

PART 770
INTERPRETATIONS

Sec.	Page
770.1 Introduction	1
770.2 Item interpretations	1
770.3 Interpretations related to exports of technology and software to destinations in Country Group D:1	9

§770.1

INTRODUCTION

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part provides commodity, technology, and software interpretations. These interpretations clarify the scope of controls where such scope is not readily apparent from the Commerce Control List (CCL) (see Supplement No. 1 to part 774 of the EAR) and other provisions of the Export Administration Regulations.

§770.2

ITEM INTERPRETATIONS

(a) Interpretation 1: Anti-friction bearing or bearing systems and specially designed parts

(1) Anti-friction bearings or bearing systems shipped as spares or replacements are classified under Export Control Classification Numbers (ECCNs) 2A001, 2A002, 2A003, 2A004, 2A005, and 2A006 (ball, roller, or needle-roller bearings and parts). This applies to separate shipments of anti-friction bearings or bearing systems and anti-friction bearings or bearing systems shipped with machinery or equipment for which they are intended to be used as spares or replacement parts.

(2) An anti-friction bearing or bearing system physically incorporated in a segment of a machine or in a complete machine prior to shipment loses its identity as a bearing. In this scenario, the machine or segment of machinery containing the bearing is the item subject to export control requirements.

(3) An anti-friction bearing or bearing system not incorporated in a segment of a machine prior to shipment, but shipped as a component of a complete unassembled (knocked-down) machine, is considered a component of a machine. In this

scenario, the complete machine is the item subject to export license requirements.

(b) Interpretation 2: Classification of “parts” of machinery, equipment, or other items

(1) **An assembled machine or unit of equipment is being exported.** In instances where one or more assembled machines or units of equipment are being exported, the individual component parts that are physically incorporated into the machine or equipment do not require a license. The license or general exception under which the complete machine or unit of equipment is exported will also cover its component parts, provided that the parts are normal and usual components of the machine or equipment being exported, or that the physical incorporation is not used as a device to evade the requirement for a license.

(2) **Parts are exported as spares, replacements, for resale, or for stock.** In instances where parts are exported as spares, replacements, for resale, or for stock, a license is required only if the appropriate entry for the part specifies that a license is required for the intended destination.

• *(c) Reserved*

(d) Interpretation 4: Telecommunications equipment and systems

Control equipment for paging systems (broadcast radio or selectively signalled receiving systems) is defined as circuit switching equipment in Category 5 of the CCL.

(e) Interpretation 5: Numerical control systems.

(1) **Classification of “Numerical Control” Units.** “Numerical control” units for machine tools, regardless of their configurations or architectures, are controlled by their functional

characteristics as described in ECCN 2B001.a. “Numerical control” units include computers with add-on “motion control boards”. A computer with add-on “motion control boards” for machine tools may be controlled under ECCN 2B001.a even when the computer alone without “motion control boards” is not subject to licensing requirements under Category 4 and the “motion control boards” are not controlled under ECCN 2B001.b.

(2) Export documentation requirement.

(i) When preparing a license application for a numerical control system, the machine tool and the control unit are classified separately. If either the machine tool or the control unit requires a license, then the entire unit requires a license. If either a machine tool or a control unit is exported separately from the system, the exported component is classified on the license application without regard to the other parts of a possible system.

(ii) When preparing the Shipper's Export Declaration (SED) or Automated Export System (AES) record, a system being shipped complete (i.e., machine and control unit), should be reported under the Schedule B number for each machine. When either a control unit or a machine is shipped separately, it should be reported under the Schedule B number appropriate for the individual item being exported.

(f) Interpretation 6: Parts, accessories, and equipment exported as scrap

Parts, accessories, or equipment that are being shipped as scrap should be described on the SED or AES record in sufficient detail to be identified under the proper ECCN. When commodities declared as parts, accessories, or equipment are shipped in bulk, or are otherwise not packaged, packed, or sorted in accordance with normal trade practices, the Customs Officer may require evidence that the shipment is not scrap. Such

evidence may include, but is not limited to, bills of sale, orders and correspondence indicating whether the commodities are scrap or are being exported for use as parts, accessories, or equipment.

(g) Interpretation 7: Scrap arms, ammunition, and implements of war

Arms, ammunition, and implements of war, as defined in the U.S. Munitions List, and are under the jurisdiction of the U.S. Department of State (22 CFR parts 120 through 130), except for the following, which are under the jurisdiction of the Department of Commerce:

(1) Cartridge and shell cases that have been rendered useless beyond the possibility of restoration to their original identity by means of excessive heating, flame treatment, mangling, crushing, cutting, or by any other method are “scrap”.

(2) Cartridge and shell cases that have been sold by the armed services as “scrap”, whether or not they have been heated, flame-treated, mangled, crushed, cut, or reduced to scrap by any other method.

(3) Other commodities that may have been on the U.S. Munitions List are “scrap”, and therefore under the jurisdiction of the Department of Commerce, if they have been rendered useless beyond the possibility of restoration to their original identity only by means of mangling, crushing, or cutting. When in doubt as to whether a commodity covered by the Munitions List has been rendered useless, exporters should consult the Directorate of Defense Trade Controls, U.S. Department of State, Washington, 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: Ground vehicles

(1) The U.S. Department of Commerce, Bureau of Industry and Security has export licensing jurisdiction over ground transport vehicles (including trailers), parts, and components therefor specially designed or modified for non-combat military use. Vehicles in this category are primarily transport vehicles designed or modified for transporting cargo, personnel and/or equipment, or to move other vehicles and equipment over land and roads in close support of fighting vehicles and troops. The U.S. Department of Commerce, Bureau of Industry and Security also has export licensing jurisdiction over unarmed all-wheel drive vehicles capable of off-road use which have been manufactured or fitted with materials to provide ballistic protection, including protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better if they do not have armor described in 22 CFR 121, Category XIII. In this section, and in ECCN 9A018, the word “unarmed” means not having weapons installed, not having mountings for weapons installed, and not having special reinforcements for mountings for weapons.

(2) Modification of a ground vehicle for military use entails a structural, electrical or mechanical change involving one or more specially designed military components. Such components include, but are not limited to:

- (i) Pneumatic tire casings of a kind designed to be bullet-proof or to run when deflated;
- (ii) Tire inflation pressure control systems, operated from inside a moving vehicle;
- (iii) Armored protection of vital parts, (e.g., fuel tanks or vehicle cabs); and
- (iv) Special reinforcements for mountings for weapons.

(3) **Scope of ECCN 9A018.b.** Ground transport vehicles (including trailers) and parts and components therefor specially designed or modified for non-combat military use are

controlled by ECCN 9A018.b. Unarmed all-wheel drive vehicles capable of off-road use that are not described in paragraph (h)(4) of this section and which have been manufactured or fitted with materials to provide ballistic protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better are controlled by ECCN 9A018.b. ECCN 9A018.b. does not cover civil automobiles, or trucks designed or modified for transporting money or valuables, having armored or ballistic protection, even if the automobiles or trucks incorporate items described in paragraphs (h)(2) (i), (ii), or (iii) of this section. In this section, the term “civil automobile” means a passenger car, limousine, van or sport utility vehicle designed for the transportation of passengers and marketed through civilian channels in the United States, but does not include any all-wheel drive vehicle capable of off-road use which has been manufactured or fitted with materials to provide ballistic protection at level III (National Institute of Justice Standard 0108.01, September 1985) or better, nor does it include any vehicle described in paragraph (h)(4) of this section. Ground vehicles that are not described in paragraph (h)(4) of this section and that are not covered by either ECCN 9A018.b or 9A990 are EAR99, meaning that they are subject to the EAR, but not listed in any specific ECCN.

(4) **Related control.** The Department of State, Directorate of Defense Trade Controls has export licensing jurisdiction for all military ground armed or armored vehicles and parts and components specific thereto as described in 22 CFR 121, Category VII. The Department of State, Directorate of Defense Trade Controls also has export licensing jurisdiction for all-wheel drive vehicles capable of off-road use that have been armed or armored with articles described in 22 CFR 121 or that have been manufactured or fitted with special reinforcements for mounting arms or other specialized military equipment described in 22 CFR 121.

(i) Interpretation 9: Aircraft, parts, accessories and components

Aircraft, parts, accessories, and components defined in Categories VIII and IX of the Munitions List are under the export licensing authority of the U.S. Department of State (22 CFR parts 120 through 130). All other aircraft, and parts, accessories and components therefor, are under the export licensing authority of the U.S. Department of Commerce. The following aircraft, parts, accessories and components are under the licensing authority of the U.S. Department of Commerce:

(1) Any aircraft (except an aircraft that has been demilitarized, but including aircraft specified in paragraph (i)(2) of this section) that conforms to a Federal Aviation Agency type certificate in the normal, utility, acrobatic, transport, or restricted category, provided such aircraft has not been equipped with or modified to include military equipment, such as gun mounts, turrets, rocket launchers, or similar equipment designed for military combat or military training purposes.

(2) Only the following military aircraft, demilitarized (aircraft not specifically equipped, reequipped, or modified for military operations):

(i) Cargo, bearing designations “C-45 through C-118 inclusive,” and “C-121”;

(ii) Trainers, bearing a “T” designation and using piston engines;

(iii) Utility, bearing a “U” designation and using piston engines;

(iv) Liaison, bearing an “L” designation; and

(v) Observation, bearing an “O” designation and using piston engines.

(3) All reciprocating engines.

(4) Other aircraft engines not specifically designed or modified for military aircraft.

(5) Parts, accessories, and components (including propellers), designed exclusively for aircraft and engines described in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this section.

(6) General purpose parts, accessories, and components usable interchangeably on either military or civil aircraft.

(j) Interpretation 10: Civil aircraft inertial navigation equipment

(1) The Department of Commerce has licensing jurisdiction over exports and reexports to all destinations of inertial navigation systems, inertial navigation equipment, and specially designed components therefor for “civil aircraft”.

(2) The Department of State, retains jurisdiction over all software and technology for inertial navigation systems and navigation equipment, and specially designed components therefor, for shipborne use, underwater use, ground vehicle use, spaceborne use or use other than “civil aircraft”.

(k) Interpretation 11: Precursor chemicals

The following chemicals are controlled by ECCN 1C350. The appropriate Chemical Abstract Service Registry (C.A.S.) number and synonyms, (i.e., alternative names) are included to help you determine whether your chemicals are controlled by this entry.

(1) (C.A.S. #1341-49-7) Ammonium hydrogen bifluoride

Acid ammonium fluoride

Ammonium bifluoride

Ammonium difluoride

Ammonium hydrofluoride

Ammonium hydrogen bifluoride

- Ammonium hydrogen difluoride
Ammonium monohydrogen difluoride
- (2) (C.A.S. #7784-34-1) Arsenic trichloride
Arsenic (III) chloride
Arsenous chloride
Fuming liquid arsenic
Trichloroarsine
- (3) (C.A.S. #76-93-7) Benzilic acid
.alpha.,.alpha.-Diphenyl-.alpha.-hydroxyacetic acid
Diphenylglycolic acid
.alpha.,.alpha.-Diphenylglycolic acid
Diphenylhydroxyacetic acid
.alpha.-Hydroxy-2,2-diphenylacetic acid
2-Hydroxy-2,2-diphenylacetic acid
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid
Hydroxydiphenylacetic acid
- (4) (C.A.S. #107-07-3) 2-Chloroethanol
2-Chloro-1-ethanol
Chloroethanol
2-Chloroethyl alcohol
Ethene chlorohydrin
Ethylchlorohydrin
Ethylene chlorohydrin
Ethylene chlorohydrin
Glycol chlorohydrin
Glycol monochlorohydrin
2-Hydroxyethyl chloride
- (5) (C.A.S. #78-38-6) Diethyl ethylphosphonate
Ethylphosphonic acid diethyl ester
- (6) (C.A.S. #15715-41-0) Diethyl methylphosphonite
Diethoxymethylphosphine
Diethyl methanephosphonite
0,0-Diethyl methylphosphonite
Methyldiethoxyphosphine
Methylphosphonous acid diethyl ester
- (7) (C.A.S. #2404-03-7) Diethyl-N,
- N-dimethylphosphoro- amidate
N,N-Dimethyl-O,O'-diethyl phosphoramidate
Diethyl dimethylphosphoramidate
Dimethylphosphoramidic acid diethyl ester
- (8) (C.A.S. #762-04-9) Diethyl phosphite
Diethoxyphosphine oxide
Diethyl acid phosphite
Diethyl hydrogen phosphite
Diethyo phosphonate
Hydrogen diethyl phosphite
- (9) (C.A.S. #100-37-8) N,
N-Diethylethanolamine
N,N-Diethyl-2-aminoethanol
Diethyl (2-hydroxyethyl) amine
N,N-Diethyl-N-(.beta.-hydroxyethyl) amine
N,N-Diethyl-2-hydroxyethylamine
Diethylaminoethanol
2-(Diethylamino) ethanol
2-(Diethylamino)ethyl alcohol
N,N-Diethylmonoethanolamine
(2-Hydroxyethyl) diethylamine
2-Hydroxytriethylamine
- (10) (C.A.S. #5842-07-9)
N,N-Diisopropyl-.beta.-aminoethane thiol
2-(Diisopropylamino) ethanethiol
Diisopropylaminoethanethiol
.beta.-Diisopropylaminoethanethiol
2-(bis(1-Methylethyl)amino) ethanethiol
- (11) (C.A.S. #4261-68-1) N,
N-Diisopropyl-.2-aminoethyl
chloride hydrochloride
- (12) (C.A.S. #96-80-0)
N,N-Diisopropyl-.beta.-aminoethanol
N,N-Diisopropyl-2-aminoethanol
2-(Diisopropylamino) ethanol
(N,N-Diisopropylamino) ethanol
2-(Diisopropylamino) ethyl alcohol
N,N-Diisopropylethanolamine
- (13) (C.A.S. #96-79-7)

- N,N-Diisopropyl-.beta.-aminoethyl chloride
 2-Chloro-N,N-diisopropylethanamine
 1-Chloro-N,N-diisopropylaminoethane
 2-Chloro-N,N-diisopropylethylamine
 N-(2-chloroethyl)-N-(1-methylethyl)-2-propanamine
 N-(2-Chloroethyl) diisopropylamine
 N,N-Diisopropyl-2-chloroethylamine
 1-(Diisopropylamino)-2-chloroethane
 2-(Diisopropylamino)ethyl chloride
 Diisopropylaminoethyl chloride
 .beta.-Diisopropylaminoethyl chloride
- (14)** (C.A.S. #108-18-9) Diisopropylamine
 N,N-Diisopropylamine
 N-(1-Methylethyl)-2-propanamine
- (15)** (C.A.S. #6163-75-3) Dimethyl ethylphosphonate
 Dimethyl ethanephosphonate
 Ethylphosphonic acid dimethyl ester
- (16)** (C.A.S. #756-79-6) Dimethyl methylphosphonate
 Dimethoxymethyl phosphine oxide
 Dimethyl methanephosphonate
 Methanephosphonic acid dimethyl ester
 Methylphosphonic acid dimethyl ester
- (17)** (C.A.S. #868-85-9) Dimethyl phosphite
 Dimethoxyphosphine oxide
 Dimethyl acid phosphite
 Dimethyl hydrogen phosphite
 Dimethyl phosphonate
 Hydrogen dimethyl phosphite
 Methyl phosphate
- (18)** (C.A.S. #124-40-3) Dimethylamine
 N-Methyl methanamine
- (19)** (C.A.S. #506-59-2) Dimethylamine hydrochloride
 Dimethylammonium chloride
 N-Methyl methanamine hydrochloride
- (20)** [RESERVED]
- (21)** (C.A.S. #1498-40-4) Ethylphosphonous dichloride
 Dichloroethylphosphine
 Ethyl phosphonous dichloride
 Ethyldichlorophosphine
- (22)** (C.A.S. #430-78-4) Ethylphosphonous difluoride
 Ethyldifluorophosphine
- (23)** (C.A.S. #1066-50-8) Ethylphosphonyl dichloride
 Dichloroethylphosphine oxide
 Ethanephosphonyl chloride
 Ethylphosphinic dichloride
 Ethylphosphonic acid dichloride
 Ethylphosphonic dichloride
- (24)** [RESERVED]
- (25)** (C.A.S. #7664-39-3) Hydrogen fluoride
 Anhydrous hydrofluoric acid
 Fluorhydric acid
 Fluorine monohydride
 Hydrofluoric acid gas
- (26)** (C.A.S. #3554-74-3)
 3-Hydroxyl-1-methylpiperidine
 3-Hydroxy-N-methylpiperidine
 1-Methyl-3-hydroxypiperidine
 N-Methyl-3-hydroxypiperidine
 1-Methyl-3-piperidinol
 N-Methyl-3-piperidinol
- (27)** (C.A.S. #76-89-1) Methyl benzilate
 Benzilic acid methyl ester
 .alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid methyl ester
 Methyl .alpha.-phenylmandelate
 Methyl diphenylglycolate
- (28)** [RESERVED]
- (29)** [RESERVED]
- (30)** [RESERVED]

- (31)** [RESERVED]
- (32)** (C.A.S. #10025-87-3) Phosphorus oxychloride
 Phosphonyl trichloride
 Phosphoric chloride
 Phosphoric trichloride
 Phosphoroychloride
 Phosphoroytrichloride
 Phosphorus chloride oxide
 Phosphorus monoxide trichloride
 Phosphorus oxide trichloride
 Phosphorus oxytrichloride
 Phosphorus trichloride oxide
 Phosphoryl trichloride
 Trichlorophosphine oxide
 Trichlorophosphorus oxide
- (33)** (C.A.S. #10026-13-8) Phosphorus pentachloride
 Pentachlorophosphorane
 Pentachlorophosphorus
 Phosphoric chloride
 Phosphorus(V) chloride
 Phosphorus perchloride
- (34)** (C.A.S. #1314-80-3) Phosphorus pentasulfide
 Diphosphorus pentasulfide
 Phosphoric sulfide
 Phosphorus persulfide
 Phosphorus sulfide
- (35)** (C.A.S. #7719-12-2) Phosphorus trichloride
 Phosphorus chloride
 Trichlorophosphine
- (36)** C.A.S. #75-97-8) Pinacolone
 tert-Butyl methyl ketone
 2,2-Dimethyl-3-butanone
 3,3-Dimethyl-2-butanone
 2,2-Dimethylbutanone
 3,3-Dimethylbutanone
 1,1-Dimethylethyl methyl ketone
 Methyl tert-butyl ketone
 Pinacolin
- Pinacolone
 1,1,1-Trimethylacetone
- (37)** (C.A.S. #464-07-3) Pinacolyl alcohol
 tert-Butyl methyl carbinol
 2,2-Dimethyl-3-butanol
 3,3-Dimethyl-2-butanol
 1-Methyl-2,2-dimethylpropanol
- (38)** (C.A.S. #151-50-8) Potassium cyanide
- (39)** (C.A.S. #7789-23-3) Potassium fluoride
 Potassium monofluoride
- (40)** (C.A.S. #7789-29-9) Potassium hydrogen fluoride
 Hydrogen potassium difluoride
 Hydrogen potassium fluoride
 Potassium acid fluoride
 Potassium bifluoride
 Potassium hydrogen difluoride
 Potassium monohydrogen difluoride
- (41)** (C.A.S. #1619-34-7) 3-Quinuclidinol
 1-Azabicyclo(2.2.2)octan-3-ol
 3-Hydroxyquinuclidine
- (42)** (C.A.S. #3731-38-2) 3-Quinuclidinone
 1-Azabicyclo(2.2.2)octan-3-one
 3-Oxyquinuclidine
 Quinuclidone
- (43)** (C.A.S.) #1333-83-1) Sodium bifluoride
 Sodium hydrogen difluoride
 Sodium hydrogen fluoride
- (44)** (C.A.S. #143-33-9) Sodium cyanide
- (45)** (C.A.S. #7681-49-4) Sodium fluoride
 Sodium monofluoride
- (46)** (C.A.S. #1313-82-2) Sodium sulfide
 Disodium monosulfide
 Disodium sulfide
 Sodium monosulfide
 Sodium sulphide

(47) (C.A.S. #10025-67-9) Sulfur Monochloride

(48) (C.A.S. #10545-99-0) Sulfur dichloride

(49) (C.A.S. #111-48-8) Thiodiglycol

Bis(2-hydroxyethyl) sulfide
 Bis(2-hydroxyethyl) thioether
 Di(2-hydroxyethyl) sulfide
 Diethanol sulfide
 2,2'-Dithiobis-(ethanol)
 3-Thiapentane-1,5-diol
 2,2'-Thiobisethanol
 2,2'-Thiodiethanol
 Thiodiethylene glycol
 2,2'-Thiodiglycol

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

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

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

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

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

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

Phosphorous acid triethyl ester
 Triethoxyphosphine
 Tris(ethoxy)phosphine

(54) (C.A.S. #121-45-9) Trimethyl phosphite
 Phosphorus acid trimethyl ester
 Trimethoxyphosphine

● (l) *Interpretation 12: Computers*

(1) Digital computers or computer systems classified under ECCN 4A003.a, .b, or .c, that qualify for “No License Required” (NLR) must be evaluated on the basis of Adjusted Peak Performance (APP) alone, to the exclusion of all other technical parameters.

Digital computers or computer systems classified under ECCN 4A003.a, .b, or .c that qualify for License Exception APP must be evaluated on the basis of APP, to the exclusion of all other technical parameters, except for ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a). Assemblies performing analog-to-digital conversions are evaluated under Category 3 - Electronics, ECCN 3A001.a.5.a.

(2) Related equipment classified under ECCN 4A003.e or .g may be exported or reexported under License Exceptions GBS or CIV. When related equipment is exported or reexported as part of a computer system, NLR or License Exception APP is available for the computer system and the related equipment, as appropriate.

(m) *Interpretation 13: Encryption commodities and software controlled for EI reasons*

Encryption commodities and software controlled for EI reasons under ECCNs 5A002 and 5D002 may be pre-loaded on a laptop, handheld device or other computer or equipment and exported under the tools of trade provision of License Exception TMP or the personal use exemption under License Exception BAG, subject to the terms and conditions of such License Exceptions. This provision replaces the personal use exemption of the International Traffic and Arms

Regulations (ITAR) that existed for such software prior to December 30, 1996. Neither License Exception TMP nor License Exception BAG contains a reporting requirement. Like other “information security” “software”, components, “electronic assemblies” or modules, the control status of encryption commodities and software is determined in Category 5, part 2 even if they are bundled, commingled or incorporated in a computer or other equipment. However, commodities and software specially designed for medical end-use that incorporate an item in Category 5, part 2 are not controlled in Category 5, part 2. See Note 1 to Category 5, part 2 (“Information Security”) of Supplement No. 1 to Part 774 (the Commerce Control List) of the EAR.

(n) Interpretation 14: Encryption commodity and software reviews

Review of encryption commodities or software is required to determine eligibility of certain encryption items under License Exception ENC (see §740.17 of the EAR) or to release certain encryption items from “EI” controls (see §742.15(b)(2) of the EAR). Note that subsequent bundling, patches, upgrades or releases, including name changes, may be exported or reexported under the applicable provisions of the EAR without further review as long as the functional encryption capacity of the originally reviewed product has not been modified or enhanced. This interpretation does not extend to products controlled under a different category on the CCL.

§770.3

INTERPRETATIONS RELATED TO EXPORTS OF TECHNOLOGY AND SOFTWARE TO DESTINATIONS IN COUNTRY GROUP D:1

(a) Introduction

This section is intended to provide you additional guidance on how to determine whether your technology or software would be eligible for a License Exception, may be exported under NLR, or require a license, for export to Country Group D:1.

(b) Scope of licenses

The export of technology and software under a license is authorized only to the extent specifically indicated on the face of the license. The only technology and software related to equipment exports that may be exported without a license is technology described in §§734.7 through 734.11 of the EAR; operating technology and software described in §740.13(a) of the EAR; sales technology described in §740.13(b) of the EAR; and software updates described in §740.13(c) of the EAR.

(c) Commingled technology and software

(1) U.S.-origin technology does not lose its U.S.-origin when it is redrawn, used, consulted, or otherwise commingled abroad in any respect with other technology of any other origin. Therefore, any subsequent or similar technical data prepared or engineered abroad for the design, construction, operation, or maintenance of any plant or equipment, or part thereof, which is based on or utilizes any U.S.-origin technology, is subject to the EAR in the same manner as the original U.S.-origin technology, including license requirements, unless the commingled technology is not subject to the EAR by reason of the *de minimis* exclusions described in §734.4 of the EAR.

(2) U.S.-origin software that is incorporated into or commingled with foreign-origin software does not lose its U.S.-origin. Such commingled software is subject to the EAR 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

in §734.4 of the EAR.

(d) Certain License Exceptions

The following questions and answers are intended to further clarify the scope of technology and software eligible for a License Exception.

(1)(i) Question 1.

(A) Our engineers, in installing or repairing equipment, use techniques (experience as well as proprietary knowledge of the internal componentry or specifications of the equipment) that exceed what is provided in the standard manuals or instructions (including training) given to the customer. In some cases, it is also a condition of the license that such information provided to the customer be constrained to the minimum necessary for normal installation, maintenance and operation situations.

(B) Can we send an engineer (with knowledge and experience) to the customer site to perform the installation or repair, under the provisions of License Exception TSU for operation technology and software described in §740.13(a) of the EAR, if it is understood that he is restricted by our normal business practices to performing the work without imparting the knowledge or technology to the customer personnel?

(ii) Answer 1. Export of technology includes release of U.S.-origin data in a foreign country, and “release” includes “application to situations abroad of personal knowledge or technical experience acquired in the United States.” As the release of technology in the circumstances described here would exceed that permitted under the License Exception TSU for operation

technology and software described in §740.13(a) of the EAR, a license would be required even though the technician could apply the data without disclosing it to the customer.

(2)(i) Question 2. We plan, according to our normal business practices, to train customer engineers to maintain equipment that we have exported under a license, License Exception, or NLR. The training is contractual in nature, provided for a fee, and is scheduled to take place in part in the customer's facility and in part in the U.S. Can we now proceed with this training at both locations under a License Exception?

(ii) Answer 2. (A) Provided that this is your normal training, and involves technology contained in your manuals and standard instructions for the exported equipment, and meets the other requirements of License Exception TSU for operation technology and software described in §740.13(a), the training may be provided within the limits of those provisions of License Exception TSU. The location of the training is not significant, as the export occurs at the time and place of the actual transfer or imparting of the technology to the customer's engineers.

(B) Any training beyond that covered under the provisions of License Exception TSU for operation technology and software described in §740.13(a), but specifically represented in your license application as required for this customer installation, and in fact authorized on the face of the license or a separate technology license, may not be undertaken while the license is suspended or revoked.