensing policy will be based on the policy applicable to a direct shipment from the United States to such other destination. Please see § 758.1(d) of this subchapter for special documentation provisions that apply to exports from the United States that transit Canada.

**§ 732.13 Exports from U.S. foreign trade zones.**

(a) Items exported from U.S. foreign trade zones are subject to the EAR.

(b) EAR licensing requirements apply to items originating in the United States and located in a foreign trade zone, as well as foreign origin items that, as a result of processing, manufacturing, or assembly while in a U.S. foreign trade zone, have been so altered that they have either been substantially enhanced in value or have lost their original identity with respect to form.

(c) Shipments of items of foreign origin that have not been altered as described in paragraph (b) of this section, for which no customs entry has been made and that enter a U.S. foreign trade zone may be exported from the foreign trade zone without a license, *except* the following:

(1) Exports to Country Group D:1 and E:2 (see supplement No. 1 to part 740 of this subchapter), if a shipment of similar items of U.S. origin could not be made from the customs territory of the United States to such a destination without a license. Items of Canadian origin require a license only if the shipment of the items would require a license to virtually all destinations, including Country Group B, if exported directly from the United States.

(2) Items shipped to the United States under International Import Certificates, Form BXA 645P/ATF-4522/DSP-53, in accordance with the procedure described in Supplement No. 4 to part 748 of this subchapter.

(3) The export and reexport of any commodity listed in Part 754, Short Supply, as requiring a license if the commodity were exported from the custom territory of the United States.

(d) Commodities of U.S. or foreign origin disposed of by the U.S. Government under a foreign excess property disposal program that enter a U.S. foreign trade zone without a customs entry require a license if the

same shipment would require a license if the export were made directly from the customs territory of the United States.

**§ 732.14 Intransit shipments through the United States.**

(a) Items moving intransit through the United States are subject to the EAR.

(b) Items shipped on board a conveyance and passing through the United States in transit from one foreign country to another do not require a license under the EAR provided that:

(1) While passing its transit through the United States, such items have not been unladen from the conveyance on which they entered; and

(2) They are not originally manifested to the United States.

(c) If you determine that an item moving intransit through the United States requires a license under the EAR, see § 740.8 of this subchapter, Exception 6, Exports of Items Temporarily in the United States (TUS), for a description of specific exceptions to licensing requirements for intransit shipments.

**§ 732.15 Shipments to territories, possessions, dependencies, or departments.**

(a) *Shipments to Puerto Rico, the Mariana Islands and U.S. territories, dependencies, and possessions.* The EAR do not require a license or other authorization for shipments from the United States to the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands or any territory, dependency, or possession of the United States as listed in Schedules C & E, Classification of Country and Territory Designations for U.S. Export Statistics, issued by the Bureau of the Census.

(b) *Shipments to the territories, possessions, or departments of other destinations.* There are a number of destinations that are not listed in the Commerce Country Chart contained in Supplement No. 1 to Part 738 of this subchapter, or in the Country Groups contained in Supplement No. 1 to part 740 of this subchapter. If your destination is not listed on the Commerce Country Chart or in the Country Groups and such destination is a territory, possession, or department of another country, the EAR accords your proposed destination the same licensing treatment as the country to 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 Commerce Country Chart and in the Country Groups.

<sup>2</sup>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.

**§ 732.16 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—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 BXA 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.

This Supplement is divided into nine sections according to topic as follows:

Section A: Publication of technology [and software] 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.

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. (§§ 732.3 and 732.7 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. (§ 732.8 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. (§ 732.7(d)(3) 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. (§ 732.7(a) 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 destination 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 § 732.8 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. (§ 732.7(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. (§ 732.7(d) 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. (§ 732.7(d)(2)(i) 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. (§ 732.7(d)(3) 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. (§ 732.9 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 § 732.9 of this part because your proprietary business does not qualify as an "academic institution" within the meaning of § 732.9 of this part. Conceivably, however, the instruction might qualify as "release at an open \* \* \* seminar, \* \* \* or other open gathering" under § 732.7(d) 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 § 732.8 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" (§ 732.8(b) of this part). Information arising during or resulting from such research is not subject to the EAR (§ 732.3(b)(2) 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 Export Administration, 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 § 732.8 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. (§ 732.8 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 (§ 732.8(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. (§ 732.8(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. (§ 732.8(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 § 732.8 of this part. Is the information arising during or resulting from this sponsored research subject to the EAR?

*Answer:* Under § 732.11 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 § 732.8 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 § 732.8 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<sup>1</sup>

*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.

*Question G(3):* Is the export or reexport of software subject to the EAR if it is sold at a price BXA concludes in a classification letter to be sufficiently low so as not to subject it to the EAR?

*Answer:* In response to classification requests, BXA 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 BXA.

#### 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—itsself 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. (§ 732.7 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?

<sup>1</sup> Exporters should note that these provisions do not apply to software controlled under the International Traffic in Arms Regulations (e.g., certain encryption software).

Answer: (1) Assume each of the following:

(i) Information is uploaded to an electronic bulletin board by a person that is the owner or originator of the information;

(ii) That person does not charge a fee to the bulletin board administrator or the subscribers of the bulletin board; and

(iii) The bulletin board is available for subscription to any subscriber in a given community regardless of the cost of subscription.

(2) 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.

### Supplement No. 2 to Part 732—Other Departments and Agencies With Foreign Policy and National Security Based Controls

(a) *Department of State.* Regulations administered by the Office of Defense Trade Controls within the Center for Defense Trade, U.S. Department of State, govern the export and reexport of defense articles and defense services on the U.S. Munitions List included in the International Traffic in Arms Regulations (ITAR) (22 CFR part 121). These regulations are issued under the authority of section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(b) *Treasury Department, Office of Foreign Assets Control (OFAC).* Regulations administered by OFAC implement broad controls and embargoes transactions with certain foreign countries, which include controls on exports and reexports, as appropriate to such countries (31 CFR part 500). These regulations are issued under a grandfather provision in the Trading With the Enemy Act for Cuba and North Korea (50 U.S.C. App. Section 1 *et seq.*), and under the International Emergency Economic Powers Act for other countries (50 U.S.C. Section 1701, *et seq.*)

(c) *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). These regulations are issued under the authority of the Atomic Energy Act of 1954, as amended (42 U.S.C. Part 2011 *et seq.*).

(d) *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). These regulations are issued under the authority of the Atomic Energy Act of 1954, as amended (42 U.S.C. Part 2011 *et seq.*).

(e) *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). BXA 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.

### Supplement No. 3 to Part 732—Calculation of Values for De Minimis Rules

Use the following guidelines in determining values for establishing exemptions or for submission of a request for authorization:

(a) U.S. content value.

(1) 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.)

(2) 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 or License Exception GBS.

(b) The foreign-made product value is the normal selling price f.o.b. factory (excluding value added taxes or excise taxes).

### PART 734—GENERAL PROHIBITIONS

Sec.

734.1 Introduction.

734.2 General prohibitions and determination of applicability.

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7429; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

#### § 734.1 Introduction.

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 part 734 and the License Exceptions set forth in part 740 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 this

subchapter regarding recordkeeping and clear your export through the U.S. Customs Service as described in part 758 of this subchapter regarding export clearance requirements.

(a) In this part 734 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 five types of information and facts or information described in § 734.2(a) of this part and upon the general prohibitions described in § 734.2(b) of this part. Note that the ten general prohibitions contain cross-references to other parts of this subchapter that further define the breadth of the general prohibitions, and, for that reason, part 734 is not freestanding. In part 736, we provide certain steps you must follow in proper order to understand the general prohibitions and their relationship to other parts of this subchapter.

(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 this subchapter regarding enforcement, you will be subject to any of the sanctions described in that part.

#### § 734.2 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) *Destination.* The country of ultimate destination for an export or reexport (see parts 738 and 774 of this subchapter concerning the country chart and the Commerce Control List);

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

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

(4) *Classification of the item.* The classification of the item on the Commerce Control List (see part 774 of this subchapter); and

(5) *Conduct.* Conduct such as contracting, financing, and freight forwarding in support of a proliferation

project as described in part 744 of this subchapter.

(b) *General prohibitions.* The following ten general prohibitions proscribe certain exports, reexports, and other conduct, subject to the scope of the EAR, you may not engage in unless you either have a license from the Bureau of Export Administration (BXA) or qualify under part 740 of this subchapter for a License Exception from each applicable general prohibition below. The License Exceptions at part 740 of this subchapter 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 this subchapter concerning embargo destinations and other special destinations.

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

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

(ii) Export to the country of destination requires a license for the control reason as indicated on the Country Chart at part 738 of this subchapter. (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.)<sup>1</sup>

(iii) Each License Exception described at part 740 of this subchapter 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 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 § 732.4 of this subchapter 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 at part 740 of this subchapter supersedes General Prohibition One 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 the foreign-produced direct product of U.S. technology and software (Foreign Produced Direct Product Reexports).*

(i) *Country scope of prohibition.* You may not export, reexport, or export from abroad items subject to the scope of this General Prohibition Three to Cuba, North Korea, Libya, or a destination in Country Group D:1 (See Supplement No. 1 to part 740 of this subchapter).

(ii) *Product scope of foreign-made items subject to prohibition.* (A) 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 or as a precondition for the use of License Exception TSR at § 740.19 of this subchapter, and

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

(B) 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 at § 740.19 of this subchapter, 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 this subchapter.

(iii) *License exceptions.* Each License Exception described at part 740 of this subchapter 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—Engage 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 this subchapter, 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. The names of persons denied export privileges are published in the **Federal Register** and are also included on the Denied Persons List, which is referenced in Supplement No. 2 to part 764 of this subchapter, Enforcement. The terms of the standard denial order are set forth in Supplement No. 1 to part 764. You should note that some denial orders differ from the standard denial order. BXA may, on an exceptional basis, authorize activity otherwise prohibited by a denial order. See § 764.3(a)(3) of this subchapter.

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

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

(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 756 of this subchapter.

(ii) License Exceptions to this General Prohibition Six are described at part 746 of this subchapter on Embargo Destinations and Special Destinations

<sup>1</sup> The following export and reexport prohibitions are not described on the Country Chart. The scope of this prohibition for super computers and certain listening devices, and the country scope for such controls is defined in the relevant ECCN. The prohibition on exports and reexports and the related country scope for short supply controls are in part 574 and relevant ECCNs. The prohibition on exports concerning certain UN sanctions and other embargoes and the related country scope of those controls are contained in part 746 and General Prohibition Six (paragraph (b)(6) of this section).

and unless a License Exception is authorized in part 746 of this subchapter the License Exceptions at part 740 of this subchapter are not available to overcome this general prohibition.

(7) *General Prohibition Seven—Support Proliferation Activities (U.S. Person Proliferation Activity)*. If you are a U.S. Person as that term is defined at § 744.6 of this subchapter, you may not perform any financing, contracting, service, support, transportation, freight forwarding, or employment that you know will assist in certain proliferation activities described further at part 744 of this subchapter. There are no License Exceptions to this General Prohibition Seven in part 740 of this subchapter unless specifically authorized in that part.

(8) *General Prohibition Eight—In transit shipments and items to be unladen from vessels or aircraft (Intransit)*. (i) *Unloading and shipping in transit*. If an item to be exported or reexported would require a license to one of the countries listed in paragraph (b)(8)(ii) of this section, you may not ship that item on an aircraft or vessel that will be unladen in or that will move in transit through any of those countries en route to some other destination unless a license specifically authorizes such transshipment or unloading.

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

(9) *General Prohibition Nine—Violate any order, terms, and conditions (Orders, Terms, and Conditions)*. You may not violate the orders, terms, or conditions of a license or of a License Exception issued under or made a part of the EAR. There are no License Exceptions to this General Prohibition Nine in part 740 of this subchapter.

(10) *General Prohibition Ten—Proceed 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. Nor may you rely upon any license or 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 this subchapter.

## PART 736—STEPS FOR DETERMINING LICENSE REQUIREMENTS

Sec.

- 736.1 STEP ONE: Publicly available technology and software.
- 736.2 STEP TWO: Ultimate country of destination and embargoed countries.
- 736.3 STEP THREE: Persons denied export privileges.
- 736.4 STEP FOUR: Prohibited end-uses and end-users.
- 736.5 STEP FIVE: Classification.
- 736.6 STEP SIX: Reason for control and the Country Chart.
- 736.7 STEP SEVEN: Foreign-made items incorporating U.S.- origin items and the de minimis rule.
- 736.8 STEP EIGHT: Foreign-produced direct product.
- 736.9 STEP NINE: Review the "Know Your Customer" guidance.
- 736.10 STEP TEN: Proliferation conduct of U.S. persons unrelated to exports and reexports.
- 736.11 STEP ELEVEN: Review of order, terms, and conditions.
- 736.12 STEP TWELVE: Intransit.
- 736.13 STEP THIRTEEN: Review of the remaining general prohibitions and License Exceptions.
- 736.14 STEP FOURTEEN: Miscellaneous duties.
- 736.15 Inapplicability of General Prohibitions.
- 736.16 Review of License Exceptions.

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7429; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

### § 736.1 STEP ONE: Publicly available technology and software.

Determine if your technology or software is publicly available as defined and explained at part 732 of this subchapter concerning the scope of the EAR.

(a) If your technology or software is outside the scope of the EAR, then you may proceed with the export.

(b) If your technology or software does not qualify as publicly available and is therefore within the scope of the EAR, you must consider all of the general prohibitions as described in part 734 of this subchapter.

(c) Supplement No. 1 to part 732 of this subchapter contains several practical examples describing the scope of publicly available technology and software that is outside the scope of the

EAR. The examples are illustrative, not comprehensive.

### § 736.2 STEP TWO: Country of ultimate destination and embargoed countries.

Determine the country of ultimate destination. If your destination for any item is an embargoed country or other country listed in part 746 of this subchapter, you may not make the export or reexport without a license unless you are exporting only publicly available technology or software or unless you qualify for a License Exception described in part 746 of this subchapter concerning embargoed destinations. You may not use a License Exception described at part 740 of this subchapter to overcome General Prohibition 6 (§ 734.2(b)(6) of this subchapter) unless it is specifically authorized in part 746 of this subchapter.

### § 736.3 STEP THREE: Persons denied export privileges.

(a) Determine whether your transferee, ultimate end-user, any intermediate consignee, and any other party to a transaction is a person denied export privileges. (See part 764 of this subchapter). While it is not a violation of General Prohibition Four (§ 734.2(b)(4) of this subchapter) to fail to check the Denied Persons List prior to a transfer, it is nonetheless a *per se* violation of the regulations in this subchapter to deal with a denied person in any activity that is prohibited by the terms or conditions of a denial order.

(b) There are no License Exceptions to General Prohibition Four (end-user) (§ 734.2(b)(4) of this subchapter) concerning certain end-users described in part 744 of this subchapter. The prohibitions concerning persons denied export privileges may be overcome only by a specific authorization from BXA, something that is rarely granted.

### § 736.4 STEP FOUR: Prohibited end-uses and end-users.

(a) Review the end-uses and end-users prohibited under General Prohibitions Four (end-user) and Five (end-use) (§ 734.2(b)(4) and (b)(5) of this subchapter) as described at part 744 of this subchapter.

(b) There are no License Exceptions to General Prohibitions Four (end-user) and Five (end-use) (§ 734.2(b)(4) and (b)(5) of this subchapter) described in part 740 of this subchapter.

### § 736.5 STEP FIVE: Classification.

(a) You must classify your items, and you may do so on your own without the assistance of BXA. You are responsible for doing so correctly, and your failure to correctly classify your items does not

relieve you of the duty to obtain a license.

(b) You have a right to request the applicable classification of your item from BXA, and BXA has a duty to provide that classification to you. For further information on how to obtain classification assistance from BXA, see part 748 of this subchapter for procedures and contact persons.

**§ 736.6 STEP SIX: Reason for control and the country chart.**

(a) *Reason for control within the Export Control Classification Number (ECCN).* The applicable ECCN will indicate the reason or reasons for control for items within that ECCN. For example, ECCN 6A07 is controlled for both national security and missile technology reasons.

(b) *Reason for control within the country chart.* Once you determine the reason for control from the proper ECCN, look up your country of destination on the country chart.

(1) A check mark in the box or boxes for the relevant country and reason(s) for control 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 § 734.2(b)(1), (b)(2), and (b)(3) of this subchapter).

(2) If one or more boxes have a check, a license is required unless you qualify for a License Exception under part 740 of this subchapter. If a box does not have a mark for your destination in one relevant reason for control, a license is not required under the CCL and the country chart unless another box is marked as requiring a license for another reason for control identified in the appropriate ECCN.

(3) Additional controls may apply to your export. You must go on to steps Seven and Eight described in §§ 736.7 and 736.8 of this Part to identify whether additional limits described in § 734.2, paragraphs (b)(2) (foreign made items incorporating U.S.-origin parts and components) and (b)(3) (the foreign produced direct product of U.S. technology and software) of this subchapter apply.

**§ 736.7 STEP SEVEN: Foreign-made items incorporating U.S.-origin items and the de minimis rule.**

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 must 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:

(a) A 10% de-minimis level to embargoed and terrorist-supporting countries; or

(b) A 25% de-minimis level to all other countries.

(c) For guidance on how to calculate the U.S. controlled content, refer to part 732 of this subchapter.

**§ 736.8 STEP EIGHT: Foreign produced direct product.**

(a) 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) (§ 734.2(b)(3) of this subchapter). Your item is subject to this general prohibition if your transaction meets each of the following conditions:

(1) *Country scope of prohibition.* Your export or reexport destination for the direct product is Cuba, North Korea, Libya, or a destination in Country Group D:1 (see Supplement No. 1 to part 740 of this subchapter) (reexports of foreign produced direct products exported to other destinations are not subject to General Prohibition Three);

(2) *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 at § 740.19 of this subchapter (reexports of foreign produced direct products created with other technology and software are not subject to General Prohibition Three); and

(3) *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 at part 774 of this subchapter (reexports of foreign produced direct products not subject to national security controls are not subject to General Prohibition Three).

(b) *License Exceptions.* Each License Exception described at part 740 of this subchapter overcomes this General Prohibition Three (foreign produced direct product) if all terms and conditions of a given exception are met by the exporter or reexporter.

**§ 736.9 STEP NINE: Review the "Know Your Customer" Guidance.**

License requirements under the regulations in this subchapter are determined solely by the classification, end-use, end-user, ultimate destination, and conduct of U.S. persons. Supplement No. 3 to part 744 of this subchapter is intended to provide helpful guidance regarding the process for the evaluation of information about customers, end uses, and end users.

**§ 736.10 STEP TEN: Proliferation conduct of U.S. persons unrelated to exports and reexports.**

(a) First, review the scope of activity prohibited by General Prohibition Seven (U.S. Person Proliferation Activity) (§ 734.2(b)(7) of this subchapter) as that activity is described in § 744.6 of this subchapter. 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 in the form received), Two (parts and components reexports), and Three (foreign produced direct product reexports) (§ 734.2(b)(1), (b)(2), and (b)(3) of this subchapter). Moreover, such activity extends to services and dealing in wholly foreign-origin items in support of the specified proliferation activity.

(b) Second, review the definition of "U.S. Person."

**§ 736.11 STEP ELEVEN: Review of order, terms, and conditions.**

Review the orders, terms, and conditions applicable to your transaction. Terms and conditions are frequently contained in licenses. In addition, the ten general prohibitions (§ 734.2(b)(1) through (b)(10) of this subchapter) and the License Exceptions (part 740 of this subchapter) 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.

**§ 736.12 STEP TWELVE: Intransit.**

Shippers and operators of vessels or aircraft should review General Prohibition Ten to determine the countries in which you may not unladen items or ship them intransit.

**§ 736.13 STEP THIRTEEN: Review of the remaining general prohibitions and License Exceptions.**

After completion of Steps described in this part 736, and review of all ten general prohibitions, including cross-referenced regulations in this subchapter, you will know which, if any, of the ten general prohibitions in

part 734 of this subchapter apply to you and your contemplated transaction or activity.

**§ 736.14 STEP FOURTEEN: Miscellaneous duties.**

Sections 736.1 through 736.13 of this part are useful in determining the license requirements that apply to you. Other portions of the EAR impose other duties and requirements. Some of them are:

(a) Requirements relating use of a license in § 758.2 of this subchapter.

(b) Requirements pertaining to the preparation and use of a Shipper's Export Declaration in § 758.3 of this subchapter.

(c) Duties of carriers, forwarders, and exporters and others to take specific steps and prepare and deliver certain documents to assure that items subject to the regulations in this subchapter are delivered to the destination to which they are licensed or authorized by a License Exception or some other provision of the regulations in §§ 758.4 through 785.6 of this subchapter.

(d) Duty of Carriers to return or unload shipments at the direction of U.S. Government officials (see § 758.8 of this subchapter).

(e) Specific duties imposed on parties to special comprehensive licenses by part 752 of this subchapter.

(f) Recordkeeping requirements imposed by Part 762 of this subchapter.

(g) Part 764 requirements to disclose facts that may come to your attention after you file a license application or make other statement to the government concerning a transaction or proposed transaction that is subject to the EAR.

(h) Certain duties imposed by Part 760 of this subchapter on parties who receive requests to take actions related to foreign boycotts and prohibits certain actions relating to those boycotts.

**§ 736.15 Inapplicability of general prohibitions.**

If none of the ten general prohibitions described in part 734 of this subchapter apply to your export, reexport or conduct, you may proceed without a license and you need not and should not examine part 740 of this subchapter for License Exceptions.

**§ 736.16 Review of License Exceptions.**

If any of the ten general prohibitions described in part 734 of this subchapter apply, then you should determine whether there is a License Exception at part 740 of this subchapter from those general prohibitions or licensing requirements on the appropriate ECCN. In considering these License Exceptions you need only qualify for any one of

them to rely upon that given License Exception for your transaction.

Moreover, you may rely upon any License Exception that authorizes your transaction. Note especially that you should not assume that if you cannot qualify for one License Exception you are unable to export or reexport under another applicable License Exception. For example, assume you do not qualify for License Exception 13: Operating Technology and Software (OTD), and you plan to export maintenance manuals to the United Kingdom. The manuals are classified under ECCN 4E94, and they are not subject to General Prohibition One (Exports and Reexports in the Form Received). Under these circumstances and if you are not subject to any of the nine other general prohibitions, you may export the maintenance manuals even though your export or reexport does not qualify for any License Exception. This is so because your transaction is not subject to any of the ten general prohibitions.

**PART 738—COMMERCE CONTROL LIST AND THE COUNTRY CHART**

Sec.

738.1 Introduction.

738.2 Commerce Control List structure.

738.3 Commerce Country Chart structure.

738.4 Determining whether a license is required.

**Supplement No. 1—Commerce Country Chart**

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7429; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

**§ 738.1 Introduction.**

(a) *Commerce Control List scope.* (1) The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL) within the Export Administration Regulations (EAR), which includes all items (i.e., commodities, software, and technology) subject to the export licensing authority of BXA. The CCL does not include those items exclusively controlled for export 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 this subchapter. Supplement No. 2 to part 774 of this subchapter contains the General Technology and Software Notes relevant to entries contained in the CCL, and Supplement No. 3 to part 774 of

this subchapter contains definitions of terms used in the CCL.

(b) *Commerce Country Chart scope.* BXA 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 all items on the CCL (with two exceptions identified in § 738.3(a) of this part) to any country in the world.

**§ 738.2 CCL structure.**

(a) *Categories.* The CCL is divided into 10 categories, numbered as follows:

- 1—Materials
- 2—Materials Processing
- 3—Electronics
- 4—Computers
- 5—Telecommunications and Information Security
- 6—Sensors
- 7—Avionics and Navigation
- 8—Marine Technology
- 9—Propulsion Systems and Transportation Equipment
- 0—Miscellaneous

(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. After you have identified the correct ECCN you should review the List of Items Controlled to determine within which subparagraph(s) your items are listed.

(d) *Entries—(1)(i) 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., 3A01). The letter immediately following this first digit identifies which of the five groups the item is listed under (e.g., 3A01). The final two digits

differentiate the individual entries and identify the type of controls that affect the item (e.g., 3A01). The following list identifies the numbers associated with each Reason for Control:

- 01-19 National Security, Regional Stability, Supercomputers
- 20-39 Missile Technology, Regional Stability
- 40-59 Nuclear Non-proliferation
- 60-79 Chemical and Biological Weapons
- 80-99 Other Controls, including Crime Control, Anti-terrorism, UN Sanctions, Short Supply, etc.

(ii) 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, the entry will have a number in the 01-19 range. If the item is controlled only for Missile Technology the number will fall within the 20-39 range.

(2) *Reading an ECCN.* A brief description is provided next to each ECCN. Following this description is the actual entry containing "License Requirements", "License Alternatives", and "List of Items Controlled" sections. A brief description of each section and its use follows:

(i) *"License Requirements".* This section contains two columns entitled "Controls" and "Country Chart".

(A) The "Controls" columns lists 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 across the columns 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
- MT Missile Technology
- NS National Security
- NP Nuclear Non-proliferation
- RS Regional Stability
- SC Supercomputers
- SS Short Supply
- UN United Nations Sanctions

(B) The "Country Chart" column 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.

(ii) *"License Alternatives".* This section identifies ECCN-driven alternatives to applying for a license and a brief eligibility statement for each. The information in this section is provided to assist you in deciding which alternative related to your particular item and destination you should explore prior to submitting an application. This section should be consulted only AFTER you have determined a license is required based on an analysis of the entry and Country Chart. (See part 740 of this subchapter for a discussion of all License Exceptions, or part 752 of this subchapter for a discussion of the Special Comprehensive License.)

(iii) *"List of Items Controlled".* This section 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 instances where there are no items identified in the List of Items Controlled, the entry controls only those items specifically identified in the description next to the ECCN.

(A) *Units of measure.* Most measurements used in the CCL are expressed in metric units with an inch-pound conversion where appropriate. 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. Exceptions will have the inch-pound unit first with a metric conversion (e.g., shotguns).

(B) *The abbreviation "n.e.s."* Entries within the CCL may contain the abbreviation "n.e.s.", meaning "not elsewhere specified". If an item you intend to export is controlled by an entry containing "n.e.s." in the description, you should not use that particular ECCN until you have determined that no other entry specifically controls that item.

### § 738.3 Commerce Country Chart structure.

(a) *Scope.* The Commerce Country Chart (Country Chart) allows you to determine, based on the Reason(s) for Control attributed to your item, if you need a license to export your item to a particular destination. There are only two instances where the chart cannot be used for this purpose:

(1) *Items controlled for short supply reasons.* Due to the unique nature of these controls, the ECCN will send you directly to part 754 of this subchapter in order to determine whether a license is required for your product to a specific

destination and the licensing policy relevant to these types of applications.

(2) *Items controlled by ECCN 5A80.* A license is required for all destinations of items controlled under this ECCN. No License Exceptions apply; accordingly, if your item is controlled by 5A80 you should proceed directly to part 748 of this subchapter for license application instructions and § 742.13 of this subchapter for information on the licensing policy relevant to these types of applications.

(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.

(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" column 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. Part 742 of this subchapter describes the licensing policy associated with each column on the Country Chart.

### § 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) With each of the applicable Country Chart Column Identifiers noted, turn to the Country Chart (Supplement No. 1 to this part 738). Locate the correct Country Chart column identifier on the horizontal heading, and determine whether an "X" is marked in the box next to the country in question.

(A) If yes, a license application must be submitted unless a License Alternative applies. All applicable ECCN-driven "License Alternatives" are identified in each entry. If the brief eligibility statement contained in the "License Exceptions" line appears to cover your transaction you should consult part 740 of this subchapter to determine whether you can use a License Exception to effect shipment, rather than applying for a license. Other License Exceptions, not related to the CCL, may also apply to your transaction (See part 740 of this subchapter).

(B) If no, a license is not required.

(iii) In situations where more than one Reason for Control applies, repeat the step in paragraph (a)(2)(ii) for each Country Chart column identifier noted in the step in paragraph (a)(2)(i).

(A) If an "X" is NOT found under any of the applicable columns, a license application is not required.

(B) If an "X" is found under any of the applicable columns, and no License Exception applies, a license application must be submitted.

**Note:** Though 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 will provide you with the information necessary 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 BXA.

(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 a particular item to a specific destination using the CCL in combination with the Country Chart.

(2) *Sample CCL entry.*

**2A00: ECCN Description.**

**License Requirements**

*Reason for Control: NP*

Control(s) and Country Chart

NP applies to entire entry—NP Column

1

## License Alternatives

### License Exceptions

LVS: \$5,000

CSR: N/A

GBS: Yes

NSG: N/A

CIV: N/A

*Special Comprehensive License:* (To be determined in the final rule).

### List of Items Controlled

Unit: Equipment in number; parts and accessories in \$ value.

(3) *Sample analysis.* After consulting the CCL I determine my item is classified under ECCN 2A00. I read that the entire entry is controlled for nuclear non-proliferation reasons, noting that the appropriate Country Chart column identifier is NP Column 1. Turning to the Country Chart, I locate my specific destination, India, and see that an "X" appears in the NP Column 1 box for India. I understand that a license is required, unless my transaction qualifies for a License Alternative (i.e., License Exception or Special Comprehensive License). Since I am not a Special Comprehensive License holder, I turn directly to the License Exceptions described in part 740 of this subchapter to determine whether a License Exception applies to my particular item/destination combination.

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Supplement No. 1 to Part 738

**Commerce Country Chart**

Countries	Reason for Control						UN Sanctions		
	Chemical & Biological Weapons	Nuclear Nonproliferation	National Security	Missile Tech	Regional Stability	Crime Control	Anti-Terrorism	UN Sanctions	
	CE Column 1	NP Column 1	NS Column 1	MT Column 1	RS Column 1	CC Column 1	AT Column 1	UN Column 1	
	CE Column 2	NP Column 2	NS Column 2	MT Column 2	RS Column 2	CC Column 2	AT Column 2	UN Column 2	
	CE Column 3	NP Column 3	NS Column 3	MT Column 3	RS Column 3	CC Column 3	AT Column 3	UN Column 3	
Afghanistan	X		X	X	X				
Albania	X								
Algeria	X	X	X	X	X				
Andorra	X	X	X	X	X				
Angola*	X	X	X	X	X				
Antigua & Barbuda									
Argentina	X		X	X	X				
Armenia	X		X	X	X				
Australia	X		X	X	X				
Austria	X		X	X	X				
Azerbaijan	X	X	X	X	X				
Bahamas, The	X		X	X	X				
Bahrain	X	X	X	X	X				
Bangladesh	X		X	X	X				
Barbados	X		X	X	X				
Belarus	X		X	X	X				
Belgium	X		X	X	X				
Belize	X		X	X	X				
Benin	X	X	X	X	X				
Bhutan	X		X	X	X				
Bolivia	X	X	X	X	X				
Bosnia & Herzegovina*	X	X	X	X	X				
Botswana	X		X	X	X				
Brazil	X		X	X	X				
Brunei	X		X	X	X				
Bulgaria	X		X	X	X				
Burkina Faso	X		X	X	X				
Burma	X		X	X	X				

\* This country is subject to United Nations Sanctions. See §746 for additional OFAC licensing requirements that may apply to your proposed transaction.

Supplement No. 1 to Part 738

**Commerce Country Chart**

Countries	Reason for Control														
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security	Missile Tech	Regional Stability		Crime Control					
	CB Column 1	CB Column 2	CB Column 3	NP Column 1	NP Column 2	NS Column 1	MT Column 1	RS Column 1	RS Column 2	CC Column 1	CC Column 2	CC Column 3	AT Column 1	AT Column 2	UN Sanctions
Burundi	X	X		X		X	X	X	X	X					
Cambodia															
Cameroon	X	X		X		X	X	X	X	X					
Canada															
Cape Verde	X	X		X		X	X	X	X	X					
Central African Republic															
Chad	X	X		X		X	X	X	X	X					
Chile															
China	X	X	X	X		X	X	X	X	X					
Colombia															
Comoros	X	X		X	X	X	X	X	X	X					
Congo															
Costa Rica	X	X		X		X	X	X	X	X					
Cote d'Ivoire															
Croatia*	X	X		X		X	X	X	X	X					
Cuba															
Cyprus	X	X		X		X	X	X	X	X					
Czech Republic															
Denmark	X			X		X	X	X	X	X					
Djibouti															
Dominica	X	X		X		X	X	X	X	X					
Dominican Republic															
Ecuador	X	X		X		X	X	X	X	X					
Egypt															
El Salvador	X	X		X		X	X	X	X	X					
Equatorial Guinea															
Eritrea	X	X		X		X	X	X	X	X					
Estonia															
Ethiopia	X	X		X		X	X	X	X	X					

See §742.3 to determine whether a license is required to export or reexport to this destination.

See §746 to determine whether a license is required in order to export or reexport to this destination.

Supplement No. 1 to Part 738

**Commerce Country Chart**

Countries	Reason for Control																	
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech		Regional Stability		Crime Control		Anti-Terrorism		UN Sanctions		
	CB Column 1	CB Column 2	CB Column 3	NP Column 1	NP Column 2	NS Column 1	NS Column 2	MT Column 1	MT Column 2	RS Column 1	RS Column 2	CC Column 1	CC Column 2	CC Column 3	AT Column 1	AT Column 2	UN Column 1	UN Column 2
Fiji	X			X		X		X		X		X						
Finland																		
France	X					X		X		X		X						
Gabon	X	X		X		X		X		X		X						
Gambia, The	X			X		X		X		X		X						
Georgia	X	X	X	X		X		X		X		X						
Germany	X			X		X		X		X		X						
Ghana	X			X		X		X		X		X						
Greece	X			X		X		X		X		X						
Grenada	X	X		X		X		X		X		X						
Guatemala	X			X		X		X		X		X						
Guinea	X	X		X		X		X		X		X						
Guinea-Bissau	X			X		X		X		X		X						
Guyana	X			X		X		X		X		X						
Haiti	X			X		X		X		X		X						
Holy See	X			X		X		X		X		X						
Honduras	X			X		X		X		X		X						
Hong Kong	X	X		X		X		X		X		X						
Hungary	X			X		X		X		X		X						
Iceland	X			X		X		X		X		X						
India	X			X		X		X		X		X						
Indonesia	X	X		X		X		X		X		X						
Iran	X	X		X		X		X		X		X						
Iraq*	X	X	X	X		X		X		X		X						
Ireland	X			X		X		X		X		X						
Israel	X	X		X		X		X		X		X						
Italy	X			X		X		X		X		X						
Jamaica	X	X		X		X		X		X		X						
Japan	X			X		X		X		X		X						

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**Commerce Country Chart**

Countries	Reason for Control															
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech		Regional Stability		Crime Control		Anti-Terrorism		UN Sanctions
	CB Column 1	CB Column 2	CB Column 3	NP Column 1	NP Column 2	NS Column 1	NT Column 1	RS Column 1	RS Column 2	CC Column 1	CC Column 2	CC Column 3	AT Column 1	AT Column 2	UN Column 1	UN Column 2
Jordan	X	X	X	X		X	X	X		X						
Kazakhstan																
Kenya	X	X		X		X	X	X								
Kiribati																
Korea, North																
Korea, South																
Kuwait	X	X	X	X		X	X	X		X						
Kyrgyzstan																
Laos	X	X		X		X	X	X								
Latvia																
Lebanon	X	X	X	X		X	X	X		X						
Lesotho																
Liberia	X	X		X		X	X	X		X						
Libya	X	X		X		X	X	X		X						
Liechtenstein																
Lithuania																
Luxembourg	X					X	X									
FYROM (Macedonia)																
Madagascar	X	X		X		X	X	X		X						
Malawi																
Malaysia	X	X		X		X	X	X		X						
Maldives																
Mali	X	X		X		X	X	X		X						
Malta																
Marshall Islands	X	X		X		X	X	X		X						
Mauritania																
Mauritius	X	X		X		X	X	X		X						
Mexico																
Micronesia	X	X		X		X	X	X		X						

See §746 to determine whether a license is required in order to export or reexport to this destination.

See §746 to determine whether a license is required in order to export or reexport to this destination.



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**Commerce Country Chart**

Countries	Reason for Control														
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech		Regional Stability					
	CB Column 1	CB Column 2	CB Column 3	NP Column 1	NP Column 2	NS Column 1	NT Column 1	NT Column 2	RS Column 1	RS Column 2	CC Column 1	CC Column 2	CC Column 3	Anti-Terrorism	UN Sanctions
St. Lucia	X	X		X		X	X		X		X				
St. Vincent & Grenadines															
San Marino	X	X		X		X	X		X		X				
Sao Tome & Principe	X	X	X	X		X	X		X		X				
Saudi Arabia	X	X		X		X	X		X		X				
Senegal	X	X		X		X	X		X		X				
Serbia & Montenegro*	X	X		X		X	X		X		X				
Seychelles	X	X		X		X	X		X		X				
Sierra Leone	X	X		X		X	X		X		X				
Singapore	X	X		X		X	X		X		X				
Slovakia	X	X		X		X	X		X		X				
Slovenia*	X	X		X		X	X		X		X				
Solomon Islands	X	X		X		X	X		X		X				
Somalia	X	X		X		X	X		X		X				
South Africa	X	X	X	X		X	X		X		X				
Spain	X	X		X		X	X		X		X				
Sri Lanka	X	X		X		X	X		X		X				
Sudan	X	X		X		X	X		X		X				
Surinam	X	X		X		X	X		X		X				
Swaziland	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				
Taiwan	X	X		X		X	X		X		X				
Tajikistan	X	X		X		X	X		X		X				
Tanzania	X	X		X		X	X		X		X				
Thailand	X	X		X		X	X		X		X				
Togo	X	X		X		X	X		X		X				
Tonga	X	X		X		X	X		X		X				

Supplement No. 1 to Part 738

**Commerce Country Chart**

Countries	Reason for Control															
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security	Missile Tech	Regional Stability		Crime Control		Anti-Terrorism	UN Sanctions			
	CB Column 1	CB Column 2	CB Column 3	NP Column 1	NP Column 2	NS Column 1	MT Column 1	RS Column 1	RS Column 2	CC Column 1	CC Column 2	CC Column 3	AT Column 1	AT Column 2	UN Column 1	
Trinidad & Tobago																
Tunisia	X			X		X	X	X		X						
Turkey	X			X		X	X	X		X						
Turkmenistan	X	X	X													
Tuvalu	X	X		X		X	X	X		X						
Uganda	X	X		X		X	X	X		X						
Ukraine	X	X		X		X	X	X		X						
United Arab Emirates	X	X	X	X	X	X	X	X		X						
United Kingdom	X	X		X		X	X	X		X						
Uruguay	X	X		X		X	X	X		X						
Uzbekistan	X	X		X		X	X	X		X						
Vanuatu	X	X		X		X	X	X		X						
Vatican City	X	X		X		X	X	X		X						
Venezuela	X	X		X		X	X	X		X						
Vietnam	X	X		X		X	X	X		X						
Western Sahara	X	X		X		X	X	X		X						
Western Samoa	X	X		X		X	X	X		X						
Yemen	X	X		X		X	X	X		X						
Zaire	X	X		X		X	X	X		X						
Zambia	X	X		X		X	X	X		X						
Zimbabwe	X	X		X		X	X	X		X						

**PART 740—LICENSE EXCEPTIONS**

- Sec.  
 740.1 Introduction.  
 740.2 Restrictions on all License Exceptions.  
 740.3 Shipments of Limited Value (LVS).  
 740.4 COCOM Successor Regime (CSR).  
 740.5 Shipments to Group B Countries (GBS).  
 740.6 Nuclear Suppliers Group (NSG).  
 740.7 Civil end-users (CIV).  
 740.8 Temporary exports (TMP).  
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 740.10 Parts (PTS).  
 740.11 Servicing and Replacement (S&R).  
 740.12 Baggage (BAG).  
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**Supplement No. 1 to Part 740—Country Groups**

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7429; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

**§ 740.1 Introduction.**

(a) *Overview*—(1) *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 otherwise require a license under one or more of the Export Control Classification Numbers (ECCN) in the Commerce Control List (CCL) in part 774 of this subchapter.

(2) *Steps*. If your export or reexport is subject to the EAR and is subject to General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), or Three (Foreign Produced Direct Product Reexports) in § 732.2(b)(1), (b)(2), or (b)(3) of this subchapter, consider the steps listed in this paragraph (a)(2). If your export or reexport is subject to General Prohibitions 4, 5, 7, 8, 9, or 10, there are no available License Exceptions for your export or reexport. If your export or reexport is subject to General Prohibition 6 (Embargo), consult part 746 of this subchapter for applicable License Exceptions.

(i) *Step One—Applicability of General Prohibitions*. Determine whether any one or more of the general prohibitions

described in § 734.2(b) of this subchapter 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 this License Exceptions chapter. You are reminded of your recordkeeping obligations and duties related to the clearance of the U.S. Customs Service provided at parts 762 and 758 of this subchapter. If your export or reexport is subject to General Prohibition 6 for embargoed destinations, refer only to part 746 of this subchapter concerning embargoed destinations to determine the availability of any License Exception.

(ii) *Step Two—Applicability of restrictions on all License Exceptions*. Determine whether any one or more of the restrictions in § 740.2 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.

(iii) *Step Three—Terms and conditions of the License Exceptions*. If none of the restrictions in § 740.2 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. 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. License Exceptions TMP, TUS, PTS, S&R, BAG, A&V, SAF, GOV, OTS, and STS authorize exports notwithstanding the provisions of the CCL. License Exceptions LVS, CSR, GBS, NSG, CIV, and TSR are available only to the extent specified on the CCL. This part 740 provides authorization for reexports only to the extent each License Exception expressly authorizes reexports. License Exception APR authorizes reexports only.

(iv) *Step Four—Scope*. Some License Exceptions are limited by country or by type of commodity.

(A) 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. 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 6 for embargoed destinations, License Exceptions are only available to the extent specifically provided in part 746 of this subchapter concerning embargoed destinations.

(B) Special commodity controls apply to short supply items. No License Exceptions in this part 740 may be used for items listed on the CCL as controlled for Short Supply reasons. Exceptions for short supply items are found in part 754 of this subchapter.

(v) *Step Five—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 determine your recordkeeping and documentation requirements at parts 758 and 762 of this subchapter.

(vi) *Step Six—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.

(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 set forth in the EAR have been met. Please refer to part 758 of this subchapter for clearance of shipments and documenting the use of License Exceptions.

(c) *Shipper's Export Declaration*. A person exporting any item under any License Exception must enter on any required Shipper's Export Declaration (SED) the letter code (e.g., CIV, PTS) of the License Exception. In the case of License Exceptions LVS, CSR, GBS and CIV the ECCN of the item being exported must also be entered. Please refer to § 758.2 of this subchapter for the use of SEDs. Certain items are listed on the CCL but do not require a license to all destinations under General Prohibitions One, (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), or Three (Foreign Produced Direct Product Reexports) (§ 732.2(b)(1), (b)(2), or (b)(3) of this subchapter). If General Prohibitions Four through Ten (§ 732.2(b)(4) through (b)(10) of this subchapter) also do not apply, you must



clear exports of such items through the U.S. Customs Service by entering the symbol "NLR" in the appropriate place on the Shippers Export Declaration. The term "NLR" represents exports of listed items when no license is required. Such exports do not require that you qualify for a License Exception.

(d) *Destination Control Statement.* A person exporting any item under any License Exception is required to enter an appropriate Destination Control Statement on commercial documents in accordance with the Destination Control Notice requirements of § 758.5 of this subchapter.

(e) *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 this subchapter.

#### § 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 is contrary to a Denial Order. See part 766 of this subchapter for a description of Denial Orders. See the **Federal Register** for the text of any particular Denial Order.

(3) You know that the item will be reexported and such reexport is subject to one of the ten General Prohibitions, is not eligible for a License Exception, and has not been authorized by BXA.

(4) You know that the export will be used for certain end-uses or is for certain end-users as set forth and prohibited in part 744 of this subchapter.

(5) The item is for surreptitious interception of wire or oral communications as set forth in ECCN 5A80, unless you are a U.S. Government agency (see § 740.15, Governments (GOV)).

(6) The commodity you are shipping is a specially designed crime control and detection instrument or equipment as described in § 742.7 of this subchapter and you are not shipping to Iceland, New Zealand, or countries listed in Country Group A:1 (COCOM Successor Regime) (see Supplement No. 1 to part 740), unless the shipment is authorized under License Exception BAG, § 740.12(e) (shotguns and shotgun shells).

(b) All License Exceptions are subject to revision, suspension, or revocation, in whole or in part, without notice. It may be necessary for BXA 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.

#### § 740.3 Shipments of Limited Value (LVS).

(a) *Scope.* A License Exception designated *License Exception LVS* is established authorizing the export in a single shipment of eligible commodities as described 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 § 740.5 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 presented for export under this License Exception.

(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 this License Exception (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 because LVS eligibility is based on the "net value" of the commodities in each order, instead of the "net value" of the commodities in the shipment.

(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.* Shipments of items in a single ECCN on the CCL may not exceed 12 times the LVS value limit for that ECCN per calendar year to the same ultimate consignee or intermediate consignee. 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:* An order includes commodities valued at \$8,000. The order consists of commodities controlled under two ECCN entries. Commodities in the order controlled under one ECCN are valued at \$3,000 while those controlled under the other ECCN are valued at \$5,000. 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 device 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.

(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.

#### § 740.4 COCOM Successor Regime (CSR).

(a) *Scope.* A License Exception designated *License Exception CSR* is established authorizing exports to eligible countries of all commodities controlled for national security reasons, except those specifically excluded by the CSR paragraphs on the CCL. Reexports of additional commodities may be authorized by paragraph (d) of this section. Exports may be made under this License Exception only when intended for use or consumption within the importing country, reexport among and consumption within eligible countries, or reexport in accordance with other provisions of the EAR.

(b) *Eligible countries.* The countries that are eligible to receive exports under this License Exception are the countries listed in Country Group A:1 (COCOM Successor Regime) (see Supplement No. 1 to part 740), as well as the cooperating countries indicated by footnote to Country Group A. Note, however, that generally there is no license requirement for shipments to Canada (see § 732.12 of this subchapter).

(c) *Restrictions on commodities re-directed en route.* Commodities exported under the provisions of this section may not be re-directed en route to a new country of destination without prior authorization from BXA, unless the new ultimate country of destination is also an eligible country under this License Exception.

(d) *Reexports—(1) Reexports from Country Group A:1 (COCOM Successor Regime) and cooperating countries.*

Reexports may be made from Country Group A:1 (COCOM Successor Regime) or from cooperating countries, provided that:

(i) The reexport is made in accordance with the conditions of an export authorization from the government of the reexporting country;

(ii) The commodities being reexported are not controlled for Nuclear Nonproliferation, Missile Technology or Crime Control reasons; and

(iii) The reexport is destined to either:  
(A) A country in Country Group B, Cambodia, or Laos and the commodity being reexported is both controlled for national security reasons and eligible for this License Exception; or

(B) A country in Country Group D:1 only (National Security) (see Supplement No. 1 to part 740), other than Cambodia or Laos, and the commodity being reexported is controlled for national security reasons.

(2) *Reexports to and among Country Group A:1 (COCOM Successor Regime) and cooperating countries.* Reexports may be made to and among Country Group A:1 (COCOM Successor Regime) and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (COCOM Successor Regime) (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 except the following are eligible for reexport to and among Country Group A:1 and cooperating countries:

(i) Supercomputers;  
(ii) Commodities controlled for Nuclear Nonproliferation reasons; and  
(iii) Electronic, mechanical or other devices, as described in ECCN 5A80, primarily useful for surreptitious interception of wire or oral communications.

#### § 740.5 Shipments to Country Group B countries (GBS).

(a) *Scope.* A License Exception designated *License Exception GBS* is established authorizing exports and reexports to Country Group B (see Supplement No. 1 to part 740) of certain commodities controlled for national security reasons.

(b) *Eligible commodities.* Eligible commodities identified by the "GBS" paragraph in the Requirements section of each entry on the CCL.

#### § 740.6 Nuclear Suppliers Group (NSG).

(a) *Scope.* A License Exception designated *License Exception NSG* is established authorizing exports and reexports to eligible countries of

commodities, software, and technology described below. Exports may be made under this License Exception only when intended for use or consumption within the importing country, reexport among and consumption within eligible countries, or reexport in accordance with other provisions of the EAR.

(b) *Eligible countries.* The countries listed in Country Group A:4 (Nuclear Suppliers Group) (see Supplement No. 1 to part 740) are eligible for this License Exception. Note, however, that generally there is no license requirement for shipments to Canada (see § 732.12 of this subchapter).

(c)(1) *Eligible commodities, software, and technology.* The eligible commodities, software, and technology are indicated in the NSG paragraph under the Requirements heading in applicable ECCNs on the CCL. In addition, the following items are not eligible for this License Exception:

(i) Items that are subject to missile technology controls; and

(ii) Items for export to Bulgaria, Romania, or Russia that are controlled for national security reasons.

(2) In addition, for shipments to Russia under NSG, General Prohibition 8 (transit) does not apply to commodities, software, and technology that are not controlled for national security reasons.

(d) *Reexports.* Commodities, software and technology eligible for this License Exception may be reexported to, among, and from countries eligible for this License Exception, except:

(1) Reexports from countries other than those in Country Group A:1 of commodities, software or technology controlled for national security reasons to destinations in Country Group D:1 (see Supplement No. 1 to part 740); or  
(2) Reexports to destinations in Country Group D:2 or E:2.

#### § 740.7 Civil end-users (CIV).

(a) *Scope.* This License Exception, designated *License Exception CIV*, authorizes certain exports and reexports as set forth in this section.

(b) *Eligibility.* License Exception CIV is available *only* for exports and reexports of certain specified items to civil end-users for civil end-uses in Country Group D:1. (See Supplement No. 1 to part 740.) CIV may not be used for exports and reexports to military end-users or to known military uses. Such exports and reexports will continue to require a license and be considered on a case-by-case basis. In addition to conventional military activities, military uses include any proliferation activities described and prohibited in part 744 of this

subchapter. Retransfer to military end-users or end-uses in eligible countries is strictly prohibited without prior authorization. The items eligible for this License Exception are those indicated on the CCL.

#### § 740.8 Temporary exports (TMP).

(a) *Scope.* A License Exception designated *License Exception TMP* is established authorizing the export and reexport of commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exclusions described in this section. Commodities and software shipped under this License Exception 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 BXA.

(b) *Eligible commodities and software.* The following commodities and software are eligible to be shipped under License Exception TMP:

(1) *Tools of trade.* Usual and reasonable kinds and quantities of commodities and software for use by employees of the exporter in a lawful enterprise or undertaking of the exporter. Eligible commodities and software may include, but are not limited to, such equipment as is necessary to commission or service goods, provided that the equipment 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. The commodities and software must remain under the effective control of the exporter or the exporter's employee. The shipment of commodities and software 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. No tools of the trade may be taken to Country Group E:2, and only equipment necessary to commission or service goods may be taken as tools of trade to Country Group D:1. (See Supplement No. 1 to part 740.)

(2) *Kits consisting of replacement parts.* Kits consisting of replacement parts may be exported or reexported under this section to all destinations, except Country Group E:2 (see

Supplement No. 1 to part 740), provided that:

(i) The parts would qualify for shipment under License Exception PTS if exported as one-for-one replacements;

(ii) The kits remain under effective control of the exporter or an employee of the exporter; and

(iii) All parts in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of PTS and the defective parts returned.

(3) *Exhibition and demonstration in Country Group B.* Commodities and software for exhibition or demonstration in Country Group B (see Supplement No. 1 to part 740) may be exported or reexported under this provision 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. The commodities 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 BXA. However, before or after an exhibition or demonstration, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains effective control over disposition of the commodities and software, pending movement to another site, return to the United States or the foreign reexporter, or BXA approval for other disposition. The export documentation for this type of transaction must show the U.S. exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(4) *Inspection and calibration.* Commodities to be inspected, tested, calibrated or repaired abroad.

(5) *Containers.* Containers for which another License Exception is not available and that are necessary for export of commodities. However, this License Exception 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.

(6) *Broadcast material.* (i) Video tape containing program material recorded in the country of export to be publicly broadcast in another country.

(ii) Blank video tape (raw stock) for use in recording program material abroad.

(7) *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 (Maquilladora), provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(8) *News media.* (i) 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 (see Supplement No. 1 to part 740) if the commodities:

(A) Are retained under "effective control" of the exporting news gathering firm;

(B) Remain in the physical possession of the news media personnel. The term physical possession for purposes of this paragraph (b)(8), *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

(C) Are removed with the news media personnel at the end of the trip.

(ii) When exporting under this section 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 Export Administration, Office of Enforcement Support, Room H4069, 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 this License Exception is being used properly.

(iii) Commodities necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported or reexported under paragraph (b)(1), *tools of trade*, of this section if owned by the news gathering firm, or under § 740.12, License Exception BAG if they are personal property of the individual news media personnel.

(Note: paragraphs (b)(1), *tools of trade* and (b)(8)(iii), *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.)

(c) *Special restrictions*—(1)

*Destinations.* (i) No commodity or software may be exported under this License Exception to Country Group E:2 (see Supplement No. 1 to part 740) except as permitted by paragraph (b)(8), news media, of this section;

(ii) No commodity or software may be exported under this License Exception to Country Group D:1 (see Supplement No. 1 to part 740) except:

(A) Commodities and software exported under paragraph (b)(8), *news media*, of this section;

(B) Commodities and software exported under paragraph (b)(1), *tools of trade*, of this section; and

(C) Commodities exported as kits of replacement parts, consistent with the requirements of paragraph (b)(2) of this section.

(iii) 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.)

(2) *Commodities.* The following commodities may *not* be exported or reexported to any destination under this License Exception:

(i) Supercomputers;

(ii) Commodities that will be used outside of Country Group A:4 (Nuclear Suppliers Group) (see Supplement No. 1 to part 740) either directly or indirectly in any sensitive nuclear activity as described in § 744.2 of this subchapter.

(iii) Electronic, mechanical, or other devices, as described in ECCN 5A80, primarily useful for surreptitious interception of wire or oral communications.

(3) *Use or disposition.* No commodity or software may be exported or reexported under this License Exception if:

(i) An order to acquire the commodity or software has been received before shipment;

(ii) The exporter has prior knowledge that the commodity or software will stay abroad beyond the terms of this License Exception; or

(iii) The commodity or software is for lease or rental abroad.

(d) *Return or disposal of commodities and software.* All commodities and software exported or reexported under this License Exception 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 exported under this License Exception, or shall be disposed of or retained in one of the following ways:

(1) *Authorization under Form BXA-748P.* If the U.S. 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 Form BXA-748P, Multipurpose Application, to BXA at the address listed in part 748 of this subchapter. (See part 748 of this subchapter for more information on reexport authorizations.) 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 directly from the United States to the proposed destination. BXA will advise the exporter of its decision.

(2) *Use of a license.* An outstanding license may also be used to dispose of commodities or software covered by the License Exception described in this section, 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.

(3) *Authorization to retain abroad beyond one year.* If the exporter wishes to retain a commodity or software abroad beyond the 12 months authorized in § 740.8(a), the exporter must request authorization by submitting Form BXA-748P, Multipurpose Application, 90 days prior to the expiration of the 12 month period. The request must be sent to BXA at the address listed in part 748 of this subchapter 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 BXA approves the extension request, the exporter will receive authorization for a one-time extension not to exceed six months. BXA 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 (d)(1) of this section.

**§ 740.9 Exports of items temporarily in the United States (TUS).**

(a) *Scope.* This License Exception, designated *License Exception TUS*, describes the conditions for exporting foreign-origin items temporarily in the United States. Specifically, this License Exception includes 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:** 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.)

(b) *Items moving in transit through the United States.* Subject to the following conditions, this License Exception authorizes 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.

(1) 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 License Exception.

(2) Items may not be exported to Country Group E:2 under this License Exception.

(3) The following may *not* be exported in transit from the United States under TUS:

(i) Commodities shipped to the United States under an International Import Certificate, Form BXA-645P;

(ii) Chemicals controlled under ECCN 1C60; or

(iii) Horses for export by sea (refer to short supply controls in part 754 of this subchapter).

(4) The provisions of this License Exception 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 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 exempt from U.S. licensing,

or made under a U.S. license or applicable U.S. License Exception other than this License Exception, or is valued at less than \$50.00. The commodity 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,<sup>1</sup> 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.

(c) *Items imported for display at U.S. exhibitions or trade fairs.* Subject to the following conditions, License Exception TUS authorizes 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.

(1) Items may be exported to the country from which imported into the United States. However, items originally imported from Cuba or North Korea may not be exported unless the U.S. Government had licensed the import from that country.

(2) Items may be exported to any destination other than the country from which imported except:

(i) Items imported into the United States under an International Import Certificate;

(ii) Exports to Country Group E:2 (see Supplement No. 1 to part 740); or

(iii) Exports to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740) of items controlled for national security, nuclear proliferation, missile technology, or chemical and biological weapons reasons, respectively.

(d) *Return of unwanted shipments.* A foreign-origin item may be returned under this License Exception 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, Libya, or North Korea.

(e) *Return of shipments refused entry.* Shipments of items refused entry by the U.S. Customs Service, the Food and Drug Administration, or any other U.S. Government agency may be returned to the country of origin, except to:

(1) A destination in Cuba, Libya, or North Korea; or

(2) 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).

#### § 740.10 Parts (PTS).

(a) *Scope.* This License Exception, designated *License Exception PTS*, authorizes the export and reexport of one-for-one replacement parts for previously exported equipment.

(b) *One-for-one replacement of parts.*

(1) The term "replacement parts" 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 TMP, § 740.8(b)(2).

(2) 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. 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.

(3) The parts to be replaced must either be destroyed abroad or returned promptly to the party who supplied the replacement parts, or to a foreign firm that is under the effective control of that party.

(c) *Exclusions.* (1) No replacement parts may be exported under this License Exception 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.

(2) No parts may be exported under this License Exception 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.

(3) No parts may be exported under this License Exception to any destination except Iceland, New Zealand, or the countries listed in Country Group A:1 (COCOM Successor Regime) (see Supplement No. 1 to part 740) if the item is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing, 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(b) of this subchapter.

(4) No replacement parts shall be exported under this License Exception to Cuba, Iran, Iraq, Sudan, Syria, Libya, or North Korea (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an aircraft, helicopter, or national security controlled commodity.

(5) The conditions set forth in this paragraph (c) 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 § 732.4(b)(2)(ii) and (iii) of this subchapter.

(d) *Reexports.* Parts exported from the United States may be reexported to a new country of destination, provided that the restrictions described in paragraphs (b) and (c) 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.

#### § 740.11 Servicing and Replacement (S&R).

(a) *Scope.* This License Exception, designated *License Exception S&R*,

<sup>1</sup> The complete names of these forms are: Commerce Form 7513, "Shipper's Export Declaration for Intransit Goods"; Customs Form 7512, "Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit."

authorizes export of items that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(b) *Items sent to a United States or foreign party for servicing*—(1) *Definition.* “Servicing” 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.

(2) *Return of serviced items.* When the serviced item 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.

(3) *Items imported from Country Group D:1 except the PRC.* Items legally exported or reexported to a consignee in Country Group D:1 (except the People’s Republic of China (PRC)) (see Supplement No. 1 to part 740) that are sent to the United States or a foreign party for servicing may be returned under this License Exception to the country from which it was sent, provided that both of the following conditions are met:

(i) The exporter making the shipment is the same person or firm to whom the original license was issued; and

(ii) The end-use and the end-user of the serviced item 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.

(4) Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. No repaired item may be exported or reexported to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria under this section.

(c) *Replacements for defective or unacceptable U.S.-origin equipment.* (1) Subject to the following conditions, certain items may be exported to replace defective or otherwise unusable (e.g., erroneously supplied) items.

(i) The item to be replaced must have been previously exported or reexported in its present form under a license or authorization granted by BXA.

(ii) No item may be exported to replace equipment that is worn out from normal use, nor may any item be exported to be held in stock abroad as spare equipment for future use.

(iii) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the item as originally

approved for export or reexport under a license issued by BXA.

(iv) No shipment may be made to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, 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.

(2) *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 set forth in paragraph (c)(1) 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 and Country Group D:1:

(i) By making such an export or reexport, the exporter represents that all the requirements of paragraph (c) have been met and undertakes to destroy or return the replaced parts as set forth in paragraph (c)(2)(iii) of this section.

(ii) The defective or otherwise unusable item 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 item within the warranty period or within 12 months of its shipment to the ultimate consignee in the country of destination, whichever is shorter.

(iii) The item 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 U.S. 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.

(iv) A party reexporting replacements for defective or unacceptable U.S.-origin equipment must ensure that the commodities being replaced were shipped to their present location in accordance with U.S. law and continue to be legally used.

#### §740.12 Baggage (BAG).

(a) *Scope.* This License Exception, designated License Exception BAG, authorizes individuals leaving the United States and crew members of exporting carriers to take to any destination, as personal baggage, the classes of commodities set forth in this section.

(b) *Eligibility.* Individuals leaving the United States may export any of the following items to any destination or series of destinations. Crew members

may export only items 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.

(c) *Limits on eligibility.* The export of any commodity may be limited or prohibited, if the kind or quantity is in excess of the limits set forth in this section. In addition, the commodities 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, or by the crew members of exporting carriers;

(3) Not intended for sale.

(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. Items of personal baggage controlled for Chemical and Biological Weapons (CB), Missile Technology (MT), National Security (NS) 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

or NP may not be exported under this License Exception to Country Group D or Country Group E:2. (See Supplement No. 1 to part 740.)

(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 paragraph (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.

(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)).

#### § 740.13 Aircraft and Vessels (A&V).

(a) *Scope.* A License Exception designated *License Exception A&V* is established authorizing the 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.

(b) *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 Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria 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 Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria; and

(iii) It does not carry from the United States any commodity for which export authorization is required and has not been granted by the appropriate U.S. Government agency.

(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 any commodity from the United States for which export authorization has not been granted by the appropriate U.S. Government agency.

(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 Cuba, Iran, Iraq, Sudan, Syria, Libya, and North Korea (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 any commodity from the United States for which export authorization is required and has not been granted by the appropriate U.S. Government agency; 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 Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, 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 Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(vi) *Place of registration.* The place of registration is not changed to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(vii) *No transfer of technology.* No technology is transferred to a national of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, 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 Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(ix) *Flight number.* The aircraft does not fly under a flight number issued to a national of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria 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 (b) are met.

(c) *Equipment and spare parts for permanent use on a vessel or aircraft—*

(1) *Vessel.* Equipment and spare parts for permanent use on a vessel, when necessary for the proper operation of such vessel, may be exported 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 North Korea, 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 or North Korea 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 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, Libya, or North Korea, or a national of any of these countries.

(d) *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 (d)(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, North Korea or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided that such commodities are all of the following:<sup>2</sup>

(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) is filed with the carrier, except that an SED is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their use.

(2) *Exports to U.S. or Canadian airline's installation or agent.* Exports of the commodities set forth in paragraph (e) of this section, except fuel, may be made to a U.S. or Canadian airline's<sup>3</sup> installation or agent in any foreign destination except Cuba, North Korea, or Country Group D:1 (excluding the PRC and Romania), (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, North Korea 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) is filed with the carrier, except that an SED 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 (d) applies to the following commodities, subject to the provisions in paragraph (d)(1) and (d)(2) of this section:

**Note:** For fuel and related commodities, refer to short supply controls in part 754 of this subchapter;

(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.

#### § 740.14 International safeguards (SAF).

(a) *Scope.* This License Exception, designated *License Exception SAF*, authorizes exports 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:

(1) Commodities consigned to the IAEA at its headquarters in Vienna, 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, services, and information are not diverted from peaceful purposes to non-peaceful purposes.

(2) Commodities 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, services, and information are not diverted from peaceful purposes to non-peaceful purposes.

(3) 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) and (a)(2) of this section when they become obsolete, are no longer required, or are replaced.

(4) Commodity 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.

(5) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited nuclear activities described in § 744.2(a) of this subchapter.

(6) When commodities 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 this subchapter.

(b) *Exclusions.* No supercomputers may be exported under this License Exception.

#### § 740.15 Governments (GOV).

(a) *Scope.* This License Exception, designated *License Exception GOV*, authorizes exports and reexports of the items listed in paragraph (b) of this section to personnel and agencies of the U.S. Government or agencies of cooperating governments.

(b) *Eligibility*—(1) *Items for personal use by personnel and agencies of the U.S. Government.* License Exception GOV 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.

(2) *Items for official use by personnel and agencies of the U.S. Government.* GOV is available for items consigned to and for the official use of any agency of the U.S. Government.

(3) *Items for official use within national territory by agencies of cooperating governments.* GOV is available for all items except supercomputers consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government.

(4) *Diplomatic and consular missions of a cooperating government.* GOV is

<sup>2</sup> Where a validated license is required, see §§ 748.2 and 748.4(g).

<sup>3</sup> See Part 772 for definitions of United States and Canadian airlines.



available for all items except supercomputers 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.)

(c) *Definitions.* (1) "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 under this License Exception to these non-government national or international agencies, except as provided in (b)(1) of this section for U.S. representatives to these organizations.

(2) "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 (COCOM Successor Regime) (see Supplement No. 1 to part 740) and the national governments of Argentina, Austria, Finland, Ireland, Korea (Republic of), Singapore, Sweden, and Switzerland.

#### § 740.16 Gift parcels (GFT).

(a) *Scope.* This License Exception, designated *License Exception GFT*, is established to 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."<sup>4</sup>

**Note:** A gift parcel, within the context of this License Exception, does not include

<sup>4</sup>Many foreign countries permit the entry, duty-free, of gift parcels that conform to regulations regarding contents and marking. To secure this advantage, the sender should show the words "U.S.A. Gift Parcel" on the addressee side of the package and on any required customs declarations. Information regarding the foreign postal regulations is available at local post offices. Senders of gift parcels who wish information regarding import duties of a foreign country should contact the nearest Commercial Office, Consulate or Embassy of the country concerned.

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 this subchapter, must be licensed by BXA. (See § 748.9(e) of this subchapter for licensing of multiple gift parcels).

(b) *Commodity, value and other limitations—(1) Eligible commodities.* The commodities eligible for this License Exception are as follows:

(i) The commodity must not be controlled for Chemical and Biological Weapons (CB), Missile Technology (MT), National Security (NS), or Nuclear Proliferation (NP) (See Commerce Control List, part 774 of this subchapter.)

(ii) *Type and quantity.* The commodity must be of a type and in quantities normally given as gifts between individuals.

(A) For Cuba, the only commodities that may be included in a gift parcel are the following items from Supplement No. 1 to part 746 of this subchapter: food, vitamins, seeds, medicines, medical supplies and devices, hospital supplies and equipment, equipment for the handicapped, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, and in addition receive-only radio equipment for reception of commercial/civil AM/FM and short wave publicly available frequency bands, and batteries for such equipment.

(B) For all other destinations, eligible commodities include all items described in paragraph (b)(2)(ii)(A) of this section as well as all other items normally sent as gifts. Gold bullion, gold tael, and gold bars are prohibited as are items intended for resale or reexport.

*Example.* 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.

(C) For purposes of paragraph (b)(2)(ii) of this section, clothing is appropriate, except that export of military wearing apparel to Country Group 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.

(2) *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.

(3) *Frequency.* Except for gift parcels of food to Cuba, not more than one gift parcel may be sent from the same donor to the same donee in any one calendar month. Parties seeking authorization to exceed this limit due to compelling humanitarian concerns (e.g., gifts of medicine to relatives) should submit a license application (BXA-748P) with complete justification.

(4) *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.

(c) *How to export gift parcels.* (1) 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.

(2) 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.

#### § 740.17 Operating technology and software (OTS).

A License Exception designated *License Exception OTS* is established to permit exports and reexports of operation technology and software.

(a) *Scope.* "Operation technology" is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those products that are lawfully exported or reexported under a License Exception or license. 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 product. Individual entries in the software and technology subcategories of the CCL may further restrict the export or reexport of operation technology under this general authorization.

(b) *Provisions and Destinations—(1) Provisions.* Operation software may be exported or reexported under License Exception OTS provided that both of the following conditions are met:

(i) The operation software is the minimum necessary to operate

equipment authorized for export or reexport; and

(ii) The operation software is in object code.

(2) *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.

#### § 740.18 Sales technology (STS).

A License Exception designated *License Exception STS* is established to authorize exports and reexports of sales technology.

(a) *Scope.* "Sales technology" is defined as data supporting a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any item.

(b) *Provisions and destinations.* (1) *Provisions.* Sales technology may be exported or reexported under License Exception STS provided that:

(i) The technology is a type customarily transmitted with a prospective or actual quotation, bid, or offer in accordance with established business practice; and

(ii) 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.

(2) *Destinations.* Sales technology may be exported or reexported to all destinations.

**Note:** Neither this authorization 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 Export Administration.

#### § 740.19 Software updates (SUD).

A License Exception designated *License Exception SUD* is established to 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 under a License Exception or license (original software). Such software updates may be exported only to the same consignee for whom the original software was authorized by a license or License Exception, 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.

#### § 740.20 General Software Note (GSN).

A License Exception designated *License Exception GSN* is established to authorize exports and reexports of software subject to the General Software Note (see Supplement No. 2 to part 774 of this subchapter).

(a) *Scope.* License Exception GSN is available for "mass market" software as described in the General Software Note and referenced in this section.

(b) *Provisions and destinations.*—(1) *Destinations.* GSN is available to all destinations except Cuba, Iran, Libya, North Korea, and Syria.

(2) *Provisions.* GSN is available for software that is generally available to the public by being:

- (i) Sold from stock at retail selling points, without restriction, by means of:
  - (A) Over the counter transactions;
  - (B) Mail order transactions; or
  - (C) Telephone call transactions; and
- (ii) Designed for installation by the user without further substantial support by the supplier.

#### § 740.21 Technology and software under restriction (TSR).

(a) A License Exception designated *License Exception TSR* is hereby established to permit exports and reexports of technology and software. Individual technology and software entries on the CCL indicate eligibility for this License Exception by the symbol TSR. A written assurance is required from the consignee before exporting under this License Exception, and this License Exception authorizes exports only to the destinations in Country Group B. (See Supplement No. 1 to part 740.)

(1) *Required assurance for export of technology.* No export or reexport of technology is authorized under this License Exception until the exporter has received from the importer a written assurance that, without a BXA license or License Exception, the importer will neither:

- (i) Reexport the technology to or release the technology to a national of a country in Country Groups D:1 or E:2;
- (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, § 732.2(b)(3) of this subchapter); nor
- (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 technology, 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.* No export or reexport of software is authorized under this License Exception until the exporter has received from the importer a written assurance that, without a BXA license or License Exception, the importer will neither:

(i) Reexport the software to or release 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 and 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 at § 732.2(b)(3) of this subchapter).

(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, or the assurance may be incorporated into a licensing agreement that specifically includes the appropriate 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, this License Exception 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) Reserved.

#### § 740.22 Additional permissive reexports (APR).

(a) *Scope.* This License Exception, designated *License Exception APR*, allows the following reexports.

(b) *Permissive reexports.* (1) 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 this subchapter for recordkeeping requirements.)

(2) 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.

(3) 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.

(4) Reexports from a foreign destination to Canada of any item if the item could be exported to Canada without a license.

(5) Reexports between Switzerland and Liechtenstein.

(6) 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. (See § 732.4 of this subchapter.)

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## Supplement No. 1 to Part 740

## Country Group A

Country	[A: 1]	[A: 2]	[A: 3]	[A: 4]
Argentina		X	X	X
Austria		X	X	X
Bulgaria				X
Czech Republic			X	X
Finland		X	X	X
Germany	X	X	X	X
Hong Kong				
Iceland		X	X	
Italy	X	X	X	X
Korea, South				
Netherlands	X	X	X	X
Norway	X	X	X	X
Portugal	X	X	X	X
Russia				X
Spain	X	X	X	X
Switzerland		X	X	X
United Kingdom	X	X	X	X
United States		X		X

\* Cooperating Countries

**Country Group B***Countries*

Afghanistan  
 Algeria  
 Andorra  
 Angola  
 Antigua  
 Argentina  
 Australia  
 Austria  
 Bahamas  
 Bahrain  
 Bangladesh  
 Barbados  
 Barbuda  
 Belgium  
 Belize  
 Benin  
 Bermuda  
 Bhutan  
 Bolivia  
 Bosnia & Herzegovina  
 Botswana  
 Brazil  
 Brunei  
 Burkina Faso  
 Burma  
 Burundi  
 Cameroon  
 Canada  
 Cape Verde  
 Central African Republic  
 Chad  
 Chile  
 Colombia  
 Comoros  
 Congo  
 Costa Rica  
 Cote d'Ivoire  
 Croatia  
 Cyprus  
 Czech Republic  
 Denmark  
 Djibouti  
 Dominica  
 Dominican Republic  
 Ecuador  
 Egypt  
 El Salvador  
 Equatorial Guinea  
 Eritea  
 Ethiopia  
 Fiji  
 Finland  
 France  
 Gabon  
 Gambia, The  
 Germany  
 Ghana

Greece  
 Greenland  
 Grenada  
 Grenadines, The  
 Guatemala  
 Guinea  
 Guinea-Bissau  
 Guyana  
 Haiti  
 Honduras  
 Hong Kong  
 Hungary  
 Iceland  
 India  
 Indonesia  
 Ireland  
 Israel  
 Italy  
 Jamaica  
 Japan  
 Jordan  
 Kenya  
 Kiribati  
 Korea, South  
 Kuwait  
 Lebanon  
 Lesotho  
 Liberia  
 Liechtenstein  
 Luxembourg  
 Macedonia, the Former Yugoslav  
 Republic of  
 Madagascar  
 Malawi  
 Malaysia  
 Maldives  
 Mali  
 Malta  
 Marshall Islands  
 Maruitania  
 Mauritius  
 Mexico  
 Micronesia, Federated States of  
 Monaco  
 Morocco  
 Mozambique  
 Namibia  
 Nauru  
 Nepal  
 Netherlands  
 Nevis  
 New Zealand  
 Nicaragua  
 Niger  
 Nigeria  
 Norway  
 Oman  
 Pakistan  
 Palau  
 Panama

Papua New Guinea  
 Paraguay  
 Peru  
 Philippines  
 Poland  
 Portugal  
 Principe  
 Puerto Rico  
 Qatar  
 Saint Kitts  
 Saint Lucia  
 Saint Vincent  
 San Marino  
 Sao Tome  
 Saudi Arabia  
 Senegal  
 Seychelles  
 Sierra Leone  
 Singapore  
 Slovakia  
 Slovenia  
 Solomon Islands  
 Somalia  
 South Africa  
 Spain  
 Sri Lanka  
 Surinam  
 Swaziland  
 Sweden  
 Switzerland  
 Taiwan  
 Tanzania  
 Thailand  
 Tobago  
 Togo  
 Tonga  
 Trinidad  
 Tunisia  
 Turkey  
 Tuvalu  
 Uganda  
 United Arab Emirates  
 United Kingdom  
 United States  
 Uruguay  
 Vanuatu  
 Vatican City  
 Venezuela  
 Western Sahara  
 Western Samoa  
 Yemen  
 Zaire  
 Zambia  
 Zimbabwe

**Country Group C**

[Reserved]

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## Supplement No. 1 to Part 740

## Country Group D

Country	[D: 1]	[D: 2]	[D: 3]	[D: 4]
Afghanistan			X	
Algeria		X		
Angola		X		
Azerbaijan	X		X	
Belarus	X		X	
Bulgaria	X		X	
Cambodia	X			
Comoros		X		
Djibouti		X		
Egypt			X	X
India		X	X	X'
Iraq		X	X	X
Jordan			X	X
Korea, North		X	X	X'
Kyrgyzstan	X		X	
Latvia	X			
Libya		X	X	X
Micronesia, Federated States of		X		
Mongolia	X			
Pakistan		X	X	X'
Romania	X		X	
Saudi Arabia			X	X
Syria			X	X
Tajikistan	X		X	
Ukraine	X		X	
Uzbekistan	X		X	
Vietnam	X		X	

\* Certain Missile Technology projects have been identified in the following countries:

Brazil	Sonda III & IV, SS-300 & SS-1000, MB/EE Series Missile, VLS Space Launch Vehicle
China	M Series Missiles, CSS-2
India	Agni, Prithvi, SLV-3 Satellite Launch Vehicle, Augmented Satellite Launch Vehicle (ASLV), Polar Satellite Launch Vehicle (PSLV), Geostationary Satellite Launch Vehicle (GSLV), Surface-to-Surface Missile Project, Scud Development Project
Iran	No Dong I, Scud Development Project
Korea, North	Haft Series Missiles
Pakistan	Surface-to-Surface Missile Project, Space Launch Vehicle
South Africa	

Supplement No. 1 to Part 740

Country Group E

[E:1]

[E:2]

Country	[E:1]	[E:2]
Angola	X	
Croatia	X	
Iraq	X	
Libya	X	X
Montenegro	X	
Serbia	X	

**PART 742—CONTROL POLICY—CCL  
BASED CONTROLS**

## Sec.

- 742.1 Introduction.
- 742.2 Proliferation of chemical and biological weapons.
- 742.3 Nuclear non-proliferation.
- 742.4 National security.
- 742.5 Missile technology.
- 742.6 Regional stability.
- 742.7 Crime control.
- 742.8 Anti-Terrorism: Iran.
- 742.9 Anti-Terrorism: Syria.
- 742.10 Anti-Terrorism: Sudan.
- 742.11 [Reserved].
- 742.12 Supercomputers.
- 742.13 Communications intercepting devices.

**Supplement No. 1 to Part 742—  
Nonproliferation of Chemical and Biological  
Weapons****Supplement No. 2 to Part 742—Countries  
That Are Party to the Nuclear Non-  
Proliferation Treaty and/or the Treaty for the  
Prohibition of Nuclear Weapons in Latin  
America (Treaty of Tlatelolco)****Supplement No. 3 to Part 742—Iran, Sudan  
and Syria Contract Sanctity Dates and  
Related Policies****Supplement No. 4 to Part 742—  
Supercomputers; Security Conditions and  
Safeguard Plans, Definitions, and Related  
Information**

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

**§ 742.1 Introduction.**

(a) Scope. This Part sets forth the controls and the licensing policies for all the items that are listed on the Commerce Control List (CCL), except the following:

(1) *Exports and reexports involving Cuba, Libya, North Korea, Iraq, and the Federal Republic of Yugoslavia (Serbia and Montenegro).* This Part does not cover controls and licensing policies that apply to exports and reexports to embargoed destinations. If you are exporting or reexporting to Cuba, Libya, North Korea, Iraq, or the Federal Republic of Yugoslavia (Serbia and Montenegro) you should first review part 746 of this subchapter, Embargoes and Other Special Controls. The Country Chart (Supplement No. 1 to part 738 of this subchapter) will direct you to part 746 of this subchapter for these countries.

(2) *Controls implementing U.N. sanctions.* The United Nations imposes sanctions, short of complete embargoes, against certain countries and destinations which may result in controls that supplement those

otherwise maintained under the EAR for that particular country. When the Country Chart (Supplement No. 1 to part 738 of this subchapter) has a check in UN Column No. 1, you should review part 746 of this subchapter, Embargoes and Other Special Controls, for any supplemental controls that may apply to exports and reexports involving these countries.

(3) *Commodities that are covered under part 754 of this subchapter, Short Supply Controls.* This Part does not address controls and licensing policies for commodities controlled for short supply reasons. These commodities contain the symbol "SS" in the "Reason for Control" part of the "License Requirements" section of the applicable ECCNs on the CCL. These ECCNs are the following: 0A80 (Horses for export by sea); 1C80 (Inorganic chemicals); 1C81 (Crude petroleum, including reconstituted crude petroleum, tar sands, and crude shale oil); 1C82 (Other petroleum products); 1C83 (Natural gas liquids and other natural gas derivatives); 1C84 (Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy); and 1C88 (Western red cedar (*Thuja plicata*) logs and timber, and rough, dressed and worked lumber containing wane).

(b) This part lists all the reasons for control reflected in the Country Chart in Supplement No. 1 to part 738 of this subchapter except UN sanctions and Short Supply. In addition, it includes licensing requirements and licensing policy for communications intercepting devices and supercomputers, which are not reflected on the Chart. This part is organized so that it lists each reason for control in the order (reading left to right) in which the control appears on the Chart. In listing the reasons for control and licensing policies, this part includes a description of any multilateral regime under which specific controls are maintained and any applicable contract sanctity provisions that may apply to specific controls.

(c) *List of controls described in this part.* Specifically, this part describes controls and licensing policies that further the U.S. policies relating to the following:

- (1) Chemical and biological weapons (CB). (§ 742.2 of this part)
- (2) Nuclear non-proliferation (NP). (§ 742.3 of this part)
- (3) National security (NS). (§ 742.4 of this part)
- (4) Missile technology (MT). (§ 742.5 of this part)
- (5) Regional stability (RS). (§ 742.6 of this part)

(6) Crime control (CC). (§ 742.7 of this part)

(7) Anti-terrorism (AT): Iran. (§ 742.8 of this part)

(8) Anti-terrorism (AT): Syria. (§ 742.9 of this part)

(9) Supercomputers (SC). (§ 742.12 of this part)

(10) Communications intercepting devices (CI). (§ 742.13 of this part)

(d) *Overlapping license policies.*

Many items are specified on the CCL as being subject to more than one type of control (e.g., national security, missile technology, nuclear non-proliferation, regional stability). 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 non-proliferation (see § 742.3(b)(2) of this part), or chemical and biological weapons (see § 742.3(b)(3) of this part) and all national security items may be reviewed for anti-terrorism reasons (see §§ 742.8(b) and 742.9(b) of this part). 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.

**§ 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:

(1) If CB Column 1 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required to all destinations except Canada for the following:

(i) Viruses, viroids, bacteria, fungi, and protozoa identified in ECCN 1C61 (Microorganisms and toxins).

(ii) Technology for the production and or disposal of microbiological commodities described in paragraph (a)(1)(i) of this section (1E61).

(2) If CB Column 2 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) 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 this subchapter) (Australia Group members) for the following:

(i) Chemicals identified in ECCN 1C60 (precursor and intermediate chemicals used in the production of chemical warfare agents).

(A) This licensing requirement includes chemical mixtures containing any chemicals identified in ECCN 1C60,



except as specified in Note 2 to that ECCN.

(B) This licensing requirement does not include chemical compounds created with any chemicals identified in ECCN 1C60, unless those compounds are also identified in ECCN 1C60.

(ii) Software (ECCN 1D60) for process control that is specifically configured to control or initiate production of the chemical precursors controlled by ECCN 1C60.

(iii) Technology (ECCN 1E60) for the production and/or disposal of chemical precursors described in ECCN 1C60, and technology involving the following for facilities designed or intended to produce chemicals described in ECCN 1C60:

(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;

(E) Consultation on specific problems involving such facilities.

(3) If CB Column 3 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required to Country Group D:3 (see Supplement No. 1 to part 740 of this subchapter) for the following:

(i) Equipment and materials identified in ECCN 1B70 on the CCL, which can be used in the production of chemical weapons precursors or chemical warfare agents, and equipment and materials identified in ECCN 1B71, which can be used in the production of biological agents.

(ii) Technology for production of the commodities covered in paragraph (a)(3)(i) of this section (ECCN 1E70).

(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 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 individual license 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, stockpiling, or use of chemical or biological weapons;

(iii) The non-proliferation credentials of the importing country;

(iv) The types of assurances or guarantees against 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.

(3) BXA will review license applications in accordance with the licensing policy described in paragraph (b)(2) of this section for items not described in paragraph (a) of this section that:

(i) Require a license for reasons other than "short supply";

(ii) Are destined to any country except countries in Country Group A:3 (see Supplement No. 1 to part 740 of this subchapter) (Australia Group members); and

(iii) 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 pre-existing 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 this subchapter). The list of items controlled in paragraph (a) of this section are consistent with lists agreed to in the Australia Group.

#### § 742.3 Nuclear non-proliferation.

(a) *License requirements.* Section 309(c) of the Nuclear Non-Proliferation Act of 1978 requires BXA 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 symbols "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 this subchapter) is indicated in the appropriate ECCN, a license is required to all destinations, except Canada.

(2) If NP Column 2 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required to Country Group D:2 (see Supplement No. 1 to part 740 of this subchapter).

(3) Other nuclear-related license requirements are described in §§ 744.3 and 744.4 of this subchapter.

(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 this subchapter; and

(viii) The non-proliferation 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) (see Supplement No. 2 to part 742), or to a similar international legally-binding nuclear non-proliferation 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 non-proliferation issues);

(F) Information on the importing country's nuclear intentions and activities.

(2) In addition, BXA 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.

(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 this subchapter) 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 this subchapter) are not included in the Annex and are controlled only by the United States.

#### § 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, if NS Column 1 of the Country Chart (see Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, 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. 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 this subchapter) that would prove detrimental to the national security of the United States.

(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 this subchapter) 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 as described for certain countries in paragraphs (b)(5) through (8) 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 this subchapter) is to approve applications when BXA 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, Bulgaria, Latvia, Kazakhstan, Lithuania, Mongolia, and Russia are accorded enhanced favorable consideration licensing treatment.

(6) Romania has been determined to present a lesser strategic threat, and has adopted safeguard measures to protect

against the diversion of national security controlled items. In recognition of these facts, the Commerce Control List includes several Advisory Notes that indicate likelihood of approval or favorable consideration for export to satisfactory end-users in Romania. Items not eligible for favorable consideration will be reviewed on a case-by-case basis.

(7) The general policy for Cambodia and Laos is to approve license applications when BXA 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.

(8) For the People's Republic of China, the general licensing policy is to approve applications, except that for those items that would make a direct and significant contribution to nuclear weapons and their delivery systems, 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:** 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) *Interim regime.* The licensing requirements described in paragraph (a) of this section reflect multilaterally agreed lists that were in effect when the Coordinating Committee (COCOM) ceased operating in March 1994. COCOM members agreed to maintain controls based on this list on an interim basis, pending the development of new lists and policies to be applied by the COCOM successor regime.

#### § 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 this subchapter).

(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 at least 300 kilometers (km).

(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 9A21 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 non-proliferation 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 pre-existing contract.

(3) *Controls on other items.* BXA 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 1B28.a 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 paragraphs (b) or (c) of this section 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 pre-existing 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 this subchapter). 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.

#### § 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 this Subchapter), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 6A02.a.1, a.2, a.3, or c; 6A03.b.3 and b.4; 6D21 (only software for development of items in 6A02.a.1, a.2, a.3 or c); 6E01 (only technology for development of items in 6A02.a.1, a.2, a.3, and c, or 6A03.b.3 and b.4); 6E02 (only technology for production of items in 6A02.a.1, a.2, a.3, or c, or 6A03.b.3 or b.4); 7D01 (only software for development or production of items in 7A01, 7A02, or 7A03); 7E01 (only technology for the development of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E02 (only technology for the production of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); and, 7E21 (only technology for the development or production of inertial navigation systems, inertial equipment, and specially designed components therefor 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 this subchapter), a license is required to any destination except countries in Country Group A:1 (see Supplement No. 1 to part 740 of this subchapter), Iceland and New Zealand for military vehicles and certain commodities (specially designed) used to manufacture military

equipment, described on the CCL in ECCNs 0A18.c, 1B18.a, 2B18, and 9A18.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.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(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.

#### § 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 No. 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 this subchapter), i.e., all countries except those listed in Country Group A:1 (see Supplement No. 1 to part 740 of this subchapter) and Iceland and New Zealand. Items affected by this requirement are identified on the CCL under the following ECCNs: 0A82; 0A84 (shotguns with barrel length over 18 but less than 24 inches, regardless of end-user); 0E84; 1A84; 3A80; 3A81; 3D80; 3E80; 4A03 (fingerprint computers only); 4A80; 4D01 (for fingerprint computers only); 4D80; 4E01 (for fingerprint computers only); 4E80; 6A02 (police-model infrared viewers only); 6E01 (for police-model infrared viewers only); 6E02 (for police-model infrared viewers only); and 9A80.

(2) Shotguns with a barrel length of 24 inches or more identified in ECCN 0A84 on the CCL under CC Column No. 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 to part 738 of this subchapter), which are the same as those countries listed in Country Group D:1 (see Supplement No. 1 to part 740 of this subchapter).

(3) Shotguns with barrel length over 24 inches, identified in ECCN 0A84 on the CCL under CC Column No. 3 in the Country Chart column of the "License Requirements" if for sale or resale to police or law enforcement entities to countries listed in CC Column 2 (Supplement No. 1 to part 738 of this subchapter) except countries in Country Group A:1 (see Supplement No. 1 to part 740 of this subchapter), and Iceland and New Zealand.

(b) *Licensing policy.* The licensing policies are as follows:

(1) Applications for licenses to export or reexport "specially designed implements of torture" will be denied.

(2) Applications for other items controlled under paragraph (a) of this section will generally be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

(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.

#### § 742.8 Anti-terrorism: Iran.

(a) *License requirements.* In support of U.S. foreign policy on terrorism designated countries, BXA maintains two types of anti-terrorism controls on the export and reexport of items described in Supplement No. 3 to part 742. Of these controls, items described in paragraph (a)(i) through (a)(v) of Supplement No. 3 to part 742 are controlled under section 6(j) of the Export Administration Act, as amended (EAA). Items listed in paragraph (a)(vi) through (a)(xxxviii) of Supplement No. 1 to part 742 are controlled under section 6(a) of the EAA.

(1) If AT Column 1 or AT Column 2 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required for export to Iran for anti-terrorism purposes.

(2) If AT Column 1 or AT Column 2 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required for reexport to Iran of such items, *except* for ECCNs 2A94, 3A93, 5A92, 5A95, 6A90, 6A94, 7A94, 8A92, 8A94, 9A90, 9A92, and 9A94. In addition, items in these ECCNs are not counted as controlled US content for the purposes of determining license requirements for foreign made products containing US parts and components. However, the export of these items from the U.S. to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Iran is prohibited without a validated license.

(b) *Licensing policy.* The Iran-Iraq Arms Non-Proliferation Act requires BXA to deny license applications for Iran. License applications for which contract sanctity is established are considered under policies in effect prior to the enactment of that Act (for Iran the effective date is October 23, 1992). Otherwise, licenses for Iran are subject to a policy of denial. 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 Iran, including its military logistics capability, or could enhance Iran's ability to support acts of international terrorism, the appropriate committees of the Congress will be notified thirty days before issuance of a license to export or reexport such items.

(c) *Contract sanctity.* Contract sanctity dates and licensing policies in effect prior to October 23, 1992 are listed in Supplement No. 3 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.

#### § 742.9 Anti-terrorism: Syria.

(a) *License requirements.* In support of U.S. foreign policy on terrorism designated countries, BXA maintains two types of anti-terrorism controls on the export and reexport of items

described in Supplement No. 3 to part 742. Of these controls, items described in paragraph (a)(i) through (a)(v) of Supplement No. 3 to part 742 are controlled under section 6(j) of the Export Administration Act, as amended (EAA). Items listed in paragraph (a)(vi) through (a)(xxxviii) of Supplement No. 1 to part 742 are controlled under section 6(a) of the EAA. If AT Column 1 of the Country Chart (Supplement No. 1 to part 738 of this subchapter) is indicated in the appropriate ECCN, a license is required for export and reexport to Syria for anti-terrorism purposes.

(b) *Licensing policy.* (1) Applications for export and reexport to Syria of the following items will generally be denied:

(i) Items that are controlled for chemical and biological weapons proliferation reasons to any destination (i.e., 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 containing NS Column 1 in the Country Chart column of the "License Requirements" section in an ECCN on the CCL and ending with the number "18".

(iii) Items that are controlled for missile proliferation reasons to any destination (i.e., 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 controlled to any destination for national security reasons and containing an NS in the Reason for Control column on the CCL; or controlled to Syria and containing an AT 1 in the Country Chart column of the "License Requirements" section of an ECCN on the CCL.

**Note:** 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 Syria will be included as controlled US content for purposes of such license requirements.

(v) Cryptographic, cryptoanalytic, and cryptologic items controlled to any destination for national security reasons and containing an NS Column 1 in the Country Chart column of the "License Requirements" section of an ECCN on the CCL; or controlled to Syria and containing an AT Column 1 in the Country Table Chart column of the "License Requirements" section of an ECCN on the CCL.

(2) Items that are controlled for nuclear non-proliferation reasons to any destination and have an NP Column 1 or NP Column 2 in the Country Chart column of the "License Requirements" section of an ECCN on the CCL will be considered on a case-by-case basis.

(3) Applications for export and reexport to Syria of all other items described in paragraph (a) of this section, and not controlled by paragraphs (b)(1) or (b)(2) 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 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 equipment.

**Note:** 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.

(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 Syria, including its military logistics capability, or could enhance Syria's ability to support acts of international terrorism, the appropriate committees of the Congress will be notified thirty days before issuance of a validated license to export or reexport such items.

(c) *Contract sanctity.* Contract sanctity dates and related licensing policies for Syria are set forth in Supplement No. 3 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.

#### § 742.10 Anti-terrorism: Sudan.

(a) *License requirements.* In support of U.S. foreign policy on terrorism designated countries, BXA maintains anti-terrorism controls on the export and reexport of items described in paragraph (a)(1) through (a)(v) of Supplement No. 3 to part 742. These items are controlled under section 6(j) of the Export Administration Act, as amended (EAA).

(b) *Licensing policy.* (1) Applications for export and reexport to Sudan of the following items will generally be denied:

(i) Items that are controlled for chemical and biological weapons proliferation reasons to any destination (i.e., 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 (i.e., that contain NS Column 1 in the Country Chart column of the "License Requirements" section of an ECCN on the CCL and ending with the number "18").

(iii) Items that are controlled for missile proliferation reasons to any destination (i.e., that contain a MT Column 1 in the Country Chart column of the "License Requirements" section of an ECCN on the CCL).

(2) Items that are controlled for nuclear non-proliferation reasons to any destination (i.e., that contain a NP Column 1 or NP Column 2 in the Country Chart column of the "License Requirements" section of an ECCN on the CCL) will be considered on a case-by-case basis.

(3) Applications for the export and reexport of national security controlled items to any destination (i.e., that contain NS Column 1 in the Country Chart column of the "License Requirements" section of an ECCN on the CCL) 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.

(4) Notwithstanding the provisions of paragraphs (b)(1), (b)(2), and (b)(3) 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 contract sanctity date of December 28, 1993).

(ii) The U.S. content of foreign-produced commodities is 20% or less by value; or

(iii) The commodities are medical equipment.

**Note:** 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.

(c) *Contract sanctity.* Contract sanctity dates and related licensing information for Sudan are set forth in Supplement No. 3 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.

#### § 742.11 [Reserved]

#### § 742.12 Supercomputers.

(a) *License requirements.* (1) This section contains special provisions for exports, reexports, and certain intra-country transfers of supercomputers. A supercomputer is any computer with a Composite Theoretical Performance (CTP) equal to or exceeding 1,500 MTOPS (million theoretical operations per second). For the calculation of CTP, see the Technical Note that follows the Advisory Notes for Category 4 in the Commerce Control List.

(2) In recognition of the strategic significance of supercomputers, in particular their potential to make substantial contributions to activities of national security and weapons proliferation concern, a license is required for the export or reexport of supercomputers to all destinations, except Japan and Canada and for intra-country transfers within such destinations, except that no license is required for export from Japan. These license requirements are not reflected on the Country Chart (Supplement No. 1 to part 738 of this subchapter).

(b) *Licensing policy.* Supercomputer licensing policies described in this section vary according to the country of destination. Generally licenses are subject to security conditions or safeguard plans. Security conditions, safeguard plans, and related information are provided in Supplement No. 4 to part 742.

(1) License applications for exports, reexports, or in-country transfers of supercomputers to Australia, Belgium, Denmark, France, Germany, Italy, the Netherlands, Norway, Spain, and the United Kingdom generally will be approved subject to Minimum Security Conditions (see Supplement No. 4 to part 742), unless otherwise stated on the license.

(2) License applications for exports, reexports, or in-country transfers of supercomputers to Austria, Finland, Iceland, Mexico, Singapore, South Korea, Sweden, Switzerland, and Venezuela will be considered on a case-by-case basis and, if approved, will be subject to Level 1 Safeguards Plans (see Supplement No. 4 to part 742), unless otherwise stated on the license. The following factors will be considered in reviewing applications for these countries:

(i) Strategic trade control cooperation between the importing government and the United States;

(ii) The ultimate consignee's participation in, or support of, any activities that involve national security concerns (e.g., cryptography, anti-submarine, and strategic defense concerns); or

(iii) The ultimate consignee's participation in, or support of, the following prohibited activities:

(A) The design, development, production, or use of:

(1) Nuclear explosive devices, including any components or subsystems of such devices;

(2) Complete rocket systems or unmanned air vehicle systems capable of delivering nuclear weapons, including any components or subsystems of such devices;

(B) The design, development, production, use, or maintenance of nuclear fuel cycle facilities (including facilities related to nuclear propulsion) or heavy water production plants in countries in Country Group D:2 (see Supplement No. 1 to part 740 of this subchapter);

(C) Any projects or facilities for the design, development, production, stockpiling, or use of chemical or biological weapons;

(D) A violation of the export laws and regulations of a supplier country or involvement in clandestine procurement activities or other activities where there is a significant risk of diversion from the authorized end-uses or a likelihood that supercomputer security safeguards would not be effectively implemented.

(3) License applications for export, reexport, or in-country transfers of supercomputers to the following

countries will be considered on a case-by-case basis and, if approved, will be subject to Level 2 Safeguards Plans (see Supplement No. 4 to part 742), unless otherwise stated on the license: Bahrain, Czech Republic, Egypt, Jordan, Lebanon, Poland, Qatar, Slovakia, Taiwan, and Yemen and countries in Country Group D:2 (see Supplement No. 1 to part 740 of this subchapter), excluding Iran. The factors that will be considered in reviewing applications to these countries are the same as those set forth in paragraph (b)(2) of this section.

**Note:** The number and nature of the safeguards required to approve an application will depend on whether the end-use is single-purpose or multiple-purpose (fewer safeguards will generally be required to approve an application when the end-use is single-purpose).

(4) License applications for exports, reexports, or in-country transfers of supercomputers to the following countries will generally be denied: countries in Country Group D:1 (see Supplement No. 1 to part 740 of this subchapter), Cuba, Iran, Iraq, the Federal Republic of Yugoslavia (Serbia and Montenegro), Libya, North Korea, Sudan, and Syria. Should an application be considered for approval to any such destinations, an appropriate safeguards plan will be developed including appropriate security conditions described under the Level 2 Safeguards Plans (see Supplement No. 4 to part 742).

(5) License applications for exports, reexports, or in-country transfers of supercomputers to other countries will be reviewed on a case-by-case basis and will be evaluated to determine which safeguards requirements would be most appropriate. In addition to the factors set forth in paragraph (b)(2) of this section, the following criteria will be considered in the review of these applications:

(i) 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; and,

(ii) The extent to which the importing country has cooperated with the United States in stemming nuclear, chemical or biological weapons, or missile proliferation activities.

**Note:** The number and nature of the safeguards required to approve an application will depend on whether the end-use is single-purpose or multiple-purpose (fewer safeguards will generally be required to approve an application when the end-use is single-purpose).

(6) Exports, reexports, or in-country transfers of supercomputers involving

countries listed in paragraphs (b)(1), (b)(2), and (b)(3) of this section that are solely dedicated to the following non-scientific and non-technical commercial and business uses may be eligible for a less restrictive set of security safeguards than those normally applicable to such countries:

(i) Financial services (e.g., banking and securities and commodity exchanges);

(ii) Insurance;

(iii) Reservation systems;

(iv) Point-of-sales systems;

(v) Mailing list maintenance for marketing purposes;

(vi) Inventory control for retail/wholesale distribution.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications involving exports and reexports of supercomputers.

(d) *Supercomputer regime.* The United States and Japan participate in a supercomputer regime. Other countries are expected to join. The regime provides uniform and effective safeguards to protect supercomputers from unauthorized end-users and unauthorized end-uses, including those associated with proliferation. Under the regime, supercomputer controls apply on a world-wide basis.

#### § 742.13 Communications intercepting devices.

(a) *License requirement.* (1) As set forth in ECCN 5A80, 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 (Pub.L. 90-361). This license requirement is not reflected on the Country Chart (Supplement No. 1 to part 738 of this subchapter).

(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.

#### **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 Syria of dimethyl methylphosphonate, methyl phosphonyldifluoride, 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-diisopropylaminoethane-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 ECCN 1C61 is February 22, 1989.

(4) The contract sanctity date for exports to Iran of dimethyl methylphosphonate, methylphosphonyl difluoride, phosphorous 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 Syria, paragraph (1) of this Supplement applies. For exports of triethanolamine to Iran, Libya, or Syria, paragraph (6) of this Supplement applies.

(8) The contract sanctity date for exports to all destinations (except Iran, Libya, or Syria) of chemicals controlled by ECCN 1C60 is March 7, 1991, except for applications to export the following chemicals: 2-chloroethanol, dimethyl methylphosphonate, dimethyl phosphite (dimethyl hydrogen phosphite), methylphosphonyl dichloride, methylphosphonyl difluoride, phosphorous 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 ECCN 1B70;

(ii) Equipment and materials for producing biological agents described in ECCN 1B71; and

(iii) Technology for the production of 1B70 and 1B71 described in 1E70.

(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 1C60 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 viruses, viroids, bacteria, fungi, and protozoa controlled by ECCN 1C61 is March 7, 1991.

#### **Supplement No. 2 to Part 742— Countries That Are Party to the Nuclear Non-Proliferation Treaty and/or the Treaty for the Prohibition of Nuclear Weapon in Latin America (Treaty of Tlatelolco)**

[This Supplement is redesignated from Supplement No. 2 to Part 778 elsewhere in

this proposed rule. The text for this Supplement will be set out in the final rule.]

#### **Supplement No. 3 to Part 742—Iran, Sudan and Syria Contract Sanctity Dates and Related Policies**

(a)(1) The current licensing policies for Iran, Sudan, and Syria are set forth in §§ 742.8, 742.9, and 742.10 of this part. The following list provides guidance on licensing policies and related contract sanctity dates that may be available for transactions involving pre-existing contracts involving Iran, Sudan, and Syria.

(i) *All items subject to national security controls.* (A) Iran. Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of items valued at \$7 million or more: January 23, 1984.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other national security controlled items: September 28, 1984.

(3) Contract sanctity date for exports and reexports to non-military end-users or end-uses: October 23, 1992, unless otherwise specified in this paragraph (a)(1)(i) of this Supplement.

(B) *Sudan.* Applications for export and reexport to Sudan of these items will generally be denied if the export or reexport is destined to a military end-user or military end-use. Applications for exports and reexports to non-military end-users or end-uses will be considered on a case-by-case basis. Contract sanctity date: December 28, 1993.

(C) *Syria.* Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or military end-use. Applications for exports and reexport to non-military end-users or end-uses will be considered on a case-by-case basis, unless otherwise specified in this paragraph (a)(1)(i) of this Supplement.

(1) No contract sanctity date for exports and reexports to military end-users or end-uses of items valued at \$7 million or more.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other items: December 16, 1986.

(ii) *All items subject to chemical and biological weapons proliferation controls.* Applications for export and reexport to Iran, Sudan, or Syria of these items will generally be denied to all end-users. Contract sanctity date for Sudan: December 28, 1993 (See Supplement No. 1 to Part 742 for contract sanctity dates for Iran and Syria).

(iii) *All items subject to missile proliferation controls (MTCR).* Applications for export and reexport to Iran, Sudan, or Syria of these items will generally be denied to all end-users. Contract sanctity date for Sudan: December 28, 1993. Contract sanctity provisions for Iran and Syria are not available.

(iv) *All items subject to nuclear weapons proliferation controls (NRL).* (A) Iran. Applications for export and reexport to Iran of these items will generally be denied to all end-users. Contract sanctity date: October 23,

1992, unless otherwise specified in this paragraph (a)(1) of this Supplement.

(B) *Sudan*. Applications for export and reexport to Sudan of these items will generally be denied if destined to a military end-user or end-use. Applications for export and reexport to non-military end-users or end-uses will be considered on a case-by-case basis. Contract sanctity date: December 28, 1993.

(C) *Syria*. Applications for export and reexport to Syria of these items will generally be denied if destined to a military end-user or end-use. Applications for export and reexport to non-military end-users or end-uses will be considered on a case-by-case basis. Contract sanctity date: October 23, 1992.

(v) *All military-related items, i.e., applications for export and reexport of items controlled by CCL entries ending with the number "18"*. (A) *Iran*. Applications for export and reexport to Iran of these items will generally be denied to all end-users. Contract sanctity date: see paragraph (a)(1)(i)(A) of this Supplement.

(B) *Sudan*. Applications for export and reexport to Sudan of these items will generally be denied to all end-users. Contract sanctity date: December 28, 1993.

(C) *Syria*. Applications for export and reexport to Syria of these items will generally be denied to all end-users. Contract sanctity date: see paragraph (a)(1)(i)(B) of this Supplement.

(vi) *All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components*. (A) *Iran*. Applications for export (and reexport, if applicable) to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity date for helicopters exceeding 10,000 lbs. empty weight or fixed wing aircraft valued at \$3 million or more: January 23, 1984.

(2) Contract sanctity date for other helicopters and aircraft and gas turbine engines therefor: September 28, 1984.

(3) Contract sanctity date for helicopter or aircraft parts and components controlled by 9A91, 9A94, or 9A95: October 22, 1987.

(B) *Syria*. Applications for export and reexport to Syria of these items will generally be denied to all end-users.

(1) 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 August 28, 1991, if destined for a regularly scheduled airline with assurance against military use.

(2) Contract sanctity date for helicopters with 10,000 lbs. empty weight or less: April 28, 1986.

(3) Contract sanctity date for other aircraft and gas turbine engines therefor: December 16, 1986.

(4) Contract sanctity date for helicopter or aircraft parts and components controlled by 9A91 or 9A94: August 28, 1991.

(vii) *Heavy duty, on-highway tractors*. (A) *Iran*. Applications for export and reexport to Iran of these items will generally be denied to all end-users. Contract sanctity date: August 28, 1991.

(B) *Syria*. Applications for export or reexport to Syria of these items 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 in Syria will be considered on a case-by-case basis. Contract sanctity date for military end-users or end-uses: August 28, 1991.

(viii) *Off-highway wheel tractors of carriage capacity 9t (10 tons) or more*. (A) *Iran*. Applications for export (and reexport, if applicable) to Iran of these items will generally be denied to all end-users. Contract sanctity date: October 22, 1987.

(B) *Syria*. Applications for export and reexport to Syria of these items 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 in Syria will be considered on a case-by-case basis. Contract sanctity date for military end-users or end-uses: August 28, 1991.

(ix) *Large diesel engines (greater than 400 horsepower) and parts to power tank transporters*. (A) *Iran*. Applications for export (and reexport, if applicable) to Iran of these items will generally be denied to all end-users. Contract sanctity date: October 22, 1987.

(B) Reserved.

(x) *Cryptographic, cryptoanalytic, and cryptologic equipment*. (A) *Iran*. Applications for export (and reexport, if applicable) to Iran of any such equipment will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of cryptographic, cryptoanalytic, and cryptologic equipment that were subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(1) and (a)(1)(i)(A)(2) of this Supplement.

(2) Contract sanctity date for all other cryptographic, cryptoanalytic, and cryptologic equipment: October 22, 1987.

(B) *Syria*. A license is required for all national security-controlled cryptographic, cryptoanalytic, and cryptologic equipment to all end-users. Applications for export and reexport to Syria will generally be denied.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of cryptographic, cryptoanalytic, and cryptologic equipment that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to non-military end-users or end-uses of cryptographic, cryptoanalytic, and cryptologic equipment that were subject to national security controls on August 28, 1991: December 16, 1986.

(3) Contract sanctity date for all other cryptographic, cryptoanalytic, and cryptologic equipment to all end-users: August 28, 1991.

(xi) *Navigation, direction finding, and radar equipment*.

(A) *Iran*. Applications for export (and reexport, if applicable) to Iran of such equipment will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of

navigation, direction finding, and radar equipment that were subject to national security controls on August 28, 1991: see paragraphs (a)(1)(i)(A)(1) and (a)(1)(i)(A)(2) of this Supplement.

(2) Contract sanctity date for all other navigation, direction finding, and radar equipment: October 22, 1987.

(B) *Syria*. Applications for export and reexport to Syria of such equipment 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 in Syria will be considered on a case-by-case basis.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of navigation, direction finding, and radar equipment that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for all other navigation, direction finding, and radar equipment for military end-users or end-uses: August 28, 1991.

(xii) *Electronic test equipment*.

(A) *Iran*. Applications for export (and reexport, if applicable) to Iran of such equipment will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of electronic test equipment that was subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(1) and (a)(1)(i)(A)(2) of this Supplement.

(2) Contract sanctity date for all other electronic test equipment for all end-users: October 22, 1987.

(B) *Syria*. Applications for export and reexport to Syria of such equipment will generally be denied to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(1) Contract sanctity date for exports and reexport to military end-users or end-uses of electronic test equipment that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexport to military end-users or end-uses of all other electronic test equipment: August 28, 1991.

(xiii) *Mobile communications equipment*.

(A) *Iran*. Applications for export (and reexport, if applicable) to Iran of such equipment will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexport of mobile communications equipment that was subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(1) and (a)(1)(i)(A)(2) of this Supplement.

(2) Contract sanctity date for all other mobile communications equipment for all end-users: October 22, 1987.

(B) *Syria*. Applications for export and reexport to Syria of such equipment 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-users in Syria will be considered on a case-by-case basis.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of mobile communications equipment that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other mobile communications equipment: August 28, 1991.

(xiv) *Acoustic underwater detection equipment.*

(A) *Iran.* Applications for export and reexport to Iran of such equipment will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of acoustic underwater detection equipment that was subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(1) and (a)(1)(i)(A)(2) of this Supplement.

(2) Contract sanctity date for all other acoustic underwater detection equipment for all end-users: October 22, 1987.

(B) *Syria.* A license is required for national security-controlled acoustic underwater detection equipment. Applications for export and reexport to Syria 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 in Syria will be considered on a case-by-case basis.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of acoustic underwater detection equipment that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses for all other acoustic underwater detection equipment: August 28, 1991.

(xv) *Portable electric power generators.* (A) *Iran.* Applications for export (and reexport, if applicable) to Iran of such equipment will generally be denied to all end-users. Contract sanctity date: October 22, 1987.

(B) Reserved.

(xvi) *Vessels and boats, including inflatable boats.* (A) *Iran.* Applications for export (and reexport, if applicable) to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of vessels and boats that were subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(1) and (a)(1)(i)(A)(2) of this Supplement.

(2) Contract sanctity date for all other vessels and boats for all end-users: October 22, 1987.

(B) *Syria.* A license is required for only national security-controlled vessels and boats. Applications for export and reexport to Syria of these items 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 in Syria will be considered on a case-by-case basis.

(1) Contract sanctity date for exports and reexport to military end-users or end-uses of vessels and boats that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for all other vessels and boats: August 28, 1991.

(xvii) *Marine and submarine engines (outboard/inboard, regardless of horsepower).* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of marine and submarine engines that were subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(1) and (a)(1)(i)(A)(2) of this Supplement.

(2) Contract sanctity date for outboard engines of 45 HP or more for all end-users: September 28, 1984.

(3) Contract sanctity date for all other marine and submarine engines for all end-users: October 22, 1987.

(B) *Syria.* A license is required for all national security controlled marine and submarine engines. Applications for export and reexport to Syria of these items 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 in Syria will be considered on a case-by-case basis.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of marine and submarine engines that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for all other marine and submarine engines: August 28, 1991.

(xviii) *Underwater photographic equipment.* (A) *Iran.* Applications for export (and reexport, if applicable) to Iran of such equipment will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of underwater photographic equipment that was subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(1) and (a)(1)(i)(A)(2) of this Supplement.

(2) Contract sanctity date for all other underwater photographic equipment for all end-users: October 22, 1987.

(B) *Syria.* Applications for export and reexport to Syria of such equipment 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 in Syria will be considered on a case-by-case basis.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of underwater photographic equipment that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of

all other underwater photographic equipment: August 28, 1991.

(xix) *Submersible systems.* (A) *Iran.* Applications for export and reexport to Iran of such systems will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of submersible systems that were subject to national security controls on October 22, 1987: see paragraphs (a)(1)(i)(A)(1) and (a)(1)(i)(A)(2) of this Supplement.

(2) Contract sanctity date for all other submersible systems for all end-users: October 22, 1987.

(B) *Syria.* Applications for export and reexport to Syria of such systems 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 in Syria will be considered on a case-by-case basis.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of submersible systems that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other submersible systems: August 28, 1991.

(xx) *Scuba gear and related equipment.* Applications for export and reexport to Iran of such equipment will generally be denied to all end-users. No contract sanctity for Iran.

(xxi) *Pressurized aircraft breathing equipment.* (A) *Iran.* Applications for export and reexport to Iran of such equipment will generally be denied to all end-users. Contract sanctity date: October 22, 1987.

(B) Reserved.

(xxii) *Computer numerically controlled machine tools.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of computer numerically controlled machine tools that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other computer numerically controlled machine tools: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of these items will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications to Syria 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 exports and reexports to military end-users or end-uses of computer numerically controlled machine tools that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other computer numerically controlled machine tools: August 28, 1991.

(xxiii) *Vibration test equipment.* (A) *Iran.* Applications for export and reexport to Iran

of such equipment will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexport of vibration test equipment that was subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other vibration test equipment: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria*. Applications for export and reexport to Syria of such equipment will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications to Syria 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 export and reexport to military end-users or end-uses of vibration test equipment that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other vibration test equipment: August 28, 1991.

(xxiv) *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*. (A) *Iran*. Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity dates for exports and reexports of items that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity date for all other items for all end-users: August 28, 1991.

(B) *Syria*. Applications for export and reexport to Syria of these items 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.

(1) Contract sanctity dates for export and reexport to military end-users or end-uses of items that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for export and reexport to military end-users or end-uses of all other items: August 28, 1991.

(xxv) *Telecommunications equipment*. (A) A license is required for the following telecommunications equipment:

(1) 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;

(2) Fiber optic systems or equipment operating at a wavelength greater than 1000 nm;

(3) "Telecommunications transmission systems" or equipment with a "digital transfer rate" at the highest multiplex level exceeding 45 Mb/s.

(B) *Iran*. Applications for export or reexport to Iran of such equipment will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of telecommunications equipment that was subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other telecommunications equipment: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(C) *Syria*. Applications for export and reexport to Syria of such equipment 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.

(1) Contract sanctity date for exports and reexport to military end-users or end-uses of telecommunications equipment that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other telecommunications equipment: August 28, 1991.

(xxvi) *Microprocessors operating at a clock speed over 25 MHz*. (A) *Iran*. Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of microprocessors that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other microprocessors: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria*. Applications for export and reexport to Syria of these items 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.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of microprocessors that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other microprocessors: August 28, 1991.

(xxvii) *Semiconductor manufacturing equipment*. For Iran or Syria, a license is required for all such equipment described in ECCNs 3B01 and 3B91.

(A) *Iran*. Applications for export and reexport to Iran of such equipment will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of semiconductor manufacturing equipment that was subject to national security controls on August 28, 1991 for all users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other semiconductor manufacturing equipment: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria*. Applications for export and reexport to Syria of such equipment 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.

(1) Contract sanctity date for export and reexport to military end-users or end-uses of semiconductor manufacturing equipment that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for export and reexport to military end-users or end-uses of all other semiconductor manufacturing equipment: August 28, 1991.

(xxviii) *Software specially designed for the computer-aided design and manufacture of integrated circuits*. (A) *Iran*. Applications for export and reexport to Iran of such software will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of software that was subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other software: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria*. Applications for export and reexport to Syria of such software 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.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of such software that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other such software: August 28, 1991.

(xxix) *Packet switches*. For Iran or Syria, a license is required for all equipment described in ECCNs 5A03 and 5A94.

(A) *Iran*. Applications for export and reexport to Iran of such equipment will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of packet switches that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other packet switches: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria*. Applications for export and reexport to Syria of such equipment 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.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of packet switches that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses

for all other packet switches: August 28, 1991.

(xxx) *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.*

(A) *Iran.* Applications for export and reexport to Iran of such software will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of such software that was subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other such software: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of such software 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.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of such software that was subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other such software: August 28, 1991.

(xxxii) *Gravity meters having static accuracy of less (better) than 100 microgal, or gravity meters of the quartz element (worden) type.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of gravity meters that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other such gravity meters: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of these items 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.

(1) Contract sanctity date for export and reexport to military end-users or end-uses of gravity meters that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other such gravity meters: August 28, 1991.

(xxxiii) *Magnetometers with a sensitivity lower (better) than 1.0 nt rms per square root Hertz.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of such magnetometers that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other such magnetometers: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of these items 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.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of such magnetometers that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other such magnetometers: August 28, 1991.

(xxxiiii) *Fluorocarbon compounds described in ECCN 1C94 for cooling fluids for radar and supercomputers.* (A) *Iran.* Applications for export and reexport to Iran of such compounds will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of such fluorocarbon compounds that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other such fluorocarbon compounds: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexports to Syria of such compounds 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.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of such fluorocarbon compounds that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other such fluorocarbon compounds: August 28, 1991.

(xxxv) *High strength organic and inorganic fibers (kevlar) described in ECCN 1C50.* (A) *Iran.* Applications for export and reexport to Iran of such fibers will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of high strength organic and inorganic fibers described in 1C50 that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other high strength organic and inorganic fibers described in 1C50: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of such fibers 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.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of high strength organic and inorganic fibers described in 1C50 that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other high strength organic and inorganic fibers described in 1C50: August 28, 1991.

(xxxvi) *Machines described in ECCNs 2B03 and 2B93 for cutting gears up to 1.25 meters in diameter.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of machines that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other machines: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export and reexport to Syria of these items 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.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of machines that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other machines: August 28, 1991.

(xxxvii) *Aircraft skin and spar milling machines.* (A) *Iran.* Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports of aircraft skin and spar milling machines that were subject to national security controls on August 28, 1991 for all end-users: see paragraph (a)(1)(i)(A) of this Supplement.

(2) Contract sanctity dates for all other aircraft skin and spar milling machines: August 28, 1991, for military end-users or end-uses; October 23, 1992, for non-military end-users or end-uses.

(B) *Syria.* Applications for export or reexport to Syria of these items 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.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of aircraft skin and spar milling machines that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other aircraft skin and spar milling machines: August 28, 1991.

(xxxviii) *Manual dimensional inspection machines described in ECCN 2B92.* (A) *Iran.*

Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of manual dimensional inspection machines that were subject to national security controls on August 28, 1991 for all end-users: see paragraphs (a)(1)(i)(A)(1) and (a)(1)(i)(A)(2) of this Supplement.

(2) Contract sanctity date for all other manual dimensional inspection machines: August 28, 1991.

(B) *Syria*. Applications for export and reexport to Syria of these items 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 in Syria will be considered on a case-by-case basis.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of such manual dimensional inspection machines that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for exports and reexports to military end-users or end-uses of all other such manual dimensional inspection machines: August 28, 1991.

(xxxviii) *Robots capable of employing feedback information in real time processing to generate or modify programs.*

(A) *Iran*. Applications for export and reexport to Iran of these items will generally be denied to all end-users.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of such robots that were subject to national security controls on August 28, 1991 for all end-users: see paragraphs (a)(1)(i)(A)(1) and (a)(1)(i)(A)(2) of this Supplement.

(2) Contract sanctity date for all other such robots: August 28, 1991.

(B) *Syria*. Applications for export and reexport to Syria of these items 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 in Syria will be considered on a case-by-case basis.

(1) Contract sanctity date for exports and reexports to military end-users or end-uses of such robots that were subject to national security controls on August 28, 1991: see paragraph (a)(1)(i)(B) of this Supplement.

(2) Contract sanctity date for all other such robots: August 28, 1991.

(2) Applications for Iran that are not subject to the policy of denial under the Iran-Iraq Arms Non-Proliferation Act (i.e., contract sanctity established prior to October 23, 1992) will be considered on a case-by-case basis for transaction involving the reexport to Iran of items where Iran was not the intended ultimate destination at the time of original export from the United States, provided that the export from the U.S. occurred prior to the applicable contract sanctity date indicated in paragraph (a)(1) of this Supplement (or, where the contract sanctity date is October 22, 1987, prior to November 27, 1987).

(3) Applicants who wish contract sanctity for any of the factors described in paragraph (a)(2) of this Supplement to be considered in

reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content, the existence of the pre-existing contract, the specifications and intended humanitarian or medical use of the equipment, or the date of export from the United States.

(b) 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 license policies that were in effect prior to the contact sanctity date. The contract sanctity dates set forth in paragraph (a) of 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, then you should include all relevant information with your license application.

#### **Supplement No. 4 to Part 742— Supercomputers; Security Conditions and Safeguard Plans Definitions and Related Information**

This Supplement sets forth the applicable security conditions and safeguard plans for the export, reexport, or in-country transfer of supercomputers to certain destinations. The licensing policies for the export, reexport, or in-country transfer of supercomputers are set forth in § 742.12 of this Part.

##### *(a) Minimum Security Conditions*

(1) *Applicable countries*. The countries subject to paragraph (a) of this Supplement include: Australia, Belgium, Denmark, France, Germany, Italy, the Netherlands, Norway, Spain, and the United Kingdom.

(2) *Security conditions*. A license for any of the countries listed in paragraph (a)(1) of this Supplement will be subject to the following conditions unless otherwise specified on the license:

(i) The applicant will assume responsibility for providing adequate security against physical diversion of the supercomputer 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 listed in Country Group D:1 (see Supplement No. 1 to Part 740 of this subchapter), and Iran, Syria, Cuba, Iraq, North Korea, and Libya;)

(ii) No reexport or intra-country transfer without prior written authorization from BXA; and

(iii) No physical or computational access to supercomputers may be granted to restricted nationals (see paragraph (e)(7) of this Supplement for definition) without prior written authorization from BXA, except that commercial consignees described in § 742.12(b)(6) of this Part are prohibited only from giving such nationals user-accessible programmability without prior written authorization.

##### *(3) Supporting documentation.*

Applications must be accompanied by an International Import Certificate (IIC) or a

Form BXA-6052P, Statement by Foreign Consignee, in accordance with the documentation requirements in Parts 748 and 752, respectively, of this subchapter.

##### *(b) Level 1 Safeguards Plan*

(1) *Applicable countries*. The countries subject to paragraph (b) of this Supplement include: Austria, Finland, Iceland, Mexico, Singapore, South Korea, Sweden, Switzerland, and Venezuela.

(2) *Supercomputer safeguards plan*. Following interagency review of the application, BXA will instruct the exporter to submit a supercomputer safeguards plan signed by the ultimate consignee. For supercomputers with a CTP equal to or exceeding 1,950 MTOPS, the safeguards plan must also be certified by the export control authorities of the importing country. The safeguards plan must indicate that the ultimate consignee agrees to implement the following safeguards:

(i) Measures to provide adequate security against physical diversion of the supercomputer 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 listed in Country Group D:1 (see Supplement No. 1 to Part 740 of this subchapter), and Iran, Syria, Cuba, Iraq, North Korea, and Libya);)

(ii) No reexport or intra-country transfer of the supercomputer without prior written authorization from BXA;

(iii) Security measures to protect the computer using facility against theft or unauthorized use of hardware or software at all times;

(iv) Appropriate checks to ensure that physical and computational access to the computer using facility will be limited to authorized persons;

(v) Password or ID protocols for access by all authorized users;

(vi) No access to supercomputers by restricted nationals;

(A) No physical or computational access to supercomputers may be granted to restricted nationals without prior written authorization from BXA, except that commercial consignees are prohibited only from giving such nationals user-accessible programmability without prior written authorization;

(B) No passwords or IDs may be issued to restricted nationals; and

(C) No work may be performed on the supercomputer on behalf of restricted nationals;

(vii) No conscious or direct ties may be established to networks (including their subscribers) operated by restricted nationals;

(viii) Appropriate monitoring of the use of the supercomputer (any indications of improper or unauthorized use or requests for runs will be promptly reported to the government of the importing country); and

(ix) No use of the supercomputer for any prohibited activities.

(3) *Certification by export control authorities of importing country*. The following importing government certification is required for supercomputers with a CTP equal to or exceeding 1,950 MTOPS:

This is to certify that (name of ultimate consignee) has declared to (name of appropriate foreign government agency) that the supercomputer (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.

(4) *Supporting documentation.* With the exception of applications for Mexico and Venezuela, applications must be accompanied by an International Import Certificate (IIC), or a Form BXA-629P (Statement by Ultimate Consignee and Purchaser), in accordance with the documentation requirements in Part 748 of this subchapter.

(c) *Level 2 Safeguards Plan*

(1) *Applicable countries.* The countries subject to paragraph (c) of this Supplement include: Bahrain, Czech Republic, Egypt, Jordan, Lebanon, Poland, Qatar, Slovakia, Taiwan, and Yemen and countries in Country Group D:2 (see Supplement No. 1 to Part 740 of this subchapter), excluding Iran.

(2) *Supercomputer safeguards plan.*

Following interagency review of the application, BXA will instruct the exporter to submit a supercomputer safeguards plan signed by the ultimate consignee and certified by the export control authorities of the importing country. The safeguards plan must indicate that the ultimate consignee agrees to implement those safeguards required by BXA as a condition of issuing the license. BXA will inform exporters concerning which of the following safeguards will be required as license conditions:

(i) The applicant will assume responsibility for providing adequate security against physical diversion of the supercomputer 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 listed in Country Group D:1 (see Supplement No. 1 to Part 740 of this subchapter), and Iran, Syria, Cuba, Iraq, North Korea, and Libya.

(ii) There will be no reexport or intra-country transfer of the supercomputer without prior written authorization from BXA.

(iii) The supercomputer systems will be used only for those activities approved on the license or reexport authorization.

(iv) There will be no changes either in the end-users or the end-uses indicated on the license without prior written authorization by BXA.

(v) Only software that supports the approved end-uses will be shipped with the computer system.

(vi) The end-user will station security personnel at the computer using facility to ensure that the applicable security measures are implemented.

(vii) 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.

(viii) The security personnel will undertake the following measures under the guidance of the exporter's representatives:

(A) The physical security of the computer using facility;

(B) The establishment of a system to ensure the round-the-clock supervision of computer security;

(C) 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;

(D) The suspension, if necessary, of any run in progress and the inspection of any output generated by the supercomputer to determine whether the program runs or output conform with the conditions of the license;

(E) 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;

(F) The determination of the acceptability of computer users to ensure conformity with the conditions of the license;

(G) The immediate reporting of any security breaches or suspected security breaches to the government of the importing country and to the exporter's representatives;

(H) The execution of the following key tasks:

(1) Establishment of new accounts;

(2) Assignment of passwords;

(3) Random sampling of data;

(4) Generation of daily logs;

(I) The maintenance of the integrity and security of tapes and data files containing archived user files, log data, or system backups.

(ix) 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).

(x) The security personnel and the exporter's representatives will provide monthly reports on the usage of the supercomputer system and on the implementation of the safeguards.

(xi) The supercomputer system will be housed in one secure building and protected against theft and unauthorized entry at all times.

(xii) Restricted nationals will not be allowed access to supercomputers:

(A) No physical or computational access to supercomputers may be granted to restricted nationals without prior written authorization from BXA, except that commercial consignees are prohibited only from giving such nationals user-accessible programmability without prior written authorization;

(B) No passwords or IDs may be issued to restricted nationals;

(C) No work may be performed on the supercomputer on behalf of restricted nationals; and

(D) No conscious or direct ties may be established to networks (including their subscribers) operated by restricted nationals.

(xiii) Physical access to the supercomputer, 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 supercomputer system.

(xiv) The supercomputer 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.

(A) The operating system will be configured so that all jobs can be designated and tracked as either program development jobs or as production jobs.

(B) 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 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.

(C) 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.

(D) 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.

(E) The supercomputer 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.

(F) 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.

(xv) 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.

(xvi) The security personnel, under the guidance of the exporter's representatives,

will change passwords for individuals frequently and at unpredictable intervals.

(xvii) 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.

(xviii) Misuse of passwords by users will result in denial of further access to the supercomputer.

(xix) The exporter's representatives will install a strict password system and provide guidance on its implementation.

(xx) Only the exporter's representatives will be trained in making changes in the password system and only they will make such changes.

(xxi) No supercomputer will be networked to other computers outside the supercomputer center without prior authorization from BXA.

(xxii) Generally, remote terminals will not be allowed outside the computer using facility without prior authorization by BXA. If remote terminals are specifically authorized by the license:

(A) The terminals will have physical security equivalent to the safeguards at the computer using facility;

(B) The terminals will be constrained to minimal amounts of computer resources (CPU time, memory access, number of input-output operations, and other resources);

(C) The terminals will not be allowed direct computational access to the supercomputer (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 supercomputer)—all terminals will be connected to the supercomputer system by a dedicated access line and a network access controller.

(xxiii) There will be no direct input to the supercomputer 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 supercomputer.

(xxiv) The exporter will perform all maintenance of the supercomputer system.

(xxv) 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.

(xxvi) No development or production technology on the supercomputer system will be sent with the supercomputer to the ultimate consignee.

(xxvii) 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.

(xxviii) The exporter must immediately report any information concerning possible violations of the safeguards to BXA. 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.

(xxix) 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 supercomputer usage and the implementation of the safeguards.

(xxx) The installation and operation of the supercomputer will be coordinated and controlled by the following management structure:

(A) *Steering Committee.* The Steering Committee will be comprised of nationals of the importing country who will oversee the management and operation of the supercomputer.

(B) *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.

(C) *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 supercomputer. 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.

(xxxi) 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 supercomputer under the conditions of the license. This group shall have the following responsibilities:

(A) Review all requests for supercomputer usage and make recommendations concerning the acceptability of all projects and users;

(B) Submit these recommendations to the Security Staff and Technical Consultative Committee for review and approval (see paragraph (c)(2)(xxviii) of this Supplement);

(C) Establish acceptable supercomputer resource parameters for each project and review the results to verify their conformity with the authorized end-uses, restrictions, and parameters; and

(D) Prepare monthly reports that would include a description of any runs exceeding the established parameters and submit them to the security staff.

(xxxii) 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 supercomputer, including access to the following:

(A) Usage logs, which should include, at a minimum, computer users, dates, times of use, and amount of system time used;

(B) Computer access authorization logs, which should include, at a minimum, computer users, project names, and purpose of projects.

(xxxiii) 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 supercomputer usage. This inspection will include:

(A) Analyzing any programs or software run on the supercomputer 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;

(B) Checking current and archived usage logs for conformity with the authorized end-uses and the restrictions imposed by the license; and

(C) Verifying the acceptability of all computer users in conformity with the authorized end-uses and the restrictions imposed by the license.

(xxxiv) Usage requests that exceed the quantity of monthly CPU time specified on the license shall not be approved without prior written authorization from BXA. Requests for computational access approval shall include a description of the intended purpose for which access is sought.

(3) *Certification by export control authorities of importing country.* (i) The following importing government certification is required:

This is to certify that (name of ultimate consignee) has declared to (name of appropriate foreign government agency) that the supercomputer (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.

(ii) Other importing government assurances may be required on a case-by-case basis regarding the prohibited activities set forth in the licensing policy for these countries.

(4) *Supporting documentation.* (i) *Exports.* Applications to export supercomputers to these countries must be accompanied by one of the following supporting documents, as required by Part 748 of this subchapter:

(A) Form BXA-629P (Statement by Ultimate Consignee and Purchaser);

(B) International Import Certificate (IIC);

(C) Indian Import Certificate;

(D) Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificates.

(ii) *Reexports.* Applications to reexport supercomputers to the following countries must be accompanied by the necessary supporting documents, as required by Part 748 of this subchapter:

(A) Bulgaria, Czech Republic, Hungary, Poland, Romania, and Slovakia. Reproduced copies of the Bulgarian, Czech, Hungarian, Polish, Romanian, and Slovak Import Certificates;

(B) India. A reproduced copy of the Indian Import Certificate;

(C) South Africa. A Form BXA-629P (Statement by Ultimate Consignee and Purchaser).

(d) *Prohibited Activities*

An ultimate consignee who is authorized to use a supercomputer, except consignees authorized in accordance with licensing policy for supplier countries and countries subject to minimum security conditions, may not be involved in activities related to any of the following:

(1) The design, development, production or use of:

(i) Nuclear explosive devices, including any components or subsystems of such devices;

(ii) Complete rocket systems or unmanned air vehicle systems capable of delivering nuclear weapons, including any components or subsystems of such devices;

(2) The design, development, production, use, or maintenance of nuclear fuel cycle facilities (including facilities related to nuclear propulsion) or heavy water production plants in countries that are listed in Country Group D:1 (see Supplement No. 1 to Part 740 of this subchapter);

(3) Any projects or facilities for the design, development, production, stockpiling, or use of chemical or biological weapons;

(4) A violation of the export laws and regulations of a supplier country or involvement in clandestine procurement activities or other activities where there is a significant risk of diversion from the authorized end-uses or a likelihood that supercomputer security safeguards would not be effectively implemented.

(e) *Definitions*

The following are definitions of terms as used in this Supplement:

(1) *Authorized person*. A person whose identity and legitimate bona fides have been established by the ultimate consignee. Restricted nationals (see paragraph (e)(7) of this Supplement) will not be considered to be authorized persons for the purposes of this Supplement.

(2) *Commercial end-user*. An end-user whose only authorized end-uses are those described in the list of approved commercial activities in § 742.12(b)(6) of this Part.

(3) *Computational access or usage*. Any data processing, or data, program, or file manipulation (retrieval), done on the supercomputer.

(4) *Independent consultant*. A nongovernment firm in the importing country that is experienced in informatics auditing procedures and not owned, affiliated, or controlled by the end-user or by the government of the importing country.

(5) *Multiple-purpose end-use*. Authorized end-uses in several areas of expertise with a variety of application packages (e.g., university).

(6) *National*. The term national as used in this section means:

(i) Any individual;

(ii) Any official, agent, or representative of a corporation, partnership, association, company, or any other kind of organization; or

(iii) Any official, agent, or representative of a government, government agency, or any other government organization.

(7) *Restricted nationals*. The term restricted nationals as used in this Supplement means:

(i) Nationals of countries subject to the licensing policy described in § 742.12(b)(4) of this Part (i.e., countries in Country Group D:1 (see Supplement No. 1 to Part 740 of this subchapter) and Cuba, Iran, Iraq, Libya, North Korea, and Syria), except those individuals who have legally immigrated and have become permanent residents of the United States or Japan, or any of the countries listed in paragraph (a)(1) of this Supplement; and

(ii) Nationals of the countries listed in § 742.12(b)(3) of this Part (i.e., Bahrain, Czech Republic, Egypt, Jordan, Lebanon, Poland, Qatar, Slovakia, Taiwan, and Yemen and countries in Country Group D:2 (see Supplement No. 1 to Part 740 of this subchapter), excluding Iran) that are involved in prohibited activities as set forth in paragraph (d) of this Supplement.

(8) *Single-purpose end-use*. An authorized end-use in one area of expertise (e.g., oil exploration).

(9) The following are terms defined elsewhere in the EAR:

(i) Computer using facility;

(ii) Cryptography;

(iii) Network access controller;

(iv) Program;

(v) Software;

(vi) Source code;

(vii) Technology;

(viii) Use; and

(ix) User-accessible programmability.

**PART 744—CONTROL POLICY: END-USER AND END-USE BASED**

Sec.

744.1 General provisions.

744.2 Restrictions on certain nuclear end-uses.

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744.4 Restrictions on certain chemical and biological weapons end-uses.

744.5 Restrictions on certain naval 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 Restrictions on certain exports to all countries for Libyan aircraft.

**Supplement No. 1 to Part 744—Missile Technology Projects**

**Supplement No. 2 to Part 744—The Enhanced Proliferation Control Initiative (EPCI) [Catch-all Item List] [Positive List] [Product Scope for End-Use Limitation]**

**Supplement No. 3 to Part 744—BXA's "Know Your Customer" Guidance**

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

**§ 744.1 General provisions.**

(a) *Introduction*. This part contains prohibitions against exports, reexports, and selected transfers to certain end-users and end-uses as introduced under General Prohibition Four and prohibitions against exports or reexports to certain end-uses as introduced, under General Prohibition Five. 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 weapons, and nuclear maritime end uses. Section 744.6 prohibits certain activities by U.S. persons in support of certain missile and chemical and biological weapons 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. 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 this subchapter prohibits exports, reexports and certain in-country transfers of items subject to the EAR to denied parties.

(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 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. 3 to part 744 for guidance.

**§ 744.2 Restrictions on certain nuclear end-uses.**

(a) *General prohibition*. In addition to the validated license requirements for items specified on the CCL, you may not export or reexport to any destination,

other than countries in the Nuclear Suppliers Group as indicated at Country Group A:4 in Supplement 1 to part 740 of this subchapter, any item subject to the EAR without a validated license if at the time of the export or reexport you know or have reason to know 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.<sup>1, 2</sup>

(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.

(3) *Safeguarded and unsafe guarded nuclear activities.* Safeguarded and unsafe guarded 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:<sup>3</sup>

(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 informed by BXA.* BXA may inform an exporter or reexporter, either by specific notice or through amendment to the regulations in this subchapter, that a license is required for export or reexport of specified items to specified end-users, because BXA 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 this section.

(c) *Exceptions.* Despite the prohibitions described in paragraph (a) and (b) of this section, you may export technology subject to the EAR under License Exception 13 for operation technology and License Exception 14 for sales technology but only to and for use in countries listed in Country Group A:1 (COCOM Successor Regime) (see Supplement No. 1 to part 740 of this subchapter) and New Zealand. All the terms and conditions of License Exception 13 apply except that this exception may only be used for exports to the countries listed in Country Group A:1 and New Zealand notwithstanding the provisions of part 740 of this subchapter.

(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 or license exception to unauthorized activities;

(7) Whether the export would present an unacceptable risk of diversion to a nuclear explosive activity or unsafe guarded nuclear fuel-cycle activity described in § 744.3 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 of 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 this subchapter), or to a similar international legally-binding nuclear nonproliferation agreement;

(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 non-proliferation and whether that government is in compliance with its international obligations in the field of non-proliferation;

(v) The degree to which the government of the importing country cooperates in non-proliferation policy generally (e.g., willingness to consult on international non-proliferation issues);

(vi) Intelligence data on the importing country's nuclear intentions and activities.

**§ 744.3 Restrictions on certain missile end-uses.**

(a) *General 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 any destination, including Canada, without a license if at the time of the export or reexport you know the item:

(1) Is destined to or for a project listed in the footnote to Country Group D:4

<sup>1</sup> Nuclear explosive devices and items specifically designed or specially modified for use in designing or fabricating nuclear weapons or nuclear explosive devices are subject to export licensing or other requirements of the Office of Defense Trade Controls, U.S. Department of State, or the licensing or other restrictions specified in the Atomic Energy Act of 1964, 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.

<sup>2</sup> Also see § 748.4 of this subchapter for special provisions relating to technical data for maritime nuclear propulsion plants and other commodities.

<sup>3</sup> 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.



(see Supplement No. 1 to part 740 of this subchapter); or

(2) Will be used in the design, development, production or use of missiles in or by a country listed in Country Group D:4, whether or not that use involves a listed project.

(b) *Additional prohibition on exporters informed by BXA.* BXA may inform the exporter or reexporter, either individually or through amendment to the regulations in this subchapter, that a license is required for a specific export, or for exports of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to activities 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 validated license requirements of paragraph (a) of this section. An illustrative list of projects is included in a footnote to Country Group D:4. Exporters are deemed to have been informed that an individual validated license is required to export to these projects. Exporters should be aware that the list of projects in Country Group D:4 is not comprehensive; extra caution should be exercised when making any shipments to a country listed in Country Group D:4.

(c) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraph (a) and (b) of this section.

(d) *License review standards for certain missile end-uses.* (1) Applications to export the items subject to this section will be considered on a case-by-case basis to determine whether the export would make a material contribution to the proliferation of missiles. When an export 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 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 non-proliferation credentials of the importing country;

(v) The types of assurances or guarantees against design, development production or use, of missiles delivery purposes that are given in a particular case; and

(vi) The existence of a pre-existing contract.

**§ 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 or reexport an item subject to the EAR to any destination, including Canada, without a license if at the time of the export or reexport you know the item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:5 (see Supplement No. 1 to part 740 of this subchapter).

(b) *Additional prohibition on exporters informed by BXA.* BXA may inform the exporter or reexporter, either individually or through amendment to the regulations in this subchapter, that a license is required for a specific export, or for export of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to such activities, 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 validated 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 or reexport items subject to 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 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 in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The non-proliferation credentials of the importing country;

(iv) The types of assurances or guarantees against 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.<sup>4</sup>

**§ 744.5 Restrictions on certain naval 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 to any destination, including Canada, 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 at part 740 of this subchapter 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.

**§ 744.6 Restrictions on certain activities of U.S. persons.**

(a) *General prohibitions—(1) Activities related to exports.* (i) No U.S. person may, without a license from BXA, export, reexport, or transfer, in the United States or in any other country,

<sup>4</sup> See Supplement No. 1 to part 742 for relevant contract sanctity dates.

any item where that person knows that such item:

(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 this subchapter).

(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 this subchapter); or

(C) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3 (see Supplement No. 1 to part 740 of this subchapter).

(ii) No U.S. person shall, without a license from BXA, 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 BXA:

(i) Perform any contract, service, or employment that the U.S. person knows will directly assist in the design, development, production, or use of nuclear explosives devices in or by a country listed in Country Group D:2 (see Supplement No. 1 to part 740 of this subchapter);

(ii) 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 this subchapter); or

(iii) Perform any contract, service, or employment that the U.S. person knows directly will directly assist in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3 (see Supplement No. 1 to part 740 of this subchapter).

(3) *Whole plant requirement.* No U.S. person shall, without a license from BXA, participate in the design, construction, export, or reexport of a whole plant to make chemical weapons precursors identified in ECCN 1C60, in countries other than those listed in Country Group A:3 (Australia Group) (See Supplement No. 1 to part 740 of this subchapter).

(b) *Additional prohibitions on U.S. persons informed by BXA.* BXA may inform U.S. persons, either individually

or through amendment to the regulations in this subchapter, 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 validated 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 chemical or biological weapons, or of missiles.

**§ 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 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 may be made of the commodities set forth 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 North Korea or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided that such commodities are<sup>5</sup> 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) is filed with the carrier, except that an SED is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their use.

(2) *Exports to U.S. or Canadian Airline's Installation or Agent.* Exports of the commodities set forth 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 North Korea or Country Group D:1 (excluding the PRC and Romania), (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, North Korea 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) is filed with the carrier, except that an SED is not required when any of these commodities is exported by U.S. airlines to their own installations and agents

<sup>5</sup> Where a license is required, see §§ 748.2 and 748.4(g).

abroad for use in their aircraft operations.

(3) *Applicable commodities.* This § 740.12(b) 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 this subchapter);
- (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 this subchapter are of non-Naval Petroleum Reserves origin or derivation (refer to short supply controls in part 754 of this subchapter);
- (iii) Medical and surgical supplies;
- (iv) Food stores;
- (v) Slop chest articles;
- (vi) Saloon stores or supplies; and
- (vii) Equipment and spare parts.

**§ 744.8 Restrictions on certain exports to all countries for Libyan aircraft.**

(a) *General end-use prohibition for Libyan aircraft.* In addition to the license requirements for items specified on the CCL for the items specified in paragraph (b) of this section, you may not export or reexport such parts and accessories if intended for use in the manufacture, overhaul, or rehabilitation in any country of aircraft that will be exported or reexported to Libya or Libyan nationals.

(b) *Scope of products subject to end-use prohibition for Libyan aircraft.* The general end-use prohibition in paragraph (a) of this section applies to items controlled by ECCNs 6A08, 6A28, 6A29, 6A30, 6A90, 7A01, 7A21, 7A02, 7A22, 7A03, 7A23, 7A04, 7A24, 7A05, 7A25, 7A06, 7A26, 7A27, 7A94, 9A01, 9A21, 9A23, 9A18.a, 9A82.d, 9A91, and 9A94.

**Supplement No. 1—Missile Technology Locations and Projects**

Location	Projects
Bahrain	
Brazil .....	Sonda III, Sonda IV, SS-300, SS-1000, MB/EE Series Missile, VLS Space Launch Vehicle.
China .....	M Series Missiles, CSS-2.
Egypt	
India .....	Agni, Prithvi, SLV-3 Satellite Launch Vehicle, Augmented Satellite Launch Vehicle (ASLV), Polar Satellite Launch Vehicle (PSLV), Geostationary Satellite Launch Vehicle (GSLV).

Location	Projects
Iran .....	Surface-to-Surface Missile Project, Scud Development Project.
Iraq	
Israel	
Jordan	
North Korea ...	No Dong I, Scud Development Project.
Kuwait	
Lebanon	
Libya	
Oman	
Pakistan .....	Haft Series Missiles.
Qatar	
Saudi Arabia	
South Africa ...	Surface-to-Surface Missile Project, Space Launch Vehicle.
Syria	
United Arab Emirates	
Yemen	

**Supplement No. 2—The Enhanced Proliferation Control Initiative (EPCI) [Catch-All Item List] [Positive List] [Product Scope for End-Use Limitation]—[Reserved]**

**Supplement No. 3—BXA’s “Know Your Customer” Guidance**

Certain provisions in part 744 require an exporter to obtain an individual validated license if the exporter “knows” that any export otherwise eligible for license exception is for end-uses involving nuclear, chemical, or biological weapons, or related missile delivery systems, in named destinations listed in the regulations.

(a) BXA has issued the following guidance on how individuals and firms should act under this knowledge standard. This guidance does not change or revise 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 which 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 this subchapter 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 BXA 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 BXA in the form of an application for a validated license or in such other form as BXA 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. BXA 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.

**PART 746—EMBARGOES AND OTHER SPECIAL CONTROLS**

## Sec.

- 746.1 Introduction.
- 746.2 Cuba.
- 746.3 Iraq.
- 746.4 Libya.
- 746.5 North Korea.
- 746.6 The Federal Republic of Yugoslavia (Serbia and Montenegro), Bosnia-Herzegovina, Croatia.
- 746.7 Rwanda.
- 746.8 through § 746.16 [Reserved]
- 746.17 Humanitarian License.

**Supplement No. 1 to Part 746—Human-Needs Items****Supplement No. 2 to Part 746—United Nations Embargoes or Other Special Sanctions Administered by the Office of Foreign Assets Control: Angola****Supplement No. 3 to Part 746—United Nations Arms Embargoes Administered by the Department of State: Liberia, Somalia and Countries of the Former Yugoslavia (Bosnia-Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Serbia, Montenegro, Slovenia)**

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

**§ 746.1 Introduction.**

(a) Sections 746.2 through 746.6 of this part give the license requirements and licensing policies for exports to Cuba, Iraq, Libya, North Korea, and the former Yugoslavia. All the items on the Commerce Control List (CCL) require a license for export or reexport to these destinations. In addition, most items subject to the EAR, but not included on the CCL, require a license to these destinations. Most items requiring a license to these destinations are subject to a general policy of denial. The Department of the Treasury's Office of Foreign Assets Control (OFAC) authorizes by general license (as defined in 31 CFR part 500) all transactions incident to the export of goods from the U.S. to Cuba and North Korea authorized by BXA. No license from OFAC is necessary. BXA is also responsible for licensing reexports of most items subject to the EAR, but additional authorization is required by OFAC if the reexport is being made by persons subject to U.S. jurisdiction (as defined in 31 CFR part 500), including foreign subsidiaries of U.S. firms. OFAC also controls other transactions by U.S. persons involving Cuba or North Korea or specially designated nationals of those countries, and exports of non

U.S.-origin items by U.S. persons from third countries to Cuba or North Korea.

(b) Section 746.7 of this part explains the special controls on the sale or supply to Rwanda of arms and related material of all types. Such military-related items are subject to a general policy of denial, consistent with a United Nations Security Council Resolution. These special controls also complement controls on items included on the U.S. Munitions List administered by the Department of State under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

(c) Section 746.17 of this part gives the eligibility requirements for donations of human-needs items to certain embargoed destinations under the Humanitarian License.

(d) Supplement No. 1 to this part lists the human-needs items that may be approved under the Humanitarian License or that may be approved under regular license procedures when not qualifying for the Humanitarian License.

(e) Supplement No. 2 to this part provides you with general information on United Nations sanctions administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC) (31 CFR part 590) on Angola.

(f) Supplement No. 3 to this part provides you with general information on United Nations arms embargoes administered by the Department of State (22 CFR parts 120 through 130) on all the countries of the former Yugoslavia (Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Serbia, Montenegro, and Slovenia), Liberia and Somalia.

**§ 746.2 Cuba.**

(a) *License requirements.* You will need a license to export or reexport all items subject to the EAR (see part 732 of this subchapter for the scope of items subject to the EAR) to Cuba, except as follows:

(1) *License Exceptions.* You may export 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 this subchapter (License Exceptions).

(i) Temporary Exports (TMP) by the news media (see § 740.8(b)(8) of this subchapter).

(ii) Operating Technology and Software (OTS) for legally exported commodities (see § 740.17 of this subchapter).

(iii) Sales Technology (STS) (see § 740.18 of this subchapter).

(iv) Software Updates (SUD) for legally exported software (see § 740.19 of this subchapter).

(v) Parts (PTS) for one-for-one replacement in certain legally exported commodities (see § 740.10 of this subchapter).

(vi) Baggage (BAG) (see § 740.12 of this subchapter).

(vii) Governments (GOV) (see § 740.15 of this subchapter).

(viii) Gift parcels (GFT) (see § 740.16 of this subchapter).

(ix) Items in transit (TUS) from Canada through the U.S. (see § 740.9(b)(4) of this subchapter).

(x) Aircraft and Vessels (A&V) for certain aircraft on temporary sojourn (see § 740.13(a) of this subchapter).

(2) [Reserved.]

(b) *Licensing policy.* Items requiring a license are subject to a general policy of denial. Exceptions to the policy of denial are as follows:

(1) *Humanitarian License.* BXA may issue licenses to organizations eligible for the Humanitarian License for exports of donated human-needs items. See § 746.17 of this part for this license and Supplement No. 1 to part 746 for a list of human-needs items that may be approved.

(2) *Licenses for donations of human-needs items.* BXA will review on a case-by-case basis applications for exports of donated human-needs items listed in Supplement 1 to part 746 that do not qualify for the Humanitarian License. Such applications include single transactions involving exports to meet emergency needs.

(3) *Medicines, medical supplies, instruments and equipment.*

Applications to export medicines, medical supplies, instruments and equipment 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 produce; and

(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.

(4) 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.

(5) Exports from third countries to Cuba of nonstrategic 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 in the third country 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. 3 to part 732 of this subchapter for instructions on how to calculate value.

(iii) You are not a U.S.-owned or -controlled entity in a third country as defined by the OFAC 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 medicine, or medical supplies, instruments, or equipment incorporating U.S.-origin parts, components or materials, in which case the application will be reviewed according to the provisions of paragraph (b)(3) 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)(4) of this section.

(D) Your transaction is for the export of donated food to individuals or nongovernmental organizations in Cuba.

(c) *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.

#### §746.3 Iraq.

(a) *License requirements.* For foreign policy reasons, you will need a license to export or reexport all items subject to the EAR (see Part 732 of this subchapter) to Iraq, except as noted in this section. OFAC administers an embargo against Iraq under the authority of the International Emergency Economic Powers Act of 1977 and in conformance with United Nations Security Council Resolutions. The applicable OFAC regulations, the Iraqi Sanctions Regulations, are found at 31 CFR part 575. You should consult with OFAC for authorization to export or reexport items subject to U.S. jurisdiction to Iraq, or to any entity owned or controlled by, or specially designated as acting for or on behalf of, the Government of Iraq. An authorization from OFAC constitutes authorization under the EAR, and no license from BXA is necessary. Except as noted in §746.3(a)(1) of this part, you may not use any BXA License Exception or other BXA authorization to export or reexport to Iraq.

(1) *License Exceptions.* You may export or reexport without a license if your transaction meets all the applicable terms and conditions of one of the following License Exceptions.

(i) *Baggage (BAG)* (See §740.12 of this subchapter).

(ii) *Governments (GOV)* (See §740.15 of this subchapter).

(iii) *Parts (PTS)* for one-for-one replacement in certain legally exported goods (See §740.10 of this subchapter).

(2) Exports for the official use of the United Nations, its personnel or agencies (excluding its relief or developmental agencies). You must consult with OFAC to determine what transactions are eligible.

(b) *Licensing policy.* Under Executive Orders 12722 of August 2, 1990 and 12724 of August 9, 1990, and consistent with United Nations resolutions, exports and reexports requiring a license are subject to a general policy of denial. You are advised to consult with OFAC concerning export and reexport authorization.

(c) *Related controls.* OFAC maintains controls on the activities of U.S. persons, wherever located, involving transactions with Iraq or any specially designated Iraqi national.

#### §746.4 Libya.

(a) *Introduction.* The Department of Commerce maintains comprehensive controls on exports and reexports to Libya. The Department of the Treasury, Office of Foreign Assets Control (OFAC) maintains comprehensive controls on exports and transshipments to Libya

under the Libyan Sanctions Regulations (31 CFR part 550). To avoid duplicate licensing procedures, OFAC and BXA have allocated licensing responsibility as follows: OFAC licenses direct exports and transshipments to Libya; BXA licenses reexports, exports of foreign-manufactured items containing U.S.-origin parts, components or materials, and exports of foreign produced direct product of U.S. technology or software. Issuance of an OFAC license also constitutes authorization under the EAR, and no license from BXA is necessary. Exports and reexports subject to the EAR that are not subject to the Libyan Sanctions Regulations continue to require authorization from BXA.

(b) *Definitions.*—(1) *Transshipment.* For purposes of this section, transshipment means exports from the United States to third countries if the exporter knows, or has reason to know, the items are intended for reshipment to Libya (including passage through, or storage in, intermediate destinations) without coming to rest in a third country. The term “transshipment” covers goods intended specifically for substantial transformation or for incorporation in a third country into products for use in Libya in the petroleum or petrochemical industry. The term “transshipment” also covers technology intended specifically for use in a third country in the manufacture of, or incorporation into, products for use in Libya in the petroleum or petrochemical industry. See 31 CFR 550.409.

(2) *Reexport.* For purposes of this section, reexport means the export of an item from a third country to Libya when Libya is not the intended ultimate destination at the time of export from the United States. Exports of foreign-manufactured items incorporating U.S.-origin parts, component or materials, and exports of foreign-manufactured items based on U.S. technology which are not subject to OFAC license requirements as “transshipments” may be subject to BXA license requirements. See part 732 of this subchapter.

(c) *License requirements.* You will need a license to export and reexport all items subject to the EAR (see part 732 of this subchapter) to Libya, except donations of items intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes, or as follows.

(1) *Exports and transshipments.* You will need a license from OFAC for all direct exports and transshipments to Libya except the following:

(i) Exports eligible for the following BXA License Exceptions: (A) Baggage

(BAG) (see § 740.12 of this subchapter). (B) Governments (GOV) (see § 740.15 of this subchapter). (C) Gift parcels (GFT) (see § 740.16 of this subchapter).

(ii) As noted in paragraph (a) of this section, an authorization from OFAC constitutes authorization under the Export Administration Regulations. Except as noted in § 746.4(b)(1) of this section, you may not use any BXA License Exception or other BXA authorization to export or transship to Libya.

(2) *Reexports*. You will need a license from BXA to reexport any U.S.-origin item from a third country to Libya, any foreign-manufactured item containing U.S.-origin parts, components or materials, as defined in § 734.2(b)(2) of this subchapter, or any national security-controlled foreign-produced direct product of U.S. technology or software, as defined in § 734.2(b)(3) of this subchapter, exported from the U.S. after March 12, 1982. Exceptions to the controls maintained by BXA, insofar as reexports are concerned, include the following:

(i) Temporary Exports (TMP) reexports by the news media (see § 740.8(b)(8) of this subchapter).

(ii) Operating Technology and Software (OTS) for legally exported commodities (see § 740.17 of this subchapter).

(iii) Sales Technology (STS) (see § 740.18 of this subchapter).

(iv) Software Updates (SUD) for legally exported software (see § 740.19 of this subchapter).

(v) Parts (PTS) for one-for-one replacement in certain legally exported commodities (§ 740.10 of this subchapter).

(vi) Baggage (BAG) (§ 740.12 of this subchapter).

(vii) Aircraft and Vessels (A&V) for vessels only (see § 740.13(c)(1) of this subchapter).

(viii) Governments (GOV) (see § 740.15 of this subchapter).

(ix) Gift parcels (GFT) (see § 740.16 of this subchapter).

(3) Applications submitted to BXA for reexport authorization must provide specific answers to the following questions:

(i) How was the product received at its current location, and under what type of authorization;

(ii) On what date was it received; and  
(iii) How are inventories maintained at the current site?

(d) *Licensing policy*. (1) You should consult with OFAC regarding licensing policy for direct exports and transshipments to Libya.

(2) The licensing policy for BXA controls is as follows. Licenses will generally be denied for:

(i) Items controlled for national security purposes and related technology and software, including controlled foreign produced products of U.S. technology and software exported from the United States after March 12, 1982; and

(ii) Oil and gas equipment and technology and software, if determined by BXA not to be readily available from sources outside the United States; and

(iii) Goods and technology and software destined for the petrochemical processing complex at Ras Lanuf, where such items would contribute directly to the development or construction of that complex. Items destined for the township at Ras Lanuf, or for the public utilities or harbor facilities associated with that township, generally will not be regarded as making such a contribution where their functions will be primarily related to the township, utilities or harbor.

(iv) The following items subject to international sanctions:

(A) Aircraft or aircraft components to Libya or the provision of engineering and maintenance servicing of Libyan aircraft or aircraft components;

(B) Arms and related material of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment, spare parts for the aforementioned, and equipment or supplies for the manufacture or maintenance of the aforementioned.

(C) Materials destined for the construction, improvement or maintenance of Libyan civilian or military airfields and associated facilities and equipment or any engineering or other services or components destined for the maintenance of any Libyan civil or military airfields or associated facilities and equipment, except emergency equipment and equipment and services directly related to civilian air traffic control;

(D) Items listed in paragraphs (d)(1) through (5) and equipment and supplies for the manufacture or maintenance of such items:

(1) Pumps of medium or large capacity (equal to or larger than 3500 cubic meters per hour) and drivers (gas turbines and electric motors) designed for use in the transportation of crude oil and natural gas.

(2) Equipment designed for use in crude oil export terminals, as follows:

(i) Loading buoys or single point moorings;

(ii) Flexible hoses for connection between underwater manifolds (plem) and single point mooring and floating

loading hoses of large sizes (from 12–16 inches); or

(iii) Anchor chains.

(3) Equipment not specially designed for use in crude oil export terminals, but which because of its large capacity can be used for this purpose, as follows:

(i) Loading pumps of large capacity (4000 m<sup>3</sup>/h) and small head (10 bars);

(ii) Boosting pumps within the same range of flow rates;

(iii) Inline pipe line inspection tools and cleaning devices (i.e., pigging tools) (16 inches and above); or

(iv) Metering equipment of large capacity (1000 m<sup>3</sup>/h and above).

(4) Refinery equipment, as follows:

(i) Boilers meeting American Society of Mechanical Engineers 1 standards;

(ii) Furnaces meeting American Society of Mechanical Engineers 8 standards;

(iii) Fractionation columns meeting American Society of Mechanical Engineers 8 standards;

(iv) Pumps meeting American Petroleum Institute 610 standards;

(v) Catalytic reactors meeting American Society of Mechanical Engineers 8 standards; or

(vi) Prepared catalysts, including catalysts containing platinum and catalysts containing molybdenum.

(5) Spare parts for any of the above.

(3) Notwithstanding the presumptions of denial in paragraphs (d)(2)(i) through (iii), licenses will generally be issued when the transaction involves items not included in paragraph (d)(2)(iv).

(i) The export or reexport of commodities or technology and software under a contract in effect prior to March 12, 1982, where failure to obtain a license would not excuse performance under the contract;

(ii) Reexport of items not controlled for national security purposes that had been exported from the United States prior to March 12, 1982 or exports of foreign products incorporating such items as components; or

(iii) Use of U.S.-origin parts, components, or materials in foreign-manufactured products destined for Libya, where the U.S. content is 20 percent or less by value,

(4) Notwithstanding the presumption of denial in paragraph (d)(2)(iv), applications for reexports under a contract pre-dating December 3, 1993, will be reviewed under the licensing policy in effect prior to that date.

(5) Licenses will generally be considered favorably on a case-by-case basis when the transaction involves the following items, provided such items are not included in paragraph (d)(2)(iv):

(i) Reexports of items subject to national security controls that were

exported prior to March 12, 1982 and exports of foreign products incorporating such U.S.-origin components, where the particular authorization would not be contrary to specific foreign policy objectives of the United States; or

(ii) Items destined for use in the development or construction of the petrochemical processing complex at Ras Lanuf, where the transaction could be approved but for the general policy of denial set out in paragraph (d)(4)(i)(C), and where either:

(A) The transaction involves a contract in effect before December 20, 1983 that requires export or reexport of the items in question; or

(B) The items had been exported from the U.S. before that date.

(iii) Other unusual situations such as transactions involving firms with contractual commitments in effect before March 12, 1982.

(6) Licenses will generally be considered favorably on a case-by-case basis for the export of reasonable quantities for civil use of off-highway wheel tractors of carriage capacity of 9t (10 tons) or more, as defined in ECCN 9A92, provided such tractors are not for uses covered by United Nations Security Council Resolution 883 of November 11, 1993.

(7) All other exports and reexports not covered by United Nations resolutions will generally be approved, subject to any other licensing policies applicable to a particular transaction.

(e) *Related controls.* OFAC administers broad economic sanctions on Libya, and restricts participation by U.S. persons in transactions with Libya or specially designated Libyan nationals. The applicable OFAC regulations, the Libyan Sanctions Regulations, are found at 31 CFR part 550.

#### § 746.5 North Korea.

(a) *License requirements.* You will need a license to export or reexport items subject to the EAR (see part 732 of this subchapter) to North Korea, except as follows:

(1) *License Exceptions.* You may export without a license if your transaction meets all the applicable terms and conditions of any of the following License Exceptions. To determine scope and eligibility requirements, you will need to turn to the sections or specific paragraphs of part 740 of this subchapter (License Exceptions).

(i) Temporary Exports (TMP) by the news media (see § 740.8(b)(8) of this subchapter).

(ii) Operating Technology and Software (OTS) for legally exported commodities (see § 740.17 of this subchapter).

(iii) Sales Technology (STS) (see § 740.18 of this subchapter).

(iv) Software Updates (SUD) for legally exported software (see § 740.19 of this subchapter).

(v) Parts (PTS) for one-for-one replacement in certain legally exported commodities (§ 740.10 of this subchapter).

(vi) Baggage (BAG) (§ 740.12 of this subchapter).

(vii) Aircraft and Vessels (A&V) for fishing vessels under governing international fishery agreements and foreign-registered aircraft on temporary sojourn in the U.S.<sup>1</sup> (see § 740.13(a) and (c)(1) of this subchapter).

(viii) Governments (GOV) (see § 740.15 of this subchapter).

(ix) Gift parcels (GFT) (see § 740.16 of this subchapter).

(2) [Reserved.]

(b) *Licensing policy.* Items requiring a license are subject to a general policy of denial. Exceptions to the policy of denial are as follows:

(1) *Humanitarian License.* BXA may issue licenses for exports of donated human-needs items to organizations eligible for the Humanitarian License. See § 746.17 of this part for this license and Supplement No. 1 to part 746 for a list of human-needs items that may be approved.

(2) BXA will review on a case-by-case basis applications for export of donated human-needs items listed in Supplement No. 1 to Part 746 that do not qualify for the Humanitarian License. Such applications include single transactions involving exports to meet emergency needs.

(3) BXA will review on a case-by-case basis applications for commercial sales of human-needs items. Such applications must be for items listed in Supplement No. 1 to part 746, but are not limited solely to small scale projects at the local level.

(c) *Related controls.* OFAC maintains controls on the activities of persons subject to U.S. jurisdiction, wherever located, involving transactions with North Korea or any specially designated North Korean national.

#### § 746.6 The Federal Republic of Yugoslavia (Serbia and Montenegro), Bosnia-Herzegovina, Croatia.

(a) *Federal Republic of Yugoslavia (Serbia & Montenegro).* BXA maintains

<sup>1</sup> Export of U.S. aircraft on temporary sojourn is prohibited by the Department of Transportation, 44 CFR Ch. IV, Part 403 "Shipping restrictions: North Korea (T-2)."

the controls reflected on the Country Chart in Supplement 1 to part 738 of this subchapter on the Federal Republic of Yugoslavia. In addition, OFAC administers an embargo on exports and reexports to the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY (S & M)). OFAC administers this embargo under Executive Orders 12808 of May 30, 1992, 12810 of June 5, 1992, 12831 of January 15, 1993, 12846 of April 25, 1993, and 12934 of October 25, 1994, and consistent with United Nations Security Council Resolutions 757 of May 30, 1992, 787 of November 16, 1992, 820 of April 17, 1993, and 942 of September 23, 1994. Under this embargo, no goods or technology subject to U.S. jurisdiction may be exported, directly or indirectly, to the FRY (S & M), or to any entity operated from the FRY (S & M), or owned or controlled by, or specially designated as acting for or on behalf of the Government of the FRY (S & M). The applicable OFAC regulations, the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, are found at 31 CFR part 585. Exporters should apply to OFAC for authorization to export or reexport items subject to the EAR to the FRY (S & M). An authorization from OFAC constitutes authorization under the EAR, and no BXA license is necessary.

(b) *Bosnia-Herzegovina.* BXA maintains the controls reflected on the Country Chart in Supplement 1 to part 738 of this subchapter on Bosnia-Herzegovina. In addition, OFAC prohibits any dealing by a U.S. person relating to the export to, or transshipment through, those areas of the Republic of Bosnia-Herzegovina under the control of the Bosnian Serb forces, or activity of any kind that promotes or is intended to promote such dealing. OFAC maintains this embargo under Executive Orders 12846 of April 25, 1993 and 12934 of October 25, 1994, and consistent with United Nations Security Council Resolutions 820 of April 17, 1993 and 942 of September 23, 1994. The applicable OFAC regulations, the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, are found at 31 CFR part 585. U.S. persons should apply to OFAC for authorization to engage in trade-related transactions involving those areas of the Republic of Bosnia-Herzegovina under the control of the Bosnian Serb forces. An authorization from OFAC constitutes authorization under the EAR, and no BXA license is necessary. You will need a license from BXA for items controlled on the CCL to Bosnia-Herzegovina when the export or

reexport is destined to areas in the Republic of Bosnia-Herzegovina not controlled by the Bosnian Serb forces. You may also need a license from BXA to reexport U.S.-origin items from third countries to areas of the Republic of Bosnia-Herzegovina under the control of the Bosnian Serb forces.

(c) *Croatia.* BXA maintains the controls reflected on the Country Chart in Supplement 1 to part 738 of this subchapter on Croatia. In addition, OFAC prohibits any dealing by a U.S. person relating to the export to, or transshipment through, the United Nations Protected Areas in the Republic of Croatia. OFAC maintains this embargo under Executive Order 12846 of April 25, 1993, and consistent with United Nations Security Council Resolution 820 of April 17, 1993. The applicable OFAC regulations, the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, are found at 31 CFR part 585. U.S. persons should apply to OFAC for authorization to engage in trade-related transactions involving to the United Nations Protected Areas in the Republic of Croatia. An authorization from OFAC constitutes authorization under the EAR, and no BXA license is necessary. You will need a license from BXA for items controlled on the CCL to Croatia when the export or reexport is destined to areas other than the United Nations Protected Areas in the Republic of Croatia. You may also need a license from BXA to reexport U.S.-origin items from third countries to the United Nations Protected Areas in the Republic of Croatia.

#### § 746.7 Rwanda.

(a) *Introduction.* In addition to the controls on Rwanda reflected on the Country Chart in Supplement 1 to part 738 of this subchapter, 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 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 "18," and items described by ECCNs 1A88F, 2B85F, 5A80D, 6A02A.a.1,a.2,a.3 and c, 6A03A.b.3 and b.4, 6D21B, 6E01A, 6E02A, 9A22B, 9A91F.a, 0A84C, 0A86F, and 0A88F.

(2) This embargo was effective 11:59 p.m. EDT on May 26, 1994.

(3) *Definitions.* For the purposes of this embargo, 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 military-related equipment 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 these regulations.

(d) *Related controls.* The Department of State, Office of Defense Trade Controls, maintains controls on arms and military equipment under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

#### § 746.8–§ 746.16 [Reserved]

#### § 746.17 Humanitarian License.

A Humanitarian License is established that authorizes exports to certain embargoed destinations of donated goods to meet basic human needs by a group or organization that has experience in maintaining a verifiable system of distribution that ensures delivery to the intended beneficiaries.

(a) *Basic human needs.* Under this license, 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. This license permits the export of goods that are suitable for small-scale local improvement projects; for example: seeds, tools, fertilizers, small-scale irrigation pumps, and agricultural materials and machinery suited to small-scale farming operations. It encompasses the export of goods of the kind normally donated by charitable organizations that address basic human needs directly and at the local level, where specific improvement projects can be closely monitored and adjusted as needed to ensure that the donated items are being delivered to the intended beneficiaries. The Humanitarian License does not, however, permit exports for large-scale projects of the kind associated with comprehensive economic growth, such as dams and hydroelectric plants.

(b) *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 to the intended beneficiaries.

(c) *Donations.* To qualify for export under this license, the items must be provided free of charge to the beneficiary. This requirement reflects a distinction between freely-donated goods of a people-to-people nature of the type exported by U.S. private and voluntary charitable organizations and those goods of a commercial nature, which are excluded from this license. 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 section.

(d) *Ineligible items.* Among those items not eligible under this license are those controlled for national security, chemical, biological and nuclear non-



proliferation, missile technology or crime control reasons in the "Reason for Control" paragraph on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of this subchapter) and communications intercepting devices (ECCN 5A80).

(e) *Eligible items.* Supplement No. 1 to this part 746 lists the kinds of items that have been determined to meet basic human needs. The exporter, however, is required to abide by the guidelines in paragraph (a) of this section to ensure that a given item to be exported is encompassed by this license. For example, even though "generators" are included in the Supplement, only small generators suitable and necessary to administer and operate a donative program are authorized for export by this license. In like manner, "laboratory supplies and equipment" covers items intended for use in local medical laboratories such as refrigerators, sterilization equipment and microscopes. If a license holder is in doubt whether an item is included within the scope of one of the entries listed in the Supplement, or seeks authorization for items not included in the Supplement, a letter of inquiry should be submitted to the Bureau of Export Administration, Office of Exporter Services, Rm. 2627, U.S. Department of Commerce, Washington, DC 20230. The request should describe the type of goods intended for export and how it is intended to meet basic human needs. The Office of Exporter Services will notify the exporter whether the item is authorized for export by this license and any special conditions that may apply to the export.

(f) *Distribution.* To qualify for a Humanitarian License, the donor must demonstrate a means of ensuring that the donations exported are in fact used to meet the basic human needs of the intended beneficiaries. This requires a monitoring system that would alert the donor if goods are being diverted. See paragraph (g)(5) of this section for ways by which this requirement may be satisfied.

(g) *Application procedure.* To apply for a Humanitarian License, the applicant shall prepare a Narrative Statement, in duplicate, explaining the nature and function of the donative program. This Narrative Statement should be submitted to the Bureau of Export Administration, Office of Exporter Services, Room 2627, Department of Commerce, Washington, DC 20230. The Narrative Statement must include, as a minimum, the following information:

(1) The applicant organization's identity and past experience as an

exporter of goods to meet basic human needs;

(2) A specific list of past and current countries to which the donative programs have been and are being directed, as well as any countries to which such programs are now planned, with particular reference to donative programs in embargoed destinations;

(3) A description of the types of projects and commodities involved in the donative programs;

(4) A description of the specific class(es) of beneficiaries of particular donated goods intended to be exported under this license.

(5) A description of the arrangements to ensure proper distribution of the donated goods. These 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;

(iii) An agreement to utilize the services of a charitable organization that has a monitoring system in place; and

(6) Information concerning the source of funding for the donative programs and the projected annual value of exports under the license. When a narrative statement is approved, the Office of Exporter Services will issue a letter authorizing export of eligible donations during the validity period, subject to the provisions of the Export Administration Regulations and to the terms and conditions contained in the letter. Attached to this letter will be a validated copy of the narrative statement with a license number and an expiration date. This letter together with the validated copy of the Narrative Statement constitutes the "Humanitarian License." The license number must be displayed on the Shipper's Export Declaration (Commerce Form 7525-V.)

(h) *Duration of license.* (1) A Humanitarian License granted under this section will be valid for two years from the last day of the month in which it is issued. The license may be extended for two-year periods thereafter by submitting a certification to the Office of Exporter Services. This certification must state the following:

For the purpose of requesting a two year extension of Humanitarian License No. \_\_\_\_\_, I (we) certify that all material facts concerning the license outlined in the Narrative Statement submitted to the Office of Exporter Services remain the same and that I continue to comply with the terms and conditions of said license and with the

Export Administration Regulations (EAR). I am authorized to make this statement on behalf of our organization.

(Name and Title)

(Signature and Date)

(2) If any material facts concerning the license have changed from those described in the Narrative Statement, the exporter must submit an explanation of those changes at the time that renewal of the license is sought. This request for an extension of the Humanitarian License should be submitted 90 days prior to the license's expiration date. When this extension request is approved, the Office of Exporter Services will issue a validated letter with a new license number and expiration date.

(i) *Revocation of license.* In addition to any enforcement action under part 764 of this subchapter, the license may be suspended or revoked if any of the following occurs:

(1) The exporter discontinues use of the license for a period of more than one year;

(2) The exporter has failed to comply with the guidelines of the license, including the export of items that do not qualify as donations intended to meet basic human needs or the acceptance of any form of payment for the items donated;

(3) The donations are diverted to an unauthorized party;

(4) Any provision of the Export Administration Act or any regulation, order, or license issued pursuant thereto has been violated.

(j) *Recordkeeping requirements.* In addition to the renewal request discussed in paragraph (h) of this section, any exporter granted a Humanitarian License must maintain records of all shipments made under that license, the values of said shipments, the countries and beneficiaries to which the donations are sent, the Department of Commerce letter and Narrative Statement, and any party charged with distributing the donations to the beneficiaries. These records must be available for review upon request by the Office of Export Enforcement.

#### **Supplement 1 to Part 746—Kinds of Items That May Be Donated To Meet Basic Human Needs Under the Humanitarian License**

The following is a list of the kinds of items that have been identified as meeting basic human needs. The list is not definitive but will be amended on an ongoing basis to reflect additional items, as they are identified, that meet

these needs. The list is divided into categories that parallel the five basic human needs: health, food, clothing, shelter, and education. A degree of overlap exists, however, since an item listed as meeting one need may serve as well to meet additional needs. A sixth category of items is added to cover the non-commercial export of basic support equipment and supplies necessary to operate and administer the donative programs. The list is limited by the guidelines outlined in § 746.17(a) of this part, which confine the scope of the list to those items appropriate in addressing basic human needs through small-scale projects at the local level. Each item itself must be able to be described as "basic" and "small-scale" if it is to be eligible for export under this license. If the exporter is unsure whether a prospective donation falls within these guidelines, the procedure outlined in § 746.17(e) of this part should be followed. Where applicable, replacement and spare parts for items that qualify for export under this Supplement may also be exported. Specific goods that may not be exported under a Humanitarian License are described in § 746.17(d) of this part.

**Note:** Motorized vehicles, watercraft and aircraft are not included in this Supplement. Requests to export such items to meet basic human needs may be made under the procedure described in § 746.17(e) of this part.

(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 2 to Part 746—United Nations Embargoes Administered by OFAC**

(a) *Angola.* BXA maintains controls on Angola as reflected on the Country Chart in Supplement 1 to part 738 of this subchapter. (See also section 746.7 of this part.) In addition, OFAC administers sanctions against the National Union for the Total Independence of Angola (UNITA). Under Executive Order 12865 of September 26, 1993, and consistent with United Nations Security Council Resolution 864 of September 15, 1993, OFAC administers an embargo on the sale or supply of arms and related matériel of all types, including weapons and ammunition, military vehicles and equipment and spare parts, and petroleum and petroleum products to:

- (1) UNITA; or
- (2) The territory of Angola, other than through points of entry designated by the Secretary of the Treasury, in the following schedule:

- (i) Airports:
  - (A) Luanda; or
  - (B) Katumbela, Benguela Province.
- (ii) Ports:
  - (A) Luanda;
  - (B) Lobito, Benguela Province; or
  - (C) Namibe, Namibe Province.
- (iii) Entry Points:
  - (A) Malongo, Cabinda.
  - (B) Reserved.

(b) Exporters should apply to OFAC for authorization to export embargoed items to UNITA or to points of entry not designated by the Secretary of the Treasury. Exports of embargoed items that are also controlled on the CCL to end-users other than UNITA and to points of entry designated by the Secretary of the Treasury continue to require a license from BXA. In addition, all other items controlled on the CCL to Angola continue to require a license from BXA.

**Supplement 3 to Part 746—United Nations Arms Embargoes Administered by the State Department**

(a) *Former Socialist Federal Republic of Yugoslavia (Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia, and Slovenia).* The Department of State administers an embargo on all weapons and military equipment, consistent with United Nations Security Council Resolution 713 of September 25, 1991, to the countries of the former Socialist Federal Republic of Yugoslavia (Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia, and Slovenia). Exporters are advised to consult with the Department of State, Office

of Defense Trade Controls (22 CFR parts 120 through 130), regarding exports of weapons and military equipment to these destinations.

(b) *Liberia.* The Department of State administers an embargo on all weapons and military equipment to Liberia, consistent with United Nations Security Council Resolution 788 of November 19, 1992. Exporters are advised to consult with the Department of State, Office of Defense Trade Controls (22 CFR parts 120 through 130), regarding exports of weapons and military equipment.

(c) *Somalia.* The Department of State administers an embargo on all weapons and military equipment to Somalia, consistent with United Nations Security Council Resolution 733 of February 23, 1992. Exporters are advised to consult with the Department of State, Office of Defense Trade Controls (22 CFR parts 120 through 130), regarding exports of weapons and military equipment.

**PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION**

Sec.

- 748.1 General provisions.  
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**Supplement No. 1—BXA-748P, BXA-748P-A; Item Appendix, and BXA-748P-B; End-User Appendix Multipurpose Application Instructions**

**Supplement No. 2—BXA-711, Statement by Ultimate Consignee and Purchaser Instructions**

**Supplement No. 3—Authorities Administering Import Certificate/Delivery Verification (IC/DV) and End Use Certificate Systems in Foreign Countries**

**Supplement No. 4—U.S. Import Certificate and Delivery Verification Procedure**

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

**§ 748.1 General provisions.**

(a) *Scope.* (1) The provisions of this part apply to all applications whether submitted in writing or electronically for transactions subject to the Export Administration Regulations (EAR). All terms, conditions, provisions, and instructions including the applicant's certification, 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 BXA-748P.

(2) BXA will give a formal licensing decision only through the review of a license application or specific classification or advisory opinion request submitted in writing to BXA. Such decisions are based upon the application or request and information submitted concerning all facts relevant to the transaction supported by all required documentation.

(b) Reserved.

**§ 748.2 Where to obtain the necessary forms.**

(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 BXA offices:

Export Counseling Division, U.S. Department of Commerce, 14th Street and Pennsylvania Ave., N.W., Room H1099D, Washington, D.C. 20230. Telephone Number: (202) 482-4811; Facsimile Number: (202) 482-3617.

Western Regional Offices:  
3300 Irvine Avenue, Ste. 345, Newport Beach, CA 92660. Telephone Number: (714) 660-0144; Facsimile Number: (714) 660-9347.

5201 Great America Pkwy., Ste. 226, Santa Clara, CA 95054. Telephone Number: (408) 748-7450; Facsimile Number: (408) 748-7470.

(b) For the convenience of foreign consignees and other foreign parties, certain BXA forms may be obtained at U.S. Embassies and Consulates throughout the world. A Forms Supplement containing samples of the most commonly used export control forms is included as a supplement to the EAR.

**§ 748.3 Classification and Advisory Opinion requests.**

(a) *Introduction.* You may ask BXA to classify your item and provide you with the correct Export Control Classification Number (ECCN) to the paragraph (or subparagraph if appropriate). BXA 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, or destination, BXA will advise you whether a license is required to export a particular item(s), and whether or not a license is likely to be granted. This type of request is commonly referred to as an "Advisory Opinion".

(1) *Classification and Advisory Opinion requests* must be submitted using Form BXA-748P; Multipurpose Application. Please see the instructions contained in Supplement No. 1 to part 748 to complete the Blocks identified for each type of request. Both requests must be sent to BXA at one of the addresses listed in § 748.14 of this part. Be certain that your request does not omit any essential information or is otherwise incomplete.

(i) Each request involving particular items must be limited to 5 items. Exceptions may be made on a case-by-case basis for several related items if the relationship between the items is satisfactorily substantiated in the request. All Classification and Advisory Opinion requests (that necessitate BXA verifying a classification) must be supported by any descriptive literature, brochures, precise technical specifications or papers that describe the items in sufficient technical detail to enable classification or verification by BXA.

(ii) Your specific request should be stated in Block 24 on the application, whether you are requesting a Classification or Advisory Opinion. If your request does not fit in this Block, you may enter the words "See Attached Request" in Block 24, and attach your written request to the application.

(b) *Classification requests.* If you are submitting a Classification request you must complete Blocks 1 through 5, 14, 22 and 25 on the application. If you are requesting BXA to classify an item for which precise specifications are identified in § 748.8 of this part, these specifications must be addressed in, or attached to, your request.

(c) *Advisory Opinion requests.* If you are submitting a written Advisory Opinion request, you must complete Blocks 1 through 5, 14 and 25 on the application. In addition you may need to complete the following Blocks based on the nature of your request:

(1) Blocks 16, 17, 18, or 19 when your request involves parties to a proposed transaction;

(2) Block 21 when your request involves a specific end-use; or

(3) Block 22 when your request involves a particular item.

**§ 748.4 Parties to the transaction.**

(a) *Definitions of parties in interest—*  
(1) *Applicant.* (i) The "applicant" is

defined as the person who, as the principal party in interest in the transaction, has the power and responsibility for determining and controlling the exporting or reexporting of the items. BXA is primarily concerned with the identity of the applicant and the applicant's role in the transaction, and not the terms of sale.

(ii) Ordinarily, a seller who delivers items in the United States to a foreign buyer, or to the latter's forwarder or other agent, would not be in a position to assume responsibility for the export and would not be a proper applicant. This would normally be the situation where sale is made f.o.b. factory, although such terms of sale may relate only to price and are not necessarily inconsistent with the assumption by the seller of full responsibility for effecting the export or reexport.

(iii) If the seller intends to leave the responsibility for effecting an export or reexport in the hands of the foreign importer or the latter's forwarding or purchasing agent in the United States, the foreign importer should apply for the license in the foreign importer's own name if the foreign importer is subject to the jurisdiction of the United States at the time of export. Otherwise, the importer's forwarding or purchasing agent must appear as applicant and exporter. In this situation you, as the applicant, must disclose your role as agent and the name of your principal.

(2) *Order party.* The order party is that 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.

(3) *Purchaser.* The purchaser is that person abroad who has entered into the transaction with the applicant to purchase an item for delivery to the ultimate consignee. A bank, freight forwarder, forwarding agent, or other intermediary is not the purchaser.

(4) *Intermediate consignee.* The intermediate consignee is the bank, forwarding agent, or other intermediary (if any) who acts in a foreign country as an agent for the exporter or reexporter, the purchaser, or the ultimate consignee, for the purpose of effecting delivery of the export or reexport to the ultimate consignee.

(5) *Ultimate consignee.* The ultimate consignee is the person located abroad who is the true party in interest in actually receiving the export for the designated end-use. A bank, freight forwarder, forwarding agent, or other party, when acting as an intermediary,

is not acceptable as the ultimate consignee.

(b) *Reserved.*

**§ 748.5 Provisions related to applying for a license.**

(a) *Licensing action.* License applications may be approved in whole or in part, denied in whole or in part, or returned without action. However, if you specifically request, the license application will be considered as a whole and either approved or denied in its entirety. You will be notified of the action taken on your license application.

(b) *Prohibited from applying for a license.* No one convicted of a violation of one of the statutes specified in § 11(h) of the Export Administration Act, as amended, at the discretion of the Secretary of Commerce, is eligible to apply for any license for a period up to 10 years from the date of the conviction.

(c) *Disclosure of prior action on a shipment.* If you have obtained a license without disclosure of the facts described in § 748.6(a) of this part, where applicable, 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.

(1) *Licenses for items subject to detention.* If you submit a license application for items that you know or have reason to know have been detained by the Office of Export Enforcement or by the U.S. Customs Service, you must disclose this fact to BXA when you submit your license application.

(2) *Licenses for items previously exported.* You may not submit a license application to BXA 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 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.

(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 BXA 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) *Second application.* You may not submit a second license application covering the same proposed transaction while the first is pending action by BXA.

(f) *Resubmission.* If a license application is returned without action to you by BXA, 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. You must attach the original license application returned without action to your new license application.

(g) *Emergency processing.* If you believe an emergency situation beyond your control necessitates expedited processing of your license application, you should contact BXA's Exporter Counseling Division of the Office of Exporter Services. This office may be reached by telephone on (202) 482-4811 or by facsimile on (202) 482-3617. These procedures do not apply to emergency handling of Special Comprehensive License applications.

(1) *How to request emergency handling.* If your license application is already pending with BXA, contact the Exporter Counseling Division directly on either number listed above. If you have not yet submitted your license application, include a written letter with the title "Emergency Handling Request" with your license application. The letter must include:

(i) A justification for the request, supported, where appropriate, with copies of orders, communications, or other documentation to show that a valid emergency exists. You may be specifically requested to supply these or other documents not included with your submission.

(ii) An acknowledgement by you that any license issued under these emergency procedures will be valid only until the end of the month following the month in which it is issued and that it may not be extended.

(2) *Prompt delivery of emergency handling requests.* You are responsible for prompt delivery of your request and license application to BXA. You may hand-carry your request and license application or use the services of an overnight courier to ensure prompt delivery. If you desire to hand-carry your request and license application, you may hand deliver it to the Exporter Counseling Division at the address stated in § 748.2 of this part. If you decide to use an overnight courier, use

the address listed in § 748.14 of this part. The envelope containing your license application should be labeled "Attn: Exporter Counseling Division, Emergency Handling Request Enclosed".

(3) *Review of emergency handling requests.* BXA views an emergency as an unforeseeable situation over which you have no control. On the day of receipt, BXA will evaluate your license application and decide whether emergency handling is warranted. Frequent emergency request will be given particularly close scrutiny. This procedure is not designed to become a substitute for timely filing of license applications.

(4) *Action on license applications processed under emergency procedures.* If you have submitted an emergency request, you will be contacted by the Exporter Counseling Division informing you of whether or not your request for emergency processing has been granted. If your license is approved under emergency handling procedures, you will be notified by BXA of the approval by telephone or in person. You will be given the license number and verbal authorization to effect shipment immediately, without waiting for the actual license. Any license approved under these emergency handling procedures will have a limited validity period as described in § 750.7(f) of this subchapter.

**§ 748.6 Disclosure and substantiation of facts on license applications.**

(a) *Disclosure requirement—(1) Full disclosure.* You, as the applicant, are required to make the fullest disclosure of all parties in interest to the transaction so that BXA may decide on the license application with the fullest knowledge of all relevant facts and so that the identity and location of the persons who know the most about the transactions may be easily ascertained in the event they must be contacted for additional information. Where there is any doubt as to which of several persons should be named as a party to the license, you must disclose the names of all such persons and the functions to be performed by each in an attachment to your license application.

(i) *Parties.* The names of all the parties who are concerned with or interested in the proposed export or reexport. This includes all parties participating on their own account: the applicant as exporter or reexporter, the ultimate consignee, the intermediate consignee, and the purchaser, as defined in § 748.4(a) of this part. If the license application is filed for an account other than that of the applicant, the agent, as

applicant must disclose the name of the agent's principal.

(ii) *Identification of principal.* Where more than one person in a transaction can fairly be described as being a principal, the license application should be accompanied by a statement giving the names and addresses of all such persons and their roles in the transaction.

(2) Reserved.

(b) *Orders and other material facts—*  
(1) *Orders involving foreign agents.* If you are a foreign agent of a U.S. exporter, you are not required to have in your possession an order before submitting a license application if the order covers items intended for general resale by you to presently unknown end-users. In all other circumstances, the order must be transmitted to the U.S. exporter before the license application is submitted to BXA.

(2) *Requirements for other types of orders.* A license application must be based on an order. An "order" means a communication from a person in a foreign country or that person's representative expressing an intent to import items from you or order party, as defined in § 748.4(b) of this part. While an order must, in any case, be more than a mere business inquiry relating to a possible export or reexport, it need not be an agreement that can presently be executed or that would become a binding contract upon acceptance. Additionally, an order need not be an unconditional offer to buy. An order, for instance, may be contingent upon certain variable conditions such as market price, time of delivery, availability of the items in kinds and quantities desired, and other undetermined factors. Such a contingent offer still constitutes an order within the meaning of these provisions. Similarly, a continuing or "open" order that remains at all times flexible in some respects may be acceptable. If, however, all of the terms of the order are not finally determined before a license application is submitted, all negotiations toward the settlement of the terms must have been advanced sufficiently to establish the intent of the person placing the order to consummate the proposed transaction. BXA will consider granting a waiver of this order requirement in situations where you are able to show that an exception is warranted. Some examples of reasons that, if fully substantiated, might warrant an exception are:

(i) An unusual expenditure of time, money, or technical skill, in excess of ordinary sales expenses is necessary before negotiations for an order may be

pursued and before a bid can be submitted or an order obtained.

(ii) The applicant is under an unusual obligation to export or reexport items covered because of a special trade or industry practice.

(iii) The export or reexport involves a sample, gift, relief, or charitable shipment, or other shipment where an order is not normally an element of the transaction.

(3) *Request for waiver of "order" requirement.* A statement explaining in full the reason(s) for the requested exception, and any documents that substantiate your request, must be submitted with your license application. If it is not possible to obtain the required documentation at the time the waiver request is submitted, you should submit the documents upon receipt. If the exception request is granted and the license is issued, certain conditions or limitations on the export or reexport may be imposed.

(c)(1) *Documentary Evidence you must have in your possession.* Before filing a license application for a license, you, as the applicant, should have in your possession documentary evidence of the order that is referenced on the license application. "Documentary evidence" means any document(s) from the foreign purchaser or the foreign purchaser's representative that contain the terms and conditions of an offer to buy the items for which the license is requested. Such evidence may take the form of a contract signed by both parties, or of letters, telegrams, facsimiles, confirmations or other documents that describe the offer of the foreign purchaser to buy or the acceptance by the foreign purchaser of the exporter's offer to sell. You, or the order party involved in the transaction, must have in your possession documentary evidence of the facts related to the transaction that appear on the license application including:

(i) Country of ultimate destination;  
(ii) Names and addresses of the ultimate consignee, intermediate consignee (if any), purchaser (if other than ultimate consignee), and any other party to the transaction, whether principal or agent, including but not limited to brokers, representatives, or other agents through whom the order was received;

(iii) Quantity, value and description of the items to be exported or reexported; and

(iv) End-use of the export or reexport.

(2) The printed name, address, or nature of business of the ultimate consignee or purchaser appearing on a letterhead or order form will not constitute evidence of either the

ultimate consignee or purchaser's identity, country of ultimate destination, or end-use of the items described in the license application. This type of information does not meet the requirement for documentary evidence as described in § 748.6(c) of this section.

#### § 748.7 General instructions for license applications.

(a) *Application Control Number.* Each application form includes a preprinted Application Control Number. This Application Control Number, consisting of a letter followed by six digits, is for use by BXA when processing applications, and by applicants communicating with BXA concerning pending applications. The Application Control Number is not a license number. This control number is for use by BXA and by applicants when communicating with BXA concerning their pending applications. This number is used for tracking purposes within the U.S. Government.

(b) *Form and instructions.* An application for license, whether to export or reexport, must be submitted on Form BXA-748P, Multipurpose Application (revised [EFFECTIVE DATE] or later), and Forms BXA-748P-A, Item Appendix, and Form BXA-748P-B, End-User Appendix. Facsimiles or copies of these forms are not acceptable. Instructions for preparing Form BXA-748P are contained in Supplement No. 1 to part 748. Remember, your license application is not limited to a single shipment, but may represent a reasonable estimate of items to be shipped throughout the validity of the license.

(c) *Assembly and additional information.* All documents or correspondence accompanying your license application should bear the Application Control Number, and be stapled together. Where necessary, BXA may require you to submit additional information beyond that stated in the EAR or Form BXA-748P confirming or amplifying information contained in your license application.

(d) *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 purchase transaction or other transaction, must be promptly reported to BXA, whether a license has been granted or the license application is still under consideration. If a license has been granted, such changes must be reported immediately to BXA, even

though shipments against the license may be partially or wholly completed.

(e) *Applying electronically for a license, Classification or Advisory Opinion requests.* You may apply electronically once you have been authorized to do so by BXA. An authorization to submit applications electronically may be limited or withdrawn by BXA at any time. There are no prerequisites for obtaining permission to submit electronically or limitations in terms of country eligibility. However, BXA may direct that any electronic application be resubmitted in writing, in whole or in part for any reason, including the desire of BXA in a particular case to receive documentation in support of the application that does not lend itself to electronic submission.

(1) *Requesting approval to submit applications electronically.* Your company must submit a written request to submit applications electronically to BXA at one of the addresses identified in § 748.14 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. BXA will provide you with language for a number of required certifications. Once you have completed the necessary certifications, you may be approved by BXA 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 BXA to submit applications electronically for the company will be assigned a personal identification number ("PIN") telephonically by BXA. A PIN will be assigned to you only if your company has certified to BXA that you are to be authorized to act for it in making to electronic submissions under these regulations.

(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 BXA 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 BXA at (202) 482-0436. You must confirm this notification in writing within two business days to BXA at the address provided in § 748.14 of this part.

(B) Your company is responsible for immediately notifying BXA 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.

(3) *Electronic submission of applications.* (i) All applications. Upon submission of the required certifications and approval of the company's request to use electronic submission, BXA 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 BXA from time to time.

(ii) 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 this subchapter. 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 BXA or to an entity under contract to receive such applications for BXA.

(4) *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.

(5) *Updating.* An applicant company must promptly notify BXA 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 BXA and follow the instructions provided by BXA. 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.

(f) *Request for extended 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 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. To request an extended validity period, include justification for your request in Block 24 on the application.

(g) *Applications for the export of items from the United States.* A license application to export items from the United States may be made only by a person subject to the jurisdiction of the United States who is in fact the exporter, or by the applicant's duly authorized agent. An application may be made on behalf of a person not subject to the jurisdiction of the United States by an authorized agent in the United States, who then becomes the applicant.

#### § 748.8 Additional license application 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 below are addressed in your license application. Any block not identified below must be completed in accordance with the instructions contained in Supplement No. 1 to part 748. All "blocks" discussed in this section relate to those appearing on the Form BXA-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 the Block 22 on the license application.

(1) Facts relating to the grade, form, concentration, mixture(s), or ingredients as may be necessary to identify the item accurately, and;

(2) In instances where Chemical Abstract Service Registry (C.A.S.) numbers exist, they 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.

(c) *Digital computers 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. If the principal function is telecommunications, a Composite Theoretical Performance (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, cryptanalytic, certifiable multi-level 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. (If your license application involves a supercomputer, See § 742.12 of this part for application requirements.)

(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 this subchapter), 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 in 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 6 to Category 4, or that exceed any of the limits specified in Advisory Notes 3 or 6 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 the BXA;

(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 in License Exception GFT (See § 740.16 of this subchapter).

(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 22(e), indicate the specific number of gift parcels you believe may represent a reasonable estimate of the number of parcels to be shipped during the validity of the license;

(4) In Block 22(j), enter the phrase "Gift Parcels";

(5) In Block 23, indicate a reasonable value approximation proportionate to the quantity of gift parcels identified in Block 22(e); and

(6) In Block 21, enter the phrase "For personal use by recipients".

(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 License Exception TUS (See § 740.9 of this subchapter), 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 a statement that the shipment is wholly of foreign origin;

(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. 10 stated in § 734.2(b)(10) of this subchapter and identification of the intermediate consignee in the country of unloading or transit is unknown at the time the license application is submitted, the country of unloading or transit must be shown in Block 17.

(g) *Nuclear Non-proliferation items and end-uses.* (1) *Statement requirement.* If a license is required to export or reexport items under § 742.3 of this subchapter, prior to submitting a license application you must obtain a signed written statement from the foreign importer 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 § 742.3 of this subchapter; and

(ii) Written authorization will be obtained from the BXA 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 License Exception NSG (See § 740.6 of this subchapter).

(2) *License application requirements.* Along with the required certification, you must include the following information in your license application:

(i) In Block 6, 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; and

(v) In Block 24, if your license application is being submitted because you know or have reason to know that your transaction involves a nuclear end-use described in § 744.2 of this subchapter, you must fully explain the basis for your knowledge that the items are intended for the purpose(s) described in § 744.2 of this subchapter. 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 § 742.3 of this subchapter.

(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 BXA 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 may 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) Number and type of data communication interfaces;

(G) 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;

(H) Description of capabilities related to "real time processing" and receiving computer aided-design as described in ECCN 2B01.a.2.a and a.2.b and ECCN 2B01.b.2 and b.3;

(I) 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 2B01; and

(J) 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 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 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, and a description of the method for measurement; and

(H) Slide motion test results if required as described in ECCN 2B01.c.1.b.6.

(i) *Parts, components, and materials incorporated abroad into foreign-made products.* BXA will consider license applications to export or reexport to multiple consignees or multiple countries. Such requests will not be approved for countries listed in Country Group E:1 (See Supplement No. 1 to part 740 of this subchapter), but may be approved only in limited circumstances for countries listed in Country Group D:1. If you are requesting approval of multiple countries or consignees, enter the word "Various" in Block 18, and list the countries or consignees in Block 24.

(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 various, 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 reexporting the foreign-made product incorporating U.S. origin parts, components or materials;

(iv) In Block 22(e), specify the quantity for each foreign-made product. If this information is unknown, enter "Unknown" in Block 22(e);

(v) In Block 22(j), describe the foreign-made product that will be reexported, 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;

(vi) 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 this subchapter. 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);

(vii) In Block 22(h), enter the digit "0" for each foreign-made product;

(viii) In Block 23, enter the digit "0";

(ix) 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;

(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 this subchapter) 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 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), enter the following information, 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 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, 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 country listed in Country Group D:1 and E:2 (see Supplement No. 1 to part 740 of this subchapter):

Uncertain; however, shipment(s) will not be made to Country Groups D:1 or E:2.

(iii) Provide information as described in § 748.8(l)(1)(ii) of this section for vessels or information contained in § 748.8(l)(2)(ii) of this section 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. License applications received without full technical specifications will be promptly returned without action, without prior notice from BXA.

(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.

(m) *Robots.* If you are submitting a license application for the export or reexport of items controlled by ECCNs 2B07 or 2D01 (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;

(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 2B07, 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 this subchapter 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 this subchapter), you must obtain

a written letter from the ultimate consignee assuring that, unless prior authorization is obtained from BXA, the consignee will not knowingly reexport the technology to any destination, or export the direct product of the technology directly to a country listed in Country Group D:1 or E:2 (See Supplement No. 1 to part 740 of this subchapter). 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.* 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. If you are submitting a license application to export or reexport technology relating to any of these items 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 BXA, 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 Export Administration 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 § 748.8(q)(2) of this section.

(p) *Temporary exports or reexports.* If you are submitting a license application for the temporary export or reexport of an item (not eligible for License Exception TMP (See § 740.8 of this subchapter)) 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 two years of the date of export (or reexport), unless other disposition has been authorized in writing by the Bureau of Export Administration.

#### § 748.9 Support documentation for license applications.

(a) *Exemptions.* If you plan to submit a license application involving one of the following situations, no support documentation is required. Simply submit the license application.

(1) All exports and reexports involving ultimate consignees located in any of the following countries:

Bahamas, Barbados, Belize, Bermuda, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, French West Indies, French Guiana, Greenland, Guatemala.

Guyana, Haiti, Honduras, Jamaica, Leeward and Windward Islands, Mexico, Miquelon and St. Pierre Islands, Netherlands Antilles, Nicaragua, Panama, Paraguay, Peru, Surinam, Trinidad and Tobago, Uruguay, and Venezuela.

(2) The ultimate consignee or purchaser is a foreign government(s) or foreign government agency(ies). To determine whether the parties to your transaction meet the definition of "government agency" refer to the definition contained in § 730.3 of this subchapter. Remember, if both the ultimate consignee and purchaser are not a foreign government or foreign government agency, a statement is required from the nongovernmental party. However, support documents are required from governments of the People's Republic of China, India, Bulgaria, Czech Republic, Hungary, Poland, Romania, and Slovakia.

(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, to a member agency in the foreign country.

(4) The license application is submitted to export or reexport items for temporary exhibition, demonstration, or testing purposes.

(5) The license application is submitted for items controlled for short supply reasons (See part 754 of this subchapter).

(6) The license application is submitted under the Special Comprehensive License described in part 752 of this subchapter.

(b) *Support documentation requirements.* Certain license applications 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 this subchapter. 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.

(ii) If no, your transaction may require a Statement by Ultimate Consignee and Purchaser. Proceed directly to § 748.11 of this part.

(2) Does your transaction involve items controlled for national security reasons destined for Bulgaria, the Czech Republic, Hungary, India, the People's Republic of China, Poland, Romania, or Slovakia?

(i) If yes, your transaction may require an Import or End-User Certificate. Proceed to § 748.10 of this part.

**Note:** 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: (1) The item to be exported is described in an Advisory Note for Country Group D:1 (See Supplement No. 1 to part 740 of this subchapter) on the CCL, or; (2) 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 (3) The End-User is not a Chinese entity.

(ii) If no, continue with question number 3.

(3) Does your transaction involve items controlled for national security

reasons destined for one of the following countries (this applies only to those overseas territories specifically listed):

Argentina, Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Republic of, Italy, Japan, Korea, Republic of.

Liechtenstein Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Portugal, Singapore, Spain, Sweden, Switzerland, Taiwan, Turkey, and United Kingdom.

(i) If yes, your transaction may require an Import Certificate. Proceed to § 748.10 of this part.

(ii) If no, your transaction may require a Statement by Ultimate Consignee or Purchaser. Proceed to § 748.11 of this part.

(c) *License applications requiring support documentation.* 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. 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. If a license application is submitted without either the required support document, the license application will be immediately returned without action unless the reasons for failing to obtain the document are supplied in Block 24 or in an attachment to the license application.

(1) *License applications supported by an Import or End User Certificate.* If submission of the original certificate is not required in § 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 will be 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) 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 original manually-signed statement is retained by the ultimate consignee, and you retain a copy of the statement.

(d) *Exceptions to obtaining the required support document.* BXA 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 program. 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 Certificate or Statement must be submitted to BXA within one year from the date that the first license application, supported by the same Certificate or Statement, was submitted to BXA.

(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 the specific information supplied in a license application or license issued by BXA. In terms of the disclosure of facts pertaining to a transaction(s), the license application covering the transaction must be self-contained. The authorizations contained in the resulting license are not extended by the general information contained in Import Certificate, End-User Certificate or Statement by Ultimate Consignee and Purchaser with regard to the reexport from the country of destination or with regard to any other facts relative to the transaction as reported on the license application.

(2) Misrepresentations, either through failure to disclose facts, concealing a material fact, or furnishing false information, will subject all parties to administrative action by BXA. 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 of which you have knowledge or belief, 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 BXA of any change in the facts contained in the support document that comes to your attention subsequent to the issuance of the support document.

(h) *Effect on license application review.* BXA 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. BXA 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 considerations upon which BXA 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 BXA.* If an applicant is requested by a foreign importer to return an unused or partially used Import or End-User Certificate submitted to BXA in support of a license application, the procedure provided below should be followed:

(1) Applicants must send their letter request for return of an Import or End-User Certificate to the address stated in § 748.14 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 is in the

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 these regulations require that all original support documents are retained for a period of five years, you may return an unused or partially used certificate at the request of a foreign importer provided that you submit the original certificate, accompanied by a letter of explanation, and a copy of each license covered by the certificate, and list of all shipments made against each license to BXA at the address listed in § 748.14. BXA 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 than 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, BXA 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 BXA. The copies must be retained on file along with your correspondence in accordance with the recordkeeping provisions in part 762 of this subchapter.

#### § 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 BXA. 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) and (b)(3) of this part.

(b) *An Import or End-User Certificate must be obtained if:*

(1) Any items on your license application are controlled for national security reasons (NS); and

(2) Your license application involves the export of items classified in a single entry on the CCL, the total value of which exceeds \$5,000.

(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 exceeding \$5,000, an Import or End-User Certificate must be obtained.

(iii) If you are specifically requested by BXA to obtain an Import Certificate for a transaction valued under \$5,000.

(c) *Where to obtain Import and End-User Certificates.* See Supplement No. 3 to part 748 for a list of the authorities administering the Import Certificate/Delivery Verification and End-User Certificate Systems in other countries.

(d) *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 BXA 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:** You should furnish the consignee 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.

(i) 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:

(A) Title of contract and contract number (optional);

(B) Names of importer and exporter;  
(C) End-User and end-use;  
(D) Description of the item, quantity and dollar value; and  
(E) Signature of the importer and date.

(ii) Reserved.

(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 BXA through a U.S. Foreign Commercial Service office, or in a sealed envelope to you marked "To be opened by BXA 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, 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 BXA 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.* (1) In order to determine whether submission to BXA of the requisite certificate is required, you must ask the following two questions.

(i) Does the license application involve the export or reexport of a supercomputer as defined in part 742 of this subchapter?

(ii) Is a PRC End-User Certificate required for the proposed transaction?

(2) If the answer is yes to either question, the original certificate must be submitted with the license application to BXA. Copies will not be accepted.

(3) If the answer is no to both of these questions, the original certificate must

be retained on file by the applicant in accordance with the recordkeeping provisions of part 762 of this subchapter, 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.* BXA 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 BXA, unless the original is submitted with the license application. All recordkeeping provisions contained in part 762 of this subchapter apply to this requirement, except that reproductions may not be substituted for the officially authenticated original in this instance.

#### § 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.

(b) *Submission of the Statement by Ultimate Consignee and Purchaser.* A copy of the signed Statement by Ultimate Consignee and Purchaser must be maintained by the applicant with the ultimate consignee retaining the manually-signed original in accordance with the recordkeeping provisions of part 762. The copy retained 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. 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 this subchapter) or the item involved is a supercomputer.

(c) *Form or letter.* The ultimate consignee and purchaser must complete either a statement on company letterhead in accordance with § 748.11(e) of this part or Form BXA-711, Statement by Ultimate Consignee and Purchaser. If you 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 you elect to complete Form BXA-711, only one Form BXA-711 (containing the signatures of the ultimate consignee and purchaser) need be completed. Whether your ultimate consignee and purchaser sign a written statement or Form BXA-711, the following constraints apply:

(1) Responsible officials representing the ultimate consignee 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 on completing Form BXA-711.* Instructions on completing Form BXA-711 are contained in

Supplement No. 2 to part 748. The ultimate consignee and purchaser may sign a legible copy of Form BXA-711. It is not necessary to require your ultimate consignee and purchaser sign an original Form BXA-711, provided all information contained on the copy is legible.

(e) *Instructions on 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, 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 one year from the date this statement is signed.

(2) *Paragraph 2.* One or more of the following certifications must be included:

**Note:** 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 each 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 belief 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 change of facts or intentions set forth 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 Export Administration, we will not reexport, resell, or otherwise dispose of any items approved on a license supported by this statement issued to [name of applicant] (1) to any country not approved for export as brought to our attention by the U.S. exporter; or (2) 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 BXA to reexport the items in the form in which received even though the ultimate consignee and/or purchaser has indicated the intention to reexport, and that authorization to reexport is not granted on the basis of information provided in the statement, but as a

result of a specific request in a license application.

#### § 748.12 Special provisions.

(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 notice 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 this subchapter, 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:** 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, the same document would be required for reexport to Country Group D:1 and E:2 (See Supplement No. 1 to part 740 of this subchapter).

(c) *Granting of exceptions to the support documentation requirement.* An exception to obtaining the required

support documentation will be considered by BXA, 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, BXA 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 BXA 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 BXA.* (i) *Single transaction request.* Where a single transaction is involved, BXA 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, BXA will advise you by letter.

(ii) *Multiple transactions request.* Where multiple transactions are involved, BXA will advise you by letter of the action taken on the exception request. The letter will contain any conditions or restrictions that BXA 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 this subchapter. To ensure compliance with this recordkeeping requirement, BXA 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.

#### § 748.13 Delivery Verification (DV).

(a) *Scope.* (1) BXA may request applicants 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. 3 to part 748.

(2) If BXA 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 BXA at the address listed in § 748.14 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 DV is required by BXA, 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. 3 to part 748, and forward the completed DV to the licensee. The DV must cover the items described on the license that have been shipped.

**Note:** BXA 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 BXA 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 BXA at the address listed in § 748.14 of this part.

(3) The documents must be forwarded with a dated letter evidencing 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 \_\_\_\_\_ have 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 BXA and, upon request, make available all information and records, including correspondence, regarding the attempt to obtain the DV.

#### § 748.14 Mailing address for applications and documentation.

All applications should be mailed to the following address, unless otherwise specified: Bureau of Export Administration, 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 Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, Room 2705, Washington, D.C. 20044, Attn: "Application Enclosed". BXA will not accept applications sent C.O.D.

#### Supplement No. 1 to Part 748—BXA-748P, BXA-748P-A; Item Appendix, and BXA-748P-B; End-User Appendix Multipurpose Application Instructions

All information must be legibly typed within the lines for each Block or Box.

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. Mark the appropriate Box with an (X). *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 have been previously exported (e.g., they are no longer located in the United States), mark the Box labeled "Reexport" with an (X). *Classification Request.* If you are requesting BXA to classify your item against the CCL, check the Box labeled "Classification Request". *Advisory Opinion Request.* If you are requesting an Advisory Opinion from BXA, check the Box labeled "Advisory Opinion Request". *Special Comprehensive License.* If you are submitting

a Special Comprehensive License in accordance with procedures described in part 752 of this subchapter, mark the Box labeled "Special Comprehensive License" with an (X).

Block 6: Attachments submitted with Application. Review the documentation you are required to submit with your application in accordance with the provisions of part 748 and § 742.12 of this subchapter, 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 this subchapter for instructions on the submission of a foreign availability submission.

If you are asking BXA to classify your product, you must mark the Box labeled "Tech. Specs.", and include with your application descriptive literature, brochures, technical specifications or papers that provide sufficient technical detail to enable BXA to determine the correct classification. Also mark this box if you are required to submit technical specifications for a 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 this subchapter.

Block 9: Special Purpose. Complete this box for certain items or types of transactions only if specifically required in § 748.8 of this part.

Block 10: Resubmission Application Control Number. If your original application was returned without action, provide the Application Control Number for the previous application.

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 change to the license as originally approved, enter the license number here, and 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 checked the "Reexport" box in Block 4. Enter the license number or License Exception symbol (for exports under General Licenses, enter the appropriate General License symbol) under which the items were originally exported.

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 § 748.11 of this subchapter.

Block 14: Applicant. Enter the applicant's name, street address, city, state/country, and postal code. Refer to § 748.4(a) of this part for a definition of "applicant". If you have checked "Export" in Block 4, 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 Employer 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 BXA 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. If 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., 011-358-0-123456F). Refer to § 748.4(b)(3) of this part for a definition of "purchaser". If the purchaser is also the ultimate consignee, enter the words "same as Block 18".

Block 17: Intermediate Consignee. Enter the intermediate consignee's complete name, street address, city, country, postal code and telephone or facsimile number. If 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., 011-358-0-123456F). Provide a complete street address, P.O. Boxes are not acceptable. Refer to § 748.4(b)(4) of this part for a definition of "intermediate consignee". If this party is identical to that listed in Block 16, you may simply type the words "Same as Block 16". If your proposed transaction does not involve use of an intermediate consignee, enter "None". If your proposed transaction involves use of more than one intermediate consignee, provide the information in Block 24 for each additional Intermediate Consignee.

Block 18: Ultimate Consignee. 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 material for the end-use designated in Block 21. A bank, freight forwarder, forwarding agent, or other intermediary may not be identified as the ultimate consignee. Refer to § 748.4(b)(1) of this part for the definition of "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 actual end-use is clearly identified in Block 21 or 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. If 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., 011-358-0-123456F).

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 is more than one end-user, enter the word "Various" in this Block, and use Form BXA-748P-B to identify each of the end-users. Enter each end user's complete name, street address, city, country, postal code and telephone or facsimile number. If 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., 011-358-0-123456F). 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. The original ultimate consignee is the entity identified in the original application for export as the ultimate consignee or the consignee currently in possession of the items. If 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., 011-358-0-123456F). Provide a complete street address, P.O. Boxes are not acceptable.

Block 21: Specific End-Use. 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 BXA-748P-A or B.

Block 22: You must complete each of the sub-blocks contained in this Block, if you are submitting a classification request, you do not need to complete blocks (d), (e), (f), (g), and (h). Enter "N/A" in these blocks. If you wish to export, reexport or have BXA classify more than one item, use Form BXA-748P-A for additional items.

(a) ECCN. Enter the Export Control Classification Number that corresponds to the item you wish to export or reexport. If you are requesting BXA classify your item, provide a recommended classification for the item in this Block.

(b) CTP. You must complete this Block if you intend to export, reexport, or request BXA to classify a digital computer. Instructions on calculating the CTP is contained in a Technical Note at the end of Category 4 in the CCL. If you are not exporting or reexporting a digital computer, insert "N/A" in this Block.

(c) Model Number. Enter the correct model number for each item.

(d) CCATS Number. If you have received a classification from BXA, provide the CCATS number shown on the classification issued by BXA. If not, enter "N/A".



(e) Quantity. Give the quantity to be exported or reexported, as in terms of the "Units" identified in the Export Control Classification Number entered in Block 21(a) of the item. If the "Unit" for an item is "Svalue," enter the quantity in units commonly used in the trade.

(f) Units. The "Unit" paragraph within each Export Control Classification Number will list a specific "Unit" for those items controlled by the entry. The "Unit" must be entered on all license applications submitted to BXA. If an item is licensed in terms of "S value", the unit of quantity commonly used in trade must also be shown on the license application. If the unit for your particular item is shown as "N/A" in the appropriate entry on the CCL, enter "N/A" in this Block.

(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 Box 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 BXA classify, if different from the applicant.

(j) Manufacturer's Description. Provide a description of the item(s) you wish to export, reexport, or have BXA 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 that may be 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 transaction as required in the EAR. Include special certifications, names of parties in interest not disclosed elsewhere, explanation of documents attached, etc. Do not include information concerning Block 22 in this space.

If your application represents a transaction previously denied, you must provide the Application Control Number for the original application.

If you are asking BXA to classify your product, provide an explanation why you believe the Export Control Classification Number 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 do not identify a recommended classification in block 22(a), you must state the reason you cannot determine the appropriate classification, identifying any ambiguities or deficiencies in the regulations that precluded you from determining the correct classification.

If additional space is necessary, use Block 24 on Form BXA-748P-A or B.

Block 25: You, as the applicant or duly authorized agent of the applicant, must manually sign the application. 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. Note: rubber-stamped or electronic signatures are not acceptable. Type both your name and title in the spaces provided.

**Supplement No. 2 to Part 748 BXA-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 which 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 § 748.4(a)(5) of this subchapter.)

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 § 748.4(a)(3) of this subchapter.)

Block 8: Certification for U.S. Exporter. This Block must be completed to certify that any correction, addition, or alteration on this form was made prior to the signing by the Ultimate Consignee in Block 6 and Purchaser in Block 7.

**Supplement No. 3 to Part 748— Authorities Administering Import Certificate/Delivery Verification (IC/DV) and end use Certificate Systems in Foreign Countries <sup>1</sup>**

Country	IC/DV authorities	System administered
Argentina .....	Secretaria Ejecutiva de la Comision Nacional de Control de Exportaciones Sensitivas y Material Belico Balcarce 362—1er. piso—Capital Federal—CP 1064 Buenos Aires. Tel. 334-0738, Fax 331-1618.	IC/DV.
Australia .....	Director, Technology Transfer and Analysis, Industry Policy and Operations Division, Department of Defense, Russell Office, Canberra, A.C.T. 2600.	IC/DV.
Austria .....	Bundesministerium fur Handel Gewerbe und Industrie Landstr. Haupstr. 55-57, Vienna 1031.	IC/DV.
Belgium .....	Ministere Des Affaires Economiques Office Central des Contingents et Licences 24-26 Rue De Mot, Bruxelles-1040.	IC/DV.
Bulgaria .....	Ministry of Trade 12 Al. Batenberg 1000 Sofia .....	IC/DV.
China, People's Republic of .....	Technology Import and Export, Department MOFERT, No. 2 Dong Chang An Street, Beijing, Telephone: 553031, Telex: 22478 MFERTCN.	PRC End-User Certificate.
Czech Republic .....	Federal Ministry of Foreign Trade, Head of Licensing Politickyh, Veznu 20 112 49 Praha 1.	IC/DV.
Denmark .....	Handelsministeriets, Licenskontor, Kampmannsgade 1, DK 1604, Copenhagen V. IC's also issued by Danmarks Nationalbank, Holmens Kanal 17, Copenhagen K Custom-houses.	IC/DV. DV.

Country	IC/DV authorities	System administered
Finland .....	Helsingin 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 .....	Deputy Director General of Foreign Trade Udyog Bhawan, Maulana Azad Road, New Delhi 11011: For small scale industries and entities, and those not elsewhere specified.	Indian IC.
	Directorate General of Technical Development, Udyog Bhawan, Maulana Azad Road, New Delhi 11011: For the "organized" sector, except for computers and related equipment.	Indian IC.
	Defense Research and Development Organization, Room No. 224, "B" Wing Sena Bhawan, New Delhi 110011: For Defense organizations.	Indian IC.
	Department of Electronics, Lok Nayak Bhawan, New Delhi 110003: For computers and related electronic items.	Indian IC.
	Assistant Director, Embassy of India, Commerce Wing, 2536 Massachusetts Ave. NW, Washington D.C. 20008—: For any of the above.	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, Dogana Italiana (of the town import where takes place).	IC/DV.
Japan .....	Ministered of International Trade and Industry in: Fukuoka, Hiroshima, Kanmon (Kitakyushu-shi), Kobe, Nagoya, Osaka, Sapporo, Sendai, Shikoku (Takamatsu-shi), Shimizu, Tokyo, and Yokohama.	IC.
	Japanese Customs Offices .....	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 .....	Handelsdepartementet, 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. Science-based Industrial Park Administration No. 2 Hsin Ann Road, Hsinchu. Export Processing Zone Administration, 600 Chiachang Road Nantz, Kaohsiung.	IC/DV.
Turkey .....	Ministry of Commerce, Department of Foreign Commerce, Ankara. Head Customs Office at the point of entry .....	IC. DV.
United Kingdom .....	Department of Trade and Industry, Export Licensing Branch, Millbank Tower Millbank, London, SW1P 4QU. H.M. Customs and Excise, King's Beam House, Mark Lane, London, E.C. 3.	IC. DV.

<sup>1</sup> Samples of Import Certificates and Delivery Verifications issued by each of these countries may be viewed at any of the offices identified in § 748.2(a) of this part. Copies are not available.

**Supplement No. 4—U.S. Import Certificate and Delivery Verification Procedure—[Reserved]**

**PART 750—APPLICATION PROCESSING, ISSUANCE AND DENIAL**

- Sec.
- 750.1 Scope.
- 750.2 Processing of Classification and Advisory Opinion requests.
- 750.3 Review of license applications by BXA and other government agencies and departments.
- 750.4 Procedures for processing license applications.
- 750.5 Status on pending applications.
- 750.6 Denial of license applications.
- 750.7 Issuance of licenses.
- 750.8 Revocation or suspension of licenses.
- 750.9 Duplicates of licenses.
- 750.10 Transfer of licenses for exports.
- 750.11 Shipping tolerances.

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

**§ 750.1 Scope.**

This part 750 describes the licensing process used by the Bureau of Export Administration (BXA) to review your application for a license, including processing times, denials, revocations, issuance, duplicates, transfers, and shipping tolerances on approved licenses. The processing times for Classification and Advisory Opinion requests are also provided along with directions on obtaining status on your pending application.

**§ 750.2 Processing of classification and advisory opinion requests.**

(a) *Classification requests.* All written inquiries submitted to BXA requesting the classification of a particular item on the Commerce Control List (CCL) will be answered within 14 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 written inquiries submitted to BXA requesting the applicability of license requirements to a proposed transaction or series of transactions (e.g., a particular item to a specific destination), will be answered within 30 days after receipt.

**§ 750.3 Review of license applications by BXA and other government agencies and departments.**

(a) *Review by BXA.* In reviewing specific license applications, BXA will conduct a complete analysis of all documentation and other forms of information submitted along with the license application. In addition to reviewing the item and end-use, BXA will consider the reliability of each party to the transaction and review any available intelligence information. To the maximum extent possible, BXA will make licensing decisions without referral of license applications to other agencies, however, BXA may consult with other U.S. departments and agencies regarding any license application.

(b) *Review by advisory agencies.* (1) The Departments of State, Defense, Energy, and the Arms Control and Disarmament Agency have the authority to review all categories of license application each agency or department specifies to BXA. These agencies and departments will be referred to as “advisory agencies” for the purposes of this section. Though advisory agencies have the authority to review any license application, they may determine that certain types of license applications need not be referred. In these instances, the advisory agency will provide BXA with a Delegation of Authority to process those license applications

without review by that particular advisory agency.

(2) Advisory agencies are concerned with license applications involving items controlled for missile technology, nuclear non-proliferation, and chemical and biological weapons proliferation reasons or destined for countries and/or end uses of concern. In addition the following advisory agencies are generally concerned with reviewing license applications, as follows:

(i) The Department of State is concerned primarily with license applications involving items controlled for regional stability, anti-terrorism, crime control reasons, and sanctions;

(ii) The Department of Defense is concerned primarily with license applications involving items controlled for national security and regional stability reasons; and

(iii) The Department of Energy is concerned primarily with license applications involving items controlled for nuclear non-proliferation reasons.

**§ 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 BXA’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 chapter apply to all license applications received on or after [EFFECTIVE DATE OF THE FINAL RULE]. The procedures and time limits in effect prior to [EFFECTIVE DATE OF THE FINAL RULE] will apply to license applications received prior to [EFFECTIVE DATE OF THE FINAL RULE].

(2) Incomplete license applications will not be registered. BXA will attempt to contact the applicant to correct the deficiencies, however, if BXA is unable to contact the applicant, 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 BXA 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 necessary action 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) *Exceptions to the 90 day license processing.* The only license applications not subject to this 90 day license processing time limit are those involving:

(1) The Special Comprehensive License;

(2) Items controlled for short supply reasons; or

(3) Items and destinations where the existence of a pre-existing contract is a prerequisite to approval.

(c) *Actions not included in processing time calculations.* The following actions will not be counted in the time period calculations described in paragraphs (a) and (b) of this section for the processing of license applications:

(1) *Agreement of the applicant.* (i) *When the applicant agrees to the delay.* Applicants may be requested by BXA to provide additional information in support of their license application or respond to questions arising during the processing of their license application.

(ii) *In situations where BXA 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 pre-license check is established by the Secretary, or by another advisory agency, if the request for a pre-license check is made by such advisory agency;

(ii) The pre-license check is requested within five days of the determination that it is necessary; and

(iii) The analysis resulting from the pre-license check is completed within five 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 thereafter; and

(iii) The license is issued within five days of the Secretary's receipt of the requested assurances.

(4) *Multilateral reviews.* Multilateral review of a license application if such review is required by the relevant multilateral regime.

(5) *Congressional notification.* License applications requiring congressional notification in accordance with section 6(j) of the Export Administration Act, as amended (EAA). Under Section 6(j) of the 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.

(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 non-proliferation reasons.

(E) All items controlled by the CCL entries ending with number 18.

(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."

(d) *Initial processing.* Within nine days of license application registration, BXA will, as appropriate:

(1) Contact the applicant if additional information is required, or if the license application is improperly completed or required support documents are missing, to request corrected information;

(2) Assure the stated classification on the license application is correct;

(3) Return the license application if a license is not required; or

(4) Refer the license application electronically along with all necessary recommendations and analysis concurrently to other agencies or departments. Any relevant information not contained in the electronic file will be simultaneously forwarded in paper copy. If referral to another advisory agency is not required, BXA will either approve the license application or notify the applicant of the intent to deny the license application.

(e) *Review by advisory agencies and/or interagency groups.* (1) Within thirty days of receipt of a referral, an advisory agency will provide BXA with a recommendation either to approve or deny the license application. As appropriate, such a recommendation may be with the benefit of consultation and 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 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 non-proliferation reasons. The SNEC also reviews license applications involving items not controlled for nuclear non-proliferation (NP) reasons, but destined for a country and/or end use/end-user of 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 concern.

(2) If an advisory agency requires additional information that is not contained in the electronic referral file or paper copies, the request will be forwarded promptly to BXA. BXA will in turn contact you.

(f) *Recommendations by advisory agencies.* Advisory agencies recommending denial of a license application must provide a statement of reasons, consistent with the provisions of the Act, and cite both the statutory and the regulatory basis for the recommendation to deny. An advisory agency that fails to provide a recommendation within thirty 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 BXA.

(g) *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 inform each agency of the Chair's decision on the license application within 14 days after the deadline for receiving agency recommendations.

(ii) If any advisory agency disagrees with the OC Chair's decision, the advisory agency may escalate the decision to the Chair of the Advisory Committee on Export Policy for resolution. If such a request for escalation is not made within five days of the decision of the OC Chair, his or her decision is then 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, and cite both the statutory and the regulatory basis for the request. The ACEP will review all relevant information and recommendations. The Chair of the ACEP will inform the reviewing agencies of the majority decision of the ACEP within 11 days from the date of receipt of the escalation request. Within five days of the decision, any dissenting advisory 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 appeal must be made by the head of the advisory agency 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 is then 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 will inform the reviewing departments and agencies of the majority decision of the EARB decision within 11 days from the date of receipt of the appeal. Within five days of the decision, any advisory 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 advisory agency. In the absence of a timely appeal, the decision of the EARB is then final.

#### § 750.5 Status of pending applications.

(a) *Information available on pending application.* Depending on the type of application you have submitted you may contact BXA for status of your application. For Classification and Advisory Opinion requests, telephone (202) 482-4905 or send a fax to (202) 219-9179. For license applications, telephone BXA'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 license application pending with BXA. 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 Standard Time. If you have any difficulty accessing STELA, contact during normal business hours, one of BXA's offices listed in § 748.2 of this subchapter.

(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. Enter the number "5" on your telephone for Application Control Numbers beginning with the letter "Z". Following this number, enter in the remaining six digits. After you enter the Application Control Number, STELA will provide

you with the current status of your license application.

#### § 750.6 Denial of license applications.

(a) *Intent to deny notification.* If BXA intends to deny your license application, BXA 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 determination to deny the license application;

(4) What, if any, modifications or restrictions to the license application would allow BXA to reconsider the license application;

(5) The name of the BXA 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 determination before the license application is denied. If you respond to the notification, BXA will advise you if, as a result of your response, the determination 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 this subchapter.

#### § 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 the BXA, 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) and other export control documents, and in communicating with the Department of Commerce concerning the license. The following changes do not require submission of a "Replacement" license or any other notification to BXA (If you wish to make any change not identified below, you will need to submit a "Replacement" license in accordance with the instructions contained in Supplement No. 1 to part 748):

- (1) Decrease in unit price or total value;
- (2) Increase in price or quantity if permitted under the shipping tolerances in § 750.11 of this subchapter;
- (3) 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, etc.;
- (4) 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;
- (5) 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;
- (6) 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 this subchapter) port not in the country of ultimate destination, without the designation of an intermediate consignee on the shipping documents and license, provided:
  - (i) 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;
  - (ii) The shipment is moving on a through bill of lading;
  - (iii) 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 this subchapter), or a national of any of these countries;
  - (iv) The carrier retains custody of the shipment until it is delivered to the ultimate consignee; and
  - (v) The original ocean bill of lading first issued at the port of export is delivered with the shipment to the ultimate consignee;
- (7) Change in address of purchaser or ultimate consignee if the new address is located within the same country shown on the license;

(8) Change in ECCN, unit of quantity, unit price, or wording of the item description (where necessary only for the purpose of conforming to an official revision in the CCL). This does not cover an actual change in the item to be shipped, or an increase in the price or quantity.

(c) *Responsibility of the licensee.* If a license is issued to you, you become the licensee. The licensee will be held accountable for use of the license, whether as a principal (exporting for your own account) or as an agent (including an agent acting for the account of a foreign principal who is not subject to the jurisdiction of the United States). You, as the licensee, assume responsibility for effecting the export or reexport, for proper use of the license, and for due performance of all of the license's terms and conditions. The obligations arising under the provisions of the EAA and the EAR are the same whether the license application is submitted and issued in writing or electronically.

(d) *Prohibited use of a license.* No one convicted of a violation of one of the statutes specified in section 11(h) of the EAA, at the discretion of the Secretary of Commerce, is eligible to use any license for a period up to 10 years from the date of the conviction. (See § 766.25 of this subchapter)

(e) *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.

(f) *License validity period.* Licenses involving the export or reexport of items generally have a 24 month validity period, unless a different validity period has been requested and specifically approved by BXA. Exceptions from the 24 month validity period include, license applications reviewed and approved as an "emergency" (See § 748.5(f) of this subchapter), or license applications for items controlled for short supply reasons. Emergency licenses are limited to a one month validity period and licenses for items controlled for short supply reasons are

limited to a 12 month validity period. Where appropriate, 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 this subchapter for validity periods for Special Comprehensive Licenses.)

(1) *Extended validity period.* Validity periods in excess of 24 months generally will *not* be granted. BXA will consider granting a validity period exceeding 24 months when extenuating circumstances warrant, however, no changes will be approved related to any other particular (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 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 emergency clearance provisions contained in § 748.5(f) of this subchapter will not be extended.

(2) *Request for extension.* (i) The applicant must submit a written request for the extension of 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 all applicable support documents remain valid and in the possession of the applicant. If the request for extension is approved, BXA will provide the applicant with a written response.

(g) *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 it is decided not to return the items to the United States, you must submit a license application requesting authorization to dispose of the items. Except where the items will be used on a temporary basis at the new

destination (and returned to the United States after such use), you must ensure your license application is accompanied by any 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 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 unloading or transit through a country listed in the Intransit Prohibition contained in part 734 of this subchapter, and you did not know the identity of the intermediate consignee at the time of the original license application, you must notify BXA 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 letter must be submitted to BXA at the address listed in § 748.15 of this subchapter.

(4) *Replacement license.* If you have been issued a "replacement" license (for changes to your original license that were not covered in § 750.7(b) of this part), you must attach the "replacement" license to the original, and retain both.

(h) *Records.* If you have been issued a license you must retain the license, and maintain complete records in accordance with part 762 of this subchapter including any licenses (whether used or unused, valid or expired) and all supporting documents and shipping records.

#### § 750.8 Revocation or suspension of licenses.

(a) *Revocation.* All licenses to export or reexport are subject to revision, suspension, or revocation, in whole or in part, without notice whenever there is reason to know that the EAR have been violated or that a violation is about to occur. BXA 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 the BXA 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, BXA may be further necessary 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 BXA 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 BXA at the address listed in § 748.15 of this subchapter, 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 this subchapter. If the licensee fails to return a license immediately upon notification that it has been suspended or revoked, the Office of Export Enforcement may impose sanctions provided for in § 764.3 of this subchapter.

#### § 750.9 Duplicate License.

(a)(1) *Lost, stolen or destroyed.* If a license is lost or destroyed you may obtain a duplicate of the license by submitting a letter to the BXA at the address listed in § 748.15 of this subchapter, Attention: Duplicate License Request". You must certify in your letter:

- (i) That the original license ([number] issued to [name and address of licensee]) has been lost or destroyed;
- (ii) The circumstances under which it was lost or destroyed;
- (iii) If the original license is found, the licensee will return either the original or duplicate license to the BXA.

(2) 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 this subchapter.

(b) *Hong Kong Trade Department.* BXA 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 this subchapter.

#### § 750.10 Transfers of licenses for export.

(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 BXA. BXA 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 commodities or technology out of the United States. BXA 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 transfer of a license or licenses containing the following:

- (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 BXA, 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 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, 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 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 made available upon demand and will be retained by me (us) for a period of two years from the time of the export from the United States, or any known reexport, transshipment, or diversion, or any other termination of the transaction whether formally in writing or by any other means, whichever is later. The undersigned will promptly report to the Bureau of Export Administration any material or substantive changes in the terms of the order and any other facts of the export transaction known or reported to the undersigned at any future time by any party to the export transaction.

(c) *Notification of transfer and recordkeeping.* Unless instructed otherwise by BXA, you must retain the license(s) pending notification by the BXA of the action taken. If the request is approved, you must forward the license(s) to the transferee and the validated letter received from BXA authorizing the transfer. If the transfer request is not approved, the license(s) must either be returned to BXA 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 BXA for additional information, after obtaining the necessary information you may resubmit your request.

#### § 750.11 Shipping tolerance.

(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 ship in the applicable ECCN on the CCL (see Supplement No. 1 to part 774 of this subchapter). 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 ECCN applicable to your item reads "\$ value" or "in \$ value", there is no shipping tolerance. You may not ship more than the dollar value stated on your license.

(2) *Items licensed by "Number".* If the "Unit" paragraph in 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 dollar value stated on that license by up to 25%.

(3) *Items licensed by "Area, Weight or Measure".* If the "Unit" paragraph in 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 this subchapter).

(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)
<hr/>	
\$1,250,000	

(ii) *Two shipments.* If the first shipment is for 40,000 pounds, 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)
<hr/>	
\$850,000	

(iii) *Three shipments.* If the first shipment is for 40,000 kg and the second shipment is for 20,000 kg, 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)
<hr/>	
\$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) 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

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) 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

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) 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

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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 752.17 Effect of other regulations.  
 752.18 Administrative actions.

### Supplement No. 1: Instructions for Completing Forms BXA-748P and BXA-752 for Requests for Special Comprehensive Licenses

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

#### § 752.1 Introduction.

(a) *Scope*—(1) *Introduction*. This part describes the provisions of the Special Comprehensive License (SCL). You may use SCLs, when appropriate, in lieu of other licenses described in part 748 of this subchapter, for multiple exports and reexports of items subject to the EAR. The SCL provides authorization to make specified exports and reexports otherwise prohibited by General Prohibitions One, Two, and Three described in part 734 of this subchapter. However, 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 this subchapter. Because the Bureau of Export Administration (BXA) does not review each individual transaction covered by a SCL, parties to the SCL must have the mechanisms in place to ensure that each export and reexport made under a SCL meets all the terms and conditions of the license and are in accordance with all applicable provisions in the Export Administration Regulations (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) *ICP Levels*. To qualify for a SCL, you will be required to develop an ICP. ICPs can be generally categorized into three levels that are dependent upon the activities involved. Section 752.12 of this part includes a general description of the elements of each of the three ICP levels, and guidance on which ICP your company must establish before making shipments under the SCL. The elements

of each ICP reflect the complexity of the activities authorized under the SCL, the countries involved, and the relationship between the SCL holder and the approved consignees. BXA may require you to include in your ICP any combination of elements from one or more levels, depending upon the nature of your SCL application.

(b) [Reserved].

#### § 752.2 Activities that may be authorized under the Special Comprehensive License.

(a) *General authorizations*. Under the SCL, BXA 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 types of activities that BXA may authorize under the SCL include:

(1) *Service activities*. Exporting and reexporting items subject to the EAR for use in servicing other items subject to the EAR. Related activities include:

(i) *Exports of replacement parts for the repair of items subject to the EAR that have been legally exported from the U.S.* This includes replacement of defective parts. Items that upgrade the original item are permitted as long as the upgrade does not exceed the performance parameter of the particular ECCN under which the item was originally classified (see Supplement No. 1 to part 774 of this subchapter).

(ii) *Exports to support services performed related to previously exported U.S.-origin items*. Examples include computer help lines, training, advisory services, transfer of information or data, and testing.

(iii) *Exports to support maintenance*. Servicing that involves normal and usual activities to maintain items in proper and safe operating condition, or to restore items to the original condition. Servicing may result in upgrades, provided that the upgrade does not exceed the performance parameters of the ECCN under which the item was originally classified (see Supplement No. 1 to part 774 of this subchapter).

(iv) *Exports to a designated service facility*.

(v) *Exports of items for stocking*. Stocking of "spare parts" where items are kept on hand to assure prompt repair of items abroad.

(A) *Definition of spare parts*. As used in this part 752, "spare parts" includes "sub-assemblies", but does not include test instruments.

(B) *Definition of sub-assemblies*. As used in this part 752, "sub-assemblies" means a number of components assembled to perform a specific function or functions, replaceable as a unit, and

not capable of operating as a standalone. One example is printed circuit boards that include mounted components. The term "sub-assemblies" does not include major subsystems such as those composed of a number of sub-assemblies, for example, the entire memory bank or the complete central processing unit of a computer.

(2) *End-user activities.* Exporting and reexporting items subject to the EAR for use as capital equipment or for incorporating items into manufactured items, where the U.S. content is above the de minimis levels identified in § 732.4(b) of this subchapter. Related activities include:

(i) Exporting items for capital expansion projects for constructing a new facility or expanding an existing facility;

(ii) Providing maintenance, repair, and operating supplies for an existing facility;

(iii) Supplying parts, components, and materials for use in the production of foreign-made items;

(iv) Exporting items to support scientific data acquisition when the items remain under the control of either the SCL holder or the consignee (examples include charting shorelines, recording tidal activity, drawing core samples, and oil and gas exploration);

(v) Exporting items for installation and expansion of services, such as providing wiring and cable for establishing a cable network; or

(vi) Supplying chemicals or chemical and biological equipment to subsidiaries under the "effective control" of the United States exporter or to other end-users specifically authorized by the BXA. As used in this part 752, "effective control" means the exercise of a right, under a contractual agreement between the U.S. exporter and the consignee, to determine and control the export of items authorized under a SCL and

(3) *Distribution activities.* Exporting and reexporting items subject to the EAR for the purpose of resale and reexport by consignees, such as:

(i) Reselling and/or reexporting in the form received under the SCL;

(ii) Assembling a finished product from kit form;

(iii) Adding software to a U.S. computer or other device;

(iv) Using an item for systems integration (i.e., assembling hardware and various components/software for a specific application by an end-user customer);

(v) Adding support equipment (e.g., test equipment being shipped with a foreign-produced system);

(vi) Installing communication/navigation equipment in a customer's

aircraft, or direction finding equipment on a vessel;

(vii) Adding discrete U.S. components to foreign-produced systems; or

(viii) Reselling foreign manufactured products that exceed the de minimis levels described in § 734.2(b)(2) of this subchapter.

(4) *Other activities.* Other activities may be authorized by BXA under the SCL on a case-by-case basis.

(b) *Prohibited activities.* The general prohibitions described in § 734.2(b) (4) through (10) of this subchapter apply to all exports and reexports by, and conduct of, all parties named on the 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 this subchapter.

#### § 752.3 Eligible items.

(a) All items subject to the EAR are eligible for export and reexport under the SCL, *except:*

(1) Items identified by the letters MT in the "Reason for Control" paragraph on the Commerce Control List (CCL) (see Supplement No. 1 to part 774 of this subchapter);

(2) Biologicals, or equipment and materials that can be used in the production of biologicals (items controlled by ECCNs 1C61, 1B71, 1E61, and 1E70);

(3) Chemicals and chemical equipment and materials that can be used in the production of chemical weapons to destinations listed in Country Group D:3 (see Supplement No. 1 to part 740 of this subchapter) (items controlled by ECCNs 1B70, 1C60, 1E60, and 1D60);

(4) Maritime (civil) nuclear propulsion systems or associated design or production software and technology identified in § 744.5 of this subchapter;

(5) Communication intercepting devices controlled by ECCN 5A80 on the CCL (see Supplement No. 1 to part 774 of this subchapter);

(6) Items identified by the letters "SS" in the "Reason for Control" paragraph on the CCL;

(7) Items specifically identified as ineligible by BXA on your approved SCL; and

(8) Additional items excluded consistent with multilateral obligations.

(b) Exports of items identified as NP in the "Reason for Control" paragraph on the CCL will not generally be authorized under an approved SCL for export or reexport to countries listed in Country Group D:2 (see Supplement No. 1 to part 740 of this subchapter).

#### § 752.4 Eligible countries.

(a) *General provisions.* You or your approved consignees may export or reexport items covered by a SCL to all countries *except:*

(1) Countries designated by the Secretary of State that have repeatedly provided support for acts of international terrorism (Cuba, Libya, Iran, Iraq, North Korea, Sudan, Syria).

(2) Countries listed in Country Group E (see Supplement No. 1 to part 740 of this subchapter); and

(3) Other countries that BXA may declare 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 owned or controlled by, or under the lease or charter of, entities in countries identified in paragraphs (a)(1) through (a)(3) of this section or any national of such countries.

#### § 752.5 Steps you must follow to apply for a Special Comprehensive License.

(a) *Step One: Establish exporter reliability.* (1) *Pre-application consultation.* To apply for a SCL, BXA must determine your reliability as a potential SCL holder. BXA usually does this through consultation with company officials, and a review of the elements identified in paragraph (a)(2) of this section. To determine whether your company requires such a consultation before you apply for a SCL, contact BXA at the address listed in § 752.19 of this part.

(2) *Criteria to determine eligibility.* BXA will review the following to 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 U.S. export controls;

(iii) Company commitment, as well as the commitment of appropriate consignees, of the necessary resources to implement an adequate ICP; and

(iv) Evidence of your knowledge of all provisions of the EAR.

(b) *Step Two: Establish consignee reliability.* (1) *Definition of consignee.* Consignee, as used in this part 752, means a legal entity authorized as a consignee on the SCL. The consignees may be:

(i) A party that is "controlled-in-fact" by the SCL holder;

(ii) An unrelated party that has entered into a written agreement with the SCL applicant to adhere to all provisions of the EAR, and related documentation applicable to an approved consignee; or

(iii) Any other party receiving items under the SCL.

(2) *Requirements.* You must make an initial determination of the reliability of all consignees that are listed on your application for a SCL.

(3) *Criteria for determining reliability.* For purposes of this initial determination, a consignee is considered "reliable" if any one of the following apply:

(i) Your proposed consignee has a satisfactory record established through BXA pre-license checks, extensive experience as a consignee under a license issued by BXA, or has been previously approved by BXA as a consignee on a special license;

(ii) 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 a SCL; or

(iii) You have evidence of an established, on-going business relationship with the proposed consignee.

(4) *Determination by BXA.* The provisions of paragraph (b)(3) of this section do not preclude the authority of BXA to determine the reliability and eligibility of a party as a consignee. BXA may, based upon any negative information on the proposed consignees, refuse to authorize a proposed consignee and remove certain consignees from your SCL application.

(c) *Step Three: Prepare your documentation.* Prepare Form BXA-748P, an ICP, a comprehensive narrative statement, Form BXA-752, and all applicable certifications. Submit this documentation to BXA at the addresses listed in § 752.19 of this part.

(1) *Form BXA-748P, Multipurpose Application.* Complete Form BXA-748P, Multipurpose Application, according to the instructions found in Supplement No. 1 to part 748 of this subchapter. Certify submission of all applicable SCL documentation by placing an "X" in the appropriate boxes in Block 8 on the Form BXA-748P.

(2) *ICP.* You must provide a copy of your proposed ICP as required by § 752.12 of this part.

(3) *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 you and other parties will perform under the SCL.

(ii) An explanation of the relationship between the parties to the application, such as affiliate, subsidiary, or parent.

(iii) A description of the role of other participants under the SCL and whether

they are under the effective control of the SCL holder or the consignee. For example, describe whether vessels receiving exports for scientific data gathering or exploration activities are "controlled-in-fact" by the SCL holder or consignee. You must attach a list of subcontractors or vessels to the Form BXA-6052 that exercises control over those entities.

(iv) A detailed list of all items you would like to export or reexport under the SCL, including Export Control Classification Numbers (ECCN), and the descriptive item category (i.e., "semiconductors,"). Refer to the Commerce Control List (Supplement No. 1 to part 774 of this subchapter for the appropriate ECCNs).

(v) A detailed list of all items eligible for export under a License Exception described in part 740 of this subchapter, which will be included in shipments of controlled items authorized under the SCL. Indicate the applicable ECCN for each item.

(vi) The total dollar value of sales or other transactions during the last 12 month period preceding submission of your application relevant to the types of activities you are requesting on the application. Also include the projected total dollar value of all transactions you anticipate to make throughout the validity period of the license, and the basis upon which you made that estimate. Include a ratio of controlled items to those not subject to the EAR, that have been, and will be, exported under the SCL.

(vii) The final disposition of the items. If the activity you are requesting is to manufacture commodities for resale, describe the finished product and how it will be sold and/or distributed.

(viii) A certification that you have in place, or will establish, upon approval of the application by BXA, an ICP that incorporates the elements set forth in § 752.12 of this part and as required by BXA upon approval of the SCL. You must indicate whether any of the elements of the ICP have not been 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.

(ix) A detailed description of the primary activities of the various classes of proposed consignees (e.g., sales, manufacturing, assembly, warehousing/redistribution, servicing, etc.). Indicate the dollar volume of sales or other transactions with each proposed consignee in the items involved during

the 12 month period preceding submission of your application. Also describe the anticipated nature and volume of regular and repetitive transactions proposed between consignees under the license.

(x) Information on whether the consignees will use directly or reexport the items received under a SCL. You must include enough detail of the proposed consignee's activity for BXA to determine the appropriate level of ICP required.

(4) *Form BXA-752, "Statement of Consignee in Support of Special Comprehensive License Application."*

Each consignee named on the SCL application must provide to you a completed Form BXA 752. This requirement also applies to subsidiaries, affiliates and branches of the applicant company, or other independent firms. Each completed Form BXA-752 must be submitted by you with your application for a SCL.

(i) *Exceptions.* Form BXA-752 is not required if the proposed consignee is the same legal entity as the applicant or if the SCL consignee is a foreign government agency.

(ii) *Number of copies.* Each named consignee must provide three copies of Form BXA-752.

(iii) *Authorized signatures.* Each of the three copies required by paragraph (a)(3)(ii) of this section must include the original signature of a responsible official of the named consignee who has:

(A) Personal knowledge of the information included on the form BXA-752;

(B) Authority to bind the company to the terms and conditions of the SCL; and

(C) The power and authority to control the use and disposition of the licensed items in the country of destination.

(iv) The authority to sign form BXA-752P 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 the signature. All copies must be co-signed by the applicant and submitted with the application to BXA.

(5) *Consignee certifications.* Each consignee must provide certain certifications on either Form BXA-752 or by letter. Letters of certification must be prepared on company letterhead, signed by the consignee, and attached to Form BXA-752. Facsimile copies of certification letters are acceptable. Each consignee must certify that:

(i) They have an ICP in place, if required by § 752.12 of this part. If

certain elements of an ICP are not required, include the reasons for that determination;

(ii) No items received under the SCL will be reexported unless authorized by § 752.6 of this part, and that the consignee agrees to the notice requirements described in § 752.6(d) of this part;

(iii) They will comply with all provisions of the EAR, including the recordkeeping provisions of part 762 of this subchapter and all applicable audit requirements of § 752.15 of this part; and

(iv) They will make available for review by BXA all records required under part 762 of this subchapter.

(6) *Additional certifications.* (i) *Temporary Exports.* Consignees who plan to exhibit or demonstrate items in countries other than those in which they are located or are authorized under a SCL, an approved Form BXA-752, or a License Exception described in part 740 of this subchapter may obtain permission to do so by providing the following additional certification on the Form BXA-752. If the consignee has already been previously approved by BXA to receive items under a SCL, the same certification may be provided on company letterhead, in triplicate, which upon approval will be validated by BXA.

"I(We) request authorization to reexport temporarily, for exhibit or demonstration in countries eligible to receive items under the SCL. 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 Export Administration."

(ii) *Exports of technology and software.* If you are requesting authorization from BXA to export technology or software eligible for export or reexport under License Exception 17 (TSR), described in § 750.19 of this subchapter, or that requires a license, both the SCL holder and consignee must certify that they have received from the foreign importer the written assurances described in § 740.18 of this subchapter.

(iii) *Chemicals and chemical and biological equipment certification.* Section 752.6(b) of this part prohibits retransfers, resales, and reexports of chemicals and chemical and biological equipment without specific authorization by BXA. If you are requesting authority to export chemicals or chemical and biological equipment (ECCNs identified with the letters CB in

the "Reason for Control" paragraph on the CCL (see Supplement No. 1 to part 774 of this subchapter), the consignee must include the following certification on the Form BXA-752, or on company letterhead, in triplicate.

"No items 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 Export Administration, and in no case will the items be transferred, resold, or reexported to a party who is not the end-user."

#### § 752.6 Reexports.

(a) *Authorized reexports.* Consignees may reexport items under License Exception 18 (APR) (see § 740.20 of this subchapter). In addition, all consignees may reexport items without approval from BXA under any one of the following circumstances, unless otherwise specifically exempt by the regulations in this subchapter or by a condition placed on your SCL.

(1) Reexports to destinations approved by BXA through validation of a Form BXA-752, according to the terms stated on the Form BXA-752 and the comprehensive narrative statement required by § 752.5(c)(3) of this part; or

(2) Reexports of items approved under a SCL to and among other consignees approved on the same SCL.

(b) *Prohibitions—(1) Reexports to destinations described in § 752.4.*

Notwithstanding the authority of paragraph (a) of this section, consignees may not use the authority of the SCL to reexport to destinations not eligible to receive items under the SCL, as described in § 752.4 of this part.

(2) *Retransfer, resell and reexport of chemicals and chemical and biological equipment.* You may not retransfer, resell, or reexport chemicals or chemical and biological equipment (ECCNs identified with the letters CB in the "Reason for Control" paragraph on the CCL (see Supplement No. 1 to part 774 of this subchapter) under the SCL without specific authorization by BXA.

(c) *Sourcing.* Consignees who obtain SCL-eligible items abroad, which are subject to General Prohibitions One, Two, or Three (see part 734 of this subchapter), may reexport them under the authority of the SCL, provided that they are reexported in accordance with the firm's comprehensive narrative statement required by § 752.5(c)(3) of this part and ICP required by § 752.12 of this part. Either the SCL holder or the consignee must submit the request for reexport of items (in triplicate), on their letterhead, BXA-6052 or within the comprehensive narrative statement.

(d) *Destination control statements—*

(1) *General provisions.* Unless

specifically exempted by the SCL or subsequently in writing by BXA, all approved consignees reexporting items received under a SCL must notify their customers on the commercial invoice (or by such other means specifically approved by BXA) of reexport restrictions. See § 758.6(b)(6) of this subchapter for information on notification procedures.

(2) *Requirements for retransfers, resales, and reexports of chemicals and chemical and biological equipment.* (i) *General requirements.* Unless specifically exempt on the SCL, or subsequently in writing by BXA, all approved consignees not located in Country Group A:3 (see Supplement No. 1 to part 740 of this subchapter) must notify each end-user approved by BXA of the restrictions on unauthorized reexports the items described in paragraph (b)(2) of this section. This notification must appear on the commercial invoice or other document specifically approved by BXA.

(ii) *Notification.* The notice required by paragraph (d)(2)(ii) of this section must read as follows:

"These items were authorized for export from the United States under a Special Comprehensive License on the condition that they may not be reexported without prior approval from the United States Government to countries not listed in Country Group A:3 in the Export Administration Regulations."

(3) *Exceptions.* The notice required by paragraph (d)(1) of this section is not required if the shipment is destined to a country in Country Group A:1 (see Supplement No. 1 to part 740 of this subchapter).

#### § 752.7 Direct shipment to customers.

(a) (1) *General authorization.* Upon request by a consignee, a SCL holder or another consignee approved under the same SCL is authorized to deliver products directly to the consignee's customer in either:

(i) The requesting consignee's country; or

(ii) Another country authorized to receive exports under the requesting consignee's validated Form BXA-752.

(2) The SCL holder or consignee making direct shipments authorized by this section must have internal controls procedures in place relative to such shipments.

(b) *Procedures—(1) Exports by a SCL holder.* The license holder may make a direct shipment by entering on the Shipper's Export Declaration (SED) 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 commodity 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)." SCL holders and consignees utilizing 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. This procedure may not be used for items identified by the letters "NP", "CB", "SS", "CC", or "RS" in the "Reason for Control" paragraph on the CCL (Supplement No. 1 to part 774 of this subchapter), unless specifically authorized by BXA.

#### § 752.8 License application process.

(a) *Scope of review.* Under a SCL, you are authorized to make multiple export and reexports without review and approval of each individual transaction by BXA. To approve a SCL, BXA 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 or foreign policy interests.

(b) *Elements of review.* To permit BXA to make such judgments, BXA, including BXA's Office of Export Enforcement, and other departments and agencies will thoroughly analyze your past export transactions, inspect your export documents, and interview company officials of both the applicant and the consignees. If BXA cannot verify that appropriate internal control procedures are in place, and 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, as defined in § 748.6(b)(2) of this subchapter, from the proposed consignee at the time you apply for a SCL. However, evidence of a consignee's firm intention to place orders on a continuing basis is required.

(d) *Criteria for review.* The following factors are among those that BXA will consider in determining what action to take on your application for a SCL:

(1) The specific nature of proposed end-uses/end-users;

(2) The significance of the export in terms of its contribution to the design, development, production, stockpiling, or use of nuclear, missile and/or chemical or biological weapons;

(3) The non-proliferation credentials of the importing country;

(4) Corporate commitment to the necessary resources to implement an adequate ICP;

(5) The types of assurances against design, development, production, stockpiling, or use of nuclear, missiles and CBW weapons that are included in the 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 U.S. export controls;

(9) Your knowledge of U.S. export controls.

(e) In reviewing and approving specific SCL, BXA retains the full right to limit the eligibility of items or to prohibit the export, reexport, or transfer of items under this procedure to specific firms, individuals, or countries.

(f) *Application processing time-frames.* (1) Within 30 days of receipt of the application for SCL, BXA will advise you of any correctable deficiencies or clarifications before it proceeds with full review of your application.

(2) Generally, BXA will process all applications that are complete in all respects and do not require additional information from you within 60-90 days of receipt. Certain individual consignees and end-users may require more time for review.

#### § 752.9 Action on applications.

(a) *Approval—(1) Validity period.* SCLs are valid for four years. You may request an extension of a valid SCL for an additional four years, but such request must be received by BXA at least 60 days before the expiration of the SCL. To apply for an extension, submit a statement on company letterhead indicating:

(i) That you continue to abide by the provisions and conditions of the SCL; and

(ii) If there are changes to the SCL that you are requesting (see § 752.10 of this part for procedures on changing your SCL).

(2) If approved, the extension letter will be validated and returned to you, extending the validity period for an additional four more years. A complete new application and support

documentation is required at the end of that eight-year period.

(3) *Support documentation.* BXA will validate all approved support documentation with the Department of Commerce seal and date of validation.

(4) *Special license conditions.* BXA may place special conditions on your license, 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 BXA. Such special conditions will be listed on an Approval Rider attached to the license in a letter from BXA to the SCL holder. You must inform all consignees of all license conditions prior to effecting any shipments under the SCL.

(b) *Denial.* BXA 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 this subchapter for subsequent transactions with such denied individual, companies, or countries.

(c) *Return without action.* If BXA determines to return the SCL application without action, the application and all related documents will be returned to the applicant. BXA will also include a letter of explanation, 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 this subchapter.

#### § 752.10 Action on Form BXA-752.

(a) *Approval.* With the approved SCL or amendment to the SCL, you will receive two validated copies of each approved Form BXA-752. You must retain one copy, and send one copy to the approved consignee. You must attach a letter to each Form BXA-752 that includes each of the following elements:

(1) A description of recordkeeping requirements, applicable to the activities of the consignee;

(2) Information on reexport restrictions on any item received under the SCL;

(3) A description or copy of part 766 of this subchapter, listing administrative actions that may be taken for improper use of, or failure to comply with, the SCL procedures;

(4) A description of any special conditions or restrictions on the license applicable to the consignee, including approved lists of customers, when required;

(5) A description of the elements of the SCL holder's ICP relevant to the SCL;

(6) A copy of the high risk customer profile contained in § 752.12(d) of this part, when required;

(7) A copy of the Table of Denial Orders currently in effect and notification that you will send the consignee regular updates to this list;

(8) 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 described in part 744 of this subchapter;

(9) A requirement that the consignee acknowledge, in writing, receipt of the letter of transmittal and certify that it will comply with all of the requirements, including establishment of an ICP, when required by § 752.12; and

(10) A description of any special documentation requirements for consignees reexporting items to destinations having such requirements.

(b) *Rejection.* If a consignee is not approved, the Form BXA-752 will be returned to the SCL holder with a letter explaining the reason for denial.

#### § 752.11 Changes to the Special Comprehensive License.

You may request a change to the provisions of your Special Comprehensive License by either an amendment or written notice to BXA, depending upon the nature of the change.

(a) *Changes made by amendments.* Amendments require authorization by BXA, and must be received by BXA 60 days before the change will occur, unless other arrangements are specifically agreed to by that office. Amendment requests must be submitted by the SCL holder on company letterhead (in duplicate) to the address listed in § 752.19 of this part. Amendments are not effective until the SCL holder receives a validated copy of the original request.

(1) *Action requiring amendments.* You must request an amendment for the following types of changes:

(i) *Change of company name.* For changes to the company name of the SCL holder, the SCL holder must send a copy of the validated letter to all consignees and inform them to attach the copy of the validated letter to their validated Form BXA-752. If a consignee changes its name, the SCL holder must advise BXA promptly, and provide a new Form BXA-752 following the procedures described in § 752.5(c) of this part.

(ii) *Additional consignees.* Requests to add consignees must be accompanied by a Form BXA-752 and a Comprehensive Narrative Statement according to the provisions of § 752.5(c) of this part.

However, a new Form BXA-752 is not required where the proposed consignee is the same entity as SCL holder or when the proposed consignee is a foreign government agency. However, this fact must be stated in the amendment letter as well as a complete address of that entity.

(iii) *Consignee move from one country to another.* Amendments to change the address of a consignee that moves to another country must be accompanied by a new Form BXA-752 in accordance with the provisions of § 752.5(c) of this part.

(iv) *Additional items.* Requests to add more items to the license must include the ECCN and item category, as defined in the Commerce Control List, Supplement No. 1 to part 774 of this subchapter.

(2) *Amendment approval.* Upon approval of an amendment, BXA will return to you a validated copy of the original letter, indicating any changes that may have been made to your amendment request, or any special conditions that may have been imposed.

(b) *Changes made by notices.* You may make the following changes to your SCL without prior approval from the Bureau of Export Administration. Such changes only require letters of notification on company letterhead, in duplicate. BXA must receive such notices no later than 30 days after the change has been made. BXA will validate the notice letter and return one copy to you for your records.

(1) *Deletion, suspension or revocation of consignees.* In the event that you remove a consignee from eligibility to receive items under your SCL, you must notify BXA as well as all SCL consignees of that action. The notice must state that the deleted party is no longer eligible to receive items under the SCL, and include the reason for removal of a consignee and whether it was due to non-compliance with the provisions of the SCL. If BXA suspends or revokes a consignee, BXA will notify both you and the consignee, and provide the reason for the suspension or revocation.

(2) *Deletion of ECCNs.* If you remove items from export and reexport eligibility under your SCL, you must notify BXA as well as all consignees of that action.

(3) *Within-country change of SCL holder or consignee address or phone number.* Include in the letter of notice to BXA the effective date of change, the

new address, and phone number of the point of contact within the firm responsible for export controls.

(4) *Changes in ownership or control of the SCL holder or SCL consignee.* If you or a consignee change ownership or control, you must notify BXA by letter on company letterhead. This letter must describe the circumstances necessitating the change (i.e., mergers), and include changes in persons who have official signatory authority on the license.

(c) *Changes made by BXA.* If BXA revises or adds an ECCN in the CCL or a country's eligibility already covered by the SCL changes, BXA will notify the SCL holder by letter or through the publication of notice in the **Federal Register**. The SCL holder is responsible for immediately complying with either the notification by letter or amendment in the **Federal Register**.

#### § 752.12 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 national security, nonproliferation, and foreign policy objectives of the EAR.

(2) *General requirements.* To qualify for a SCL, you must have an ICP in place that is designed to ensure compliance with all conditions of the SCL and the EAR.

(3) *Levels of ICPs.* There are three levels of ICPs provided for in this part 752. The elements of each ICP reflect the complexity of the activities authorized under the SCL, the countries involved, and the relationship between the SCL holder and the approved consignees. BXA may require you to include in your ICP any combination of elements from one or more levels, depending upon the nature of your SCL request.

(b) *Certification requirements.* You must certify, according to the provisions of § 752.5(c)(3)(viii) of this part that you have an ICP in place or you are ready to implement an ICP upon approval of the application. You may not make any shipments under a SCL until you implement all the elements of the required ICP. If any of the elements for an ICP will not be implemented at the time of SCL approval, you must explain why these elements were deemed inapplicable. 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 all applicable regulations pertaining to its SCL.

(c) *Elements of an ICP.* The elements of your ICP are dependent upon the activities you and your consignees are

authorized to perform under the SCL. Each level describes the responsibilities of both the SCL holder and consignees. However, Level I only describes the responsibilities of the SCL holder because shipments are made directly to customers, not through consignees. There are three levels of ICPs:

(1) *Level I ICP*. Examples of activities that may require the elements of a Level I ICP include services for customers. Activities covered by Level I ICPs do not include reexport of items by the receiving company. The Level I ICP must include at least the following elements:

- (i) A clear statement of corporate policy communicated to all levels of the firm involved in export sales, traffic, and related functions, emphasizing the importance of SCL compliance;
- (ii) Methods for screening customers against the Table of Denial Orders;
- (iii) A system for assuring compliance with product and country restrictions;
- (iv) Evidence that you have no knowledge or reason to believe through the normal course of business that the item was delivered without the appropriate BXA authorization;
- (v) Identification of export control personnel; and
- (vi) A program for recordkeeping as required by the EAR.

(2) *Level II ICP*. This plan requires the SCL holder as well as consignees to develop an ICP. A Level II ICP is required when authorized activities involve items controlled for proliferation reasons, or for end-user activities described in § 752.2(a)(2) of this part, such as exporting items subject to the EAR to support capital expansion projects. The Level II ICP must include the following elements:

- (i) *For the SCL holder*: (A) A clear statement of corporate policy communicated to all levels of the firm involved in export sales, traffic, and related functions, emphasizing the importance of SCL compliance;
- (B) Identification of positions (and maintenance of current listing of individuals occupying the positions) in the license holder firm and consignee firms responsible for compliance with the requirements of the SCL procedure;
- (C) Methods for screening customers' orders/shipments against the Table of Denial Orders (TDO);
- (D) A system for assuring compliance with product and country restrictions;
- (E) A system for timely distribution to consignees and verification of receipt by consignees of the TDO (Supplement No. 2 to part 764 of this subchapter);
- (F) A program for recordkeeping as required by the EAR;

(G) A system for notifying BXA promptly if the SCL holder has knowledge that a consignee is not in compliance with terms of the SCL.

(H) A system for assuring compliance with controls over missile-related items and end-uses described in §§ 742.5 and 744.3 of this subchapter;

(I) A system for assuring compliance with controls over chemical precursors and biological agents and related items and end-uses described in §§ 742.2 and 744.4 of this subchapter; and

(J) 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 non-proliferation controls apply. See paragraph (d) of this Section for signs of potential diversion.

(ii) *For consignees*: (A) Statement of consignee policy, communicated from consignee management to consignee employees, directing compliance with provisions of the EAR pertaining to the SCL procedure;

(B) Maintenance of a current list of employees charged with export compliance responsibilities.

(C) A system for screening hardware, software, training and servicing transactions against Table of Denial Orders (Supplement No. 2 to part 764 of this subchapter) and any relevant updates supplied by the SCL holder;

(D) A system for assuring compliance with the product and country restrictions for reexports authorized on the Form BXA-752, and for exports of products incorporating controlled items received under the SCL;

(E) A program for recordkeeping as required by the EAR; and

(F) An order processing system that documents employee clearance of transactions in accordance with applicable elements described in this section.

(3) *Level III ICP*. This plan requires the SCL holder as well as consignees to develop an ICP. A Level III ICP is generally required in instances where the SCL authorizes export of items under an international marketing program. It may include various activities and generally involves three or more consignees that have been approved in advance as foreign distributors and/or users. The elements of a level III ICP include:

- (i) *For the SCL holder*: (A) A clear statement of corporate policy communicated to all levels of the firm involved in export sales, traffic, and related functions, emphasizing the importance of compliance with the SCL;
- (B) Identification of positions (and maintenance of current listing of

individuals occupying the positions) in the license holder firm and consignee firms responsible for compliance with the requirements of the SCL procedure;

(C) A system for timely distribution to consignees and verification of receipt by consignees of the Table of Denial Orders (Supplement No. 2 to part 764 of this subchapter) and other regulatory materials necessary to ensure compliance;

(D) A method for screening customers' orders and shipments of all items and activities against the Table of Denial Orders (Supplement No. 2 to part 764 of this subchapter);

(E) A system for assuring compliance with product and country restrictions, including controls over reexports by consignees and direct exports to consignees' customers;

(F) An internal audit system or compliance review program covering the SCL holder and extending to all consignees;

(G) A system for assuring compliance with the limits on delivery to nuclear end-uses and/or end-users as described in § 744.2 of this subchapter;

(H) An on-going program for informing and educating those parties in the license holder firm and consignee firms concerning applicable regulations, limits and restrictions of the Special License;

(I) A program for recordkeeping as required by the EAR;

(J) An order processing system affixing responsibility for all required internal control reviews;

(K) A system for monitoring in-transit shipments and shipments to bonded warehouses and free trade zones;

(L) A system for notifying BXA promptly if the license holder has knowledge that a consignee is not in compliance with terms of the SCL;

(M) A system for assuring compliance with controls over missile-related items and end-uses described in §§ 742.5 and 744.3 of this subchapter;

(N) A system for assuring compliance with controls over chemical precursors and biological agents and related items and end-uses described in §§ 742.2 and 744.4 of this subchapter; and

(O) 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 non-proliferation controls apply. See paragraph (d) of this section for signs of potential diversion.

(ii) *For consignees*: (A) A clear statement of consignee company policy, communicated from consignee management to consignee employees,

directing compliance with provisions of the EAR pertaining to the SCL;

(B) Maintenance of current list of employees charged with export compliance responsibilities;

(C) A system for screening hardware, software, technology, training and servicing transactions against Table of Denial Orders and updates thereto supplied by the SCL holder;

(D) A system for assuring compliance with the product and country restrictions for reexports authorized on the Form BXA-752, and for exports and reexports of items received under the SCL;

(E) A system for assuring compliance with the limits on delivery to nuclear end-uses and/or end-users as described in § 744.2 of this subchapter;

(F) A system for assuring compliance with controls over missile-related items and end-uses described in §§ 742.5 and 744.3 of this subchapter;

(G) A system for assuring compliance with controls over chemical precursors and biological agents and related items and end-uses described in §§ 742.2 and 744.4 of this subchapter;

(H) An internal audit program to verify consignee compliance with its ICP;

(I) An education program for employees processing transactions involving items received under the procedure;

(J) A process for screening customers against the diversion risk profile described in paragraph (d) of this section;

(K) A program for recordkeeping as required by the EAR; and

(L) An order processing system that documents employee clearance of transactions in accordance with applicable elements described above.

(d) *Signs of potential diversion.* (1) The signs of potential diversion that you should take into consideration include, but are not limited to, the following:

(i) Your customer is little known (financial information unavailable from normal commercial sources and corporate principals unknown by trade sources);

(ii) Your customer does not wish to use commonly available installation and maintenance services;

(iii) Your customer is reluctant to provide end-use and end-user information;

(iv) Your customer requests atypical payment terms or currencies;

(v) Customer order amounts, packaging, or delivery routing requirements do not correspond with normal industry practice.

(vi) The performance/design characteristics of the items ordered are

incompatible with customer's line of business or stated end-use;

(vii) Your customer provides only a "P.O. Box" address or has facilities that appear inappropriate for the items ordered;

(viii) Your 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); and

(ix) Your customer is known to have, or is suspected of having, unauthorized dealings with parties and/or destinations in ineligible countries.

(2) 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 before contacting the SCL holder. If the SCL holder is unable to resolve the problem, the SCL holder should request assistance, in writing, from BXA's Special Licensing and Compliance Division. The request should explain the basis for the concern regarding the proposed customer and seek a determination if there is information available on the reliability of the customer (see § 752.19 of this part for appropriate addresses). Consignees and holders should consider use of a license described in part 748 of this subchapter before establishing an ongoing relationship with new customers under a SCL.

#### § 752.13 Recordkeeping requirements.

(a) *Introduction.* In addition to the recordkeeping requirements in part 762 of this subchapter, the SCL holder and each consignee must maintain certain other records for a period of two years beyond the expiration date of the SCL. These records must be made readily available for review by the BXA upon request by BXA, in accordance with the provisions of part 762 of this subchapter.

(b) *License holder and consignees—*  
(1) *Form BXA-752.* The consignee named on the Form BXA-752 must retain the original, validated Forms BXA-752 and all applicable attachments. The SCL holder must maintain one copy of each validated Form BXA-752 as well as all forms not approved.

(2) *Transmittal letter to consignees.* The SCL holder and the consignee must retain one copy of the transmittal letter required under § 752.19(a) of this part and any attachments by the SCL holder and the consignee.

(3) *Amendment and notice letters.* The SCL holder must retain all original, validated copies of amendment and notice letters.

(4) *Export and reexport documentation.* (i) *License holder.* The SCL holder must keep, in accordance with the recordkeeping requirements of part 762 of this subchapter, all forms, documents, correspondence, memoranda, specifications and other records, including invoices, shipping documents and orders relating to all exports from the United States. Other records that must be kept under part 762 of this subchapter include records on special documentation for specific destinations, records relating to special conditions on license applications, and other records and reports confirming compliance with the requirements of the regulations in this subchapter and the SCL.

(ii) *Consignees.* All consignees must retain all records of the types of activities identified in § 752.3(a)(3). Records on such sales or reexports must include the following:

(A) Full name and address of individual or firm to whom sale or reexport was made;

(B) Full description of each item sold or reexported;

(C) Units of quantity and value of each item sold or reexported; and

(D) Date of sale or reexport.

(5) *Table of Denial Orders (TDO) and other regulatory materials necessary to ensure compliance.* Copies of the most current list of denied parties TDO (see Supplement No. 2 to part 764 of this subchapter) and all other regulatory materials necessary to ensure compliance, such as relevant changes to the EAR, product classification, and additions, deletions, or other administrative changes to the SCL, must be maintained by all parties. Copies of the transmittal letters and consignee's confirmations of receipt of these materials must also be maintained by both the license holder and the consignees.

(6) *ICP.* Copies of manuals, guidelines, policy statements, internal audit procedures reports, and other documents making up the ICP of each party included under a SCL must be maintained on a current basis.

#### § 752.14 Inspection of records.

(a) *Availability of records.* You and all consignees must make available all of the records required by § 752.13 of this part for inspection, upon request, by BXA or by any other representative of the U.S. Government, in accordance with part 762 of this subchapter.



(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 BXA-752 an alternative arrangement for BXA to review consignee activities and determine whether or not the consignee has complied with U.S. export control laws and regulations.

(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 this subchapter or to the administrative actions described in part 766 of this subchapter.

#### § 752.15 Audits.

(a) *Pre-license audits.* In addition to the requirement for pre-license consultation with BXA, BXA may require new SCL applicants (or upon extension) to cooperate in pre-license audits to establish the firm's credentials and reliability to participate in the SCL procedure. This review may also include, but not be limited to, reviews of information collected to establish the reliability of proposed consignees.

(b) *Post-license audits—(1) Authority of BXA.* BXA may conduct audits of the SCL holder as well as any consignee. Generally, BXA will give reasonable notice to SCL holders and consignees in advance of such audits.

(2) *Scope.* The audits will involve interviews with officials familiar with, or responsible for, SCL compliance, inspection or records and the review of ICPs. BXA may conduct special unannounced audits if BXA has reason to believe a SCL holder or consignee has improperly used or has failed to comply with the SCL regulations and conditions. Alleged violations established during the course of audits will be referred to BXA's Office of Export Enforcement.

(c) *Mini audits.* BXA may require a SCL holder or consignee to submit to its office a list of all sales made under the SCL during a specified time-frame. Also, from time to time, BXA may request from any consignee a list of transactions during a specified, limited period involving direct shipments of commodities received under SCLs to customers of other consignees and sales to customers in reexport territories authorized by BXA on the consignee's validated Form BXA-752.

#### § 752.16 Export clearance.

(a) *Shipper's Export Declaration (SED).* The SED covering an export made under a SCL must be prepared in

accordance with standard instructions described in § 758.3 of this subchapter. If the SCL holder has implemented the Bureau of Census Monthly Reporting System, the SCL holder is to comply with the Census requirements. Firms authorized to file summary SED reports to the U.S. Census Bureau may, on the request of BXA, be required to submit for BXA inspection copies of such report applicable to exports under a SCL.

(1) *Item descriptions.* Item descriptions on the SED must indicate specifically the ECCN and item description conforming to the applicable Commerce Control List 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, the value of each shipment must be shown on the SED.

(3) *SCL number.* The SED must include the SCL Number.

(4) *License number.* The SED must include in the lower portion of column 10 the SCL number followed by a blank space, and then the consignee numerical designation identifying the SCL's approved consignee to whom the shipment is authorized. The consignee numbers will be assigned by BXA to all approved consignees in order to monitor exports.

(5) *Recordkeeping.* A copy of the SED must be prepared and retained by the exporter for recordkeeping purposes for a period of five years after shipment. BXA may require submission of copies of the SEDs upon notification.

(b) *Destination control statement—(1) Exports.* The U.S. exporter must enter a destination control statement on all copies of the bill of lading, air way-bill, and the commercial invoice covering exports under the SCL, in accordance with the provisions of § 758.6 of this subchapter. 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 BXA. In such instances, reexport is not contrary to U.S. law and, hence is not prohibited. A different destination control statement may be required or approved by BXA on a case-by-case basis.

(2) *Reexports.* See § 752.6(d) of this part for information on destination control requirements for reexports of items under the SCL.

(c) *Exports by mail.* Exports by mail must be made in accordance with the provisions of part 758 of this

subchapter. The SCL number must be entered on the address side of the wrapper on the package.

#### § 752.17 Effect of other regulations.

Insofar as consistent with the provisions of this part 752, all of the provisions of the EAR shall apply equally to applications for licenses and licenses issued under this part.

#### § 752.18 Administrative actions.

(a) *General information.* Failure to strictly comply with all conditions and requirements to the SCL by SCL holders, consignees, U.S. suppliers or customers increases the risk of diversion contrary to U.S. national and economic interests.

(b) *Administration actions.* (1) If BXA is not satisfied that you or other parties to the SCL are complying with such conditions and requirements, or that control systems employed by parties to such licenses are not adequate, BXA may, in addition to any enforcement action pursuant to part 764 of this subchapter, 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 covered by the SCL, or otherwise restrict their activities;

(iv) Restrict items that may be shipped under the SCL;

(v) Require that certain exports or reexports be individually authorized by BXA;

(vi) Restrict parties to whom consignees may sell; and

(vii) Require that a license holder provide an audit report to BXA of selected consignees or overseas operations.

(2) Whenever necessary to protect the national interest of the U.S., BXA may take any licensing action it deems appropriate, without regard to contracts or agreements entered into before such action, including those described in paragraphs (b)(1) (i) through (vi) of this section.

(c) *Appeals.* Actions taken pursuant to paragraph (b) of this section may be appealed under the provisions of part 756 of this subchapter.

#### § 752.19 BXA mailing addresses.

(a) *Special Licensing and Compliance Division.* You should use the following addresses when submitting to BXA applications, reports, documentation, or other requests required in this part 752: Bureau of Export Administration, 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 Export Administration, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Room 2705, Washington D.C. 20230 "Attn: Special Licensing and Compliance Division".

(b) *Office of Export Enforcement.* Mail all documentation and reports submitted to the Office of Export Enforcement under this part 752 to the following address: Bureau of Export Administration, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Room 4069, Washington, D.C. 20230, "Attn: Office of Export Enforcement".

**Supplement No. 1 to Part 752—  
Instructions for Completing Forms  
BXA-748P and BXA-752 for Requests  
for Special Comprehensive Licenses—  
[Reserved]**

**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  
Restrictions on Crude Oil**

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2410 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

**§ 754.1 Introduction.**

(a) *Scope.* This part implements the provisions of Section 7, "Short Supply Controls," of the Export Administration Act of 1979, 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 this subchapter). 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 set forth in this part, cover the following:

(i) Crude oil described by ECCN 1C81D (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, described by the following ECCNs. For specific licensing requirements for these items, see § 754.3 of this part.

(A) ECCN 1C80D (Inorganic chemicals);

(B) ECCN 1C82D (Other petroleum products);

(C) ECCN 1C83D (Natural gas liquids and other natural gas derivatives); and

(D) ECCN 1C84D (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 1C88D (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 0A80D (Horses for export by sea). For specific licensing requirements, § 754.5 of this part.

(2) It incorporates 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 procedures 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 this

subchapter (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 1C81D on the CCL (Supplement No. 1 to part 774 of this subchapter), a license is required for the export of crude oil, as defined in paragraph (g) of this Section, to all destinations, including Canada.

(b) *License policy.* (1) Except as provided in paragraph (c) of this section, BXA will generally approve applications to export crude oil if BXA determines that the proposed export is consistent with the national interest and the purposes of the Energy Policy and Conservation Act.

(2) Generally, BXA will determine that the following kinds of transactions involving the exports of crude oil are in the national interest and consistent with the purposes of EPCA:

(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) 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;

(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;

(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; and

(D) That the crude oil to be imported into the United States would not be available for import if the export had not taken place;

(v) The export will be part of an overall transaction:

(A) That will result directly in the importation into the United States of a quantity and quality of petroleum products listed, other than crude oil 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 commodity for which an export license is sought; and

(B) 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;

(vi) 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;

(vii) Exports that are consistent with international agreements as described in the statutes listed in paragraph (c) of this section;

(viii) 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

(ix) Exports of foreign origin crude oil where, based on written documentation satisfactory to BXA, the exporter can demonstrate that the oil is not of U.S. origin and has not been commingled with oil of U.S. origin.

(c) *Additional statutory restrictions.* (1) The following Statutes restrict the export of domestically produced crude oil based on its place of origin or mode of transport. If such other statutory restrictions apply, a license may only be approved if the President makes the findings required by the applicable law.

(i) Section 7(d) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(d)). Restricts exports of domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 203 of the TransAlaska Pipeline Authorization Act (43 U.S.C. 1652) ("TAPS").

(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 provides the relevant statutory provisions. In cases where a particular statute applies, a Presidential finding is necessary before BXA can approve the export. You should note that it is possible that more than one statute could apply to a particular export of crude oil.

(d) Exports from Alaska's Cook Inlet. Exports of crude oil that was derived from the state-owned submerged lands of Alaska's Cook Inlet and has not been, nor will not be, transported by a

pipeline over a federal right-of-way subject to the MLA or TAPS.<sup>1</sup>

(e) *Exports to Canada for consumption or use therein.* (1) Except for crude oil subject to TAPS, the licensing policy is to approve applications for exports of crude oil to Canada for consumption or use therein.

(2) The licensing policy for crude oil subject to TAPS 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 Department of Commerce will determine, in consultation with the Maritime Administration, whether such transportation is "ocean" transportation; and

(ii) Authorization to export such Alaska crude oil will be granted on a quarterly basis. Applications will be accepted by BXA 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 validated license for export during the calendar quarter will be determined by the BXA 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) BXA 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 oil withdrawn from the Strategic Petroleum Reserve (SPR) will be approved if BXA, in consultation with the Department of Energy, determines that such exports will directly result in the importation into the U.S. of refined petroleum products that are needed in the U.S. 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) BXA will approve license applications subject to the following conditions:

(i) You must provide BXA 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 BXA 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

<sup>1</sup> 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.

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) *Definition of "crude oil"*. "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.

#### **§ 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 1C80D, 1C82D, 1C83D, and 1C84D on the CCL (Supplement No. 1 to part 774 of this subchapter), 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. See paragraph (c) of this section for License Exceptions for non-naval petroleum reserves products.

(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. See paragraph (c) of this section for License Exceptions that apply to non-naval petroleum reserve products.

(c) *License Exception for Non-Naval Petroleum Reserve products (NPR)*. Subject to the requirements set forth in this paragraph, License Exception NPR may be used to export without a license petroleum products that were not produced or derived from the Naval Petroleum Reserves or became available for export as a result of an exchange of a Naval Petroleum Reserves-produced or derived commodity.

(1) The requirements and restrictions set forth in § 740.1 and § 740.2 of this subchapter that apply to all License Exceptions also apply to the use of License Exception NPR.

(2) A person exporting any item pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) the letter code "SS-NPR".

#### **§ 754.4 Unprocessed western red cedar.**

(a) *License requirement*. (1) As indicated by the letters "SS" in the "Reason for Control" paragraph in the "License Requirements" section of ECCN 1C88D on the CCL Supplement No. 1 to part 774 of this subchapter), a license is required to all destinations, including Canada, for the export of unprocessed western red cedar covered by ECCN 1C88D (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.

(2)(i) Applicants requesting export of unprocessed western red cedar must submit a properly completed Form BXA-748P, Multipurpose License Form, other documents as may be required by BXA, 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 feet 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) \_\_\_\_\_

(ii) For Items [6] and [7] on Form BXA-748P, "Various" may be entered when there is more than one purchaser or ultimate consignee.

(3) For each Form BXA-748P submitted, and for each export shipment made under a license, the exporter must assemble and retain for the period prescribed in part 762 of this

subchapter, 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.

(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.

(b) *Licensing policy*. (1) BXA 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) BXA 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) BXA 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 set forth below, 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 set forth in §§ 740.1 and 740.2 of this subchapter 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) the letter code "SS-WRC".

(d) *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 1C88D, 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.

**§ 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 0A80D on the CCL (Supplement No. 1 to part 774 of this subchapter) 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 BXA, 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 BXA-748P, certifying that no horse under consignment is being exported for the purpose of slaughter.

(3) Each applications 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 BXA 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 Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20230.

**§ 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 BXA 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 Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20230.

**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 1C80D, 1C81D, 1C82D, 1C83D, and 1C84D.

**SCHEDULE B**

Number	Commodity description <sup>1</sup>
<b>Crude Oil</b>	
2709.0710	Crude petroleum (including reconstituted crude petroleum), tar sands and crude shale oil.
2710.0710	Petroleum, partly refined for further refining.
<b>Petroleum Products</b>	
2804.29.0010	Helium.
2804.10.0000	Hydrogen.

SCHEDULE B—Continued

SCHEDULE B—Continued

SCHEDULE B—Continued

Number	Commodity description <sup>1</sup>
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). <sup>2</sup>
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.

Number	Commodity description <sup>1</sup>
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 petroleum, 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.
2713.11.0000	Petroleum coke, except calcined.

<sup>1</sup>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.

<sup>2</sup>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 1C88D.

SCHEDULE B

Number <sup>1</sup>	Commodity description	Unit of quantity <sup>2</sup>
200.3516	Western red cedar (Thuja plicata) logs and timber .....	MBF
202.2820	Western red cedar lumber; rough, containing wane .....	MBF

Number <sup>1</sup>	Commodity description	Unit of quantity <sup>2</sup>
202.2840	Western red cedar lumber; dressed or worked, containing wane .....	MBF

<sup>1</sup> Schedule B Numbers are provided only as a guide to proper completion of the Shipper's Export Declaration, Form No. 7525 V.

<sup>2</sup>For export licensing purposes, report commodities on Form BXA-748P in units of quantity indicated.

**Supplement No. 3 to Part 754—Statutory Restrictions on Exports of Crude Oil<sup>1</sup>**

*Export Administration Act of 1979, as Amended*

50 U.S.C. App. 2406(d)

(d) *Domestically produced crude oil.*  
 (1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude 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) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this section, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, or any of its territories and possessions, unless the requirements of paragraph (d)(2) of this section are met.  
 (2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if:  
 (A) The President makes and publishes express findings that exports of such crude oil, including exchanges:  
 (i) Will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

<sup>1</sup> The statutory material published in this Supplement is provided for the information of the reader only. See the U.S. Code for the official text of this material.

(ii) Will, within 3 months following the initiation of such exports or exchanges, result in:

(A) Acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange; and

(B) Not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) Will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(iv) Are clearly necessary to protect the national interest; and

(v) Are in accordance with the provisions of this Act; and

(B) The President reports such findings to the Congress and the Congress, within 60 days thereafter, agrees to a concurrent resolution approving such exports on the basis of the findings.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

#### *Mineral Lands Leasing Act*

30 U.S.C. 185(u)

##### *(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 to 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)

(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 quantity or quality 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.

(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:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2410 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

### **§ 756.1 Introduction.**

(a) *Scope.* This part 756 describes the procedures applicable to appeals from administrative actions taken under the Export Administration Act of 1979, as amended (EAA) or the Export Administration Regulations (EAR). Any person directly and adversely affected by an administrative action taken by the U.S. Department of Commerce 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 set forth in this part 756:

(1) Issue, amend or revoke or appeal a regulation. (These requests may be submitted to the Department at any time.)

(2) Denial or probation orders, civil penalties, sanctions, or other actions under parts 764 and 766 of this subchapter.

(b) *Definitions.* The following are definitions of terms used in this part 756:

*Administrative action.* Any action taken by the U.S. Department of Commerce under the EAA or the EAR with respect to a particular person including denial of a license application, return without action of a license application for other than procedural deficiencies or additional information, or classification of an applicant's commodity. Administrative actions do not include enforcement actions under part 764 of this subchapter.

*Appeal.* A request for relief from an administrative action taken by the Bureau of Export Administration.

*Appellant.* A person, or their representative, requesting relief from an administrative action taken by the Bureau of Export Administration.

*Person.* Any individual, partnership, corporation, or other form of association.

*Under Secretary.* The term "Under Secretary" refers to the Under Secretary and any other official delegated authority, by the Under Secretary to review and decide an appeal submitted pursuant to § 756.2(a)(2) of this part.

#### § 756.2 Appeal from an administrative action.

(a) *Review and appeal officials.* The Under Secretary may delegate to the Deputy Under Secretary for Export Administration or to another Department of Commerce official the authority to review and decide the appeal. In addition, the Under Secretary may designate any Department 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 Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H-3886C, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230, not later than 45 days after the date appearing on the written notice of administrative action.

(2) *Content of appeal.* A full written statement in support of the request must be filed with the appeal. The request 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 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. All hearings, if granted, 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 will 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 will 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 given appropriate weight.

(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 will 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 Departmental official to conduct an informal hearing, that designee 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 will consider any recommendations, reports, or relevant documents available to the Department of Commerce in determining the appeal, but will 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 will decide an appeal within a reasonable time after receipt of the appeal. The decision will 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 will be final.

(d) *Effect of appeal.* Acceptance and consideration of an appeal will 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.

#### PART 758—GENERAL EXPORT CLEARANCE REQUIREMENTS

Sec.

758.1 General export clearance requirements.

758.2 Use of license.

758.3 Shipper's Export Declaration.

758.4 Conformity of documents for shipments under export licenses.

758.5 General destination control requirements.

758.6 Destination control statements.

758.7 Authority of the Office of Export Enforcement, the Bureau of Export Administration, Customs offices and Postmasters in clearing shipments.

758.8 Return or unloading of cargo at direction of U.S. Department of Commerce or Customs Service.

758.9 Other applicable laws and regulations.

758.1 General export clearance requirements.

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2410 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

(a) *Responsibility of licensee, exporter and agent.* (1) If you are issued a Bureau of Export Administration (BXA) license, or you rely on a License Exception described in part 740 of this subchapter, you are responsible for the proper use of that license or License Exception and for the performance of all of its terms and conditions.

(2) If you export without a license issued by BXA, you are responsible for determining that the transaction is outside the scope of the EAR or the export is designated as "No License Required" or "Not on List", as described in paragraph (a)(3) and (4) of this section.

(3)(i) "No License Required". Items that are listed on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of this subchapter) but that do not require a license by reason of the Commerce Country Chart contained in Supplement 1 to part 738 of this subchapter, must be designated as "NLR", or "no license required", on your shipping documents in accordance with the provisions of this part.

(ii) *NLR notation.* Entering the symbol NLR is a representation to the U.S. government that the items being exported are listed on the Commerce Control List but do not require a license by reason of the Commerce Country Chart (Supplement No. 1 to part 738 of this subchapter); that they do not



require a license under General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), or Three (Foreign Produced Direct Product Reexports); General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and the items are subject to the EAR.

(4)(i) *“Not on List” designation.* Some items that are not on the Commerce Control List are subject to the EAR (see § 732.3 of this subchapter). When exporting such items, you must designate them on your shipping documents as “NOL”, or “not on list”, in accordance with the provisions of this part.

(ii) *NOL notation.* Entering the symbol NOL is a representation to the U.S. government that the items being exported are not listed on the Commerce Control List but are subject to the Export Administration Regulations and therefore do not require a license under General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign Produced Direct Product Reexports); General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity.

(5) *License Exception symbol.* Entering a License Exception symbol is a representation to the U.S. Government that the transaction meets all of the terms and conditions of the License Exception cited. (See part 740 of this subchapter for details regarding License Exceptions)

(b) *Forwarding agent.* (1) *Authorizing a forwarding agent.* A forwarding agent is a person the exporter authorizes to perform services that facilitate the export described on the Shipper's Export Declaration. The agent must be authorized to act on behalf of the exporter either for the specific transaction for which he is submitting the Shipper's Export Declaration or under a general power of attorney. The Foreign Trade Statistics Regulations of the Bureau of the Census (15 CFR part 30) set forth the specific requirements for obtaining authorization as a forwarding agent.

(2) *Forwarding agent as licensee.* If the forwarding agent is appointed at the suggestion of a foreign buyer, the seller may insist that the agent apply for the export license.

(3) *Record and proof of agent's authority.* The power-of-attorney or other authorization from the exporter must be retained on file in the forwarding agent's office while the authorization is in force and for a period of five years after the last action taken by the forwarding agent under the

authority. During this retention period, the forwarding agent must make its delegation of authority from the exporter available for inspection on demand, in accordance with the provisions of § 762.6 of this subchapter. This recordkeeping and inspection requirement also applies to any redelegation of the forwarding agent's authority and to any person to whom the forwarding agent redelegates its authority. (For further recordkeeping requirements see part 762 of this subchapter)

(c) *Responsibility for compliance.* Acting through a forwarding agent, or other agent or delegation or redelegation of authority, does not relieve anyone of responsibility for compliance with this subchapter.

(d) *Exports by mail.* (1) *Exports made under a license issued by the Bureau of Export Administration.* Before making by mail an export that is authorized by a license issued by BXA, you must enter the license number on the address side of the parcel and submit a properly executed Shipper's Export Declaration (SED) to the post office at the place of mailing, when required by these regulations and/or the Foreign Trade Statistics Regulations of the U.S. Bureau of the Census.<sup>1</sup>

(2) *Shipments without a license.* The requirements of this paragraph apply whenever you export items that do not require a license under the EAR. These requirements apply regardless of whether you ship under one of the “No License Required” or “Not On List” provisions or under a License Exception as described in part 740 of this subchapter.

(i) *Shipments to Canada for consumption therein.* An SED is not required for exports of items to Canada if the items are for consumption in Canada and the export transaction does not require a license from BXA. Note that if the item you are exporting to Canada is controlled by another government agency, the regulations of that agency may require you to file a Shipper's Export Declaration.

(ii) *Shipments to Puerto Rico or U.S. territories or possessions.* Exports of items to Puerto Rico or the U.S.

territories or possessions do not require a license issued by BXA. However, the regulations of the Census Bureau (15 CFR part 30) may still require you to file a Shipper's Export Declaration.

(iii) *Shipments valued over \$500.* When mailing an item from one business concern to another where the total value of the items being shipped exceeds \$500, you must present an executed SED to the post office at the place of mailing unless the EAR or the Bureau of the Census Foreign Trade Statistics Regulations specifically provide an exception to this requirement. If either the exporter or recipient is not a business concern, no SED is required.

(iv) *Designation on Shipper's Export Declaration and/or parcel.* If you are exporting an item that is not listed on the Commerce Control List, or one that is listed but for the export of which no license is required, or you are exporting pursuant to a License Exception as described in part 740 of this subchapter, you must enter the appropriate symbol indicating the absence of a license requirement (either NLR, meaning “No License Required” or NOL meaning “Not On List”) or of the applicable License Exception on the SED and on the address side of the parcel along with the phrase “Export License Not Required.” If your transaction is one for which you are not required to file a SED, you must enter the appropriate symbol indicating the absence of a license requirement (either NLR, meaning “No License Required” or NOL meaning “Not On List”) or of the applicable License Exception on the address side of the parcel along with the phrase “Export License Not Required.”

(A) By entering the symbol NLR you are representing to the U.S. government that: the items you are exporting are listed on the Commerce Control List (See Supplement No. 1 to part 774 of this subchapter) but do not require a license by reason of the Country Chart (Supplement No. 1 to part 738 of this subchapter); that it does not require a license under General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), or Three (Foreign Produced Direct Product Reexports); General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity; and the item is subject to the EAR.

(B) By entering the symbol NOL, you are representing to the U.S. government that the items you are exporting are not listed on the Commerce Control List but is subject to the Export Administration Regulations and therefore does not require a license under General

<sup>1</sup>The Shipper's Export Declaration (U.S. Department of Commerce form 7525-V) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or it may be privately printed. Form 7525-V-Alt (Intermodal), must be privately printed. Privately printed forms must strictly conform to the official form in all respects. Samples of these forms may be obtained from the Bureau of the Census, Washington, DC 20233, local Customs offices, and the U.S. Department of Commerce District Offices (see list beginning on page ii under Commerce Office Addresses).

Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign Produced Direct Product Reexports); General Prohibitions Four through Ten do not apply to the given export, reexport, or other activity.

(C) By entering a License Exception symbol, you are representing to the U.S. Government that your transaction meets all of the terms and conditions of the License Exception you are using. (See part 740 of this subchapter for details regarding License Exceptions)

(v) *Gift parcels.* If you are sending a gift parcel to Cuba, North Korea or Libya pursuant to the requirements of part 746 of this subchapter, you must enter the phrase "Gift—export license not required" on any customs declaration documents and on the address side of the parcel.

(vi) *Software and technology.* If you are exporting software or technology, the export of which is authorized under the License Exceptions set forth in § 740.15 through § 740.18 of this subchapter, you do not need to make any notation on the package. If you are exporting software or technology that is outside the scope of the EAR, check to see if any other agency's regulations require specific markings on the package.

(3) When you enter any of the symbols or phrases referred to in paragraph (b) of this section on the documents or packages, you are certifying to the post office and to the Bureau of Export Administration that you are exporting the package in compliance with all of the terms and provisions of the License Exception or other authority to export.

(c) *Exports by means other than mail.* (1) (i) Exemptions to Shipper's Export Declaration. A Shipper's Export Declaration is not required for:

(A) Any shipment, other than a shipment made under a license issued by BXA, to any country in Country Group B (See Supplement No. 1 to part 740 of this subchapter) or to the People's Republic of China if the shipment is valued at \$2,500 or less per Schedule B Number. The schedule B number of an item is that shown in the current edition of Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States. As used here "shipment" means all commodities classified under a single Schedule B Number, shipped on the same carrier, from one exporter to one importer;

(B) Any shipment reported under the provisions of the Monthly Reporting Procedure (§ 758.3(p) of this part); or

(C) Any shipment made under any other exception to the Shipper's Export Declaration requirements provided elsewhere in this part 758 or in part 740 of this subchapter. (A complete list of exceptions to the Shipper's Export Declaration requirement is set forth in Subpart D of the Bureau of the Census' Foreign Trade Statistics Regulations. See Supplement No. 1 to this part 758.)

(ii) *Exceptions from Shipper's Export Declaration requirements.*

(A) *Statement on shipping documents.* If you are exempt by paragraph (c)(1) of this section from the requirement of filing a Shipper's Export Declaration, the Bureau of the Census Foreign Trade Statistics Regulations (FTSR) (15 CFR § 30.50), require you to make a statement on the bill of lading, air waybill, or other loading document describing the basis for the exemption and referencing the specific section of the FTSR where the exemption is provided, unless the exemption is based on value and destination. If the exemption is based on the value and destination of your shipment, you must state the basis for the exemption, but you do not have to cite a reference to the specific section of the FTSR containing the exemption.

(B) *Monthly reporting procedures.*

(1) All forwarders or brokers who use the monthly reporting procedures described in FTSR § 30.39 (15 CFR 30.39) on behalf of exporters who are not themselves exempt from the individual filing requirement must also include on the bill of lading, air waybill (including house air waybill), or other loading document either the number of and expiration date of an export license issued by the Bureau of Export Administration, or the appropriate symbol indicating the absence of an export license requirement (either NLR, meaning "No License Required" or NOL meaning "Not On List") or of the applicable License Exception from part 740 of this subchapter.

(2) The notation required by paragraph (c)(1)(ii)(B)(1) of this section applies to any bill of lading or other loading document, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, this requirement does not apply to a "master" bill of lading or other loading document issued by a carrier to cover a consolidated shipment. The bill of lading or other loading document must be available for inspection along with the goods or data prior to lading on the carrier.

(2) *Presentation of declaration.* The exporting carrier is responsible for the accuracy of the following items of

information (where required) on the Shipper's Export Declaration:

(i) Name of carrier (including flag of vessel),

(ii) U.S. Customs port of export,

(iii) Method of transportation,

(iv) Foreign port of unloading,

(v) Bill of lading or air waybill number, and

(vi) Whether or not containerized.

(3) *Exports not requiring a license.*

Even if your shipment does not require a license from the Bureau of Export Administration, it may still require a Shipper's Export Declaration. Before shipping, check the Bureau of the Census Foreign Trade Statistics Regulations for the complete Shipper's Export Declaration requirements.

(d) *Shipments transiting Canada en route to other countries.*

(1) *Shipments moving under individual Shipper's Export Declaration.* When an export to a foreign country is made in transit through Canada, and the shipment is one for which an individual Shipper's Export Declaration is required pursuant to this part 758, the U.S. exporter must submit to the Canadian Customs authorities at the Canadian port of entry a copy of the U.S. Shipper's Export Declaration, Form 7525-V, certified by the exporter as "A True Copy" of the original Shipper's Export Declaration.

(i) *Shipments for which individual Shipper's Export Declarations are not required.* When an export to a foreign country is made in transit through Canada, and the shipment is one for which an individual Shipper's Export Declaration is not required because:

(A) The forwarder or broker is authorized to report export information to Census by means other than an individual Shipper's Export Declaration; or

(B) The shipment qualifies for a specific exemption (listed in Subpart D of the Census Bureau Foreign Trade Statistics Regulations), the forwarder or broker must include the number of and expiration date of the license issued by the Bureau of Export Administration, or the appropriate symbol indicating the absence of an export license requirement (either NLR, meaning "No License Required" or NOL meaning "Not On List") or of the applicable License Exception from part 740 of these Export Administration Regulations on the bill of lading or other loading document as directed in paragraph (c)(2) of this section. The properly annotated bill of lading or other loading document, along with the license authorization, when required, must be displayed to the Canadian Customs authorities at the Canadian

port of entry and a copy provided, if requested by the Canadian authorities.  
(2) Reserved.

#### § 758.2 Use of export license.

(a) *License valid for shipment from any port.* A license issued by BXA authorizes exports from the United States from any U.S. port of export unless the license notes otherwise. Items that leave the United States at one port, cross adjacent foreign territory, and reenter the United States at another port before final export to a foreign country will be treated as an export from the last U.S. port of export.

(b) *Shipments against expiring license.* (1) Any item that has not departed from the last U.S. port of export by midnight of the expiration date of the license may not be exported under that license unless the shipment meets the requirements of paragraph (b)(1)(i) or (ii) of this section are met.

(i) The Bureau of Export Administration grants an extension; or  
(ii) Prior to midnight of the expiration date of the license, the items:

(A) Were laden aboard the vessel; or  
(B) 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

(2) When the vessel is expected to be available at the pier for loading before the license expires, but exceptional and unforeseen circumstances delay it, the items may be exported without an extension of the license, if in the judgment of the U.S. Customs Service or the Bureau of Export Administration, undue hardship would otherwise result.

(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 in the same quantity and of the same value to the same consignee and destination under the same license. Before reshipping, the exporter must submit to the Office of Exporter Services of the Bureau of Export Administration of the U.S. Department of Commerce satisfactory evidence of the original export and of the failure to deliver the shipment, together with a satisfactory explanation of the delivery failure. If an item is to be reshipped to any person other than the original consignee, the shipment is deemed to be a new export and is subject to all current Export Administration Regulations regarding the specific item and destination.

#### § 758.3 Shipper's Export Declaration.

(a) *Shipper's Export Declaration presentation requirement.* Both the Foreign Trade Statistics Regulations of

the Census Bureau (15 CFR part 30) and these Export Administration Regulations require that Shipper's Export Declarations be submitted to the U.S. government. There are a few exceptions to this rule, but if you are required to submit a Shipper's Export Declaration you must prepare it in accordance with the rules of the Foreign Trade Statistics Regulations (FTSR) and present the number of copies specified in the FTSR at the port of export.

(b) *Shipper's Export Declaration is a statement to the U.S. government.* Your Shipper's Export Declaration is a statement to the U.S. government in which you assert that all of the information shown on the Shipper's Export Declaration is true. You may execute and submit the Shipper's Export Declaration only if you are the exporter or the duly authorized forwarding agent of an exporter.

(c) *Limitation on time when Shipper's Export Declaration may be used.* No one may use a Shipper's Export Declaration to export, or facilitate or effect an export, after the expiration of the applicable license or after the termination of the applicable License Exception or provisions of the Export Administration Regulations that authorize export without a license, except as provided in § 750.6(d) of this subchapter and § 758.2(b) of this part.

(d) *Additional copies of the Shipper's Export Declaration.* You are required to submit additional copies of the SED when:

(1) The Bureau of Export Administration or one of its component offices asks you to send it copies of the Shipper's Export Declaration for exports:

- (i) Authorized by a license (See paragraph (l) of this section);
- (ii) Authorized by a Special Comprehensive License (See § 752.16(a)(5) of this subchapter; or
- (iii) Of items controlled for short supply reasons (See part 754 of this subchapter); or
- (iv) Required by § 758.1(d) of this part.

(2) Reserved.

(e) *Statements on Shipper's Export Declaration.* Whenever a SED is presented to a carrier, a customs office, or a postmaster, the exporter and the person making the presentation represent that:

(1) All statements and information on the SED have been furnished by the exporter or on the exporter's behalf to effect an export under the provisions of this subchapter;

(2) Export of the items described on the SED is authorized under the "No License Required" or "Not on List"

provisions of this subchapter, a License Exception described in part 740 of this subchapter, or the license identified on the SED;

(3) Statements contained on the SED are consistent with the contents of the license or the terms, provisions, and conditions of the applicable License Exception or of the applicable "No License Required" provisions or "Not on List" provisions of this subchapter; and

(4) All other terms, provisions, and conditions of the EAR applicable to the export have been met.

(f) *Items that may be listed on the same Shipper's Export Declaration.* (1) *General.* Except as described in paragraph (f)(2) of this section, more than one item may be listed on the same Shipper's Export Declaration provided they are contained in one shipment on board a single carrier and are going from the same exporter to the same consignee. Even if some of the items are being shipped under authority of a license and others under a License Exception or the "No License Required" or "Not On List" provisions of this subchapter, they may still be shown on one Shipper's Export Declaration. The applicable license number and expiration date, License Exception symbol, the "No License Required" symbol (NLR) or the "Not on List" symbol (NOL) must be shown under each of the properly aligned line item descriptions (including quantity, if required, Schedule B Number, and value) to which each authorization applies. The following apply for notations made on Shipper's Export Declarations:

(i) Entering the license number and date is a representation to the U.S. government that the transaction is authorized by the license cited.

(ii) Entering a License Exception symbol, or "NLR" or "NOL" is a representation to the U.S. government that the shipment meets one of the applicable provisions of paragraphs (a)(3) through (a)(5) of § 758.1 to this part.

(2) *Exception.* Separate Shipper's Export Declarations must be prepared and presented for each vehicle when more than one vehicle is used to make the shipment. Customs Directors may waive this requirement if a shipment is made under a single bill of lading or other loading document and all the items listed on the Shipper's Export Declaration are cleared simultaneously.

(g) *Schedule B Number and item description.* (1) *Schedule B number.* You must enter the Schedule B number, as shown in the current edition of Schedule B, Statistical Classification of

Domestic and Foreign Commodities Exported from the United States, in the designated column of the Shipper's Export Declaration regardless of whether the shipment is being exported under authority of a license issued by the Bureau of Export Administration, a License Exception described in part 740 of this subchapter, or the "No License Required" or "Not on List" provisions of this subchapter.

(2) *Item description for exports under a license.* (i) *General.* If your export is being made under the authority of a license issued by the Bureau of Export Administration, you must enter the item description shown on the license on the Shipper's Export Declaration. However, if part of the description on the license is underlined, you need place only the underlined portions on the Shipper's Export Declaration. The item description on the license will be stated in Commerce Control List terms, which may be inadequate to meet Census Bureau requirements. In this event, the item description you place on the Shipper's Export Declaration must give enough additional detail to permit verification of the Schedule B number (e.g., size, material, or degree of fabrication).

(ii) *Distinguishing characteristics or specifications.* If a commodity classification in Schedule B has instructions such as "specify by name," "state species," etc., you must furnish that information in the column of the Shipper's Export Declaration provided for the commodity description. When a single Shipper's Export Declaration covers more than one item classifiable under a single classification carrying the "specify by name" or similar requirement, you must enter each item separately in this column. However, if more than five items are involved, all classifiable under one Schedule B number, only the five items of greatest value in the classification need be shown separately. Separate quantities, values, and shipping weights for individual items are not required in either case.

(3) *Item description for License Exception shipments or shipments for which no license is required.* For items that may be exported under the authority of a License Exception, or are exported under the "No License Required" or a "Not on List" provision of this subchapter, you must enter a description in sufficient detail to permit review by the U.S. government and verification of the Schedule B number entered on the Shipper's Export Declaration.

(h) *License number or other authorization designation.* (1) *Exports*

*under authority of a license issued by the Bureau of Export Administration.* You must show the license number and expiration date, the Export Control Classification Number (ECCN) and the item description, in the designated spaces of a Shipper's Export Declaration covering an export under a license issued by the Bureau of Export Administration (The space for the item description on the SED form may be headed "commodity description"). If you have also included other items on the Shipper's Export Declaration that may be exported under a License Exception, or under a "No License Required" or "Not on List" provision of this subchapter, you must show the license number and expiration date immediately below the specific description (quantity, Schedule B, value) of the item(s) to which the license applies.

(2) *Exports not needing a license.* In addition to the item description, the License Exception symbol, "No License Required" symbol (NLR) or "Not on List" symbol (NOL) must be shown in the appropriate column of each Shipper's Export Declaration covering a shipment under authority of a License Exception (see part 740 of this subchapter), or a "No License Required" or "Not on List" provision of this subchapter. If several items, authorized by different License Exceptions, "No License Required" provisions or "Not on List" provisions are listed on one declaration, the appropriate symbol for each item must be placed under the properly aligned description of that item. If the item will be exported under the provisions of License Exceptions GBS, CIV, LVS or CSR, the ECCN must also be shown in the designated space. The following apply for notations made on Shipper's Export Declarations:

(i) Entering the license number and date is a representation to the U.S. government that the transaction is authorized by the license cited.

(ii) Entering a License Exception symbol, or "NLR" or "NOL" is a representation to the U.S. government that the shipment meets one of the applicable provisions of paragraphs (a)(3) through (a)(5) of § 758.1 to this part.

(i) *Optional Ports of Unlading.* (1) *Applicability.* If, prior to the departure of the exporting carrier, the exporter does not know at what port the shipment will be unloaded, the exporter may designate optional ports of unlading on the SED and bill of lading or air waybill in accordance with the provisions of this paragraph. There are restrictions on the countries in which these optional ports may be located. The

restrictions depend on whether the export is authorized under the "No License Required" or "Not on List" provisions of this subchapter, the License Exceptions described in part 740 of this subchapter, or a license (See paragraph (j)(3) of this section).

(2) *Exemptions.* You may never designate an optional port of unlading for a shipment destined directly or indirectly to Country Group D:1 (except for the People's Republic of China), Libya, Cuba, or North Korea.

(3) *Shipments for which no license is required or which are authorized by a License Exception.* (i) For exports under the authority of the "No License Required" or "Not on List" provisions of this subchapter, if the exporter does not know which of several countries in Country Group B or the People's Republic of China is the country of ultimate destination, the exporter may name optional ports of unlading in one or more of these countries.

(ii) When an export under any License Exception is shipped in transit through a country other than the country of ultimate destination, the exporter may designate optional ports of unlading in one or more countries, together with the name and address of the intermediate consignee in each country designated.

(4) *Restrictions on optional ports of unlading.* The optional ports of unlading, which the exporter designates on the Shipper's Export Declaration pursuant to paragraph (i)(3)(i) of this section, must be in a country to which the item being unloaded may be exported directly from the United States under the same or another applicable "No License Required" provision, "Not on List" provision or License Exception to these Export Administration Regulations.

(5) *Shipments under a license issued by the Bureau of Export Administration.* For exports under a license, optional ports of unlading are restricted to the country of ultimate destination, unless either the transaction complies with the provisions of § 750.7 of this subchapter dealing with continuity of shipments, or the license designates intermediate consignees in other countries. In the latter case, the optional ports of unlading must be designated as optional intransit points on the Shipper's Export Declaration, or if there is no Shipper's Export Declaration, on the Shipper's Letter of Instructions, or, if there is neither, the optional port of unlading must appear on another document containing instructions that the exporter conveys (either directly or through an agent) to the carrier, and on the bill of lading or air waybill.

(6) *Correcting the Shipper's Export Declaration.* As soon as the exporter, or the exporter's forwarding agent or carrier determines at which port the shipment is to be unloaded (whether in the country of ultimate destination or in a country of transit), that person must correct the SED to show the specific port of unloading and the name and address of the intermediate consignee to whom delivery is to be made. An intermediate consignee must be shown if the port of unloading is located in a country other than the country of destination. If the export is unloaded at more than one port, the quantity and value unloaded at each port and the name and address of each intermediate consignee must be given. The procedures for correcting and filing SEDs are set forth in § 758.3(n) of this part.

(j) *Signature on Shipper's Export Declaration.* The exporter or the exporter's authorized forwarding agent, or an authorized employee of either, may sign the Shipper's Export Declaration. In general, the requisite authority rests with employees who, by their official titles, are apparently vested with power to deal with exports, such as export managers or such corporate officers as the president, vice president, treasurer, and secretary of a corporation, any partner of a partnership, and any responsible head of any other form of private or quasi-governmental organization, and assistant officers. The signature of such person, whether that of the exporter or authorized agent or employee, constitutes a representation by the exporter that all statements and information in the Shipper's Export Declaration are true and correct. In addition, if the signature is that of the forwarding agent, or the forwarding agent's duly authorized officer or employee, such signature constitutes a like representation by the forwarding agent.

(k) *Attachment to Shipper's Export Declaration.* If you need additional space for any information on the SED, you may use additional copies of the Shipper's Export Declaration or copies of the continuation sheet. In such cases, only one Shipper's Export Declaration need be signed. You must number the additional sheets in sequence and securely attach them to the executed Shipper's Export Declaration. You must insert the following statements between the column provided for marks and numbers of the shipment and the column provided for its value:

This Shipper's Export Declaration consists of this sheet and \_\_\_\_\_ continuation sheets.

No portion of any form attached as a continuation sheet may be torn off or removed.

(l) *Special requirements for additional information and documents.* (1) A license may bear on its face a requirement to submit a Shipper's Export Declaration or other documents (or information) to the Office of Export Enforcement in addition to that furnished when the application was filed. The exporter and the person submitting the documents represent that the documents are complete, truthful and accurate. The Export Administration Regulations prohibit the making of false representations to the U.S. government in any export control matter (see § 764.2(g) of this subchapter). The licensee must furnish the documents to:

Office of Export Enforcement, Room H-4520, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230.

(2) When required, the licensee must:

(i) Prepare one copy of the SED in addition to the number of copies otherwise required;

(ii) Enter the additional information called for by the license in the space between the column provided for marks and numbers of the shipment and the column provided for its value on all copies of the SED; and

(iii) Unless otherwise specified on the license, attach the required documents (either original or certified copy) to the extra copy of the Shipper's Export Declaration.

(m) *Shipper's Export Declaration for shipments moving in-transit.* (1) *Applicability.* Use the Shipper's Export Declaration for In-transit Goods, Commerce Form 7513,<sup>2</sup> for the following types of transactions:

(i) Items departing the United States by vessel, which transited through, or transhipped in, ports of the United States, destined from one foreign country or area to another.

(ii) Foreign merchandise exported from a General Order Warehouse and the export of foreign origin merchandise that was rejected after government inspection or examination. Shipments in bond transiting the United States being exported by means of any carrier other than a vessel may be cleared for export without presenting a Form 7513, unless a license is required for the export.

(2) *Exports from Foreign Trade Zones.* You may not use Form 7513 for any

exports from Foreign Trade Zones. Such shipments require the filing of the Shipper's Export Declaration (Form 7525-V), unless otherwise exempted, with the applicable zone number reported on the Document.

(3) *Additional information.* The following additional information must be entered on a Shipper's Export Declaration for In-transit Goods:

(i) The name and address of the intermediate consignee in a foreign destination, if any, must be shown below the description of the items.

(ii) Underneath the name and address of the intermediate consignee, one of the following statements, whichever is appropriate, must be entered:

(A) For intransit shipments of foreign-origin merchandise (see part 772 of this subchapter for a definition of "foreign-origin,"), enter the following statement:

The merchandise described herein is of foreign origin.

(B) For intransit shipments of domestic (U.S.) merchandise, enter the following statement:

The merchandise described herein is of the growth, production, or manufacture of the United States.

(C) For intransit shipments of items of U.S. origin eligible for License Exception TUS (See § 740.9 of this subchapter), enter the following statement:

The merchandise described herein is of the growth, production, or manufacture of the United States, but has been so altered by further processing, manufacture, or assembly in a foreign country that it has either been substantially enhanced in value, or has lost its original identity with respect to form.

(iii) The items must be described in terms of Schedule B, including the appropriate Schedule B number.

(4) See section 30.8 of the Foreign Trade Statistics Regulations (15 CFR 30.8) for additional requirements concerning the information that must be placed on a Shipper's Export Declaration for In-transit Goods.

(n) *Correction, change, alteration, or amendment of Shipper's Export Declaration.* (1) *Methods of changing declarations.* The exporter or the exporter's agent must report corrections, cancellations, additions or amendments to information reported on SEDs to the Customs Director at the port of exportation (or, in the case of mail shipments, to the Postmaster at the post office where the shipment was mailed) as soon as the need for such changes is determined. See the Foreign Trade Statistics Regulations (15 CFR part 30) for additional information about how to correct SEDs and file the corrections. If

<sup>2</sup>Form 7513 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, the local customs offices, or may be privately printed.

you are required by paragraph (l) of this section to file a copy of the original SED with the Office of Export Enforcement (OEE), a copy of the changed SED should be sent to OEE at the address shown in paragraph (l) of this section with the words "Correction Copy" conspicuously shown in the upper right portion of the form.

(2) *Responsibility.* Nothing herein relieves you or any person or firm making changes on the Shipper's Export Declaration from responsibility for any such changes. Acceptance of a changed Shipper's Export Declaration by the Customs office does not imply approval of any act involved in the shipment or acceptance of the truth or accuracy of the information provided.

(o) *Summary monthly reports in lieu of individual Shipper's Export Declarations.* (1) *Scope.* This paragraph contains only basic information about the monthly filing procedures for the SED. Details of the procedure are set forth in § 30.39 of the Foreign Trade Statistics Regulations (FTSR) of the Bureau of the Census (15 CFR § 30.39). Exporters interested in the procedure should consult § 30.39 of the FTSR to ascertain qualifications, how to apply for the privilege of participating, how to file electronically after approval is given, and other pertinent facts.

(2) *Applicability.* Approved parties may file monthly SEDs with the Bureau of the Census for export to Canada and destinations in Country Group B (see Supplement No. 1 to part 740 of this subchapter).

(3) *How to request monthly reporting privileges.* (i) *Addresses.* (A) A request for the privilege of participating in monthly reporting procedures should be forwarded to: Foreign Trade Division, Bureau of the Census, Washington, D.C. 20233.

(B) A copy of all requests must be sent to: Office of Export Enforcement, Room H-4616, U.S. Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230.

(ii) *Certification requirements.* The request must include the following certification by the applicant:

I (We) certify that I (we) have established adequate internal procedures and safeguards to assure compliance with the requirements set forth in the U.S. Department of Commerce Export Administration Regulations and Foreign Trade Statistics Regulations. Among other things, these procedures and safeguards assure:

- (1) A proper determination as to whether a license is required for a particular export;
- (2) Actual receipt of the export license, if required, before the shipment is exported;
- (3) Compliance with all the terms of the license or License Exception, as applicable;

(4) Return of licenses to the Bureau of Export Administration in accordance with § 750.7 of the Export Administration Regulations, if requested;

(5) Compliance with the destination control statement provisions of §§ 758.5 and 758.6 of the Export Administration Regulations;

(6) Compliance with the prohibition against export transactions that involve persons who have been denied U.S. export privileges; and

(7) Compliance with the recordkeeping requirements of part 762 of the Export Administration Regulations and, in addition, I (we) agree that my (our) office records will be made available for inspection by the Bureau of the Census, the Bureau of Export Administration or the U.S. Customs Service, upon request, to verify that a given shipment was properly included in a particular monthly report.

(4) *Exporter's agent.* If the exporter intends to authorize a forwarding agent to file electronically on the exporter's behalf, the exporter's request must include the name and address of each such forwarding agent.

(5) *Authorization by Census to use monthly reporting procedure.* Any authorization to file summary monthly reports in lieu of individual SEDs may be granted only by the Bureau of the Census with the concurrence of BXA.

(6) *Export clearance.* (i) *Destination control statement.* In addition to the exporter's responsibility for assuring that the proper destination control statement is placed on the commercial invoice as required by § 758.6 of this part, the exporter or the exporter's forwarding agent is responsible for assuring that the carrier places the proper destination control statement on the related bill of lading or air waybill.

(ii) *Detention and examination.* Shipments being reported under the summary filing procedure described in this paragraph are subject to inspection, examination and detention, as provided in § 758.8 of this part, whenever an official of the Bureau of Export Administration, a customs officer, or a postmaster deems such action necessary to assure compliance with the Export Administration Regulations.

(7) *Revocation of authorization.* An authorization to file summary monthly reports in lieu of individual Shipper's Export Declarations, granted under the provisions of § 30.39 of the Foreign Trade Statistics Regulations (15 CFR § 30.39) and this paragraph, may be revoked, suspended, or revised at any time.

(8) *Effect of other provisions.* Insofar as consistent with the provisions of this paragraph that relate specifically to filing electronically in lieu of individual Shipper's Export Declarations, the other

provisions of this part 758 apply to exports reported under this procedure.

#### § 758.4 Conformity of documents for shipments under export licenses.

(a) *Applicability.* The rules of conformity set forth in this section apply to shipping documents used in connection with any shipment under the authority of a license issued by BXA except "master" air waybills issued by consolidators. These rules apply to any individual air waybill issued by a consolidator (indirect carrier) for an export included in a consolidated shipment and to any air waybill issued by anyone in connection with an export not included in a consolidated shipment.

(b) *Compliance.* You may not issue, prepare, or procure a bill of lading that is contrary to the provisions of this section. Officials of the Bureau of Export Administration and the U.S. Customs Service are authorized to require any document or to use any other appropriate methods to ensure compliance with the rules of conformity in this section.

(c) *Rules of conformity.* (1) *General.* The following documents must be consistent with each other:

- (i) The license issued by BXA;
- (ii) One of the following applicable documents:

- (A) The SED;
- (B) If there is no SED, the Shipper's Letter of Instructions; or
- (C) If there is neither, another document containing instructions that the exporter conveys (either directly or through an agent) to the carrier, and the outbound bill of lading (including a railroad through bill of lading) covering a particular export shipment must be consistent with one another.

(2) *Signs of inconsistent documents.* The bill of lading, whether in negotiable or nonnegotiable form, is not consistent with those other documents if:

- (i) It does not provide for delivery of the shipment (cargo) at a port located in the country of either the ultimate or intermediate consignee named in the documents described in paragraph (c)(1)(ii) of this section;

(ii) It contains any indication that the shipment is intransit to a country of ultimate destination different from that named in the appropriate one of the documents described in paragraph (c)(1)(ii) of this section, or that the shipment is not for consumption in such country of ultimate destination. For example, it would be inconsistent to consign a shipment to the ultimate destination with a qualifying phrase indicating the shipment is "in transit"

at that destination, or to consign the shipment to a free zone or free port;

(iii) It names as shipper any person other than the licensee (the person to whom a license is issued) or the licensee's duly authorized forwarding agent. Where shipments from more than one licensee are consolidated on a single bill of lading, the shipper named on the bill of lading must also appear as the authorized forwarding agent for each exporter on each document described in paragraph (c)(1)(ii) of this section.

(iv) The name and address of the ultimate consignee are not shown either in the space provided for "consignee" or in the body of the bill of lading under the caption "ultimate consignee and notify party" or, in the case of the air waybill, under the caption "also notify." However, where shipments to more than one ultimate consignee are consolidated on one bill of lading and not all are shown in the body of the bill of lading, the name of the intermediate consignee (customs broker or consolidator's agent in the foreign country) who will receive and distribute the items to the ultimate consignees must appear on the bill of lading, the export license(s), and documents listed in paragraph (c)(1)(ii) of this section.

(2) *Additional rules for negotiable bills of lading.* A negotiable bill of lading (an "order" bill of lading) is deemed consistent with the appropriate one of the documents described in paragraph (c)(1)(ii) of this section only if the consignee or order party named on the bill of lading is also named in the Shipper's Export Declaration, the Shipper's Letter of Instructions or the other document.

(i) Sometimes "order" bills of lading consign the items they cover to the order of the shipper, to the order of an intermediate consignee such as a bank, foreign freight forwarder, or other intermediary, or to the order of a purchaser who is not the same person as the ultimate consignee. An "order" bill of lading issued in any of these forms constitutes a representation by the shipper that:

(A) The items covered by the appropriate one of the documents described in paragraph (c)(1)(ii) of this section and bill of lading are ultimately destined to the ultimate consignee stated on the license;

(B) The "order" bill of lading has not been used for the purpose of evading the terms and conditions of the license; and

(C) Pursuant to the contract of carriage, the items will be delivered at a port located in the country of the ultimate consignee or of the intermediate consignee named on the appropriate one of the documents

described in paragraph (c)(1)(ii) of this section.

(3) *Item description.* On the bill of lading the items may be described in terms of the freight tariff classification or other type of classification, but may not be inconsistent with the description shown on the appropriate one of the documents described in paragraph (c)(1)(ii). These documents must include the same item description as shown on the related license, and, in addition, it must include more detailed information where required by the Bureau of the Census.

(4) *Carrier's manifest.* If the carrier's outward foreign manifest filed with the U.S. customs office contains the names of shippers or consignees, these names must not be inconsistent with the names shown on the bill of lading and the appropriate one of the documents described in paragraph (c)(1)(ii) of this section.

#### **§ 758.5 General destination control requirements.**

(a) *Scope.* This section sets forth some actions the parties to a transaction authorized by a license issued by BXA are prohibited from taking. The purpose of these prohibitions 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 goods are unloaded in a country other than that of the ultimate consignee or intermediate consignee as stated on the export license.

(b) *Destination on bill of lading or air waybill.* (1) *Requirements to prevent diversions.* (i) *Statements on bill of lading or air waybill.* (A) A carrier (or any other person on behalf of any carrier) may not issue a bill of lading or air waybill providing for delivery of cargo at any foreign port located outside the country of the ultimate consignee, or the intermediate consignee, named on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part.

(B) *Optional ports on bill of lading or air waybill.* No carrier may issue a bill of lading or air waybill providing for delivery of cargo at optional ports to the ultimate consignee named on one of the appropriate documents described in § 758.4(c)(1)(i) and (ii) of this part where one of such optional ports is not in the country of ultimate destination named on the license or Shipper's Export Declaration, or if there is no Shipper's Export Declaration, the Shipper's Letter of Instructions, or if there is neither, another document containing instructions that the exporter conveys (either directly or through an agent) to the carrier, without prior written authorization from the Bureau of Export

Administration. However, where the appropriate document described in § 758.4(c)(1)(i) and (ii) of this part provide for delivery of cargo to optional intermediate consignees located in ports in different countries, the carrier may issue a bill of lading or air waybill providing for delivery at such optional ports.

(2) *Delivery of cargo.* No carrier may deliver cargo to any country other than the country of the ultimate consignee, or the intermediate consignee, named on the appropriate one of the documents described in § 758.4(c)(1)(ii) at the request or option of the shipper, consignor, exporter, purchaser, or ultimate consignee, or their agents, or any other person having custody or control of the shipment, without prior written authorization from BXA to the carrier or its agent.

(c) *Duties when items are unloaded in a unauthorized country.* If the items are unloaded in a country other than that of the intermediate or ultimate consignee as stated on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, the procedures described in this paragraph must be followed.

(1) *Reasons beyond carrier's control.* Nothing contained in this subchapter shall be deemed to prohibit a carrier from unloading cargo at a port outside the country of intermediate or ultimate destination shown on the appropriate one of the documents described in § 758.4(c)(1)(ii), where for reasons beyond the control of the carrier (as set forth in the standard provisions of the carrier's bill of lading or air waybill, such as acts of God, perils of the sea, damage to the carrier, strikes, war, political disturbances, or insurrections), it is not feasible to deliver the cargo at the licensed port of destination.

(2) *Required actions for unscheduled unloading.* (i) If the item is unloaded in a country to which that item may be exported without a license issued by the Bureau of Export Administration, no one is required to notify BXA of the unloading. The exporter may dispose of the items in that country without approval of the BXA. When making such a disposition you must still comply with any conditions or requirements of the License Exception or other provisions of the EAR that would authorize the export of the item being unloaded to the country in which you are disposing of it, and any regulations of other government agencies that apply to the transaction. This paragraph does not authorize anyone to take any action with knowledge or reason to know that a violation of the Export Administration Act, the EAR, or any order, license or

authorization issued thereunder, has occurred, is about to occur or is intended to occur, or to deliver to a denied party or to take any other action prohibited by the EAR.

(ii) If a license issued by the Bureau of Export Administration would be required to export the item to the country in which it is unloaded:

(A) No person may take any steps to effect delivery or entry of the items into the commerce of the country where unloaded without prior approval of the Bureau of Export Administration;

(B) The carrier must take steps to assure that the items are placed in custody under bond or other guaranty not to enter the commerce of such country or any country other than the countries of the ultimate and intermediate consignees shown on the appropriate one of the documents described in § 758.4(c)(1)(ii) of this part, without prior approval of BXA;

(iii) The carrier, the carrier's agent located in the United States, and the exporter each have specific responsibilities to notify the Bureau of Export Administration regarding any unscheduled unloading. The specific responsibilities of each party are as follows:

(A) The carrier must, within 10 days after date of unloading, report the facts to the nearest American Consulate and to the agent of the carrier located in the United States. Within 10 days after receipt of such report, the agent must send a copy of the report to BXA. The report must include:

(1) A copy of the manifest of such diverted cargo;

(2) A statement of the place of unloading; and;

(3) The name and address of the person in whose custody the items were delivered.

(B) BXA will inform the exporter of the unloading. Within 10 days following receipt of this notice, the exporter must inform the BXA of the proposed disposition of the items. The exporter may not dispose of the items without approval of the BXA.

#### § 758.6 Destination control statements.

(a) *Requirement for destination control statement.* One of the destination control statements shown in paragraph (b) of this section must be entered on all copies of the bill of lading, the air waybill and the commercial invoice covering any export made under a license, or that is authorized by the following License Exceptions: PTS, GBS, CIV, CSR, LVS, NSG, SLV, TUS, or TMP. In addition, if an item would require a license to be exported to any destination in County

Group D:1, and the total value of all such items in a particular shipment exceeds \$250, a destination control statement found in paragraph (b) of this section must be entered on all copies of the bill of lading, the air waybill and the commercial invoice covering the export of that item even if the export would be authorized by the "no license required" provision described in § 758.1(a)(2)(i) of this part. An exporter or the exporter's agent may enter a destination control statement on the shipping documents for exports for which no destination control statement is required.

(b) *Text of destination control statement.* (1) For exports authorized by a license or License Exceptions CSR or NSG, either statement 1 or 2 may be used.

(i) *Statement 1.* These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations for ultimate destination [*name of country*]. Diversion contrary to U.S. law is prohibited.

(ii) *Statement 2.* These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations for ultimate destination [*name of country*] and may be resold or redistributed in [*names of countries*]. Diversion contrary to U.S. law is prohibited.

(2) *Completion of country information in Statements 1 and 2.* (i) *Shipments authorized by a license.* If the shipment is authorized by a license, enter the name of the country to which the exports are licensed in the blank for "name of country" in either statement one or two. The country must be the same as the country of ultimate destination stated on the license and Shipper's Export Declaration or other document described in § 758.4(c)(1)(ii) of this part. If the license authorizes resale or redistribution in other countries you may use the second statement, in which case, in the space for "names of countries" enter either the names of the countries to which the license authorizes resale or redistribution or you may enter the phrase "all countries except" followed by a list of the countries to which the license does not authorize resale or redistribution.

(ii) *Shipments authorized by License Exceptions CSR or NSG.* For shipments authorized by License Exceptions CSR or NSG, enter the name of the country to which you are exporting the item in the blank for "name of country". This country must be the same as the country of ultimate destination stated on the appropriate document described in

§ 758.4(c)(1)(ii) of this part. If you use Statement 2, enter either the names of the countries to which direct exports from the United States would be authorized under the License Exception you are using or the phrase "all countries except" followed by a list of the countries to which exports would not be permitted under the License Exception you are using.

(3) *Other exports.* If the item would require a license to be exported to any destination in County Group D:1, but does not require a license to be exported to the country to which it is destined and the export would not be authorized under License Exceptions CSR or NSG and the total value of all such items in a particular shipment exceeds \$250 or if the export is authorized by License Exception GBS or LVS, you may use the following statement 3:

*Statement 3:* United States law prohibits disposition of these items in Cuba, Iraq, Libya, North Korea and other countries as stated in Country Group D, Number 1 of the Export Administration Regulations, unless otherwise authorized by the United States. Diversion to countries, persons or uses contrary to U.S. law is prohibited.

(4) *Shipments License Exceptions PTS, CIV, TUS or TMP.* If the export is authorized by License Exceptions PTS, CIV, TUS, or TMP (see part 740 of this subchapter for additional information), you may use the following statement:

*Statement 4.* United States law prohibits disposition of these items in Cuba, Iraq, Libya, or North Korea. Diversion to countries, persons or uses contrary to U.S. law is prohibited.

(5)(i) *Special statement for approved consignees under Special Comprehensive Licenses.* Approved consignees under Special Comprehensive Licenses may comply with the requirements of § 752.6(d) of this subchapter by using the following statement:

These items were authorized for export from the United States under a Special Comprehensive License procedure on the condition that they may not be reexported without prior approval from United States authorities.

(ii) The approved consignee may use more specific wording referring to the need for BXA approval. The notice may be translated into an appropriate language.

(c) *Responsibility for assuring that the destination control statement is used.*

(1) *Exporters.* The exporter is responsible for assuring entry of the destination control statement on the commercial invoice, regardless of whether the exporter actually prepares this document. The exporter has this



responsibility even if the invoice is prepared by an order party or the exporter acts through an agent.

(2) *Agents of exporters (forwarding agents)*. Agents of exporters are also responsible for assuring entry of the destination control statement on the commercial invoice.

(i) If the agent receives from the exporter a copy of a commercial invoice without the correct destination control statement, the agent must:

(A) Notify the exporter in writing;

(B) Request written assurance from the exporter that:

(1) The destination control statement has been properly entered on all other copies of the commercial invoice; and

(2) Any person who received an invoice without the statement has been informed in writing of the restrictions set forth in the statement;

(ii) Either:

(A) Enter the appropriate statement on the agent's copy of the invoice; or

(B) Return it to the exporter for completion; and

(iii) Keep and make available for inspection, in accordance with part 762 of this subchapter, a copy of his notification to the exporter and the original of the exporter's assurance required by paragraph (c)(2)(i) of this section. (For further recordkeeping requirements, see part 762 of this subchapter)

(iv) If the agent prepares the invoice, the agent's responsibilities are governed by paragraph (c)(3) of this section.

(3) *Forwarders, carriers and other parties who prepare invoices*. If a forwarder, a carrier acting as a forwarder, or any other party prepares, presents, and/or executes the invoice, the forwarder, carrier, or other party is also responsible for assuring that an appropriate statement is entered on the invoice.

(4) *Carriers and other parties who issue bills of lading or air waybills*. The carrier, or any other party that issues the bill of lading or air waybill, is responsible for assuring that the destination control statement appearing on the corresponding invoice also appears on the bill of lading or air waybill.

(d) *Responsibility for distributing copies of the invoice*. The exporter or other person issuing any invoice containing a destination control statement must promptly send copies to:

(1) The ultimate consignee and the purchaser named in the declaration;

(2) The intermediate consignee; and

(3) Any other persons named in the invoice who are located in a foreign country. Nothing contained in this part shall be construed to limit the persons

or classes of persons to whom such invoices, bills of lading or air waybills are usually and customarily sent in the course of export trade. The shipper or other person issuing the commercial invoice may comply with the requirements of this section even if the copy of the invoice sent to any of the persons listed in this section omits all reference to price or sales commission provided such invoice otherwise adequately identifies the shipment. As an alternative in lieu of a copy of the commercial invoice, such person may send a copy of the bill of lading or air waybill containing the destination control statement.

(e) *Requirements for bill of lading or air waybill*. (1) *General*. No carrier may issue (and no one may prepare or procure) a bill of lading or air waybill covering an export for which a destination control statement is required under the provisions of paragraph (a) of this section, unless all copies of such bill of lading or air waybill (including all non-negotiable and office copies) contain the destination control statement in clearly legible form.

(2) *Exception for "master" air waybills*. In the case of shipments by air (other than airmail or air parcel post), the requirement of paragraph (c)(2)(i) of this section applies to any air waybill, including one issued by a consolidator (indirect carrier) for an export included in a consolidated shipment. However, the provisions of paragraph (e) of this section do not apply to a "master" air waybill issued by a carrier to cover a consolidated shipment.

(f) *Requirements for the commercial invoice*. No licensee, shipper, consignor, exporter, agent, or any other person may prepare or issue a commercial invoice for a shipment for which a destination control statement is required under the provisions of paragraph (a) of this section, unless all copies of the invoice(s) contain the statement in clearly legible form.

(g) *Carrier's responsibility before releasing cargo*. No carrier may release custody of a shipment covered by the provisions of this section to any party without surrender by that party, to the carrier, of a copy of the bill of lading or air waybill bearing on its face the applicable destination control statement, unless either:

(1) Simultaneously with the release, the carrier delivers to such party a written copy of the destination control statement, contained in the carrier's copy of the bill of lading or air waybill for the shipment. The written copy must identify the shipment by bill of lading or air waybill number, name of carrier, voyage or flight number, date, and port

of arrival. The carrier must also secure either a signed receipted copy of the written statement or other equivalent written evidence that the statement has been delivered by the carrier; or,

(2) The regulations of the importing country require the carrier to deliver the items directly into the physical possession and control of customs or other government agency for delivery to the consignee or the consignee's agent. In this case, the carrier need not give to, or receive from, the customs or other government agency, or the consignee or the consignee's agent, any document bearing the destination control statement.

**§ 758.7 Authority of BXA, the Office of Export Enforcement, Customs offices and Postmasters in clearing shipments.**

(a) *Actions to assure compliance with the regulations*. Officials of BXA, 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 the Bureau of Export Administration 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 the Bureau of Export Administration 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 Shipper's Export Declaration, or if there is no Shipper's Export Declaration, 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 BXA. 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 officials 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 data 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 them in violation of the Export Administration Regulations, or whenever they know or has probable cause to believe that 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 of the Office of Export Enforcement are authorized to detain any shipment held for review of the Shipper's Export Declaration, or if there is no Shipper's Export Declaration, 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 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 BXA 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.

**§ 758.8 Return or unloading of cargo at direction of U.S. Department of Commerce 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, the BXA, 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 the BXA. 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) of this part, relating to reporting, notification to BXA, and the prohibition against unauthorized delivery or entry of the item data 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 the Bureau of Export Administration, U.S. Department of Commerce. 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 Shipper's Export Declarations and manifests, or any applicable rules and regulations of the U.S. Customs Service.

#### Supplement No. 2 to Part 778— [Redesignated as Supplement No. 2 to Part 742]

2. Supplement No. 2 to part 778 is redesignated as Supplement No. 2 to part 742.

#### Part 769—[Redesignated as Part 760]

3. Part 769 is redesignated as part 760, and references to "769" are revised to read "760" wherever they appear.

4. Parts 762, 764, and 766 are added and parts 768, 770, and 772 are revised to read as follows:

#### 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:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2410 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

#### § 762.1 Scope.

(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 this subchapter;

(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 item involved is to be reexported, transshipped, or diverted from Canada to another foreign country; or

(4) Any other transactions subject to the Export Administration Regulations. 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 lead to a violation of the Export Administration Act, the Export Administration Regulations 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 Export Administration Regulations, 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.

#### § 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 this subchapter;

(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, or that are made or obtained by a person described in § 762.1(b) of this part.

(b) *Additional record retention requirements.* In addition to the records required to be retained by paragraph (a) of this section, other sections of the Export Administration Regulations require the retention of records including, but not limited to part 734 and § 736.14, § 740.1, § 740.20, Supplement No. 4 to part 742, §§ 746.17, 748.6, 748.7, 748.10, 748.11, 748.13, 748.14, 750.7, 750.8, 750.9, 750.10, 752.5, 752.7, 752.10, 752.11, 752.12, 752.13, 752.14, 752.15, 752.16, 754.4, 758.3, 758.6, 760.6, 762.2, 764.2, 764.5, and 766.10.

#### § 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) Parking 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.

#### § 762.4 Original records required.

The regulated person must maintain the original records in the form in

which he or she receives or creates them unless he or she meets all of the conditions of § 762.5 of this part relating to reproduction of records.

**§ 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 may use any photographic, photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, 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.

(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 readability 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 this subchapter 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;

(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 this subchapter, the date the regulated person receives the boycott related request or requirement.

(b) *Destruction or disposal of records.* If the Bureau of Export Administration

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 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 Export Administration Regulations, 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 Export Administration, the U.S. Customs Service, or 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 for 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 Export Administration Regulations 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 Export Administration, the U.S. Customs Service, or a Foreign Service post, or by any accredited representative of the U.S. Government, without any charge or expense to such agent, official or employee.

**PART 764—ENFORCEMENT**

Sec.

764.1 Introduction.

764.2 Violations.

764.3 Sanctions.

764.4 Reporting of violations.

764.5 Voluntary self-disclosure.

Supplement No. 1 to Part 764—Standard Terms of Orders Denying Export Privileges  
 Supplement No. 3 to Part 764—Denied Persons List

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2410 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

#### § 764.1 Introduction.

This part describes conduct which constitutes a violation of the Export Administration Act (EAA) and/or the Export Administration Regulations (EAR), and sets forth the sanctions that may be imposed for such violations. Although the violations and sanctions set forth in this part may be applicable to antiboycott cases, other antiboycott violations are identified in part 760 of this subchapter. This part explains administrative sanctions that may be imposed by Bureau of Export Administration (BXA) and criminal sanctions that may be imposed by a United States court, and also refers to protective administrative measures, as well as to other sanctions which are neither administrative nor criminal. Information is provided on how to report and disclose violations.

#### § 764.2 Violations.

(a) *Engaging in prohibited conduct.* No person may engage in any conduct prohibited by, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.

(b) *Causing, aiding and 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 do any act that solicits the commission of, or that constitutes an attempt to bring about, 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 items exported or to be exported from the United States, or

which is otherwise subject to the EAR, with knowledge or reason to know 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.

(f) *Possession with intent to export illegally.* No person may possess any items controlled for national security or foreign policy reasons under sections 5 or 6 of the EAA: (1) with intent to export such items in violation of the EAA, the EAR, or any order, license or authorization issued thereunder, or (2) with knowledge or reason to know that the items would be so exported.

(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, whether directly to BXA, the United States Customs Service, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or any foreign government agency or official:

(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, or restrictive trade practice or boycott request report, as defined in § 760.6 of this subchapter; or

(iii) For the purpose of or in connection with effecting an export from the United States, the reexport, transshipment, or diversion of any such export, or any 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 BXA and any other relevant agency(ies), in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information which would lead a reasonably prudent person to believe 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, either independently or through any other person, 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 (see part 762

of this subchapter) requirements in violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(j) *Misuse of license, export control documents.* (1) *Unauthorized use and alteration.* Except as specifically authorized in the EAR or in writing by BXA, no licensee or other person may obtain, use, alter, assist in, or permit the use or alteration of any export control document for the purpose of, or in connection with, facilitating or effecting any export or reexport other than that set forth in such document and in accordance with all the terms, provisions, and conditions thereof.

(2) *Trafficking and advertising export control documents.* Without prior written approval of the BXA, no person may do any of the following with respect to any export or reexport in connection with any export control document:

(i) Effect any transfer of, or other change in the authority granted in such document, whether by sale, grant, gift, loan or otherwise, to any person; permit any person to use an export control document other than for the true account of and as true agent in fact for the licensee; or, if that person is not the licensee, to receive or accept a transfer or other change of the authority granted in, or otherwise use an export control document except for the true account of and as true agent in fact for the licensee.

(ii) Effect any change of, substitution for, or addition to, the parties named in an export control document; or transfer, obtain, purchase, or create any interest or participation in the transaction described in any export control document.

(iii) Offer or solicit by advertisement, circular, or other communication any transfer or change of an export control document or any interest therein prohibited above. Such communication shall be deemed unlawful:

(A) Even though coupled with a condition requiring approval by BXA of a new consignor or consignee or other change in the export license, by way of transfer or otherwise;

(B) Where, in offering or soliciting the sale for export of any items, the communication indicates that the proposed seller of such items holds or will furnish a license or other export control document for the export of such items;

(C) Where, in offering or soliciting the purchase for export of any items, that communication is addressed by the proposed buyer directly or indirectly to any person on the condition that such person as a seller then holds or will

furnish a license or other export control document for the export of those items.

(iv) *Other unlawful practices.* It is unlawful:

(A) For a licensee or other person holding an export control document to sell or offer to sell, or for any person to purchase or to offer to purchase, the items described in such document with the understanding that the document may be used by or for the benefit of the purchaser to effect export of those items;

(B) For any person to effect the export of the commodities referred to in § 764.2(j)(2) of this part for the benefit of or "for the account" of any person other than the licensee, regardless of the device, means, or fiction employed;

(C) For the licensee to act fictitiously as principal or agent of another person who actually is effecting the export, or for such other person to act fictitiously as the licensee's principal or agent for the same purpose;

(D) For the named consignee to act "for the account" of a new unlicensed consignee; or

(E) For any person to use a license, originally issued for a specified transaction which was not effected, for any other transaction without the specific written authorization from BXA.

(k) *Acting contrary to the terms of a denial order.* No person may take any action that is prohibited by the terms or conditions of a denial order.

#### § 764.3 Sanctions.

(a) *Administrative.* Violations of the EAA, the EAR, or any order, license or authorization issued thereunder are subject to the administrative sanctions set forth in this section, and to any other liability, sanction or penalty available under law. Administrative sanctions for violations, which are imposed pursuant to the administrative enforcement procedures set forth in part 766 of this subchapter, are separate and distinct from protective administrative measures taken by BXA, such as temporary denial orders, license suspension and revocation, and suspension of eligibility for license exceptions, all of which are inherent in the exercise of BXA's regulatory and licensing authority, but not all of which are subject to part 766 administrative enforcement procedures.

(1) *Civil penalty.* (i) In addition to, or instead of, any or all of the administrative sanctions described in this section, a civil penalty not to exceed \$10,000 for each violation of the EAA, the EAR, or any order, license or authorization thereunder may be imposed, except that a civil penalty not to exceed \$100,000 may be imposed for each violation of the EAA, the EAR, or

any order, license or authorization thereunder involving national security controls imposed under section 5 of the EAA.

(ii) The payment of any civil penalty imposed 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. Moreover, the payment of any penalty imposed may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(2) *Denial of export privileges.* An order may be issued in accordance with the procedures in part 766 of this subchapter that restricts the ability of the named persons to engage in export-related transactions involving items subject to the EAR, or that restricts access by named persons to items subject to the EAR. Such an order denying export privileges may be imposed either as a sanction for a violation specified in this part; as a temporary denial order, an administrative protective measure that may be taken pursuant to § 766.24 of this subchapter; or as an order issued against a person convicted for violating one or more of the statutes listed in section 11(h) of the EAA, an administrative protective measure that may be taken pursuant to § 766.25 of this subchapter. A denial order may suspend or revoke any or all outstanding licenses issued under the EAR to a person named in the denial order, 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 denial order, used either as a sanction for a violation, as a temporary denial order, or as an order issued pursuant to section 11(h) of the EAA and § 766.25 of this subchapter, is set forth in Supplement No. 1 to this part, and this section is to be construed as authorizing an order of such breadth. A non-standard denial order, narrower in scope, may be issued in a specific case. Authorization for actions prohibited by a denial order may be given by the Office of Exporter Services (OExS), in consultation with the Office of Export Enforcement (OEE),

on application filed either 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 attorney, accountant, consultant, freight forwarder, or in any other representative capacity with regard to any license application or other matter before BXA may be excluded from any or all such activities before BXA.

(b) *Criminal.* Conduct which constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, or which occurs in connection with such a violation, may also be subject to criminal sanctions under one or more laws of the United States. Either administrative sanctions, criminal sanctions, or both, may be imposed for the same conduct.<sup>1</sup>

(1) *General.* Except as provided in paragraph (b)(2) of this section, whoever knowingly violates or conspires to or attempts to violate the EAA, the EAR, or any order or license issued thereunder, shall be fined not more than five times the value of the exports involved or \$50,000, whichever is greater, or by imprisonment for not more than five years, or both.<sup>2</sup>

(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 the items involved is, any controlled country or any country to which exports are controlled for foreign policy purposes, except in the case of an individual, shall be fined per violation not more than five times the value of the export involved or \$1,000,000, whichever is greater; and, in the case of an individual, shall be fined per violation 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 of any items to a controlled country and who, with knowledge that such export is being used by such controlled country for military or intelligence gathering purposes contrary

<sup>1</sup> 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.

<sup>2</sup> 18 U.S.C. 3571, a broad criminal code provision, 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 \$250,000 for an individual, or an amount not more than \$500,000 for an organization.

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 per violation not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and, in the case of an individual, shall be fined per violation not more than \$250,000, or imprisoned not more than five years, or both.

(iii) Any person who possesses any item with intent to export 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, 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), be subject to the penalties set forth in paragraph (b)(2) 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 thereunder), 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), such person shall be subject to the penalties set forth in paragraph (b)(2) of this section.

(3) *Other criminal sanctions.* Conduct which constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, or which occurs in connection with such a violation, may also be prosecuted under 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.* In addition to the administrative and criminal sanctions available under the EAA and the EAR, conduct that violates the EAA, the EAR, or any order, license or authorization issued thereunder, as well as conduct specifically identified in the EAA, may be subject to statutory or other sanctions or protective measures. These may 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 do not involve civil or criminal penalties, but rather impose restrictions on imports and procurement under EAA section 11A (multilateral export control violations) and EAA section 11C (chemical and biological weapons proliferation), and restrict the issuance of export licenses under EAA section 11B (missile proliferation violations) and the Iran-Iraq Arms Non-Proliferation Act of 1992. If the conduct for which such statutory sanctions are imposed also constitutes a violation of the EAR, it may be subject to administrative and criminal sanctions set forth in § 764.3(a) and (b) of this part.

(2) *Other actions.* (i) *Seizure and forfeiture.* Items which 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) *Temporary denial orders.* BXA may obtain a temporary denial order on an ex parte basis when it believes such an order is necessary to prevent the occurrence of an imminent export violation. (15 CFR 766.24; EAA section 13(d)).

(iii) *Denial based on criminal conviction.* BXA may deny the export privileges for a period of up to ten years of any person who has been convicted criminally of violations of certain statutes such as the EAA, the Arms Export Control Act, and the International Emergency Economic Powers Act, Sections 793, 794 or 798 of Title 18 of the United States Code and Section 783 of Title 50 of the United States Code. (EAA section 11(h); 15 CFR 766.25).

(iv) *Cross-debarment.* (A) The Department of State may deny licenses or approvals for defense articles and defense services controlled under the Arms Export Control Act to persons for a variety of reasons, including indictments and/or convictions for specified criminal offenses, including violations of the EAA. This section does not provide an exhaustive list of other acts whose violation may lead to denial of licenses or approvals by the Department of State. (22 CFR 126.7(a)).

(B) The Department of State may deny licenses or approvals for defense articles and defense services controlled under the Arms Export Control Act to persons denied export privileges by other

agencies, such as BXA. (22 CFR 127.11(a)).

(C) 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. (48 CFR 9.407-2(b)).

#### § 764.4 Reporting of violations.

(a) *Where to report.* If a person, or Federal, state, or local agency, learns that an export control violation of the EAR has occurred or may occur, that person may notify:

Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce, Room H-4520, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, Tel: (202) 482-1208, Facsimile: (202) 482-0964.

or, for violations of part 760 of this subchapter:

Office of Antiboycott Compliance, Bureau of Export Administration, 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 export licenses or unlicensed exports to the detriment of national security, foreign policy, proliferation or short supply interests of the United States.

(c) *Reporting requirement distinguished.* The reporting provisions set forth in paragraph (a) of this section are not "reporting requirements" within the meaning of § 764.2(i) of this part.

#### § 764.5 Voluntary self-disclosure.

(a) *General policy.* BXA strongly encourages the disclosure of information to OEE by persons who believe that they may have violated the export control provisions of the EAA, 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 of either section 8 of the EAA or of 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 this subchapter concerning violations of the export control provisions of the EAA and 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. Moreover, voluntary self-disclosure does not prevent transactions from being referred to the Justice Department for criminal prosecution. In such a case, OEE would notify the Justice Department of the voluntary self-disclosure, but the Justice Department is not required to give that fact any weight.

(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 to the Office of Export Enforcement in connection with a voluntary self-disclosure.*

(1) *General.* Any person wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined in this paragraph (c), 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 set forth 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.

(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 export 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 locations listed in § 764.5(c)(7) of this part.

(iii) The initial 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.

(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 the person making the disclosure undertakes a review of more limited scope than that recommended, he risks 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 an unlicensed shipment, or dealing with a party denied U.S. 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) Export license numbers;

(v) Commodity classification numbers, product descriptions and quantities, and value in U.S. dollars of the commodities or technical data involved; and

(vi) A description of any mitigating circumstances.

(4) *Supporting documentation.* (i) The narrative account should be

accompanied by copies of those 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 handled in accordance with the recordkeeping rules set forth in part 762 of this subchapter.

(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:

Office of Export Enforcement, Director,  
Intelligence Division, U.S.  
Department of Commerce, Ben  
Franklin Station, P.O. Box 70,  
Washington, D.C. 20044

Office of Export Enforcement, Director,  
Intelligence Division, 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 to any of the following field offices:  
Special Agent in Charge, Boston Field  
Office, Office of Export Enforcement,



New Boston Federal Building, 10 Causeway Street, Room 350, Boston, Massachusetts 02222, Tel: (617) 565-6030

Special Agent in Charge, Chicago Field Office, Office of Export Enforcement, 2400 East Devon, Suite 300, Des Plaines, Illinois 60018, Tel: (312) 353-6640

Special Agent in Charge, Dallas Field Office, Office of Export Enforcement, 525 Griffin Street, Room 622, Dallas, Texas 75202, Tel: (214) 767-9294

Special Agent in Charge, Los Angeles Field Office, Office of Export Enforcement, 2601 Main Street, Suite 310, Irvine, California 92714-6299, Tel: (714) 251-9001

Special Agent in Charge, Miami Field Office, Office of Export Enforcement, 200 East Las Olas Blvd., Suite 1260, Fort Lauderdale, Florida 33301, Tel: (305) 356-7540

Special Agent in Charge, New York Field Office, Office of Export Enforcement, Teleport II, 2 Teleport Drive, Staten Island, New York 10311-1001, Tel: (718) 370-0070

Special Agent in Charge, San Jose Field Office, Office of Export Enforcement, 96 North 3rd Street, Suite 250, San Jose, California 95112-5572, Tel: (408) 291-4204

Special Agent in Charge, Washington, D.C. Field Office, Office of Export Enforcement, 8001 Forbes Place, Room 201, Springfield, Virginia 22151-0838, Tel: (703) 487-4950

(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 or firm 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 this subchapter and attempt to settle the matter;

(4) Issue a charging letter pursuant to § 766.3 of this subchapter if a settlement is not reached; and/or

(5) Refer the matter to the United States Department of Justice for criminal prosecution.

(e) *Criteria.* For purposes of determining what administrative action to take and what sanctions, if any, to seek, the fact that a voluntary self-

disclosure has been made will be a mitigating factor. OEE will take that factor into account along with other mitigating and aggravating factors when determining what, if any, administrative sanction should be imposed. The factors that OEE will consider are in its sole discretion, but may include:

(1) The extent to which the purpose of the control is undermined by the transaction;

(2) Whether the transaction would have been authorized had proper application been made;

(3) The quantity and value of the items involved;

(4) Why the violations occurred. For example, OEE may consider whether the violations were intentional or inadvertent; the degree to which the person or firm responsible for the violation making the disclosure was familiar with the EAR; and whether the violator has been the subject of prior administrative or criminal action under the EAA;

(5) Whether, as a result of the information provided, OEE is able to prevent any items exported illegally from reaching unauthorized persons or destinations;

(6) The degree of cooperation with the ensuing investigation;

(7) Whether the person or firm has instituted or improved an internal compliance program to reduce the likelihood of future violations.

(f) *Treatment of unlawfully exported items after voluntary self-disclosure.* (1) Any person taking certain actions with knowledge or reason to know that a violation of the EAA or the EAR has occurred has violated § 764.2(e) of this part of the EAR. Any person who has made a voluntary self-disclosure has reason to believe 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 BXA to engage in the activities set forth in § 764.2(e) of this part which would otherwise be prohibited. If the request is granted by Export Administration (EA), in consultation with Export Enforcement (EE), 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 is he relieved from the obligation to obtain any required reexport authorizations.

(2) Reexport authorization for 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 BXA in accordance with the provisions of part 748 of this subchapter. If the applicant for reexport authorization knows or has reason to know 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.

#### **Supplement No. 1 To Part 764—Standard Terms of Orders Denying Export Privileges**

Orders denying export privileges may be “standard” or “non-standard.” This Supplement sets forth the terms of the standard order denying export privileges. All orders denying export privileges are published in the **Federal Register**. The failure by any person to comply with any order denying export privileges is a violation of the Export Administration Regulation (EAR). (See General Prohibition Four at § 734.2(b)(4) of this subchapter; § 764.2(k) of this part). All persons whose export privileges are denied by any form of denial order are identified on the Denied Persons List (Supplement No. 2 to this part), with an indication of whether an order is standard or non-standard denoted in the “Term of order” column. The Denied Persons List also tells you where each denial order can be found in the **Federal Register**. Reference should be made to the text of the denial order, as published in the **Federal Register**, to learn the scope of any order that denies export privileges, including any non-standard denial order.

Denial orders issued prior to [THE EFFECTIVE DATE OF THE FINAL RULE] are to be construed, insofar as possible, as having the same scope and effect as this standard denial order.

The introduction to each order imposing a denial of export privileges 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, section 11(h) of the EAA, or temporary denial order request; and (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.

The standard denial order shall provide:

“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,

technology or software (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:<sup>1</sup>

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 hereafter 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 an 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 immediately."

#### Supplement No. 2 To Part 764—Denied Persons List

(a) *General.* (1) The Denied Persons List identifies those persons denied export privileges by the Bureau of Export Administration (BXA) pursuant to the terms of an order. Part A of the Denied Persons List lists all denied persons in alphabetical order and provides supplementary information, while Part B lists all denied persons by geographic area. Part A of the Denied Persons List is organized into five columns, including the name and address of the denied person, the effective and expiration dates of the order, a brief description of the terms of the order, and a citation to the **Federal Register** here the terms of the order can be located. Reference should always be made to the text of a denial order when using the Denied Persons List.

(2) Denial orders issued subsequent to [THE EFFECTIVE DATE OF THE FINAL RULE] shall be identified in Part A as being standard or non-standard, and denial orders issued prior to [THE EFFECTIVE DATE OF THE FINAL RULE] shall be construed, insofar as possible, as having the same scope and effect as the standard denial order. Non-standard orders are denoted by the phrase "non-standard" in the "Terms of order" column in Part A, standard orders are denoted by the word "standard," and orders issued prior to [THE EFFECTIVE DATE OF THE FINAL RULE] are denoted by the same brief description entered at the time of issuance. Standard orders denying export privileges contain the standard terms set forth in Supplement No. 1 to part 764.

(3) You are responsible for ensuring that you take no action involving items subject to the Export Administration Regulations (EAR) that is contrary to the terms of a denial order.

(b) *Related persons.* Related persons who are denied export privileges subsequent to [THE EFFECTIVE DATE OF THE FINAL RULE] shall appear in Part A of the Denied Persons List with a note identifying the denied persons to whom they are related in the column entitled "Terms of order."

(c) *Publication.* New and amended denial orders are published in the **Federal Register** as they are issued. This publication constitutes the only official notice to the public, and the **Federal Register** is the only source that can be relied on to provide current and accurate information with respect to denied persons.

(d) *Updates and availability.* As a convenience for the public, issuance of denial orders is announced in Export Administration Bulletins, as well as in printed Denied Persons List updates. The printed version of the Denied Persons List is revised and updated by BXA semi-annually, adding new or amended orders and deleting orders which have expired. Between the semi-annual revisions of the Denied Persons List, additions and changes are published in Export Administration Bulletins. The Denied Persons List does not appear in the CFR, but you may contact the Office of Exporter Services to request a copy:

Office of Exporter Services, P.O. Box 273, Washington, DC 20044

or

U.S. Department of Commerce, Bureau of Export Administration, Room 2705, 14th Street & Constitution Avenue, NW., Washington, DC 20230, Tel: (202) 482-0074

The Denied Persons List is also available electronically on the National Trade Data Base, which is updated only as frequently as the printed version of the Denied Persons List.

#### PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

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<sup>1</sup> But see § 764.3(a)(2) which permits BXA, by request, to authorize certain actions prohibited by a denial order.

- 766.17 Decision of the administrative law judge.  
 766.18 Settlement.  
 766.19 Reopening.  
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 766.24 Temporary denials.  
 766.25 Administrative action denying permission to apply for or use export licenses.

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

#### § 766.1 Scope.

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 this subchapter define those actions that constitute violations, and part 764 describes the sanctions that apply. In addition, 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. Finally, this part 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 regulations in this subchapter, 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 to 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 decide appeals from the imposition of temporary denial orders.

**Assistant Secretary.** The Assistant Secretary for Export Enforcement, Bureau of Export Administration.

**Bureau of Export Administration (BXA).** Bureau of Export Administration, United States Department of Commerce, 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.

**EAR.** The Export Administration Regulations (15 CFR parts 730 through 774), including the regulations concerning Restrictive Trade Practices or Boycotts (15 CFR part 760).

**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, and 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 section 8 of the EAA, and which is subject to appellate review by the Under Secretary for Export Administration, but which becomes the final decision in the absence of such an appeal.

**Party.** BXA 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 section 8 of the EAA, and which is subject to review by the Under Secretary of Commerce for Export Administration, who issues a written order affirming, modifying or vacating the recommended decision.

**Respondent.** Any person named in a charging letter, proposed charging letter, temporary denial order, or other order proposed or issued under this part.

**Under Secretary.** The Under Secretary for Export Administration, United States Department of Commerce.

#### § 766.3 Institution of administrative enforcement proceedings.

(a) **Charging letters.** The Director of the Office of Export Enforcement<sup>1</sup> (OEE) or the Director of the Office of Antiboycott Compliance (OAC), as appropriate, may begin administrative enforcement proceedings under this part by issuing a charging letter in the name of BXA. 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

<sup>1</sup> By agreement with the Director of the Office of Strategic Industries and Economic Resource Administration, the Director of the Office of Export Enforcement enforces short supply controls imposed under section 7 of the EAA.

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 this subchapter. The charging letter will inform the respondent that failure to answer 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. BXA 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 his 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.

**§ 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. A respondent personally, or through counsel or other representative, shall file a notice of appearance with the administrative law judge. BXA will be represented by the Office of Chief Counsel for Export Administration, U.S. Department of Commerce.

**§ 766.5 Filing and service of papers other than charging letter.**

(a) *Filing.* All papers to be filed shall be delivered or mailed to "EAR Administrative Enforcement Proceedings," U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, or such other place as the administrative law judge may designate. Filing by United States mail, first class postage prepaid, or by express or equivalent parcel delivery service, 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 BXA shall be addressed to the Chief Counsel for Export Administration, 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.

**§ 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 BXA 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 shall be deemed to constitute a waiver of the respondent's right to appear and contest the allegations in the charging letter and to authorize the administrative law judge, on BXA's motion and without further notice to the respondent, to find the facts to be as alleged in the charging letter and to enter a recommended decision containing findings of fact and appropriate conclusions of law and a proposed order imposing appropriate sanctions. The recommended decision and proposed order shall be reviewed by the Under Secretary in accordance with the procedures set forth in § 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 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 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 further 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 he 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 he 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 BXA to receive and consider information and documents that are sensitive from the standpoint of national security or business confidentiality 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 his 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 BXA 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 national security or confidential business 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 his 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 him to achieve the purposes of such a conference.

(d) For all conference proceedings, the administrative law judge will prepare a summary of any actions agreed on or taken at the conference. 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 he 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 materially advance 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 his/her 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 insofar as the default procedures of § 766.7 of this part may be applicable, 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 him/her 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 section 8 of the EAA, 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 this subchapter. 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 section 8 of the EAA, 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 this subchapter, 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 BXA 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 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 section 8 of the EAA 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 BXA 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 such event, a proposed charging letter will be prepared, and a settlement proposal consisting of a settlement agreement and order 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 administrative law 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) If the respondent neither admits nor denies BXA's allegations of violation, the order disposing of a case by settlement shall not contain a finding of violation.

(d) 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.

(e) 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 BXA 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.

(f) Cases that are settled may not be reopened or appealed.

#### § 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 BXA 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 § 766.20(a) and (b) of this part, 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 brought under section 8 of the EAA, 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 § 766.20(b) of this part 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 brought under the EAA, 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 § 766.20(b) of this part 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 section 8 of the EAA, a party may appeal to the Under Secretary from an order disposing of a proceeding, denying a petition to set aside a default or a petition for reopening, or from refusal to approve a settlement proposal 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 of an order must be filed with the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H-3898, 14th Street and Constitution Avenue N.W., Washington, D.C. 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 section 8 of the EAA, the administrative law judge shall immediately refer the recommended decision and proposed 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 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 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 in which to submit simultaneous responses. Parties thereafter shall have 8 days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the times specified by the Under Secretary.

(c) *Final decision.* Within 30 days after receipt of the recommended decision, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision of the administrative law judge. If he/she vacates the recommended decision, 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 related services. 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 BXA.

(b) *Procedures.* The procedures for making orders applicable to related persons are as follows:

(1) If, at the time an order is issued, BXA has reason to believe that a person is related to the respondent, BXA will name that related person in the order; and

(2) If, subsequent to the time an order is issued, BXA has reason to believe that a person is related to the respondent, BXA shall, through the Office of Chief Counsel for Export Administration, give that person notice and an opportunity to comment why the order should not be made applicable to that person. The Assistant Secretary may, thereafter, issue an order naming that person as related to the respondent.

(c) *Appeals.* Any person named by BXA in an order as related to the respondent may file an appeal with the administrative law judge. The sole issue to be raised and ruled on in any such appeal is whether the person so named is related to the respondent. The recommended decision and proposed 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 § 766.24 of this part 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 BXA may take under the EAR with respect to any application, order, license or authorization issued under the EAA, BXA may ask the Assistant Secretary to issue a temporary denial order on an *ex parte* basis to prevent an imminent violation, as defined in paragraph (b) of this section, of the EAA, the EAR, or any order, license or authorization issued thereunder. The temporary denial order will deny any or all of the export privileges specified in part 764 of this subchapter to any person named in the order.

(b) *Issuance.* (1) The Assistant Secretary may issue an order temporarily denying to a party any or all of the export privileges specified in part 764 of this subchapter upon a showing by BXA 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 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, BXA 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. In support of its position concerning the likelihood of future violations, BXA 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.

(c) *Related persons.* In order to prevent evasion or circumvention of the temporary denial order, the order or any renewal thereof may name and deny export privileges to, in addition to any person designated as a respondent, any other person who is then related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. BXA may seek to add to a temporary denial order, at a time other than initial issuance or renewal, any person who BXA then has reason to believe is related to a respondent by following the procedures in § 766.23 of this part.

(d) *Renewal.* (1) If, no later than 20 days before the expiration date of a temporary denial order, BXA believes that renewal of the denial order is necessary in the public interest to prevent an imminent violation, BXA 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. BXA'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 BXA 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 BXA's request for renewal is whether the temporary denial order should be continued to prevent an imminent violation as defined in this section.

(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 § 766.24(e) of this part.

(iii) If no written opposition to BXA'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.* Grounds for an appeal must be specified.

(i) A respondent may appeal to the administrative law judge from an order issuing or renewing a temporary denial order on the ground that a finding of an imminent violation is unsupported.

(ii) Any related person may appeal any finding that he/she is related to a respondent, but may not appeal the underlying issuance or renewal of the temporary denial order.

(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 BXA, 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 BXA 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, stating 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 § 766.24(g) of this part.

(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 BXA 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 permission to apply for or use export licenses.**

(a) *General.* The Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny permission to apply for or use any export license, including any license exceptions, to 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 permission to apply for or use any export license, including any license exception, to any such person. The Director of the Office of Exporter Services, will notify each person denied under this section by letter stating that permission to apply for or use export licenses has been denied.

(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 permission to apply for or use export licenses, including any license exception, under this section shall not exceed 10 years.

(e) *Effect.* Any person denied permission to apply for and use licenses under this section will be considered a "person denied export privileges" for purposes of § 734.2(b)(4) (General Prohibition 4—Engage in actions prohibited by a denial order) and § 764.2(k) of this subchapter.

(f) *Publication.* The name and address(es) of any person denied permission to apply for or use export licenses under this section will be published in Supplement No. 2 to part 764 of this subchapter, noting that such action was taken pursuant to this section and section 11(h) of the EAA.

(g) *Appeal.* An appeal of an action under this section will be pursuant to part 756 of this subchapter.

(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, through the Office of Chief Counsel for Export Administration, notify any person related through affiliation, ownership, control, or position of responsibility to any person denied export privileges under paragraph (a) of this section, of his/her intent to deny that person permission to apply for or use any export license, including any license exceptions. Such person so notified may request a hearing by filing a request for a hearing with the Office of the Administrative Law Judge, Room H–6716, 14th Street and Constitution

Avenue, N.W., Washington, D.C. 20230, and by serving a copy of the request for a hearing on the Office of Chief Counsel for Export Administration, Room H–3839, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The sole issue to be raised and ruled on under this paragraph is whether the person notified is, in fact, related to any person denied export privileges under paragraph (a) of this section, and not the scope or duration of the underlying denial. The procedures set forth in this part will apply to any hearing requested under this paragraph.

**PART 768—FOREIGN AVAILABILITY DETERMINATION PROCEDURES AND CRITERIA**

Sec.

- 768.1 Introduction.
- 768.2 Foreign availability described.
- 768.3 Foreign availability assessment.
- 768.4 Initiation of an assessment.
- 768.5 Contents of foreign availability submissions and Technical Advisory Committee certifications.
- 768.6 Criteria.
- 768.7 Procedures.
- 768.8 Eligibility of expedited licensing procedures for non-controlled countries.
- 768.9 Appeals of negative foreign availability determinations.
- 768.10 Removal of controls on less sophisticated items.

**Supplement No. 1 to Part 768—Evidence of Foreign Availability**

**Supplement No. 2 to Part 768—Items Eligible for Expedited Licensing Procedures—[Reserved]**

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

**§ 768.1 Introduction.**

(a) *Authority.* Pursuant to sections 5(f) and 5(h) of the Export Administration Act of 1979, as amended (EAA), the Under Secretary of Commerce for Export Administration directs the Bureau of Export Administration (BXA) 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.

(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.

*Applicant.* Any person or firm as defined in part 772 of this subchapter.

*Assessment.* An evidentiary analysis that BXA conducts concerning the foreign availability of a given item in light of the assessment criteria, data gathered by BXA, 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 that 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 applicant who makes a foreign availability submission, excluding TACs.

*Comparable quality.* An item is of comparable quality to an item controlled under the regulations in this subchapter if it possesses the characteristics specified in the Commerce Control List 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 commodity.

*Controlled countries.* Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lithuania, Moldova, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam and the People's Republic of China.

*Decontrol.* Removal of license requirements under the Export Administration Regulations (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 the Department receives a foreign availability submission or a TAC certification, or on the Secretary's own initiative.

*Denied license assessment.* A foreign availability assessment conducted as a result of an applicant's allegation of foreign availability for an item (or items) for which the Department of Commerce has denied or has issued a letter of intent to deny a license. If the Secretary finds foreign availability, the Department's approval of a license will be limited to the items, countries, and quantities in the application.

*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 BXA 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, BXA 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 BXA 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 BXA. (See § 768.5 of this part).

*Item.* Any commodity, technology, or software.

*Item eligible for non-controlled country expedited licensing procedures.* An item is eligible for expedited licensing procedures if it is described as such in Supplement No. 2 of part 768 (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 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 listed as a controlled country.

*Non-U.S. source/foreign source.* A person located outside the jurisdiction of the United States (as defined in part 772 of this subchapter) that makes an item available.

*Reasonable evidence.* Relevant information that is credible.

*Reliable evidence.* Relevant information that is credible and dependable.

*Secretary.* As used in this subchapter, the Secretary refers to the Secretary of Commerce or 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 commodity.

*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 with respect to a particular country or countries. 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 Export Administration Act on export control matters related to specific areas of controlled goods and technology.

*TAC certification.* A statement that a TAC submits to BXA, 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.

#### § 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 goods or technology that would make a significant contribution to the military potential of the controlled country or combination of countries that would prove 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: 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 the Bureau of Export Administration (BXA) conducts to assess the foreign availability of a given item under the assessment criteria. BXA 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 or approve the license in question, unless the President exercises a National Security Override. (See § 768.7 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.

### § 768.4 Initiation of an assessment.

(a) *Assessment request.* To initiate an assessment, each claimant and TAC must submit a FAS or a TAC Certification to BXA. 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 license applicant whose license the Department of Commerce has denied, or on which it has issued a letter of intent to deny, on national security grounds may request that BXA initiate a denied license assessment by submitting a 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 trigger 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 with respect to a particular country or countries. In the case of a positive determination, the Secretary will determine whether a decontrol assessment is warranted. If so, then BXA will initiate a decontrol assessment.

(c) *Decontrol assessment.* (1) Any claimant may at any time request that BXA initiate a decontrol assessment by making a FAS to BXA alleging foreign availability to any country or countries.

(2) A TAC may request that BXA initiate a decontrol assessment at any time by submitting a TAC Certification to BXA 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) *BXA mailing address.* All foreign availability submissions and TAC certifications are to be submitted to: Department of Commerce, Bureau of Export Administration, 14th 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 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: foreign manufacturers' catalogs, brochures, operation or maintenance manuals; articles from reputable trade and technical publications; photographs; depositions based on eyewitness accounts; and other credible evidence. Examples of supporting evidence are provided in Supplement No. 1 to part 768.

(d) Upon receipt of a FAS or TAC certification, BXA will review it to determine whether there is sufficient evidence to support the belief that foreign availability may exist. If BXA determines the FAS or TAC certification is lacking in supporting evidence, BXA will seek additional evidence from appropriate sources, including the claimant or TAC. BXA will initiate the assessment when it determines that it has sufficient evidence that foreign availability may exist. Claimant and TAC initiated 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 delineated in § 768.6 of this part and the examples of evidence set forth in Supplement No. 1 to part 768 when assembling supporting evidence for inclusion in the FAS or TAC certification.

### § 768.6 Criteria.

(a) *Introduction.* BXA evaluates the evidence contained in a FAS or TAC certification and all other evidence gathered in the assessment process in light of certain criteria that must be met before BXA can recommend a positive determination to the Secretary. In order

to initiate an assessment, each FAS and TAC certification should address each of these criteria. The criteria are statutorily prescribed and are:

- (1) Available-in-fact;
- (2) Non-U.S. source;
- (3) Sufficient quantity; and
- (4) Comparable quality.

(b) *Related definition.* The criteria are defined in § 768.1(d) of this part.

#### § 768.7 Procedures.

(a) *Initiation of an assessment.* (1) Once BXA accepts a FAS or TAC certification of foreign availability, BXA will notify the claimant or TAC that it is initiating the assessment.

(2) The Bureau of Export Administration will publish a **Federal Register** notice of the initiation of any assessment.

(3) BXA 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 BXA has initiated an assessment. Each such department, agency, and contractor shall provide to BXA all relevant information that it has concerning the item. BXA will invite interested departments and agencies to participate in the assessment process (See paragraph (e) of this section for details).

(b) *Data gathering.* BXA will seek and consider all available information that bears upon the presence or absence of foreign availability, including but not limited to that evidence set out in § 768.5(b) and (c) of this part. As soon as Commerce 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.* BXA conducts its analysis by evaluating whether the reasonable and reliable evidence that is relevant to each of the foreign availability criteria provides a sufficient basis for a recommendation for a determination that foreign availability does or does not exist.

(d) *Recommendation and determination.* (1) Upon completion of each assessment, BXA on the basis of its analysis, recommends to the Secretary

of Commerce that the Secretary make a determination either that there is or that there is not foreign availability, whichever the evidence supports. BXA's assessment upon which BXA based its recommendation accompanies the recommendation to the Secretary.

(2) BXA 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 export control, or denial of the license application in question 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 goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the national security of the United States.

(3) The Secretary makes the determination of foreign availability on the basis of the BXA assessment and recommendation; the Secretary's determination takes into account the evidence provided to BXA, 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 (pursuant to section 5(f)(3) of the EAA) initiated by a FAS, the Secretary makes a determination within 4 months of the initiation of the assessment and so notifies the claimant. The Secretary submits positive determinations for review to appropriate departments and agencies.

(5) The deadline for determinations based on self-initiated and TAC-initiated assessments are different than the deadlines for claimant-initiated assessments (see paragraphs (f)(2) and (f)(3) of this section).

(e) *Interagency review.* Commerce notifies all appropriate U.S. agencies and Departments upon the initiation of the assessment and invites them to participate in the assessment process. Commerce provides 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, Commerce provides 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, Commerce provides 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 informs the claimant in writing and submits for publication in the **Federal Register** a notice to the effect 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 COCOM Successor Regime, the U.S. Government will submit the proposed decontrol or approval of the license for COCOM Successor Regime review 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 COCOM Successor Regime review process.); or
- (ii) Foreign availability does not exist.

(2) For all TAC certification assessments, the Secretary makes a foreign availability determination within 90 days following initiation of the assessment. BXA prepares and submits 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 initiated on the Secretary's own initiative or for the resulting determination. However, the Department 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 an NSO, BXA submits the determination to the Department of State, along with a draft proposal for the multilateral decontrol of the item or for COCOM Successor Regime approval of the license. The Department of State submits the proposal or the license to the COCOM Successor Regime review process. The COCOM Successor Regime has 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 to which 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 pursuant to section 5(f) of the EAA, the Secretary of any agency may recommend that the President exercise the authority under the Act to retain the controls or deny the license notwithstanding the finding of foreign availability.

(4) For an NSO resulting from an assessment initiated pursuant to section 5(h) of the EAA, the Secretary of Commerce may recommend that the President exercise the authority under the Act to retain the controls

notwithstanding the finding of foreign availability.

(5) Under an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs 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 pursuant to section 5(f) of the EAA, the Bureau of Export Administration will publish notices in the **Federal Register** of:

(i) The Secretary's determination of foreign availability;

(ii) The President's decision to exercise the National Security Override;

(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, the Department of Commerce will retain the control only to the extent that foreign availability is eliminated. If foreign availability is not eliminated, the Department of Commerce 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, Commerce 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 BXA becomes aware of conditions, including new evidence, that affect a previous determination that foreign availability exists or does not exist, BXA may review the conditions. If BXA finds that the foreign availability previously determined no longer exists, or that foreign availability not earlier found now does exist, the Office 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 the Bureau of Export Administration will publish a **Federal Register** notice of the determination.

#### **§ 768.8 Eligibility for expedited licensing procedure for non-controlled countries.**

(a) BXA 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) BXA 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, the BXA 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 makes a determination of foreign availability on the basis of the BXA evaluation and recommendation which takes into account the evidence the Secretaries of Defense, State, and other interested agencies provided to BXA and any other information that the Secretary considers relevant. The Secretary of Commerce will provide all interested agencies an opportunity to review and comment on the evaluation.

(f) Within 30 days of the receipt of the FAS or TAC certification, BXA will publish the Secretary's determination in the **Federal Register**, that the item 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, BXA 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. They should be sent to: Department of Commerce, Bureau of Export Administration, 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 set forth in 15 CFR part 789. A Presidential decision (NSO) to deny a license or continue controls notwithstanding a determination of foreign availability shall not be 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 Department of Commerce has decontrolled for foreign availability reasons.

**Supplement No. 1 to Part 768—  
Evidence of Foreign Availability**

Below is a list of examples of evidence that the Bureau of Export Administration (BXA) has found 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 FAS should include as much evidence as possible on all four of the criteria listed below. BXA combines the submitted evidence with the evidence that it collects from other sources. BXA 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 of reasonableness of such evidence. BXA 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 BXA. If information is based on oral

statements a third party made, the submitter should provide a memorandum of the conversation to BXA if the submitter cannot obtain a written memorandum from the source. BXA 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 BXA will consider in evaluating foreign availability. BXA 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 regulation of the source country which shows 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, and 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 this subchapter.

(3) *Sufficient quantity:*

(i) Evidence that foreign sources have the item in serial production;

(ii) Evidence that the item or its products 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), technical data or device; 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 Commodity interpretations.
- 770.3 Interpretations related to exports of technology and software to destinations in Country Group D:1.

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

**§ 770.1 Introduction.**

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 this subchapter) and other provisions of the Export Administration Regulations.

**§ 770.2 Commodity 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) 2A01, 2A02, 2A03, 2A04, 2A05, 2A06 and 2A96 (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 2B01.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 2B01.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 2B01.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), 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 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 Office of Defense Trade Controls, U.S. Department of State, Washington, D.C. 20520, or the Exporter Counseling Division, Office of Exporter Services, Room 1099A, U.S. Department of Commerce, Washington, D.C. 20230, before reporting a shipment as metal scrap.

(h) *Interpretation 8: Military automotive vehicles and parts for such vehicles*—(1) *Military automotive vehicles.* (i) For purposes of U.S. export controls, military automotive vehicles "possessing or built to current military specifications differing materially from normal commercial specifications" may include, but are not limited to, the following characteristics:

- (A) Special fittings for mounting ordnance or military equipment;
- (B) Bullet-proof glass;
- (C) Armor plate;
- (D) Fungus preventive treatment;
- (E) Twenty-four volt electrical systems;
- (F) Shielded electrical system (electronic emission suppression); or
- (G) Puncture-proof or run-flat tires.

(ii) *Automotive vehicles fall into two categories.*

(A) *Military automotive vehicles on the Munitions List, new and used.* Automotive vehicles in this category are primarily combat (fighting) vehicles, with or without armor and/or armament, "designed for specific fighting function." These automotive vehicles are licensed for export by the U.S. Department of State (22 CFR parts 120 through 130).

(B) *Military automotive vehicles not on the U.S. Munitions List, new and used.* Automotive vehicles in this category are primarily transport vehicles designed for non-combat military purposes (transporting cargo, personnel and/or equipment, and/or for to wing other vehicles and equipment over land

and roads in close support of fighting vehicles and troops). These automotive vehicles are licensed for export by the U.S. Department of Commerce.

(iii) *Parts for military automotive vehicles.* Functional parts are defined as those parts making up the power train of the vehicles, including the electrical system, the cooling system, the fuel system, and the control system (brake and steering mechanism), the front and rear axle assemblies including the wheels, the chassis frame, springs and shock absorbers. Parts specifically designed for military automotive vehicles on the Munitions List are licensed for export by the U.S. Department of State (22 CFR parts 120 through 130).

(iv) *General instructions.* Manufacturers of non-Munitions List automotive vehicles and/or parts will know whether their products meet the conditions described in this paragraph (h). Merchant exporters and other parties who are not sure whether their products (automotive vehicles and/or parts) meet these conditions should check with their suppliers for the required information before making a shipment under general exception or submitting an application to BXA for a license.

(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 1C60C. The appropriate Chemical Abstract Service Registry (C.A.S.) number and synonyms, (i.e., alternative names) are included to help you determine whether your chemicals are controlled by this entry. These chemicals require a license to all countries except Argentina, Australia, Austria, Belgium, Canada, Denmark, Czech Republic, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

(1) (C.A.S. #1341-49-7) Ammonium hydrogen bifluoride

Acid ammonium fluoride  
Ammonium bifluoride  
Ammonium difluoride  
Ammonium hydrofluoride  
Ammonium hydrogen fibluoride  
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
- (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  
O,O-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-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) (C.A.S. #57856-11-8) O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL)  
Methylphosphonous acid 2-(bis(1-methylethyl)amino)ethyl ethyl ester
- (21) (C.A.S. #1498-40-4) Ethylphosphonous dichloride  
Dichloroethylphosphine
- Ethyl phosphonous dichloride  
Ethyl dichlorophosphine
- (22) (C.A.S. #430-78-4) Ethylphosphonous difluoride  
Ethyl difluorophosphine
- (23) (C.A.S. #1066-50-8) Ethylphosphonyl dichloride  
Dichloroethylphosphine oxide  
Ethanephosphonyl chloride  
Ethylphosphinic dichloride  
Ethylphosphonic acid dichloride  
Ethylphosphonic dichloride
- (24) (C.A.S. #753-98-0) Ethylphosphonyl difluoride  
Ethyl difluorophosphite  
Ethyl difluorophosphine oxide  
Ethylphosphonic difluoride
- (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-Hydroxy-1-methylpiperidine  
3-Hydroxy-N-methylpiperidine  
1-Methyl-3-hydroxypiperidine  
N-Methyl-3-hydroxypiperidine  
1-Methyl-3-piperidinol  
N-Methyl-3-piperidonol
- (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) (C.A.S. #676-83-5) Methylphosphonous dichloride  
Dichloromethylphosphine  
Methyldichlorophosphine  
Methylphosphorus dichloride
- (29) (C.A.S. #753-59-3) Methylphosphonous difluoride  
Difluoromethylphosphine  
Methyldifluorophosphine
- (30) (C.A.S. #676-97-1) Methylphosphonyl dichloride  
Dichloromethylphosphine oxide  
Methanephosphonodichloridic acid  
Methanephosphonyl chloride  
Methylphosphonic acid dichloride  
Methylphosphonic dichloride  
Methylphosphonodichloridic acid  
Methylphosphonyl chloride
- (31) (C.A.S. #676-99-3) Methylphosphonyl difluoride  
Difluoromethylphosphine oxide  
Methyl difluorophosphite  
Methylphosphonic difluoride

(32) (C.A.S. #10025-87-3) Phosphorus oxychloride	(41) (C.A.S. #1619-34-7) 3-Quinuclidinol	(52) (C.A.S. #637-39-8) Triethanolamine hydrochloride
Phosphonyl trichloride	1-Azabicyclo(2.2.2)octan-3-ol	(53) (C.A.S. #122-52-1) Triethyl phosphite
Phosphoric chloride	3-Hydroxyquinuclidine	Phosphorous acid triethyl ester
Phosphoric trichloride	(42) (C.A.S. #3731-38-2) 3-Quinuclidinone	Triethoxyphosphine
Phosphoroxychloride	1-Azabicyclo(2.2.2)octan-3-one	Tris(ethoxy)phosphine
Phosphoroxytrichloride	3-Oxyquinuclidine	(54) (C.A.S. #121-45-9) Trimethyl phosphite
Phosphorus chloride oxide	Quinuclidone	Phosphorus acid trimethyl ester
Phosphorus monoxide trichloride	(43) (C.A.S. #1333-83-1) Sodium bifluoride	Trimethoxyphosphine
Phosphorus oxide trichloride	Sodium hydrogen difluoride	<b>§ 770.3 Interpretations related to exports of technology and software to destinations in Country Group D:1.</b>
Phosphorus oxytrichloride	Sodium hydrogen fluoride	(a) <i>Introduction.</i> 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, or require a license, for export to Country Group D:1.
Phosphorus trichloride oxide	(44) (C.A.S. #143-33-9) Sodium cyanide	(b) <i>Scope of licenses.</i> 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 § 732.7 of this subchapter, and installation, operation, maintenance, and repair technology and software eligible for License Exception 14 described in § 740.16 of this subchapter.
Phosphoryl trichloride	(45) (C.A.S. #7681-49-4) Sodium fluoride	(c) <i>Commingled technology and software.</i> (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 at § 732.4 of this subchapter.
Trichlorophosphine oxide	Sodium monofluoride	(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 in 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 at § 732.4 of this subchapter.
Trichlorophosphorus oxide	(46) (C.A.S. #1313-82-2) Sodium sulfide	(d) <i>Certain License Exception.</i> The following questions and answers are
(33) (C.A.S. #10026-13-8) Phosphorus pentachloride	(47) (C.A.S. #10025-67-9) Sulfur Monochloride	
Pentachlorophosphorane	(48) (C.A.S. #10545-99-0) Sulfur dichloride	
entachlorophosphorus	(49) (C.A.S. #111-48-8) Thiodiglycol	
Phosphoric chloride	Bis(2-hydroxyethyl) sulfide	
Phosphorus (V) chloride	Bis(2-hydroxyethyl) thioether	
Phosphorus perchloride	Di(2-hydroxyethyl) sulfide	
(34) (C.A.S. #1314-80-3) Phosphorus pentasulfide	Diethanol sulfide	
Diphosphorus pentasulfide	2,2'-Dithiobis-(ethanol)	
Phosphoric sulfide	3-Thiapentane-1,5-diol	
Phosphorus persulfide	2,2'-Thiobisethanol	
Phosphorus sulfide	2,2'-Thiodiethanol	
(35) (C.A.S. #7719-12-2) Phosphorus trichloride	Thiodiethylene glycol	
Phosphorus chloride	2,2'-Thiodiglycol	
Trichlorophosphine	(50) C.A.S. #7719-09-7) Thionyl chloride	
(36) C.A.S. #75-97-8) Pinacolone	Sulfinyl chloride	
tert-Butyl methyl ketone	Sulfinyl dichloride	
2,2-Dimethyl-3-butanone	Sulfur chloride oxide	
3,3-Dimethyl-2-butanone	Sulfur oxychloride	
2,2-Dimethylbutanone	Sulfurous dichloride	
3,3-Dimethylbutanone	Sulfurous oxychloride	
1,1-Dimethylethyl methyl ketone	Thionyl dichloride	
Methyl tert-butyl ketone	(51) (C.A.S. #102-71-6) Triethanolamine	
Pinacolin	Alkanolamine 244	
Pinacoline	Nitrilotriethanol	
1,1,1-Trimethylacetone	2,2',2''-Nitrilotriethanol	
(37) (C.A.S. #464-07-3) Pinacolyl alcohol	2,2',2''-Nitrilotris(ethanol)	
tert-Butyl methyl carbinol	TEA	
2,2-Dimethyl-3-butanol	TEA(amino alcohol)	
3,3-Dimethyl-2-butanol	Tri(2-hydroxyethyl)amine	
1-Methyl-2,2-dimethylpropanol	Triethanolamin	
(38) (C.A.S. #151-50-8) Potassium cyanide	Tris(.beta.-hydroxyethyl)amine	
(39) (C.A.S. #7789-23-3) Potassium fluoride	Tri(2-hydroxyethyl)amine	
Potassium monofluoride	Trolamine	
(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		

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 14 (OTS) described in § 740.16 of this subchapter, 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 License Exception 14 (OTS) for operating technology and software, 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 or License Exception. 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 14 (OTS) for operating technology and software, the training may be provided within the limits of that License Exception. 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 14 (OTS), 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.

**PART 772—DEFINITIONS OF TERMS**

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

The following are definitions of terms as used in the Export Administration Regulations:

**Advisory Committee on Export Policy (ACEP).** The ACEP voting members include the Assistant Secretary of Commerce for Export Administration, and the Assistant Secretary-level representatives from the Departments of State, Defense, Energy, and the Arms Control and Disarmament Agency. The Director of the Joint Chiefs of Staff for International Negotiation 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. No alternate ACEP members may be designated, but the appropriate acting assistant head of any agency or department may serve in lieu of the assistant head of the concerned agency or department. The ACEP may invite the assistant heads of other United States 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.

**Airline.** Any person or firm 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.

**Applicant.** That person who, as the principal party in interest in the transaction, has the power and responsibility for determining and controlling the sending of the item out of the country and is thus, in reality, the exporter. (For additional information see § 748.4(b)(1) of this subchapter.)

**Australia Group.** The members belonging to this group have agreed to adopt controls on dual-use chemicals, i.e., weapons precursors, and

equipment, and biological microorganisms and related equipment in order to prevent the proliferation of chemical and biological weapons.

**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.

**CCL Group.** The Commerce Control List is divided into 10 categories. Each category is subdivided into the same five groups, designated by letters A through E. See § 738.2(b) of this subchapter for a listing of these groups.

**CTP.** See Composite Theoretical Performance.

**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:

(1) A natural person who is a citizen of Canada; or

(2) A partnership of which each member is such an individual; or

(3) 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.

**Category.** The Commerce Control List is divided into 10 categories. A list of these categories can be found in § 738.2(a) of this subchapter.

**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. A successor regime is currently in the process of being created. COCOM members included the NATO countries, except Iceland, plus Japan and Australia.

**Commerce Control List (CCL).** A list of items under the export control jurisdiction of the Bureau of Export Administration, U.S. Department of Commerce. Note that certain additional items described in part 732 of this subchapter are also subject to the EAR.

**Commodity.** Any article, material, or supply except technology and software.

**Composite Theoretical Performance (CTP).** A measure of computational performance given in millions of theoretical operations per second (MTOPS). 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.

*Controlled country.* Country Group D:1. (See Supplement No. 1 to part 740 of this subchapter.)

*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 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 this subchapter, 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).

*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 this subchapter for a list of countries in each Country Group.)

*Customs officer.* The Customs officers in the U.S. Customs Service and postmasters unless the context indicates otherwise.

*Defense Trade Control (DTC).* The office at the Department of State, formerly known 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.)

*Denied Persons List.* A list, referenced in Supplement No. 2 to part 764 of this subchapter, of specific persons or firms that have been denied export privileges, in whole or in part. The full text of each order denying export privileges is published in full in the **Federal Register**.

*Dual use.* Items that have both military and commercial applications and items with purely commercial uses.

*Export Administration Review Board (EARB).* The EARB was established by Executive Order No. 11533 of June 4, 1970. EARB voting members are the

Secretary of Commerce, the Secretary of State, the Secretary of Defense, the Secretary of Energy, 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 United States Government agencies or departments (other than those identified above) 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.* The term export means an actual shipment, transfer, or transmission of items out of the United States; a transfer of items in the United States to an embassy or affiliate of a controlled country; or a transfer to any person of items either within the United States or outside the United States with the knowledge or intent that the items will be shipped, transferred, or transmitted to an unauthorized recipient. (See § 732.3(e) of this subchapter.)

*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 Control Classification Number (ECCN).* The numbers used in part 774 of this subchapter and throughout the EAR. The Export Control Classification Number consists of a set of digits and a letter. Reference § 738.2(c) of this subchapter 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; International Import Certificate; Delivery Verification Certificate or similar evidence of delivery; Shipper's Export Declaration (SED) 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 this

subchapter; 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 this subchapter; 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.

*Export of satellites.* The term export, as applied to satellites controlled by the Department of Commerce, includes the physical movement of a satellite from the United States to another country for any purpose, or the transfer of registration of a satellite or operational control over a satellite from a person resident in the United States to a person resident in another country. Under the Commercial Space Launch Act, a launch of a launch vehicle and payload is not an export for purposes of controlling export.

*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.

*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.

*Foreign policy control.* A control imposed under the EAR for any and all of the following reasons: chemical and biological weapons, nuclear non-proliferation, 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.

*Forwarding agent.* The person authorized by an exporter to perform for that exporter actual services which facilitate the export of items. The forwarding agent need not be a person regularly engaged in the freight forwarding business. The forwarding agent must be designated by the exporter in writing in the power-of-

attorney set forth on the Shippers' Export Declaration or in a general power-of-attorney, or other written form, subscribed and sworn to by a duly authorized officer or employee of the exporter.

**General prohibitions.** The 10 prohibitions found in part 734 of this subchapter that prohibit certain exports, reexports, and other conduct, subject to the EAR.

**Hold Without Action (HWA).** License applications may be held without action only in the limited circumstances described in § 750.4(c) of this subchapter.

**Intent to Deny (ITD) letter.** A letter informing: 1) the applicant of the reason for BXA's decision to deny a license application; and 2) that the application will be denied 45 days from the date of the ITD letter, unless the applicant provides, and BXA accepts, a reason why the application should not be denied for the stated reason.

**Intermediate consignee.** The intermediate consignee is the bank, forwarding agent, or other intermediary (if any) who acts in a foreign country as an agent for the exporter, the purchaser, or the ultimate consignee, for the purpose of effecting delivery of the items to the ultimate consignee.

**Item.** Any commodity, technology, or software.

**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."

**License.** Authority issued by the Bureau of Export Administration authorizing an export, reexport, or other regulated activity. The term "license" does not include authority represented by a "License Exception."

**License alternatives.** A license alternative is either the Special Comprehensive License described in part 752 of this subchapter, or a License Exception described in part 740 of this subchapter.

**License application; application for license.** License application and similar wording mean an application to BXA requesting the issuance of a license to the applicant.

**License Exception.** An authorization described in part 740 of this subchapter 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 BXA. See § 750.7(c) of this subchapter for a complete definition and identification of a licensee's responsibilities.

**MTCR.** See Missile Technology Control Regime.

**MTEC.** See Missile Technology Export Control Group.

**Missile Technology Control Regime (MTCR).** The United States along with 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 reasons. The MTEC also reviews applications involving items not controlled for Missile Technology reasons, but destined for a country and/or end use/end user of concern.

**"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 entered on the Shipper's Export Declaration, certifying that the items exported are listed on the CCL and that no license is required.

**NOL.** NOL ("not on list") is a symbol entered on the Shipper's Export Declaration, certifying that items exported are not listed on the CCL, but still subject to the EAR, and 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, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

**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.

**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 dual-use items with nuclear applications.

**Office of Foreign Assets Control (FAC) or (OFAC).** The agency at the

Department of the Treasury responsible for blocking assets of sanctioned foreign entities, 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. (31 CFR parts 500 through 590.)

**Operating Committee (OC).** The OC voting members include representatives of appropriate agencies in the Departments of Commerce, State, Defense, and Energy and the Arms Control and Disarmament Agency for Nonproliferation Policy. The Director of the Joint Chiefs of Staff for International Negotiations 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 United States Government agencies or departments (other than those identified above) to participate in the activities of the OC when matters of interest to such agencies or departments are under consideration.

**Person.** A natural person, including a citizen or national of the United States or of any foreign country, or any firm.

**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.

**Production facility.** As defined by 10 CFR 110.2 of the Nuclear Regulatory Commission Regulations, production facility means any nuclear reactor or plant specially designed or used to produce special nuclear material through the irradiation of source material or special nuclear material, the separation of isotopes or the chemical reprocessing or irradiated source or special nuclear material.

**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 this subchapter).

**Purchaser.** The person abroad who has entered into a transaction with the applicant to purchase an item for delivery to the ultimate consignee. A bank, freight forwarder, forwarding agent, or other intermediary is not a purchaser.

**RWA.** See Return without Action.

**Reasons for Control.** There are 10 possible reasons why an item may be controlled. Items controlled within a particular ECCN may be controlled for

more than one reason. Reasons for Control are: Anti-Terrorism (AT), Chemical & Biological Weapons (CB), Crime Control (CC), Missile Technology (MT), National Security (NS), Nuclear Nonproliferation (NP), Regional Stability (RS), Supercomputers (SC), Short Supply (SS), and United Nations sanctions (UN).

**Reexport.** The term "reexport" includes the transfer, transshipment, or diversion of items from one foreign country to another foreign country. 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.** An authorization by the Bureau of Export Administration revising the information, conditions, or riders stated on a license issued by BXA.

**Return Without Action (RWA).** An application may be RWA'd for one of the following reasons: (1) the applicant has requested the application be returned, (2) if a License Exception applies, (3) the items are not under Department of Commerce jurisdiction, (4) required documentation has not been submitted with the application, or (5) the applicant can not be reached after several attempts to request additional information necessary for processing of the application.

**SNEC.** See Subgroup on Nuclear Export Coordination.

**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 this subchapter for information on use of Schedule B numbers.)

**Shield.** Chaired by the Department of State, the Shield primarily reviews applications involving items controlled for Chemical and Biological Weapons reasons. The Shield also reviews applications involving items not controlled for Chemical and Biological Weapons reasons, but destined for a country and/or end use/end-user of concern.

**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.

**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 (STN).** 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).

**Subgroup on Nuclear Export Coordination (SNEC).** Chaired by the Department of State, the SNEC primarily reviews applications involving items controlled for Nuclear Non-proliferation reasons. The SNEC also reviews applications involving items not controlled for Nuclear Non-proliferation reasons, but destined for a country and/or end use/end-user of concern.

**Subject to the EAR.** A term used in the EAR to describe those commodities, technology, software and activities over which the Bureau of Export Administration (BXA) exercises regulatory jurisdiction under the EAR (See § 732.2(a) of this subchapter for a complete definition).

**Supercomputer.** A "supercomputer" is any computer with a Composite Theoretical Performance (CTP) equal to or exceeding 1,500 Mtops (million theoretical operations per second). 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.

**U.S. exporter.** That person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States.

**Ultimate consignee.** The person located abroad who is the true party in interest in actually receiving the export or reexport for the designated end-use. (See § 748.4(b)(5) of this subchapter.)

**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:

(1) An individual who is a citizen of the United States or one of its possessions; or

(2) A partnership of which each member is such an individual; or

(3) 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.

**Utilization facility.** 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. Utilization facility does not include the steam turbine generator portion of a nuclear power plant.

**You.** Any person, including a natural person or a firm.

#### **PARTS 771, 773, 775-779, 785-791— [REMOVED AND RESERVED]**

5. Parts 771, 773, 775 through 779 and 785 through 791 are removed and reserved.

#### **PART 799—[REDESIGNATED AS PART 774]**

6. Part 799 is redesignated as part 774.

7. The authority citation for newly designated part 774 is revised to read as follows:

**Authority:** 18 U.S.C. 2510 *et seq.*; 30 U.S.C. 185; 42 U.S.C. 6212; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 50 U.S.C. 1710 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139(a); 43 U.S.C. 1354; 50 U.S.C. 2401 *et seq.*; 46 U.S.C. 466(c); E.O. 12924.

8. Newly designated § 774.1 is revised to read as follows:

#### **§ 774.1 Introduction.**

The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), that includes all items (commodities, software, and technology) subject to the licensing authority of

BXA. 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. The CCL is contained in Supplement No. 1 to part 774. Supplement No. 2 contains the General Technology and Software Notes relevant to entries contained in the CCL, and Supplement No. 3 contains definitions to terms used in the CCL.

9. Supplement No. 1 to newly designated part 774 is amended by revising the Requirements section of each applicable Export Control Classification Number (ECCN) to read as follows:

**Supplement No. 1 to Part 774—The Commerce Control List**

*Category 1—Materials*

A. Equipment, Assemblies and Components

**1A01 Components made from fluorinated compounds.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1A02 Composite structures or laminates.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to composite structures that are specially designed for missile applications (including specially designed subsystems and components)—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$1500

CSR: Yes, except MT

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1A03 Manufactures of non-fluorinated polymeric substances controlled by 1C08.a in film, sheet, tape or ribbon form.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$200

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1A22 Other composite structures of laminates usable in missile systems.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$1500

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1A27 Maraging steels (steels generally characterized by high nickel, very low carbon content and the use of substitutional elements or precipitates to produce age-hardening), other than those controlled by ECCN 1A47, below, having an Ultimate Tensile Strength of  $1.5 \times 10^9$  N/m<sup>2</sup> (Pa) or greater measured at 20°C, in the form of sheet, plate, or tubing with a wall or plate thickness equal to or less than 5.0mm(0.2 inch).**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1A44 Crucibles made of materials resistant to liquid actinide metals.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*



1A45 Specialized packings for use in separating heavy water from ordinary water that are made of phosphor bronze mesh or copper (both chemically treated to improve wettability) and are designed for use in vacuum distillation towers.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1A46 Aluminum and titanium alloys in the form of tubes or solid forms (including forgings) with an outside diameter of more than 75 mm (3 inches).

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1A47 Maraging steel capable of an ultimate tensile strength of 2050 MPa (2.050 x 10^9 N/m^2) (300,000 lbs./in^2) or more at 293 K (20 °C), except forms in which no linear dimension exceeds 75 mm (3 inches).

License Requirements

Reason for Control: NP, MT, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
MT applies to maraging steels controlled by this entry that also meet

the specifications of 1A27—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes, except MT
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1A48 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) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1A50 Parts made of tungsten, tungsten carbide, or tungsten alloys (greater than 90% tungsten) having a mass greater than 20 kilograms and a hollow cylindrical symmetry (including cylinder segments) with an inside diameter greater than 10 cm (4 in), but less than 30 cm (12 in), except parts specially designed for use as weights or gamma-ray collimators.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1A84 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; smoke bombs; non-irritant smoke flares, canisters, grenades and charges; other pyrotechnic articles having dual military and commercial use; and fingerprinting powders, dyes and inks.

License Requirements

Reason for Control: CC

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1A88 Bulletproof and bullet resistant vests.

License Requirements

Reason for Control: UN

Control(s) and Country Chart

UN applies to entire entry—UN Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

**B. Test, Inspection and Production Equipment**

**1B01** Equipment for the production of fibers, prepregs, preforms or composites controlled by 1A02 or 1C10, as follows, and specially designed components and accessories therefor.

**License Requirements**

*Reason for Control: NS, MT, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry EXCEPT 1B01.d.4—MT Column 1

NP applies to filament winding machines described in 1B01.a that are capable of winding cylindrical rotors having a diameter between 75mm (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 Alternatives***License Exceptions*

LVS: N/A for 1B01.a; \$5000 for all other items

CSR: Yes, except MT and NP

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B02** Systems and components therefor specially designed for producing metal alloys, metal alloy powder or alloyed materials controlled by 1C02.a.2, 1C02.b, or 1C02.c.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: \$5000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B03** Tools, dies, molds or fixtures, for superplastic forming or diffusion bonding titanium or aluminum or their alloys, specially designed for the manufacture of the following:

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: \$5000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B16** Plants for the production of uranium hexafluoride (UF<sub>6</sub>) and specially designed or prepared equipment (including UF<sub>6</sub> purification equipment), and specially designed parts and accessories therefor.

**License Requirements**

*Reason for Control: NS, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to items that appear on International Atomic Energy List—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes, except Bulgaria, Romania, or Russia for NP only

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

**1B17** Electrolytic cells for the production of fluorine with a production capacity greater than 250 grams of fluorine per hour, and specially designed parts and accessories therefor.

**License Requirements**

*Reason for Control: NS, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to items that appear on the International Atomic Energy List—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes, except Bulgaria, Romania, or Russia for NP only

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B18** Commodities on the International Munitions List

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 1B18.a—RS Column 2

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: \$3000 for 1B18.a for Australia, Japan, New Zealand, and NATO only; \$5000 for 1B18.b

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B21 Other equipment for the production of fibers, prepreps, preforms or composites.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B28 Other equipment for the production of propellants.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B30 Pyrolytic deposition and densification equipment.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$1500
- CSR: N/A
- GBS: N/A

NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B41 Filament winding machines not controlled by 1B01, controls, and mandrels.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B42 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) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B50 Vacuum and controlled environment furnaces.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B51 Instruments designed for vacuum service that are capable of measuring absolute or differential pressures to an accuracy of plus or minus 1 torr in the pressure range of 0 to 100 torr absolute where all whetted surfaces, including pressure sensing elements, are constructed of or protected by corrosion-resistant materials such as nickel, nickel alloys, phosphor bronze, stainless steel, aluminum, or aluminum alloys and specially designed or modified component parts therefor.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B52 Water-hydrogen sulfide exchange tray columns constructed from fine carbon steel (such as ASTM A516) with a diameter of 1.8 m (6 ft) or greater and made to operate at a nominal pressure of 2 MPa (300 psi) or greater.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B53 Hydrogen-cryogenic distillation columns.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B54 Ammonia synthesis converters.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry AT—Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B58 Facilities or plants, and related equipment, for the production, recovery, extraction, concentration, or handling of tritium.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B59 Pumps for circulating solutions of diluted or concentrated potassium amide catalyst in liquid ammonia (KNH<sub>2</sub>/NH<sub>3</sub>).**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B70 Equipment that can be used in the production of chemical weapons precursors and chemical warfare agents.**

**License Requirements**

*Reason for Control: CB, AT*

Control(s) and Country Chart

CB applies to entire entry—CB Column 3

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1B71 Equipment that can be used in the production of biological weapons.**

**License Requirements**

*Reason for Control: CB, AT*

Control(s) and Country Chart

CB applies to entire entry—CB Column 3

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**C. Materials**

**1C01 Materials specially designed for use as absorbers of electromagnetic waves, or intrinsically conductive polymers.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

LVS: \$5000  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C02 Metal alloys, metal alloy powder or alloyed materials.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C03 Magnetic metals of all types and of whatever form, having the following characteristics:**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C04 Uranium titanium alloys or tungsten alloys with a matrix based on iron, nickel or copper, with all of the following characteristics:**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C05 Superconductive composite conductors in lengths exceeding 100 m or with a mass exceeding 100 g.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$1500

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C06 Fluids and lubricating materials.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C07 Ceramic base materials, non-composite ceramic materials, ceramic matrix composite materials and precursor materials.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

MT applies to items described in 1C07.d (dielectric constant less than 6 at frequencies from 100Hz to 10,000 Mhz) for use in missile radomes—MT Column 1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$5000, except N/A for 1C07.e

CSR: Yes, except 1C07.d

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C08 Non-fluorinated polymeric substances.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$200

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C09 Unprocessed fluorinated compounds.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives***License Exceptions*

LVS: \$5000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**1C10 Fibrous and filamentary materials that may be used in organic matrix, metallic matrix or carbon matrix composite structures or laminates.****License Requirements***Reason for Control: NS, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to 1C10.a (all aramid fibrous and filamentary materials [FFM]), 1C10.b (all carbon FFM), and 1C10.c (all glass FFM)—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: \$1500, except N/A for NP items

CSR: N/A

GBS: N/A

NSG: Yes, except to Bulgaria, Romania, or Russia for NP only

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**1C18 Items on the International Munitions List.****License Requirements***Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: \$3000

CSR: N/A

GBS: Yes for items listed in Advisory Note to 1C18

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**1C19 Items on the International Atomic Energy List (e.g., zirconium metal, nickel powder and porous nickel metal, lithium, beryllium metal, wet-proofed platinized catalysts, and hafnium).****License Requirements***Reason for Control: NS, NP, AT*

Control(s) and Country Chart

NS applies to entire entry except zirconium in the form of foil or strip having a thickness not exceeding 0.10 mm (0.004 in) in shipments of 200 kg or less—NS Column 1

NP applies to zirconium metal, alloys, or compounds in shipments of 5 kg or less—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes, except to Bulgaria, Romania, or Russia for NP only

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**1C21 Other materials for reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures (i.e., stealth technology), for applications usable for missile systems and subsystems.****License Requirements***Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**1C22 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 percent or higher 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) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**1C27 Other ceramic or graphite materials usable in missile systems.****License Requirements***Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: \$5000

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**1C31 Propellants, constituent chemicals, and polymeric substances for propellants.****License Requirements***Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C49** Platinized catalysts not controlled by 1C19.e that are 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 heavy water production.

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: Yes  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C50** Fibrous and filamentary materials not controlled by 1C10.

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: Yes  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C51** High purity (99.99% or greater) bismuth with very low silver content (less than 10 parts per million).

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: Yes  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C52** High purity calcium containing both less than 1,000 parts per million by weight of metallic impurities other than magnesium and less than 10 parts per million of boron.

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: Yes  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C53** High purity magnesium containing both less than 200 parts per million by weight of metallic impurities other than calcium and less than 10 parts per million of boron.

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: Yes  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C54** Alpha-emitting radionuclides having an alpha half-life of 10 days or greater, but less than 200 years, including compounds and mixtures containing these radionuclides with a total alpha activity of 1 curie (37 GBq) per kilogram or greater, and equipment containing these radionuclides.

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: Yes  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C55** Helium isotopically enriched in the helium-3 isotope, in any form, whether or not mixed with other materials, or contained in any equipment or device, except products or devices containing less than 1 g of helium-3.

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: Yes  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C56 Chlorine trifluoride (C1F<sub>3</sub>).**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C57 Boron and boron compounds, mixtures, and loaded materials in which the boron-10 isotope is more than 20% by weight of the total boron content.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C58 Radium-226.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C60 Precursor and intermediate chemicals used in the production of chemical warfare agents.**

**License Requirements**

*Reason for Control: CB, AT*

Control(s) and Country Chart

CB applies to entire entry—CB Column 2

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C61 Microorganisms and toxins.**

**License Requirements**

*Reason for Control: CB, AT*

Control(s) and Country Chart

CB applies to entire entry—CB Column 2

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1C80 Inorganic chemicals 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 this subchapter. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

**List of Items Controlled**

\* \* \* \* \*

**1C81 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 this subchapter. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

**List of Items Controlled**

\* \* \* \* \*

**1C82 Other petroleum products 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 this subchapter. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

**List of Items Controlled**

\* \* \* \* \*

**1C83 Natural gas liquids and other natural gas derivatives 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 this subchapter. The



Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

List of Items Controlled

\* \* \* \* \*

1C84 Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Dept. of Energy) 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 this subchapter. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

List of Items Controlled

\* \* \* \* \*

1C88 Western red cedar (thuja picata), 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 this subchapter. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for SS reasons.

List of Items Controlled

\* \* \* \* \*

1C92 Oil well perforators.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1C93 Fibrous and filamentary materials, not controlled by 1C10 or 1C50, for use in composite structures and with a specific modulus of 3.18 x 10^6 m or greater and a specific tensile strength of 7.62 x 10^4 m or greater.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1C94 Fluorocarbon electronic cooling fluids.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

D. Software

1D01 Software specially designed or modified for the development, production, or use of equipment controlled by 1B01, 1B02, 1B03, 1B16, 1B17, or 1B18.

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software for the development, production, or use of

equipment controlled by 1B01 and 1B18.a for MT reasons—MT Column 1

NP applies to software for the development, production or use of equipment controlled by 1B01 for NP reasons—NP Column 1
AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- NSG: Yes, except Bulgaria, Romania, or Russia, for NP only
CIV: Yes, except MT and NP
TSR: Yes, except MT and NP

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1D02 Software for the development of organic matrix, metal matrix or carbon matrix laminates or composites.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software specially designed or modified for the development of composites controlled by 1A, 1B or 1C entries for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- NSG: N/A
CIV: Yes, except MT
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1D23 Other software specially designed for the "development", "production", or "use" of items controlled by 1A, 1B, and 1C for missile technology reasons.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- NSG: N/A

CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1D41 Software, not controlled by 1D01, specially designed or modified for the "development", "production", or "use" of filament winding machines controlled by 1B41.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1D50 Specially designed software for computer control and monitoring systems specially configured for vacuum and controlled atmosphere metallurgical melting and casting furnaces controlled by 1B50.b.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1D60 Software for process control that is specifically configured to control or initiate production of chemical precursors controlled by ECCN 1C60.**

**License Requirements**

*Reason for Control: CB, AT*

Control(s) and Country Chart

CB applies to entire entry—CB Column 2

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1D93 Software specially designed for the "development", "production", or "use" of fibrous and filamentary materials controlled by 1C50.b or 1C93.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1D94 Software specially designed for the "development" or "production" of fluorocarbon electronic cooling fluids controlled by 1C94.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

E. Technology

**1E01 Technology according to the General Technology Note for the development or production of equipment or materials controlled by 1A01.b, 1A01.c, 1A02, 1A03, 1B01, 1B02, 1B03, 1B18, 1C01, 1C02, 1C03, 1C04, 1C05, 1C06, 1C07, 1C08, 1C09, 1C10, or 1C18.**

**License Requirements**

*Reason for Control: NS, MT, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology for items controlled by 1A02 or 1B01 for MT reasons—MT Column 1

NP applies to technology for the development or production of items controlled by 1B01 and materials controlled by 1C10 for NP reasons—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes, except Bulgaria, Romania, or Russia, for NP only  
CIV: N/A  
TSR: Yes, except MT and NP, and except Iran and Syria

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1E02 Other technology.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: Yes, except Iran and Syria

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

1E19 Technology according to the General Technology Note for the "development", "production", or "use" of equipment or materials controlled by 1B16, 1B17, or 1C19.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to technology for the development, production or use of plants controlled by 1B16, equipment controlled by 1B17, or materials controlled by 1C19—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes, except Bulgaria, Romania, or Russia for NP only

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1E23 Other technology according to the General Technology Note for the "development", "production", or "use" of items controlled by 1A22, 1A27, 1B28, 1B30, 1C21, 1C22, 1C27, or 1C31.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1E24 Technology (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.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1E25 Technology for producing pyrolytically derived materials formed on a mold, mandrel, or other substrate from precursor gases that decompose at 1,300°C to 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) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1E40 Technology for the use of filament winding machines controlled by 1B01.a that are capable of winding cylindrical rotors having a diameter between 3 inches and 16 inches and a length of 24 inches or greater.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1E41 Technology for the "development", "production", or "use" of items controlled by 1A44, 1A45, 1A46, 1A47, 1A48, 1A50, 1B41, 1B42, 1B50, 1B51, 1B52, 1B53, 1B54, 1B58, 1B59, 1C49, 1C50, 1C51, 1C52, 1C53, 1C54, 1C55, 1C56, 1C57, or 1C58 or for the "use" of items controlled by 1C10.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

1E60 Technology for the production and/or disposal of chemical precursors described in ECCN 1C60, and technology as described in the list below for facilities designed or intended to produce chemicals described in ECCN 1C60.

License Requirements

Reason for Control: CB, AT

Control(s) and Country Chart

CB applies to entire entry—CB Column 2

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

**1E61 Technology for the production and/or disposal of microbiological items described in ECCN 1C61.**

**License Requirements**

*Reason for Control: CB, AT*

Control(s) and Country Chart

CB applies to entire entry—CB Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1E70 Technology for production of commodities described in ECCNs 1B70 and 1B71 (equipment that can be used in production of chemical warfare agents or their precursors, or biological agents).**

**License Requirements**

*Reason for Control: CB, AT*

Control(s) and Country Chart

CB applies to entire entry—CB Column 3

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**1E94 Technology for the development, production, or use of fibrous and filamentary materials controlled by 1C93 or fluorocarbon electronic cooling fluids controlled by 1C94.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

*Category 2—Materials Processing*

A. Equipment, Assemblies and Components

**Note to Category 2A:** Category 2A does not control balls with tolerance specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse.

**2A01 Ball bearings or solid roller 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 national equivalents).**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A02 Other ball bearings or solid roller bearings, except tapered roller bearings, having tolerances specified by the manufacturer in accordance with ABEC 9, ABEC 9P or ISO Standard Class 2 or better (or national equivalents).**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A03 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 national equivalents) and having either of the following characteristics.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A04 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.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A05 Active magnetic bearing systems.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$3000
- CSR: Yes
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A06 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).**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$3000
- CSR: Yes
- GBS: N/A
- NSG: N/A
- CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A19 Commodities on the International Atomic Energy List (e.g., power generating and/or propulsion equipment, neutron generator systems, and valves for gaseous diffusion separation process).**

**License Requirements**

*Reason for Control: NS, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to 2A19.b & c—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes for 2A19.b and c, except to Bulgaria, Romania, or Russia
- CIV: Yes, except NP (see Advisory

Note to 2A19)

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A44 Specialized instruments for hydrodynamic experiments.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A48 Valves not controlled by 2A19.c that are 5 mm (0.2 in.) or greater in diameter, with a bellows seal, wholly made of or lined with aluminum, aluminum alloy, nickel, or alloy containing 60% or more nickel, either manually or automatically operated, and specially designed parts and accessories therefor.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A49 Generators and other equipment specially designed, prepared, or intended for use with nuclear plants.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 2

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A50 Equipment related to nuclear material handling and processing and to nuclear reactors.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A51 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, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A

CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A52** Vacuum pumps with an input throat size of 38 cm (15 in.) or greater with a pumping speed of 15,000 liters/second or greater and capable of producing an ultimate vacuum better than  $10^{-4}$  Torr (0.76 x  $10^{-4}$  mbar).

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A53** Pumps designed to move molten metals by electromagnetic forces.

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2A94** Portable electric generators and specially designed parts.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

B. Test, Inspection and Production Equipment

**2B01** Numerical control units, motion control boards, specially designed for numerical control applications on machine tools, machine tools, and specially designed components therefor.

**License Requirements**

*Reason for Control: NS, NP, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes, except Bulgaria, Romania, or Russia  
 CIV: Yes, except NP (for items described in Advisory Note 2)

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2B02** Non-numerically controlled machine tools for generating optical quality surfaces.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$3000  
 CSR: Yes  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2B03** Numerically controlled or manual machine tools specially designed for cutting, finishing, grinding or honing either of the following classes of bevel or parallel axis hardened ( $R_c = 40$  or more) gears, and specially designed components, controls and accessories therefor.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000  
 CSR: Yes  
 GBS: N/A  
 NSG: N/A  
 CIV: Yes for 2B03.a

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2B04** Hot isostatic presses, as follows, and specially designed dies, molds, components, accessories and controls therefor.

**License Requirements**

*Reason for Control: NS, MT, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

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 Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

2B05 Equipment specially designed for deposition, processing and in-process control of inorganic overlays, coatings and surface modification, as follows, for non-electronic substrates by processes shown in the Table and associated Notes following 2E03.d and specially designed automated handling, positioning, manipulation and control components therefor.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: \$1000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

2B06 Dimensional inspection or measuring systems or equipment.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to 2B06.a, b or c—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: Yes for 2B06.d
GBS: N/A
NSG: Yes for 2B06.a, b, and c, except to Bulgaria, Romania, or Russia
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

2B07 Robots, and specially designed controllers and end-effectors therefor.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to robots and NP Column 1 end-effectors that are controlled by 2B07.b OR that are specially designed or rated as radiation hardened to withstand greater than 5x10^4 grays (Si) (5x10^6 rad (Si)) without operational degradation, and to specially designed controllers therefor—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: \$5000, except N/A for NP
CSR: Yes, except NP
GBS: N/A
NSG: Yes, except Bulgaria, Romania, or Russia, for NP only
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

2B08 Assemblies, units or inserts specially designed for machine tools, or for equipment controlled by 2B06 or 2B07.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and 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 Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes, except Bulgaria, Romania, or Russia
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

2B09 Specially designed printed circuit boards with mounted components and software therefor, or compound rotary tables or tilting spindles, capable of upgrading, according to the manufacturer's specifications, numerical control units, machine tools or feed-back devices to or above the levels specified in ECCNs 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, or 2B08.

License Requirements

Reason for Control: NS, NP, AT

Control(s) and 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 Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: Yes, except Bulgaria, Romania, or Russia
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

2B18 Commodities on the International Munitions List.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and 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

License Alternatives

License Exceptions

- LVS: \$3000
CSR: N/A
GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**2B24 Isostatic presses not controlled by 2B04 and specially designed dies and moulds, and controls therefor.****License Requirements***Reason for Control: MT, NP, AT*

Control(s) and Country Chart

MT applies to entire entry—NS Column 1

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**2B41 Numerically controlled machine tools for vertical and/or boring not controlled by ECCN 2B01.****License Requirements***Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**2B44 Isostatic presses, not controlled by 2B04 or 2B24, capable of achieving a maximum working pressure of 10,000 psi (69 MPa) or greater and having a chamber cavity with an inside diameter in excess of 152 mm (6 inches) and specially designed dies and moulds, and controls therefor.****License Requirements***Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**2B50 Spin-forming and flow-forming machines and precision rotor-forming mandrels, and specially designed components therefor.****License Requirements***Reason for Control: NP, MT, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

MT applies to 2B50.a except those that are not usable in the production of propulsion components and equipment (e.g., motor cases) for missile systems—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**2B51 Centrifuge rotor fabrication assembly, and straightening equipment and bellows-forming mandrels and dies.****License Requirements***Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**2B53 Centrifugal balancing machines, fixed or portable, horizontal or vertical.****License Requirements***Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: Yes

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**2B85 Equipment specially designed for manufacturing shotgun shells; and ammunition hand-loading equipment for both cartridges and shotgun shells.****License Requirements***Reason for Control: UN*

Control(s) and Country Chart

UN applies to entire entry—UN Column 1

**License Alternatives***License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A



NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2B91 Numerical control units for machine tools and numerically controlled machine tools, n.e.s.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2B92 Manual dimensional inspection machines with two or more axes, and measurement uncertainty equal to or less (better) than (3 + L/300) micrometer in any axes (L measured length in mm).**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2B93 Gearmaking and/or finishing machinery not controlled by 2B03 capable of producing gears to a quality level of better than AGMA 11.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2B94 Robots not controlled by 2B07 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) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

C. Materials—[Reserved]

D. Software

**2D01 Software specially designed or modified for the development, production or use of equipment controlled by 2A01, 2A02, 2A03, 2A04, 2A05, 2A06, 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, 2B08, or 2B09.**

**License Requirements**

*Reason for Control: NS, MT, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software specially designed or modified for the development, production or use of items controlled by 2B04—MT Column 1

NP applies to software described in this entry for the development, production or use of equipment controlled by 2B01, 2B04, and 2B06.a, .b and .c (including software for the simultaneous measurements of wall thickness and contour), 2B07, and 2B09 for NP reasons—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes for software for 2B01, 2B06.a, .b, .c, 2B07, and 2B09 except to Bulgaria, Romania, or Russia. Software (including documentation) for numerical control units must be: in machine executable form only; and limited to the minimum necessary for the use (i.e., installation, operation, and maintenance) of the units.

CIV: N/A

TSR: Yes, except MT and NP

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2D02 Specific software.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2D18 Software for the development, production or use of equipment controlled by 2B18.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software for the development, production or use of items controlled by 2B18 for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes, except MT and Iran and Syria

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2D19 Software for the development, production or use of equipment controlled by 2A19.**

**License Requirements**

*Reason for Control: NS, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to software for the development, production or use of items controlled by 2A19.b and .c—NP Column 1

AT applies to entire entry AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes, *except* Bulgaria, Romania, or Russia for NP only

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2D24 Software for the development, production or use of commodities controlled by 2B24.**

**License Requirements**

*Reason for Control: MT, NP, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2D41 Software specially designed or modified for the development, production or use of numerically controlled machine tools controlled by ECCN 2B41.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry NP Column 1

AT applies to entire entry AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes, provided that software (including documentation) for “numerical control” units is: exported in machine executable form only; and limited to the minimum necessary for the use (i.e., installation, operation, and maintenance) of the units.

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2D44 Software for the development, production or use of commodities controlled by 2B44.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2D49 Software specially designed or modified for the development, production or use of equipment controlled by 2A49.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 2

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2D50 Software specially designed or modified for the development, production or use of equipment controlled by 2A50 or 2B50.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2D53 Software specially designed or modified for the development, production or use of centrifugal balancing machines controlled by 2B53.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2D92 Software specially designed for the development or production of portable electric generators controlled by 2A94.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2D93 Software specially designed for the development or production of manual dimensional inspection machines controlled by 2B92.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2D94 Software specially designed for the development, production, or use of numerical control units and numerically controlled machine tools controlled by 2B91, gear making and/or finishing machinery controlled by 2B93, or robots controlled by 2B94.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

E. Technology

**2E01 Technology according to the General Technology Note for the development of equipment or software controlled by 2A01, 2A02, 2A03, 2A04, 2A05, 2A06, 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, 2B08, 2B09, 2D01 or 2D02.**

**License Requirements**

*Reason for Control: NS, MT, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology for the development of items controlled by 2B04—MT Column 1

NP applies to technology for the development of items controlled by 2B04—NP Column 1

NP applies to technology for the development of items controlled for NP reasons by 2B01, 2B06.a .b and .c, 2B07, 2B08, and 2B09, and software controlled by 2D01 for NP reasons—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes for NP, *except* technology for 2B04, and *except* Bulgaria, Romania, or Russia

CIV: N/A

TSR: Yes, *except* MT and NP

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2E02 Technology according to the General Technology Note for the production of equipment controlled by 2A01, 2A02, 2A03, 2A04, 2A05, 2A06, 2B01, 2B02, 2B03, 2B04, 2B05, 2B06, 2B07, 2B08 or 2B09.**

**License Requirements**

*Reason for Control: NS, MT, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology for the production of items controlled by 2B04—MT Column 1

NP applies to technology for the production of items controlled by 2B04—NP Column 1

NP applies to technology for the production of items controlled by 2B01, 2B06.a .b, and .c, 2B07, 2B08,

and 2B09 for NP reasons—NP Column 1  
AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes, *except* technology for 2B04 and *except* Bulgaria, Romania, or Russia, for NP only

CIV: N/A

TSR: Yes, *except* MT and NP

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2E03 Other Technology.**

**License Requirements**

*Reason for Control: NS, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to technology controlled by 2E03.a.1 or a.3—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes, *except* Bulgaria, Romania, or Russia, for 2E03.a.1 and a.3 only

CIV: N/A

TSR: Yes, *except* 2E03.a.1, a.3, b, and d

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2E18 Technology for the development, production or use of equipment controlled by 2B18.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology for the development, production or use of items controlled by 2B18 for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes, *except* MT and Iran and Syria

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2E19 Technology for the development, production, or use of equipment controlled by 2A19.**

**License Requirements**

*Reason for Control: NS, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to technology for the development, production or use of items controlled by 2A19.b and .c—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes, *except* Bulgaria, Romania, or Russia for NP only

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2E20 Technology for the use of commodities controlled by 2B04.**

**License Requirement**

*Reason for Control: MT, NP, AT*

Control (s) and 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 Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2E24 Technology for the development, production, or use of commodities controlled by 2B24.**

**License Requirement**

*Reason for Control: MT, NP, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2E40 Technology for the use of hot isostatic presses controlled by 2B04, and systems or equipment controlled by 2B06.a, .b, or c, 2B07, 2B08 or 2B09.**

**License Requirement**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to technology NP Column 1 for the use of items controlled by 2B04, 2B06.a, .b or .c, 2B07, 2B08, and 2B09 for NP reasons.

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2E41 Technology for the development, production or use of numerically controlled machine tools controlled by 2B41 or for the use of equipment controlled by 2B01.**

**License Requirement**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2E44 Technology for the development, production or use of specialized instruments for hydrodynamic experiments controlled by 2A44 or isostatic presses controlled by 2B44.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2E48 Technology for the development, production or use of valves controlled by 2A48.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**2E49 Technology for the development, production or use of equipment controlled by 2A49.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 2

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

2E50 Technology for the development, production or use of equipment controlled by 2A50 or 2B50.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column

1

AT applies to entire entry—AT Column

1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

2E51 Technology for the development, production or use of equipment controlled by 2A51 or 2B51.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column

1

AT applies to entire entry—AT Column

1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

2E52 Technology for the development, production or use of equipment controlled by 2A52.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column

1

AT applies to entire entry—AT Column

1

License Alternatives

License Exceptions

NSG: Yes

CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

2E53 Technology for the development, production or use of equipment controlled by 2A53 or 2B53.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column

1

AT applies to entire entry—AT Column

1

License Alternatives

License Exceptions

NSG: Yes
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

2E93 Technology for the development, production, or use of portable electric generators controlled by 2A94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column

2

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

2E94 Technology for the development, production, or use of numerical control units and numerically controlled machine tools controlled by 2B91, manual dimensional inspection machines controlled by 2B92, gear making and/or finishing machinery controlled by 2B93, or robots controlled by 2B94.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column

1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

Category 3—Electronics Design, Development and Production

A. Equipment, Assemblies and Components

3A01 Electronic devices and components.

License Requirements

Reason for Control: NS, MT, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to 3A01.a.1.a—MT Column 1

NP applies to 3A01.e.5—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: \$1500: 3A01.c; \$3000: 3A01.b.1 to b.3, 3A01.d to 3A01.f; \$5000: 3A01.a, 3A01.b.4 to b.7

CSR: Yes, except 3A01.a.1.a and 3A01.e.5

GBS: Yes, except 3A01.a.1.a, b.1, b.3 to b.7, c to f

NSG: Yes, except Bulgaria, Romania, or Russia, for 3A01.e.5

CIV: Yes for 3A01.a.4.a and a.4.b (see Advisory Note 3 to Category 3—Electronics Design, Development and Production)

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

3A02 General purpose electronic equipment.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: \$3000: 3A02.a, 3A02.e to g;

\$5000: 3A02.b to d, 3A02.h  
 CSR: Yes  
 GBS: Yes for 3A02.a.1  
 NSG: N/A  
 CIV: Yes for 3A02.h

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A22 Accelerators capable of delivering electromagnetic radiation produced by "bremsstrahlung" from accelerated electrons of 2 Me V or greater and systems containing the accelerators, excluding that equipment specially designed for medical purposes.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A41 Capacitors not controlled by 3A01.e.2.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A42: Superconducting solenoidal electromagnets other than those described in 3A01.e.3.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A43 Switching devices.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A44 High-speed pulse generators with output voltages greater than 6 volts into a less than 55-ohm resistive load, and with pulse transition times less than 500 picoseconds (defined as the time interval between 10% and 90% voltage amplitude).**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A46 Firing sets and equivalent high-current pulse generators (for detonators controlled by 3A49).**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A48 Multistage light gas gun or other high-velocity gun systems (coil, electromagnetic, electrothermal, or other advanced systems) capable of accelerating projectiles to 2 kilometers per second or greater and specialized components therefor.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: Yes  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A49 Detonators and multipoint initiation systems (exploding bridge wire, slapper, etc.).**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A50 Inverters, converters, frequency changers, and generators.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A51 Mass spectrometers.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A52 Oscilloscopes, transient recorders, and specially designed components therefor.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A53 High-voltage direct current power supplies capable of continuously producing, over a time period of 8 hours, 20,000 V or greater with a current output of 1 amp or greater and with a current or voltage regulation better than 0.1 percent.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A54 Direct current high-power supplies capable of continuously producing, over a time period of 8 hours, 100 V or greater with a current output of 500 amps or greater and with a current or voltage regulation better than 0.1 percent.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A55 Flash X-ray generators and electron accelerators not controlled by 3A01.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A80 Voice print identification and analysis equipment and parts, n.e.s.**

**License Requirements**

*Reason for Control: CC*

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A

NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A81 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) and Country Chart

CC applies to entire entry—CC Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A92 Electronic devices and components not controlled by 3A01.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A93 Electronic test equipment in Category 3A n.e.s.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$1000 for Syria only  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3A94 General purpose electronic equipment not controlled by 3A02.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

B. Test, Inspection and Production Equipment

**3B01 Equipment for manufacture or testing of semiconductor devices or materials, as follows, and specially designed components and accessories therefor.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1  
AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$500  
CSR: Yes  
GBS: N/A

NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3B91 Equipment not controlled by 3B01 for the manufacture or testing of electronic components and materials, and specially designed components and accessories therefor.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

C. Materials

**3C01 Hetero-epitaxial materials consisting of a "substrate" with stacked epitaxially grown multiple layers.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$3000  
CSR: Yes  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*



**3C02 Resist materials, and "substrates" coated with controlled resists.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3C03 Organo-inorganic compounds as described in this entry.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$3,000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3C04 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) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

D. Software

**3D01 Software specially designed for the development or production of equipment controlled by 3A01.b to 3A01.f, 3A02, or 3B01.**

**License Requirements**

*Reason for Control: NS, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

NP applies to software for the development or production of items controlled for NP reasons by 3A01.e.5.—NP Column 1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

NSG: Yes, except Bulgaria, Romania, or Russia, for "software" for 3A01.e.5

CIV: N/A

TSR: Yes, except 3A01.e.5

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3D02 Software specially designed for the use of stored program controlled equipment controlled by 3B01.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3D03 Computer-aided-design (CAD) "software" for semiconductor device or integrated circuits.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3D21 Software specially designed for the development or production of items controlled by 3A01.a.1.a.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3D22 Software for the development, production, or use of radiographic equipment (linear accelerators) controlled by 3A22.**

**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 Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3D80 Software specially designed for the development, production, or use of items controlled by 3A80 and 3A81.**

**License Requirements:**

*Reason for Control: CC*

Control(s) and Country Chart

CC applies to entire entry—entry CC Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3D94 Software specially designed for the development, production, or use of electronic devices or components controlled by 3A92, electronic test equipment controlled by 3A93, general purpose electronic equipment controlled by 3A94, or manufacturing and test equipment controlled by 3B91.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

E. Technology

**3E01 Technology according to the General Technology Note for the development or production of equipment or materials controlled by 3A01, 3A02, 3B01, 3C01, 3C02, 3C03 or 3C04.**

**License Requirements**

*Reason for Control: NS, MT, NP, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology specially designed for the development or

production of items controlled for MT reasons by 3A01.a.1.a—MT Column 1  
NP applies to technology specially designed for the development or production of items controlled for NP reasons by 3A01.e.5 —NP Column 1  
AT applies to entire entry—AT Column 1

*License Alternatives*

**License Exceptions**

NSG: N/A

CIV: N/A

TSR: Yes, except 3A01.a.1.a and e.5

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3E02 Other technology for the development or production of equipment and components described in this entry.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3E22 Technology for the development, production, or use of radiographic equipment (linear accelerators) controlled by 3A22.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3E40 Technology for the development, production, or use of items controlled by 3A41, 3A42, 3A43, 3A44, 3A46, 3A48, 3A49, 3A50, 3A51, 3A52, 3A53, 3A54, or 3A55.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3E41 Technology for the use of flash discharge type x-ray systems, including tubes, controlled by 3A01.e.5.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**3E80 Technology specially designed for the development, production, or use of items controlled by 3A80 and 3A81.**

**License Requirements**

*Reason for Control: CC*

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

3E94 Technology for the development, production, or use of electronic devices or components controlled by 3A92, electronic test equipment controlled by 3A93, general purpose electronic equipment controlled by 3A94, or manufacturing and test equipment controlled by 3B91.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- NSG: N/A
CIV: N/A
TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

Category 4—Computers

Note 1: Computers, related equipment or "software" performing telecommunications or "local area network" functions must also be evaluated against the performance characteristics of the telecommunications entries in Category 5.

N.B. 1: 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 the telecommunications entries in Category 5.

N.B. 2: For the control status of "software" that provides routing or switching of "datagram" or "fast select" packets (i.e., packet by packet route selection) or for "software" specifically designed for packet switching, see the telecommunications entries in Category 5.

Note 2: Computers, related equipment or "software" performing cryptographic, cryptanalytic, certifiable multi-level security or certifiable user isolation functions, or that limit electromagnetic compatibility (EMC), must also be evaluated against the performance characteristics of the "information security" entries in Category 5.

A. Equipment, Assemblies and Components

4A01 Electronic computers and related equipment, as follows, and assemblies and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, NP, SC, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to 4A01.a—MT Column 1

AT applies to entire entry—AT Column 1

NP applies to computers with a CTP exceeding 500 Mtops destined for a country listed in Country Group D:2. This reason for control does not relate directly to a licensing requirement, but rather an additional review conducted on all applications by the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements.

SC (Supercomputer) controls apply to all destinations except Japan for computers with a Composite Theoretical Performance equal to or exceeding 1500 Mtops. These controls do not relate directly to a licensing requirement, but rather what type of supercomputer support documentation (e.g., security plan) is required, conditions that may be placed on the license, and the licensing review policy the application will be subject to at the Bureau of Export Administration.

Accordingly, no additional column is provided for purposes of identifying licensing requirements. (Reference § 742.12 for information on licensing review policies, required support documentation, security conditions and plans, and licensing policies.)

License Alternatives

License Exceptions

- LVS: \$5000 for 4A01.a; N/A for 4A01.b
CSR: Yes, except MT and except supercomputers as defined in § 742.12 (no supercomputer restriction for Japan)
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

4A02 Hybrid computers, as follows, and assemblies and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT, NP, SC

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to hybrid computers combined with specially designed software, for modeling, simulation, or design integration of complete rocket systems and unmanned air vehicle systems that are usable in systems controlled for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

NP applies to computers with a CTP exceeding 500 Mtops destined for a country listed in Country Group D:2. This reason for control does not relate directly to a licensing requirement, but rather an additional review conducted on all applications by the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements.

SC (Supercomputer) controls apply to all destinations except Japan for computers with a Composite Theoretical Performance equal to or exceeding 1500 Mtops. These controls do not relate directly to a licensing requirement, but rather what type of supercomputer support documentation (e.g., security plan) is required, conditions that may be placed on the license, and the licensing review policy the application will be subject to at the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements. (Reference § 742.12 for information on licensing review policies, required support documentation, security conditions and plans, and licensing policies.)

License Alternatives

License Exceptions

- LVS: \$5000
CSR: Yes, except MT and except supercomputers as defined in § 742.12 (no supercomputer restrictions for Japan)
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

**4A03 Digital computers, assemblies, and related equipment therefor, as described in this entry, and specially designed components therefor.**

**License Requirements**

*Reason for Control: NS, MT, CC, AT, NP, SC*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B05 or 9B06—MT Column 1

CC applies to computers for computerized fingerprint equipment—CC Column 1

AT applies to entire entry (refer to 4A94 for controls on computers with CTPs greater than 260 Mtops., but less than or equal to 6 Mtops)—AT Column 1  
NP applies to computers with a CTP

exceeding 500 Mtops destined for a country listed in Country Group D:2. This reason for control does not relate directly to a licensing requirement, but rather an additional review conducted on all applications by the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements.

SC (Supercomputer) controls apply to all destinations except Japan for computers with a Composite Theoretical Performance equal to or exceeding 1500 Mtops. These controls do not relate directly to a licensing requirement, but rather what type of supercomputer support documentation (e.g., security plan) is required, conditions that may be placed on the license, and the licensing review policy the application will be subject to at the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements. (Reference § 742.12 for information on licensing review policies, required support documentation, security conditions and plans, and licensing policies.)

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: Yes, except MT and CC, and except supercomputers as defined in § 742.12 (no supercomputer restriction for Japan)

GBS: Yes, except MT and CC for computers with a CTP not exceeding 1,000 Mtops (500 Mtops for eligible countries in Country Group D:2 and specially designed components therefor, exported separately or as part of a system;

and related equipment therefor when export with these computers as part of a system. (GBS is not available for the export of commodities that the exporter knows will be used to: enhance the performance capability (i.e., CTP) of a computer to the supercomputer level or enhance the performance capability of a supercomputer (See § 742.12 for a definition of supercomputer))

NSG: N/A

CIV: Yes, except MT and CC for 4A03.d (having a 3-D vector rate less than 3M vectors/sec) f, (see Advisory Notes 2, 3 and 8 to Category 4—Computers)

*Special Comprehensive License—(To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**4A04 Computers, as follows, and specially designed related equipment, assemblies and components therefor.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**4A21 Analog computers, digital computers, or digital differential analyzers designed or modified for use in missiles not controlled by 4A01 and having either of the following characteristics: rated for continuous operation at temperatures from below -45°C to above +55°C; or designed as ruggedized or radiation hardened.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**4A80 Computers for fingerprint equipment, n.e.s.**

**License Requirements**

*Reason for Control: CC*

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**4A94 Computers, assemblies, and related equipment not controlled by 4A01, 4A02, or 4A03, and specially designed components therefor.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

B. Test, Inspection and Production Equipment

4B94 Equipment for the development and production of magnetic and optical storage equipment, as described in this entry.

License Requirements

Reason for Control: AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

C. Materials

4C94 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) and Country Chart

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

D. Software

Note to Category 4D: 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 the Category 4 is dealt with herein.

4D01 Software specially designed or modified for the development, production or use of equipment controlled by 4A01, 4A02, 4A03, or 4A04, or software controlled by 4D01, 4D02, or 4D03.

License Requirements

Reason for Control: NS, MT, CC, AT, SC

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software specially designed or modified for the development, production or use of equipment controlled for MT reasons by 4A01, 4A02, and 4A03—MT Column 1

CC applies to software specially designed or modified for the development, production or use of computers for computerized fingerprint equipment—CC Column 1

AT applies to entire entry—AT Column 1

SC (Supercomputer) controls apply to all destinations except Japan for software specially designed or modified for the development, production, or use of computers with a Composite Theoretical Performance equal to or exceeding 1500 Mtops. These controls do not relate directly to a licensing requirement, but rather what type of supercomputer support documentation (e.g., security plan) is required, conditions that may be placed on the license, and the licensing review policy the application will be subject to at the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements. (Reference § 742.12 for information on licensing review policies, required support documentation, security conditions and plans, and licensing policies.)

License Alternatives

License Exceptions

- NSG: N/A
CIV: Yes, except MT and CC (see Advisory Notes 2 and 3 to Category 4—Computers)
TSR: Yes, except MT and CC and except software for supercomputers as defined in § 742.12 (no supercomputer restriction for Japan)

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

4D02 Software specially designed or modified to support technology controlled by 4E01 or 4E02.

License Requirements

Reason for Control: NS, MT, AT, SC

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software specially designed or modified to support technology for the development, production or use of equipment controlled for MT reasons by 4A01, 4A02, and 4A03—MT Column 1
AT applies to entire entry—AT Column 1

SC (Supercomputer) controls apply to all destinations except Japan for software specially designed or modified to support technology for the development, production, or use of computers with a Composite Theoretical Performance equal to or exceeding 1500 Mtops. These controls do not relate directly to a licensing requirement, but rather what type of supercomputer support documentation (e.g., security plan) is required, conditions that may be placed on the license, and the licensing review policy the application will be subject to at the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements. (Reference § 742.12 for information on licensing review policies, required support documentation, security conditions and plans, and licensing policies.)

License Alternatives

License Exceptions

- NSG: N/A
CIV: N/A
TSR: Yes, except MT and CC and except software specifically designed or modified to support technology for supercomputers as defined in § 742.12 (no supercomputer restriction for Japan)

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

4D03 Specific software, as described in this entry.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes, except D03.c

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**4D21 Software specially designed or modified for the development, production, or use of items controlled by 4A21, or for supporting technology controlled by 4E21 for the development, production, or use of items controlled by 4A21.**

**License Requirements***Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**4D80 Software specially designed for the development, production, or use of items controlled by 4A80.**

**License Requirements***Reason for Control: CC*

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

**License Alternatives***License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**4D92 Software specially designed or modified for the development, production, or use of equipment controlled by 4B94 and materials controlled by 4C94.**

**License Requirements***Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**4D93 Program proof and validation software, software allowing the automatic generation of source codes, and operating systems not controlled by 4D03 that are specially designed for real time processing equipment.**

**License Requirements***Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled:**

\* \* \* \* \*

**4D94 Software specially designed for the development, production, or use of digital computers, assemblies, and related equipment therefor controlled by 4A94.**

**License Requirements***Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives***License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

E. Technology

**4E01 Technology according to the General Technology Note, for the development, production or use of equipment controlled by 4A01, 4A02, 4A03, or 4A04, or software controlled by 4D01, 4D02, or 4D03.**

**License Requirements***Reason for Control: NS, MT, CC, AT, SC*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology for the development, production or use of equipment or software controlled for MT reasons by 4A01, 4A02, 4A03, 4D01 or 4D02—MT Column 1

CC applies to technology for the development, production or use of computers controlled by 4A03 for CC reasons—CC Column 1

AT applies to entire entry—AT Column 1

SC (Supercomputer) controls apply to all destinations except Japan for technology for the development, production, or use of computers with a Composite Theoretical Performance equal to or exceeding 1500 Mtops. These controls do not relate directly to a licensing requirement, but rather what type of supercomputer support documentation (e.g., security plan) is required, conditions that may be placed on the license, and the licensing review policy the application will be subject to at the Bureau of Export Administration. Accordingly, no additional column is provided for purposes of identifying licensing requirements. (Reference § 742.12 for information on licensing review policies, required support documentation, security conditions and plans, and licensing policies.)

**License Alternatives***License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes, except MT and CC and except technology for supercomputers as defined in 742.12 (no supercomputer restriction for Japan)

*Special Comprehensive License: (To Be Determined in Final Rule)***List of Items Controlled**

\* \* \* \* \*

**4E02 Other technology.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**4E21 Technology for the development, production, or use of items controlled by 4A21.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**4E80 Technology for the development, production, or use of items controlled by 4A80.**

**License Requirements**

*Reason for Control: CC*

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**4E92 Technology for the development, production, or use of equipment controlled by 4B94, materials controlled by 4C94, or software controlled by 4D92, 4D93, or 4D94.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**4E93 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) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**4E94 Technology for the development, production, or use of digital computers, assemblies and related equipment therefor controlled by 4A94.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

*Category 5—Telecommunications and Information Security*

**Notice:** Category 5 entries are divided into three sections. (I) Telecommunication entries; (II) Information Security entries; and (III) Other Equipment, Materials and Software and Technology entries.

*I. Telecommunications*

A. Equipment, Assemblies and Components

**5A01 Any type of telecommunications equipment having any of the following characteristics, functions or features.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5A02 Telecommunication transmission equipment or systems and specially designed components and accessories therefor, having any of the characteristics, functions or features described in this entry.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry— AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: Yes

GBS: Yes, except 5A02.h and i

NSG: N/A

CIV: Yes, except 5A02.h and i

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5A03** Stored program controlled switching equipment and related signalling systems having any of the characteristics, functions or features described in this entry, and specially designed components and accessories therefor.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: Yes

GBS: Yes

NSG: N/A

CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5A04** Centralized network controls having the characteristics described in this entry.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: Yes

GBS: Yes

NSG: N/A

CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5A05** Optical fiber communication cables and optical fibers.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: Yes

NSG: N/A

CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5A06** Phased array antennas, operating above 10.5GHz containing active elements and distributed components, and designed to permit electronic control of beam shaping and pointing, except for landing systems with instruments meeting ICAO standards (microwave landing systems (MLS)).

**License Requirements**

*Reason For Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: Yes

GBS: Yes

NSG: N/A

CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

B. Test, Inspection and Production Equipment

**5B01** Equipment, and Specially designed components and accessories therefor, Specially designed for the development, production, or use of equipment, materials, or functions controlled by the entries in the telecommunications sections of Category 5 for national security reasons.

**License Requirements**

*Reason For Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: Yes

GBS: Yes

NSG: N/A

CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5B02** Other equipment.

**License Requirements**

*Reason For Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: Yes

GBS: Yes

NSG: N/A

CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

C. Materials

**5C01** Preforms of glass or of any other material optimized for the manufacture of optical fibers controlled by 5A05.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column

1

AT applies to entire entry—AT Column

1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: Yes

NSG: N/A

CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*



D. Software

5D01 Software specially designed or modified for the development, production or use of equipment or materials controlled by the telecommunications entries 5A01, 5A02, 5A03, 5A04, 5A05, 5A06, 5B01, 5B02, or 5C01.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: Yes
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

5D02 Software specially designed or modified to support technology controlled by telecommunications entries 5E01 and 5E02.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: Yes
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

5D03 Specific Software as described in this entry.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: Yes

TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

E. Technology

5E01 Technology according to the General Technology Note for the development, production or use (excluding operation) of equipment, systems, materials or software controlled by the telecommunications entries in 5A, 5B, 5C, or 5D.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

5E02 Specific technologies as described in this entry.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry— NS Column 1

AT applies to entire entry— AT Column 1

License Alternatives

License Exceptions

NSG: N/A
CIV: N/A
TSR: Yes, except Iran and Syria

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

II. Information Security

A. Equipment, Assemblies and Components

5A11 Systems, equipment, application specific "assemblies", modules or integrated circuits for "information security" as listed, and specially designed components therefor.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: Yes for Advisory Note 4 to Category 5—Information Security
NSG: N/A
CIV: Yes for Advisory Notes 4 and 5 to Category 5—Information Security

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

B. Test, Inspection and Production Equipment

5B11 Equipment specially designed for the development of equipment or functions controlled by the information security entries in this category, including measuring or test equipment.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

**5B12 Equipment designed for the production of equipment or functions controlled by the information security entries in this category, including measuring, test, repair or production equipment.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5B13 Measuring equipment specially designed to evaluate and validate the information security functions controlled by the information security entries in 5A or 5D.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

C. Materials

[Reserved]

D. Software

**5D11: Software specially designed or modified for the development, production or use of equipment controlled by Information Security entries 5A11, 5B11, 5B12 or 5B13 or software controlled by Information Security entries 5D11, 5D12, or 5D13.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- NSG: N/A
- CIV: Yes for Advisory Note 5 to Category 5—Information Security
- TSR: Yes for Advisory Note 5 to Category 5—Information Security

*Special Comprehensive License: (To Be determined in final rule)*

**List of Items Controlled**

\* \* \* \* \*

**5D12 Software specially designed or modified to support technology controlled by the information security entry 5E11.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- NSG: N/A
- CIV: N/A
- TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5D13 Specific software as follows:**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- NSG: N/A
- CIV: N/A
- TSR: Yes for software described in Advisory Note 5—Information Security, provided that the software is not controlled by the Office of Defense Trade Controls, Department of State

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

E. Technology

**5E11 Technology according to the General Technology Note for the development, production or use of equipment controlled by information security entries 5A11, 5B11, 5B12, or 5B13 or software controlled by information security entries 5D11, 5D12, or 5D13.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- NSG: N/A
- CIV: N/A
- TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

*III. Other Equipment, Materials, "Software", and Technology*

A. Equipment, Assemblies and Components

**5A20 Telemetry and telecontrol equipment usable as launch support equipment for unmanned air vehicles or rocket system.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A

GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5A80 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.

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5A90 Any type of telecommunications equipment, not controlled by 5A01, specially desinged to operate outside the temperature range from 219D (- 54°C) to 397K (124°C).**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5A91 Transmission equipment, not controlled by 5A02, containing:**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5A92 Mobile communications equipment, n.e.s., and assemblies and components therefor.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5A93 Radio relay communications equipment designed for use at frequencies equal to or exceeding 19.7 GHz and assemblies and components therefor, n.e.s.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5A94 Data (message) switching equipment or systems designed for packet-mode operation and assemblies and components therefor, n.e.s.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5A95 Information security equipment, n.e.s.; (e.g., cryptographic, cryptanalytic, and cryptologic equipment, n.e.s.), and components therefor.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

B. Test, Inspection and Production Equipment

**5B94 Telecommunications test equipment, n.e.s.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$1,000 for Syria; N/A to Iran  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

C. Materials

[Reserved]

D. Software

**5D20 Software designed or modified for the development, production or use of items controlled by 5A20.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
 CIV: N/A  
 TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5D90 Software specially designed or modified for the development, production, or use of equipment controlled by 5A90 and 5A91.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

NSG: N/A  
 CIV: N/A  
 TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5D91 Software specially designed or modified for the development, production, or use of telecommunications test equipment controlled by 5B94.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
 CIV: N/A  
 TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5D92 Software specially designed or modified for the development, production or use of mobile communications equipment controlled by 5A92.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
 CIV: N/A  
 TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5D93 Software specially designed or modified for the development, production or use of radio relay communication equipment controlled by 5A93.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
 CIV: N/A  
 TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5D94 Software specially designed or modified for the development, production or use of data (message) switching equipment controlled by 5A94.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
 CIV: N/A  
 TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5D95 Software, n.e.s., specially designed or modified for the development, production, or use of information security or cryptologic equipment (e.g., equipment controlled by 5A95).**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

NSG: N/A  
 CIV: N/A  
 TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

E. Technology

**5E20 Technology for the development, production or use of equipment or software controlled by 5A20 or 5D20.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
 CIV: N/A  
 TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5E90** Technology for the development, production or use of equipment controlled by 5A90 or 5A91 or software controlled by 5D90.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5E91** Technology for the development, production, or use of telecommunications test equipment controlled by 5B94, or software controlled by 5D91.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5E92** Technology for the development, production, or use of mobile communications equipment controlled by 5A92 or software controlled by 5D92.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5E93** Technology for the development, production, or use of radio relay communication equipment controlled by 5A93, or software controlled by 5D93.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5E94** Technology for the development, production or use of data (message) switching equipment controlled by 5A94, or software controlled by 5D94.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**5E95** Technology, n.e.s., for the development, production, or use of information security or cryptologic equipment (e.g., equipment controlled by 5A95), or software controlled by 5D95.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

*Category 6—Sensors*

A. Equipment, Assemblies and Components

**6A01 Acoustics.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$3000  
CSR: Yes  
GBS: Yes for 6A01.a.1.b.4 (see Advisory Note 1.2 to Category 6—Sensors)  
NSG: N/A  
CIV: Yes for 6A01.b

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A02 Optical Sensors.**

**License Requirements**

*Reason for Control: NS, MT, CC, RS, AT, UN*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to optical detectors in 6A02.a.1, a.3, and a.4 that are specially designed or rated as electromagnetic (including "lasers") and ionized-particle radiation resistant—MT Column 1

RS applies to 6A02.a.1, a.2, a.3 and .c—RS Column 1

CC applies to police-model infrared viewers in 6A02.c—CC Column 1

AT applies to entire entry—AT Column 1

UN applies to 6A02.a.1, a.2, a.3 and c—UN Column 1

**License Alternatives**

*License Exceptions*

LVS: \$3000, except N/A for 6A02.a.1, a.2, a.3, and c  
CSR: Yes, except MT, RS, and CC  
GBS: N/A  
NSG: N/A

CIV: Yes, except MT, RS and CC for 6A02a.4 and items in Advisory Notes 2.2 and 2.3 to Category 6—Sensors

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A03 Cameras.**

**License Requirements**

*Reason for Control* NS, NP, RS, AT, UN

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to items controlled in paragraphs 6A03.a.2, a.3, a.4, a.5 and b.1—NP Column 1

RS applies to items controlled in 6A03.b.3 and b.4—RS Column 1

AT applies to entire entry—AT Column 1

UN applies to items controlled in 6A03.b.3 and b.4—UN Column 1

**License Alternatives**

*License Exceptions*

LVS: \$1500, except N/A for 6A03.a.2 through a.5, b.1, b.3 and b.4

CSR: Yes, except NP and RS

GBS: N/A

NSG: Yes, except Bulgaria, Romania, or Russia, for NP only

CIV: Yes for 6A03a.1 and items in Advisory Note 3.2 to Category 6—Sensors

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A04 Optics.**

**License Requirements**

*Reason for Control*: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes

GBS: Yes for 6A04a.1, a.2, a.4, b, d.1.a, e.2 and e.4 (see Advisory Note 4.2 to Category 6—Sensors)

NSG: N/A

CIV: Yes for 6A04.f and items in Advisory Note 4.2 to Category 6—Sensors

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A05 Lasers, components and optical equipment, as follows.**

**License Requirements**

*Reason for Control*: NS, NP, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

NP applies to 6A05.a.1.c, a.2.a, a.4.c, a.6 (argon lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, and d.2.c—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A for NP items; \$3000 for all other items

CSR: Yes, except NP

GBS: Yes, except NP, for items in Advisory Notes 5.3 and .4 to Category 6—Sensors

NSG: Yes, except Bulgaria, Romania, or Russia, for NP only

CIV: Yes, except NP for 6A05.c.2.a, d, e and for items in Advisory Notes [5.2], 5.3 and 5.4 to Category 6—Sensors

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A06 Magnetometers, magnetic gradiometers, intrinsic magnetic gradiometers and compensation systems and specially designed components.**

**License Requirements**

*Reason for Control*: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$1500

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A07 Gravity meters (gravimeters) and gravity gradiometers.**

**License Requirements**

*Reason for Control*: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to 6A07.b and c when the characteristics of 6A07.b are exceeded—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes, except MT

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A08 Radar systems, equipment and assemblies having any of the following characteristics, and specially designed components therefor.**

**License Requirements**

*Reason for Control*: NS, MT, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to items that are designed for airborne applications and that are usable in systems controlled for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: Yes, except MT

GBS: N/A

NSG: N/A

CIV: Yes, except MT for 6A08.b, c, and l.1

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A18 Magnetic, pressure, and acoustic underwater detection devices specially designed for military purposes and controls and components therefor.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$5000
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A22 Photosensitive components not controlled by ECCN 6A02**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$3000
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A28 Radar and laser radar systems (including altimeters), and specially designed components for airborne applications.**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$5000
- CSR: N/A

GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A29 Precision tracking systems.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$5000
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A30 Integrated electronic systems specially designed for radar cross section measurement.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$3000
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A43 Cameras and components not controlled by ECCN 6A03.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions:*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A44 Photomultiplier tubes.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A50 Lasers, laser amplifiers, and oscillators.**

**License Requirements**

*Reason for Control: NP, AT*

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: Yes
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A90** Airborne radar equipment, n.e.s., and specially designed components therefor.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A92** Gravity meters (gravimeters) not controlled by 6A07.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A93** "Magnetometers" having a "noise level" (sensitivity) lower (better) than 1.0 nT rms per square root Hz, but no lower than 0.05 nT rms per square root Hz.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6A94** 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) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

LVS: N/A  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

B. Test, Inspection and Production Equipment

**6B04** Optics.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5,000  
CSR: Yes  
GBS: Yes for Advisory Note 4.3 to Category 6—Sensors  
NSG: N/A  
CIV: Yes for Advisory Note 4.3 to Category 6—Sensors

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6B05** Lasers.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5,000  
CSR: Yes  
GBS: N/A  
NSG: N/A  
CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6B07** Gravimeters.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000  
CSR: Yes  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6B08: Radar.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions:*

LVS: \$5000  
CSR: Yes  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*



C. Materials

6C02 Optical sensors.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: \$3000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: Yes for 6C02.c

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

6C04 Optics.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: \$1500

CSR: Yes

GBS: Yes for Advisory Note 4.2 to Category 6—Sensors

NSG: N/A

CIV: Yes for 6C04.h and Advisory Note 4.2 to Category 6—Sensors

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

6C05 Lasers.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: \$1500

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

D. Software

6D01 Software specially designed for the development or production of equipment controlled by 6A04, 6A05, 6A08, or 6B08.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and County Chart

NS applies to entire entry—NS Column 1

MT applies to software for the development or production of equipment controlled by 6A08 that is designed for airborne applications and that are usable in systems controlled for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions:

NSG: N/A

CIV: N/A

TSR: Yes, except MT

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

6D02 Software specially designed for the use of equipment controlled by 6A02.b, 6A08, or 6B08.

License Requirements

Reason for Control: NS, MT, AT

Control(s) and County Chart

NS applies to entire entry—NS Column 1

MT applies to software for the use of equipment controlled by 6A08 that is designed for airborne applications and that are usable in systems controlled for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions:

NSG: N/A

CIV: N/A

TSR: Yes, except MT

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

6D03 Other software, as follows.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: Yes for 6D03.d.1 and Advisory Note 8.2 to Category 6—Sensors

TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

6D21 Software specially designed for the development or production of equipment controlled by 6A02.a.1, a.2, a.3, a.4, c, 6A03.b.3, b.4, 6A22, 6A07.b and .c, 6A28 or 6A30.

License Requirements

Reason for Control: MT, RS, AT, UN

Control(s) and Country Chart

MT applies to software for the development or production of equipment controlled by 6A02.a.1, a.3, and a.4, 6A07.b and c, 6A22, 6A28, or 6A30—MT Column 1

RS applies to software for the development or production of equipment controlled by 6A02.a.1, a.2, a.3, c, 6A03.b.3 and b.4—RS Column 1

AT applies to entire entry—AT Column 1

UN applies to software for the development or production of equipment controlled by 6A02.a.1, a.2, a.3, c, 6A03.b.3 and b.4—UN Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

**6D22** Software specially designed for the use of equipment controlled by 6A02.a.1, a.3, and a.4, 6A22, 6A07.b and .c, 6A28, or 6A30.

**License Requirements**

*Reason for Control:* MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6D29** Software for the development, production, or use of commodities described in 6A29, including software that processes post-flight recorded data enabling determination of vehicle position throughout its flight path.

**License Requirements**

*Reason for Control:* MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6D90** Software specially designed for the development, production, or use of airborne radar equipment controlled by 6A90.

**License Requirements**

*Reason for Control:* AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6D92** Software specially designed for the development, production, or use of gravity meters (gravimeters) controlled by 6A92.

**License Requirements**

*Reason for Control:* AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6D93** Software specially designed for the development, production, or use of magnetometers controlled by 6A93.

**License Requirements**

*Reason for Control:* AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6D94** Software specially designed for the development, production, or use of marine or terrestrial acoustic equipment controlled by 6A94.

**License Requirements**

*Reason for Control:* AT

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

E. Technology

**6E01** Technology according to the General Technology Note for the development of equipment, materials or software controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, 6C05, 6D01, 6D02, or 6D03.

**License Requirements**

*Reason for Control:* NS, MT, NP, RS, CC, AT, UN

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology for the development of equipment controlled by 6A02.a.1, a.3, or a.4, 6A07.b or .c, or 6A08 (only when the equipment is designed for airborne applications and that are usable in systems controlled for MT reasons—MT Column 1

NP applies to technology for the development of equipment controlled by 6A03.a.2, a.3, a.4, a.5, or b.1, or 6A05.a.1.c, a.2.a, a.4.c, a.6 (argon ion lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, or d.2.c.—NP Column 1

RS applies to technology for the development of items controlled by 6A02.a.1, a.2, a.3, or .c, and 6A03.b.3 and b.4—RS Column 1

AT applies to entire entry—AT Column 1

CC applies to technology for the development of police-model infrared viewers controlled by 6A02.c—CC Column 1

UN applies to technology for the development of items controlled by 6A02.a.1, a.2, a.3, or .c, and 6A03.b.3 and b.4—UN Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes, except Bulgaria, Romania, or Russia, for NP only

CIV: N/A

TSR: Yes, except MT, NP, RS, AT, CC, UN

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

6E02 Technology according to the General Technology Note for the production of equipment or materials controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, or 6C05.

License Requirements

Reason for Control: NS, MT, NP, RS, AT, CC, UN

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology for the production of equipment controlled by 6A02.a.1, a.3, or a.4, 6A07.b or .c, or 6A08 when the equipment is designed for airborne applications that are usable in systems controlled for MT reasons—MT Column 1

NP applies to technology for the production of equipment controlled by 6A03.a.2, a.3, a.4, a.5, or b.1, or 6A05.a.1.c, a.2.a, a.4.c, a.6 (argon ion lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, or d.2.c.—NP Column 1

RS applies to technology for the production of items controlled by 6A02.a.1, a.2, a.3, or .c—RS Column 1

AT applies to entire entry—AT Column 1

CC applies to technology for the production of police-model infrared viewers controlled by 6A02.c—CC Column 1

UN applies to technology for the development of items controlled by 6A02.a.1, a.2, a.3, or c and 6A03.b.3 or b.4—UN Column 1

License Alternatives

License Exceptions

NSG: Yes, except Bulgaria, Romania, or Russia, for NP only

CIV: N/A

TSR: Yes, except MT, NP, RS, AT, CC, UN

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

6E03 Other technology.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: Yes

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

6E21 Technology for the development of equipment controlled by 6A22, 6A28, 6A29, or 6A30.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

6E22 Technology for the production of equipment controlled by 6A22, 6A28, 6A29, or 6A30.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

6E23 Technology for the use of equipment controlled by 6A02.a.1, a.3, and a.4, 6A22, 6A07.b and .c, 6A08, 6A28, 6A29, or 6A30.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to technology for use of items controlled by 6A02.a.1, a.3, and a.4, 6A22, 6A07.b and .c, 6A28, 6A29, 6A30, or items controlled by 6A08 when the equipment is designed for airborne applications that are usable in systems controlled for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

6E40 Technology for the use of equipment controlled by 6A03.a.2, a.3, a.4, a.5, or b.1 or 6A05.a.1.c, a.2.a, a.4.c, a.6 (argon ion lasers only), a.7.b, c.1.b, c.2.c.2, c.2.c.3, c.2.d.2, or d.2.c.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

NSG: Yes

CIV: N/A

TSR: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

6E41 Technology for the development, production, or use of equipment controlled by 6A43, 6A44, or 6A50.

License Requirements

Reason for Control: NP, AT

Control(s) and Country Chart

NP applies to entire entry—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: Yes  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6E90 Technology for the development, production, or use of airborne radar equipment controlled by 6A90.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6E92 Technology for the development, production, or use of gravity meters (gravimeters) controlled by 6A92.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6E93 Technology for the development, production, or use of magnetometers controlled by 6A93.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**6E94 Technology for the development, production, or use of marine or terrestrial acoustic equipment controlled by 6A94.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

*Category 7—Navigation and Avionics*

A. Equipment, Assemblies, and Components

**7A01 Accelerometers designed for use in inertial navigation or guidance systems and having any of the following characteristics, and specially designed components therefor.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry except accelerometers that are specially designed and developed as Measurement While Drilling (MWD) Sensors for use in downhole well service applications—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7A02 Gyros having any of the following characteristics, and specially designed components therefor.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

LVS: \$5000  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7A03 Inertial navigation systems and inertial equipment for aircraft and specially designed components therefor.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

LVS: \$5000  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7A04 Gyro-astro compasses, and other devices that 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; and specially designed components therefor.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

LVS: \$5000  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7A06** Airborne altimeters operating at frequencies other than 4.2 to 4.4 GHz inclusive and specially designed components therefor, having either of the following characteristics.

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

LVS: \$5000  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7A21** Accelerometers, designed for use in inertial navigation systems or in guidance systems of all types, having the characteristics of either 7A21.a or 7A21.b; and specially designed components therefor.

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry except accelerometers that are specially designed and developed as Measurement While Drilling (MWD) Sensors for use in downhole well service applications—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7A22:** Gyros of all types, 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) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7A23** Inertial or other equipment using accelerometers or gyros described in 7A21 or 7A22, and systems incorporating such equipment; and specially designed components therefor.

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7A24** Other gyro-astro compasses and other devices, and specially designed components therefor.

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7A26** Avionics equipment and components usable in missile systems.

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000  
CSR: N/A  
GBS: N/A  
NSG: N/A  
CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7A27** Airborne passive sensors for determining bearing to specific electromagnetic sources (direction finding equipment) or terrain characteristics.

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7A94 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems, and other avionic equipment, including parts and components, n.e.s.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

B. Test, Inspection and Production Equipment

**7B01 Test, calibration or alignment equipment specially designed for equipment controlled by 7A, for national security reasons except equipment for Maintenance Level I or Maintenance Level II.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

LVS: \$3000  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7B02 Equipment, as follows, specially designed to characterize mirrors for ring laser gyros.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

LVS: \$3000  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7B03 Equipment specially designed for the production of equipment controlled by 7A for national security reasons, and specially designed components therefor, including:**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

LVS: \$3000  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7B22 Reflectometers and specially designed test, calibration, and alignment equipment and production equipment and specially designed components therefor, for the production of items controlled by 7A or 7B for national security or missile technology reasons and specially designed components therefor.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$3000  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7B94 Other equipment for the test, inspection, or production of navigation and avionics equipment.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

C. Materials

[Reserved]

D. Software

**7D01 Software specially designed or modified for the development or production of equipment controlled by 7A or 7B for national security reasons.**

**License Requirements**

*Reason for Control: NS, MT, RS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to entire entry—MT Column 1  
RS applies to software for the development or production 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 Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7D02 Source code for the use of any inertial navigation equipment or Attitude Heading Reference Systems (AHRS) (except gimbaled AHRS) including inertial equipment not controlled by 7A03 or 7A04.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7D03 Other software, as follows.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7D24 Software specially designed for the development, production, or use of commodities controlled by 7A21, 7A22, 7A23, 7A24, 7A25, 7A26, and 7A27, 7B01, 7B02, 7B03, and 7B22 for missile technology reasons.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1  
AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7D94 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) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

E. Technology

**7E01 Technology according to the General Technology Note for the development of equipment or software controlled by 7A, 7B, or 7D for national security reasons.**

**License Requirements**

*Reason for Control: NS, MT, RS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1  
MT applies to entire entry—MT Column 1

RS applies to technology for the development 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 Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**7E02 Technology according to the General Technology Note GTN for the production of equipment controlled by 7A or 7B for national security reasons.**

**License Requirements**

*Reason for Control: NS, MT, RS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1  
MT applies to entire entry—MT Column 1  
RS applies to technology for the production 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 Alternatives**

*License Exceptions*

NSG: N/A  
CIV: N/A  
TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled:**

\* \* \* \* \*

**7E03 Technology according to the General Technology Note (GTN) for the repair, refurbishing or overhaul of equipment controlled by 7A01 to 7A04, except for maintenance technology directly associated with calibration, removal or replacement of damaged or unserviceable line replaceable units (LRU) and shop replaceable units (SRA) of a civil aircraft as described in Maintenance Level I or Maintenance Level II.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives

##### License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

#### List of Items Controlled

\* \* \* \* \*

#### 7E04 Other technology.

#### License Requirements

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives

##### License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

#### List of Items Controlled

\* \* \* \* \*

**7E21 Other technology for the development, production or use of equipment or software controlled by 7A, 7B, or 7D controlled for national security or missile technology reasons.**

#### License Requirements

*Reason for Control: MT, RS, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

RS applies to development—RS Column 1 or production 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 Alternatives

##### License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

#### List of Items Controlled

\* \* \* \* \*

**7E22 Design technology for protection of avionics and electrical subsystems against electromagnetic pulse (EMP) and electromagnetic interference (EMI) hazards from external sources.**

#### License Requirements

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

#### License Alternatives

##### License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

#### List of Items Controlled

\* \* \* \* \*

**7E94 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) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

#### License Alternatives

##### License Exceptions

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

#### List of Items Controlled

\* \* \* \* \*

#### Category 8—Marine Technology

A. Equipment, Assemblies and Components

**8A01 Submersible vehicles or surface vessels.**

#### License Requirements

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

#### License Alternatives

##### License Exceptions

LVS: \$5000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

#### List of Items Controlled

\* \* \* \* \*

#### 8A02 Systems or equipment.

#### License Requirements

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

#### License Alternatives

##### License Exceptions

LVS: \$5000

CSR: Yes

GBS: Yes for 8A02.i.2 (see Advisory Note 2 to Category 8—Marine Technology)

NSG: N/A

CIV: Yes for 8A02.e.2 and Advisory Note 2 to Category 8—Marine Technology

*Special Comprehensive License: (To Be Determined in Final Rule)*

#### List of Items Controlled

\* \* \* \* \*

#### 8A18 Commodities on the International Munitions List.

#### License Requirements

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

#### License Alternatives

##### License Exceptions

LVS: \$5000

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

#### List of Items Controlled

\* \* \* \* \*



**8A92 Other underwater camera equipment, n.e.s., other submersible systems, n.e.s.; and specially designed parts therefor.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**8A93 Self-contained underwater breathing apparatus (scuba gear) and related equipment.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**8A94 Boats, n.e.s., including inflatable boats, marine engines (both inboard and outboard) and submarine engines, n.e.s.; and specially designed parts therefor, n.e.s.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**B. Test, Inspection and Production Equipment**

**8B01 Water tunnels, having a background noise of less than 100 dB (reference 1 microPascal, 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) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$3000
- CSR: Yes
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**C. Materials**

**8C01 Syntactic foam for underwater use.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: Yes
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**D. Software**

**8D01: Software specially designed or modified for the development, production or use of equipment or materials controlled by 8A01, 8A02, 8A18, 8B01, or 8C01.**

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- NSG: N/A
- CIV: N/A
- TSR: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**8D02 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) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- NSG: N/A
- CIV: N/A
- TSR: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**8D92 Software specially designed or modified for the development, production or use of commodities controlled by 8A92.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- NSG: N/A
- CIV: N/A
- TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**8D93** Software specially designed or modified for the development, production or use of commodities controlled by 8A93 and 8A94.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

E. Technology

**8E01** Technology according to the General Technology Note for the development or production of equipment or materials controlled by 8A01, 8A02, 8A18, 8B01, or 8C01.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**8E02** Other technology

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**8E92** Technology for the development, production or use of commodities controlled by 8A92.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**8E93** Technology for the development, production or use of commodities controlled by 8A93 and 8A94.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

*Category 9—Propulsion Systems and Transportation Equipment*

A. Equipment, Assemblies and Components

**9A01** Aero gas turbine engines incorporating any of the technologies controlled by 9E03.a and described in this entry.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9A02** Marine gas turbine engines with an ISO standard continuous power rating of 24,245 kW or more and a specific fuel consumption of less than 0.219 kg/kW-hr at any point in the power range from 35 to 100 percent, and specially designed assemblies and components therefor.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: Yes

GBS: Yes for Advisory Note 2 to Category 9—Propulsion Systems and Transportation Equipment

NSG: N/A

CIV: Yes for Advisory Note 2 to Category 9—Propulsion Systems and Transportation Equipment

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

9A03 Specially designed assemblies and components, incorporating any of the technologies controlled by 9E03.a for gas turbine engine propulsion systems.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: \$5000
CSR: Yes
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

9A04 Spacecraft (not including their payloads) and specially designed components therefor.

License Requirements

Reason for Control: NS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

9A18 Commodities on the International Munitions List.

License Requirements

Reason for Control: NS, RS, AT

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

RS applies to 9A18.a and b—RS Column 2

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

LVS: \$1500

CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

9A21 Gas turbine aero engines not controlled by 9A01, uncertified or certified, having both a maximum thrust value greater than 1000N (achieved un-installed), excluding civil certified engines with a maximum thrust value greater than 8,890N (achieved un-installed), and specific fuel consumption of 0.13kg/N/hr or less (at sea level static and standard conditions).

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: \$5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

9A22 Vehicles designed or modified for transport or handling of missile systems.

License Requirements

Reason for Control: MT, UN, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

UN applies to entire entry—UN Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: N/A
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

9A23 Liquid or slurry propellant control systems, pumps and servo valves therefor, and specially designed components therefor.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: \$1000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

9A24 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.

License Requirements

Reason for Control: MT, AT

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

License Alternatives

License Exceptions

- LVS: \$5000
CSR: N/A
GBS: N/A
NSG: N/A
CIV: N/A

Special Comprehensive License: (To Be Determined in Final Rule)

List of Items Controlled

\* \* \* \* \*

9A80 Nonmilitary mobile crime science laboratories; and parts and accessories, n.e.s.

License Requirements

Reason for Control: CC

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

License Alternatives

License Exceptions

LVS: N/A

CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9A90 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°); pressurized aircraft breathing equipment, n.e.s.; and specially designed parts therefor, n.e.s.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9A91 Other aircraft and certain gas turbine engines.**

**License Requirements**

*Reason for Control: AT, UN*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

UN applies to 9A91.a—UN Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9A92 Off highway wheel tractors of carriage capacity at (10 tons) or more; and parts and accessories, n.e.s.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9A93 On-Highway tractors, with single or tandem rear axles rated for 9t (20,000 lbs.) or greater and specially designed parts.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9A94 Aircraft parts and components, n.e.s.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

B. Test, Inspection and Production Equipment

**9B01 Specially designed equipment, tooling or fixtures, as follows, for manufacturing or measuring gas turbine blades, vanes or tip shroud castings.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to equipment for test, inspection and production of small lightweight turbine engines described in 9A21—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000  
 CSR: Yes, except MT  
 GBS: N/A  
 NSG: N/A  
 CIV: Yes, except MT for 9B01.a, b, f and h

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B02 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 9E03.a.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

LVS: \$3000  
 CSR: N/A  
 GBS: N/A  
 NSG: N/A  
 CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B03** Equipment specially designed for the production or test of gas turbine brush seals designed to operate at tip speeds exceeding 335 m/s, and specially designed parts or accessories.

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

LVS: \$5000

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B04** Tools, dies or fixtures for the solid state joining of gas turbine superalloy or titanium components.

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

LVS: \$3000

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B05** On-line (real-time) control systems, instrumentation (including sensors) or automated data acquisition and processing equipment, specially designed for use with wind tunnels or devices.

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: N/A

GBS: N/A

NSG: N/A

CIV: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B06** Specially designed acoustic vibration test equipment capable of producing sound pressure levels of 160 dB or more, (reference to 20 micropascals) with a rated output of 4 kW or more at a test cell temperature exceeding 1273 K (1000°C), and specially designed transducers, strain gauges, accelerometers, thermocouples or quartz heaters therefor.

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to vibration test equipment only—MT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$3000

CSR: Yes, except MT

GBS: N/A

NSG: N/A

CIV: Yes, except MT

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B07** 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) and 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 Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B08** Transducers specially designed for the direct measurement of the wall skin friction of the test flow with a stagnation temperature exceeding 833k (560 °C)

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

LVS: \$5000

CSR: Yes

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B09** 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) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$5000
- CSR: Yes
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B21 Specially designed production facilities and production equipment for the systems, sub-systems, and components in "missile" systems.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$5000
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B25 Wind tunnels for speeds of Mach 0.9 or more related control systems, instrumentation (including sensors) or automated data acquisition and processing equipment.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$5000
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B26 Other vibration test equipment, as follows.**

**License Requirements**

*Reason for Control: MT, NP, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

NP applies to 9B26.a—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$3000
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B27 Test benches or stands that have the capacity to handle solid or liquid propellant rockets or rocket motors of more than 90 KN (20,000 lbs.) of thrust, or that are capable of simultaneously measuring the three axial thrust components.**

**License Requirements**

*Reason for Control: MT, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$5000
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9B94 Vibration test equipment and specially designed parts and components, n.e.s.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

C. Materials

[Reserved]

D. Software

**9D01 Software required for the development of equipment controlled by 9A01, 9A02, 9A03, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09, or technology controlled by 9E03.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software required for the development of items controlled by 9B02, 9B03, 9B04, 9B06, 9B07, and equipment for test, inspection and production of items controlled by 9A21 for for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- NSG: N/A
- CIV: N/A
- TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9D02 Software required for the production of equipment controlled by 9A01, 9A02, 9A03, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08 or 9B09.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software required for the production of items controlled by 9B02, 9B03, 9B04, 9B06, 9B07, and equipment for test, inspection and production of items controlled by 9A21 for for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9D03 Software required for the use of full authority digital electronic engine controls (FADEC) for propulsion systems controlled by 9A01, 9A02 or 9A03, or equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08 or 9B09.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to software required for the use of FADEC for gas turbine aero engines controlled by 9B21—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9D04 Other software.**

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and 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 Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9D18 Software for the development, production, or use of equipment controlled by 9A18.**

**License Requirements**

*Reason for Control: NS, RS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

RS applies to 9A18.a and b—RS Column 2

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes for Australia, Japan, New Zealand, and NATO only

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9D24 Software specially designed or modified for the development, production, or use of propulsion systems and equipment controlled by 9A21, 9A22, 9A23, 9A24, 9B21, 9B25, 9B26, or 9B27, and software, n.e.s., specially designed or modified for use of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07.**

**License Requirements**

*Reason for Control: MT, NP, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

NP applies to software for the development, production or use of vibration test equipment and feedback

or closed loop test equipment controlled by 9B26.a—NP Column 1  
AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9D90 Software, n.e.s., for the development or production of diesel engines and pressurized aircraft breathing equipment controlled by 9A90.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9D91 Software, n.e.s., for the development or production of aircraft and aero gas turbine engines controlled by 9A91 or aircraft parts and components controlled by 9A94.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9D93** Software for the production or development of off-highway wheel tractors controlled by 9A92 or on-highway tractors controlled by 9A93.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9D94** Software for the development, production, or use of equipment controlled by 9B94.

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

E. Technology

**9E01** Technology according to the General Technology Note for the development of equipment controlled by 9A01.c, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09 or software controlled by 9D01, 9D02, 9D03, or 9D04.

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology according to the General Technology Note for the development of equipment controlled by 9B02, 9B03, 9B04, 9B06, and 9B07, and software controlled by 9D01, 9D02, 9D03, and 9D04 for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9E02** Technology according to the General Technology Note for the production of equipment controlled by 9A01.c or 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09.

**License Requirements**

*Reason for Control: NS, MT, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

MT applies to technology according to the General Technology Note for the development of equipment controlled by 9B02, 9B03, 9B04, 9B06, and 9B07, and software controlled by 9D01, 9D02, 9D03, and 9D04 for MT reasons—MT Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9E03** Other technology, as follows:

**License Requirements**

*Reason for Control: NS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9E18** Technology for the development, production, or use of equipment controlled by 9A18.

**License Requirements**

*Reason for Control: NS, RS, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

RS applies to 9A18.a and b—RS Column 2

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes for Australia, Japan, New Zealand, and NATO only

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9E21** Technology for the development, production or use of equipment controlled by 9A21, 9A22, 9A23, 9A24, 9B21, 9B25, 9B26, or 9B27, or software controlled by 9D24, and technology for the use of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07.

**License Requirements**

*Reason for Control: MT, NP, AT*

Control(s) and Country Chart

MT applies to entire entry—MT Column 1

NP applies to technology for the development, production, or use of vibration test equipment and feedback or closed loop test equipment controlled by 9B26.a.—NP Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*



**9E90 Technology, n.e.s., for the development, production, or use of diesel engines and pressurized aircraft breathing equipment controlled by 9A90.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 2

**License Alternatives**

*License Exceptions*

- NSG: N/A
- CIV: N/A
- TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9E91 Technology, n.e.s., for the development, production, or use of aircraft and aero gas turbine engines controlled by 9A91 or aircraft parts and components controlled by 9A94.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- NSG: N/A
- CIV: N/A
- TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9E93 Technology for the development, production, or use of off-highway wheel tractors controlled by 9A92 or on-highway tractors controlled by 9A93.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- NSG: N/A
- CIV: N/A
- TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**9E94 Technology for development, production, or use of vibration test equipment controlled by 9B94.**

**License Requirements**

*Reason for Control: AT*

Control(s) and Country Chart

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- NSG: N/A
- CIV: N/A
- TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

*Category 0—Miscellaneous*

A. Equipment, Assemblies and Components

**0A18 Items on the International Munitions List.**

**License Requirements**

*Reason for Control: NS, RS, UN, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

RS applies to 0A18.c—RS Column 2

UN applies to entire entry—UN Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

- LVS: \$5000 for 0A18.a and b; \$3000 for 0A18.c; \$1500 for 0A18.d through f
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**0A80 Horses by sea.**

**License Requirements**

*Reason for Control: SS*

Control(s)

SS applies to entire entry. For licensing requirements, please turn to part 754 of this subchapter. The country chart is not designed to determine licensing requirements for items controlled for SS reasons.

**List of Items Controlled**

\* \* \* \* \*

**0A82 Saps; thumbcuffs, thumbscrews, leg irons, shackles, and handcuffs; specially designed implements of torture; straight jackets, plastic handcuffs, police helmets and shields; and parts and accessories, n.e.s.**

**License Requirements**

*Reason for Control: CC*

Control(s) and Country Chart

CC applies to entire entry—CC Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**0A84 Shotguns, barrel length 18 inches (45.72 cm) inches or over; buckshot shotgun shells; and discharge type arms (for example, stun guns, shock batons, electric cattle prods, immobilization guns and projectiles, etc.) 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., including optical sighting devices for firearms.**

**License Requirements**

*Reason for Control: CC, UN*

Control(s) and Country Chart

CC applies to 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 shotguns with a barrel length over 24 in. (60.96 cm), regardless of end-user—CC Column 2

CC applies to 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—UN Column 1

**License Alternatives**

*License Exceptions*

- LVS: N/A
- CSR: N/A
- GBS: N/A
- NSG: N/A
- CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**0A86 Shotgun shells, except buckshot shotgun shells, and parts.**

**License Requirements**

*Reason for Control: UN*

Control(s) and Country Chart

UN applies to entire entry—UN Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**0A88 Conventional military steel helmets as described by 0A18.f.1; and machetes.**

**License Requirements**

*Reason for Control: UN*

Control(s) and Country Chart

UN applies to entire entry—UN Column 1

**License Alternatives**

*License Exceptions*

LVS: N/A

CSR: N/A

GBS: N/A

NSG: N/A

CIV: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

B. Test, Inspection and Production Equipment

[Reserved]

C. Materials

[Reserved]

D. Software

[Reserved]

E. Technology

**0E18 Technology for the development, production, or use of items controlled by 0A18.b through 0A18.e.**

**License Requirements**

*Reason for Control: NS, RS, UN, AT*

Control(s) and Country Chart

NS applies to entire entry—NS Column 1

RS applies to technology for the development, production or use of items controlled by 0A18.c for RS reasons—RS Column 2

UN applies to entire entry—UN Column 1

AT applies to entire entry—AT Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: Yes

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**0E84 Technology for the development or production of shotguns controlled by 0A84 and shotgun shells.**

**License Requirements**

*Reason for Control: CC, UN*

Control(s) and Country Chart

CC applies to technology for the development or production of 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 the development or production of shotguns with a barrel length over 24 in. (60.96 cm), regardless of end-user—CC Column 2

CC applies to technology for the development or production of 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—UN Column 1

**License Alternatives**

*License Exceptions*

NSG: N/A

CIV: N/A

TSR: N/A

*Special Comprehensive License: (To Be Determined in Final Rule)*

**List of Items Controlled**

\* \* \* \* \*

**Supplement No. 2 to Part 774—General Technology and Software Notes (To Be Included With Publication of Final Rule)**

**Supplement No. 3 to Part 774—Definitions to the Commerce Control List (To Be Included With Publication of Final Rule)**

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