

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 732, 736, 740, 742, 744, 746, 748, 750, 752, 758, and 770

[Docket No. 961122325-6325-01]

RIN 0694-AB51

Revisions to the Export Administration Regulations: License Exceptions

AGENCY: Bureau of Export Administration

ACTION: Final rule.

SUMMARY: This final rule revises the Export Administration Regulations (EAR) by reorganizing those License Exceptions that are referenced on the Commerce Control List. These License Exceptions had been bundled together in a single section, bearing a group symbol to be used for export clearance purposes. This rule splits the list-based License Exceptions into separate sections, each with its own clearance symbol. This rule makes

conforming changes throughout the EAR. Finally, this rule makes corrections and clarifications to certain sections of the EAR affected by the changes to the License Exceptions.

DATE: This rule is effective (DATE OF PUBLICATION).

FOR FURTHER INFORMATION CONTACT: Hillary Hess, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482-2440.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1996, the Bureau of Export Administration (BXA) published an interim rule that revised the entire EAR (61 FR 12714). Prior to that date, on May 11, 1995, BXA had published a proposed version of this comprehensive revision (60 FR 25267), and public comments on that proposed rule significantly helped shape the interim rule. Public comments on the proposed rule indicated that the number of License Exceptions was too high and generally supported combining similar License Exceptions. In response to these comments, BXA consolidated single License Exceptions into "groupings." Exporters used the grouping symbol as a certification on their shipping documents; each single License Exception also bore a symbol, for optional use in recordkeeping and ease of distinguishing among separate

sets of provisions.

Public comments on the interim rule, however, generally contained objections to the consolidation of those License Exceptions found on the Commerce Control List (CCL). These License Exceptions included the following: Limited Value Shipments (LVS), Shipments to Group B Countries (GBS), Civil End-users (CIV), Technology and Software under Restriction (TSR), and Computers (CTP); they were consolidated into the "list-based" License Exception section and exporters shipping under any of the five used the grouping symbol "LST" for export clearance purposes. Many exporters with automated processes found that using a grouping symbol added an additional step to their programs; others simply found using the grouping more cumbersome. While groupings of the other, more transaction-based License Exceptions did not elicit the same objections, exporters indicated that having additional acronyms for optional recordkeeping use, but not for export clearance, was more confusing than convenient.

Consequently, this rule splits or "debundles" the list-based License Exceptions, putting each in its own section. Each License Exception symbol for export clearance documents matches that on the CCL (i.e., LVS); the grouping symbol "LST" disappears. Other groupings remain unchanged, except that this rule removes any acronyms that are not used for clearance purposes. This rule also drops the term "grouping" in favor of calling each section a License Exception. Specific sets of terms and conditions, formerly referred to as "License Exceptions," are termed "provisions." Any references throughout the EAR to meeting all

terms and conditions of License Exceptions should be understood to mean meeting all applicable terms and conditions.

A License Exception may contain one, two, or more sets of terms and conditions; and to use a given License Exception you must meet all the terms and conditions of one such set. For example, if you meet all the terms and conditions of paragraph 740.5(a) of the EAR for One-for-One Replacement of Parts, you may export or reexport under that paragraph even though you do not meet all the terms and conditions of paragraph 740.5(b) of the EAR for Servicing and Replacement. The correct symbol for use on a required SED in this case is RPL. As an additional example, if you meet all the terms and conditions of paragraph 740.8(d) of the EAR for the General Software Note and mass market software, you may export or reexport under that paragraph even though you do not meet all the terms and conditions of paragraph 740.8(a) of the EAR for Operation Technology and Software, paragraph 740.8(b) of the EAR for Sales Technology, or paragraph 740.8(c) of the EAR for Software Updates.

Finally, this rule makes certain corrections and clarifications to sections of the EAR affected by the changes to the License Exceptions part. This rule clarifies certain provisions on the availability of License Exceptions LVS, GBS, CIV, and TSR. This rule removes Laos and Cambodia from Computer Tier 2 and adds them to Computer Tier 3 in License Exception CTP; adds Hong Kong, New Zealand, and Taiwan to the list of countries that are defined as "cooperating" for purposes of License Exception GOV; changes Country Group A:4 to A:1, Iceland, or New Zealand in License Exception TMP; adds Iceland to the list of countries

eligible to receive operation and sales technology and software even when that technology or software pertains to otherwise restricted nuclear end-uses in §744.2; and adds CTP to the list of those License Exceptions requiring a Destination Control Statement in §758.6. This rule also corrects certain cross-references that were incorrect in the March 25 rule.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notice of August 15, 1995 (60 FR 42767) and August 14, 1996 (61 FR 42527).

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These

collections have been approved by the Office of Management and Budget under control numbers 0694-0023, 0694-0029, and 0694-0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Section 13(b) of the EAA, cite, does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR parts 732, 740, 748, 750, 752 and 758

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

15 CFR parts 736, 742 and 770

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.

Accordingly, the Export Administration Regulations (15 CFR parts 730-799A) are amended as follows:

1. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.;

E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of

August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

2. The authority citation for 15 CFR part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12924, 59 FR 43437, 3

CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of

August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

3. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12924, 59 FR 43437, 3

CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and

Notice of August 14, 1996 (61 FR 42527).

4. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 18 U.S.C. 2510 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

5. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

6. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 287c; 22 U.S.C. 6004; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

7. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

8. The authority citation for 15 CFR part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); E.O. 12981, 60 FR 62981; and Notice of August 14, 1996 (61 FR 42527).

9. The authority citation for 15 CFR part 752 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

10. The authority citation for 15 CFR part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and

Notice of August 14, 1996 (61 FR 42527).

11. The authority citation for 15 CFR part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

PART 732 - [AMENDED]

12. In §732.2, paragraph (f)(1)(ii) is amended by revising the reference to "License Exception TSR at §740.3(d) of the EAR" to read "License Exception TSR in §740.6 of the EAR".

13. In §732.3, paragraph (f)(1)(ii) is amended by revising the reference to "License Exception TSR described §740.19 of the EAR" to read "License Exception TSR in §740.6 of the EAR".

14. Section 732.4 is amended by revising paragraph (b)(3)(iii) to read as follows:

§732.4 Steps regarding License Exceptions.

(b) * * *

(3) * * *

(iii) License Exceptions TMP, RPL, BAG, AVS, GOV, and TSU authorize exports notwithstanding the provisions of the CCL. List-based License Exceptions (LVS, GBS, CIV, TSR, and CTP) are available only to the extent specified on the CCL. Part 740 of the EAR provides authorization for reexports only to the extent each License Exception expressly authorizes reexports. License Exception APR authorizes reexports only.

* * * * *

15. Section 732.5 is amended by revising paragraph (a)(2) to read as follows:

§732.5 Steps regarding Shipper's Export Declaration, Destination Control Statements, recordkeeping, license applications, and other requirements.

(a) * * *

(2) License Exception symbol. You must enter on any required SED the letter code (e.g., LVS, TMP) of the License Exceptions under which you are exporting. In the case of License Exceptions LVS, GBS, and CIV, the ECCN of the item being exported must also be entered when an SED is required. Please refer to §758.3 of the EAR for detailed information on use of SEDs.

* * * * *

PART 736 - [AMENDED]

16. Section 736.2 is amended by revising paragraphs (b)(3)(ii)(A)(1) and (b)(3)(ii)(B)(1) to read as follows:

§736.2 General prohibitions and determination of applicability.

(a) * * *

(b) * * *

(ii) * * *

(A) * * *

(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 in §740.6 of the EAR, and

* * * * *

(B) * * *

(1) Such plant or component is the direct product of technology

that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR in §740.6 of the EAR, and

* * * * *

PART 740 - [AMENDED]

17. Part 740 is amended:

- a. By revising section 740.1, paragraphs (c) and (d)(1);
- b. By revising section 740.2, paragraphs (a)(5) and (a)(6);
- c. By revising section 740.3;
- d. By redesignating sections 740.4 through 740.11 to read sections 740.8 through 740.15;
- e. By adding new sections 740.4 through 740.7; and
- f. By revising newly designated sections 740.8 through 740.12.

§740.1 Introduction.

* * * * *

(c) License Exception symbols. Each License Exception bears a three letter symbol that will be used for export clearance purposes (see paragraph (d) of this section).

(d) Shipper's Export Declaration. (1) Clearing exports under License Exceptions. You must enter on any required Shipper's Export Declaration (SED) the letter code (e.g., LVS, TMP) of the License Exception(s) under which you are exporting. In the case of License Exceptions LVS, GBS, and CIV, the ECCN of the item being exported must also be entered. Please refer to §758.3 of the EAR for the use of SEDs.

* * * * *

§740.2 Restrictions on all License Exceptions.

(a) * * *

(5) The item is for surreptitious interception of wire or oral communications controlled under ECCN 5A980, unless you are a U.S. Government agency (see §740.10(b)(2)(ii) of this part, Governments (License Exception GOV)).

(6) The commodity you are shipping is a specially designed crime control and detection instrument or equipment as described in §742.7 of the EAR and you are not shipping to Iceland, New Zealand, or countries listed in Country Group A:1 (see Supplement No. 1 to part 740), unless the shipment is authorized under

License Exception BAG, §740.13(e) of this part (shotguns and shotgun shells).

* * * * *

§740.3 Shipments of Limited Value (LVS).

(a) Scope. License Exception LVS authorizes the export and reexport in a single shipment of eligible commodities as identified by "LVS - \$(value limit)" on the CCL.

(b) Eligible Destinations. This License Exception is available for all destinations in Country Group B (see Supplement No. 1 to part 740), provided that the net value of the commodities included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified in the LVS paragraph for that entry.

(c) Definitions. (1) Order. The term "order" as used in this §740.3 means a communication from a person in a foreign country, or that person's representative, expressing an intent to import commodities from the exporter. Although all of the details of the order need not be finally determined at the time of export, terms relating to the kinds and quantities of the commodities to be exported, as well as the selling prices of these commodities, must be finalized before the goods can be exported under License Exception LVS.

(2) Net value: for LVS shipments. The actual selling price of the commodities that are included in the same order and are controlled under the same entry on the CCL, less shipping charges, or the current market price of the commodities to the same type of purchaser in the United States, whichever is the larger. In determining the actual selling price or the current market price of the commodity, the value of containers in which the commodity is being exported may be excluded. The value for LVS purposes is that of the controlled commodity that is being exported, and may not be reduced by subtracting the value of any content that would not, if shipped separately, be subject to licensing. Where the total value of the containers and their contents must be shown on Shipper's Export Declarations under one Schedule B Number, the exporter, in effecting a shipment under this License Exception, must indicate the "net value" of the contained commodity immediately below the description of the commodity.

(3) Single shipment. All commodities moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even though these commodities will be forwarded to one or more ultimate consignees. Commodities being transported in this manner will be treated as a single shipment even if the commodities represent more than one order or are in separate containers.

(d) Additional eligibility requirements and restrictions.

(1) Eligible orders. To be eligible for this License Exception, orders must meet the

following criteria:

(i) Orders must not exceed the applicable "LVS" dollar value limits. An order is eligible for shipment under LVS when the "net value" of the commodities controlled under the same entry on the CCL does not exceed the amount specified in the "LVS" paragraph for that entry. An LVS shipment may include more than one eligible order.

(ii) Orders may not be split to meet the applicable LVS dollar limits. An order that exceeds the applicable LVS dollar value limit may not be misrepresented as two or more orders, or split among two or more shipments, to give the appearance of meeting the applicable LVS dollar value limit. However an order that meets all the LVS eligibility requirements, including the applicable LVS dollar value limit, may be split among two or more shipments.

(iii) Orders must be legitimate. Exporters and consignees may not, either collectively or individually, structure or adjust orders to meet the applicable LVS dollar value limits.

(2) Restriction on annual value of LVS orders. The total value of exports per calendar year to the same ultimate or intermediate consignee of commodities classified under a single ECCN may not exceed 12 times the LVS value limit for that ECCN; however, there is no restriction on the number of shipments provided that value is not exceeded. This annual value

limit applies to shipments to the same ultimate consignee even though the shipments are made through more than one intermediate consignee. There is no restriction on the number of orders that may be included in a shipment, except that the annual value limit per ECCN must not be exceeded.

(3) Orders where two or more LVS dollar value limits apply. An order may include commodities that are controlled under more than one entry on the CCL. In this case, the net value of the entire order may exceed the LVS dollar value for any single entry on the CCL. However, the net value of the commodities controlled under each ECCN entry shall not exceed the LVS dollar value limit specified for that entry.

Example to paragraph (3): An order includes commodities valued at \$8,000. The order consists of commodities controlled under two ECCN entries, each having an LVS value limit of \$5000. Commodities in the order controlled under one ECCN are valued at \$3,500 while those controlled under the other ECCN are valued at \$4,500. Since the net value of the commodities controlled under each entry falls within the LVS dollar value limits applicable to that entry, the order may be shipped under this License Exception.

(4) Prohibition against evasion of license requirements. Any activity involving the use of this License Exception to evade license requirements is prohibited. Such devices include, but are not limited to, the splitting or structuring of orders to meet applicable LVS dollar value limits, as prohibited by paragraphs (d)(1)(ii) and (iii) of this section.

(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 Shipments to Country Group B countries (GBS). License Exception GBS authorizes exports and reexports to Country Group B (see Supplement No. 1 to part 740) of those commodities controlled to the ultimate destination for national security reasons only and identified by "GBS - Yes" on the CCL.

§740.5 Civil end-users (CIV). License Exception CIV authorizes exports and reexports controlled to the ultimate destination for national security reasons only and identified by "CIV - Yes" on the CCL, provided the items are destined 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. In addition to conventional military activities, military uses include any proliferation activities described and prohibited by part 744 of the EAR. A license is also required for transfer to military end-users or end-uses in eligible countries of items exported under CIV.

§740.6 Technology and software under restriction (TSR).

(a) Scope. License Exception TSR permits exports and reexports of technology and software controlled to the ultimate destination for national security reasons only and identified by "TSR

- Yes" in entries on the CCL, provided the software or technology is destined to Country Group B. (See Supplement No. 1 to part 740.) A written assurance is required from the consignee before exporting or reexporting under this License Exception.

(1) Required assurance for export of technology. You may not export or reexport technology under this License Exception until you have received from the importer a written assurance that, without a BXA license or License Exception, the importer will not:

(i) Reexport or release the technology to a national of a country in Country Groups D:1 or E:2; or

(ii) Export to Country Groups D:1 or E:2 the direct product of the technology, if such foreign produced direct product is subject to national security controls as identified on the CCL (See General Prohibition Three, §736.2(b)(3) of the EAR); or

(iii) If the direct product of the technology is a complete plant or any major component of a plant, export to Country Groups D:1 or E:2 the direct product of the plant or major component thereof, if such foreign produced direct product is subject to national security controls as identified on the CCL or is subject to State Department controls under the U.S. Munitions List (22 CFR part 121).

(2) Required assurance for export of software. You may not export or reexport

software under this License Exception until you have received from the importer a written assurance that, without a BXA license or License Exception, the importer will neither:

(i) Reexport or release the software or the source code for the software to a national of a country in Country Groups D:1 or E:2; nor

(ii) Export to Country Groups D:1 or E:2 the direct product of the software, if such foreign produced direct product is subject to national security controls as identified on the CCL. (See General Prohibition Three, §736.2(b)(3) of the EAR).

(3) Form of written assurance. The required assurance may be made in the form of a letter or any other written communication from the importer, or the assurance may be incorporated into a licensing agreement that specifically includes the assurances. An assurance included in a licensing agreement is acceptable only if the agreement specifies that the assurance will be honored even after the expiration date of the licensing agreement. If such a written assurance is not received, License Exception TSR is not applicable and a license is required. The license application must include a statement explaining why assurances could not be obtained.

(4) Other License Exceptions. The requirements in this License Exception do not apply to the export of technology or software under other License Exceptions, or to the export of technology or software included in an application for the foreign filing of a patent,

provided the filing is in accordance with the regulations of the U.S. Patent Office.

(b) Reserved.

§740.7 Computers (CTP).

(a) Scope. License Exception CTP authorizes exports and reexports of computers and specially designed components therefor, exported or reexported separately or as part of a system, and related equipment therefor when exported or reexported with these computers as part of a system, for consumption in Computer Tier countries as provided by this section. You may not use this License Exception to export or reexport items that you know will be used to enhance the CTP beyond the eligibility limit allowed to your country of destination. When evaluating your computer to determine License Exception CTP eligibility, use the CTP parameter to the exclusion of other technical parameters for computers classified under ECCN 4A003, except of parameters specified as Missile Technology (MT) concerns, 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5), and graphic accelerators or graphic coprocessors exceeding a "3-D vector rate" of 10,000,000. This License Exception does not authorize export or reexport of such graphic accelerators or coprocessors, or of computers controlled for MT reasons.

(b) Computer Tier 1.

(1) Eligible countries. The countries that are eligible to receive exports and reexports under this License Exception are Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, the Holy See, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

(2) Eligible Computers. The computers eligible for License Exception CTP are those with a CTP greater than 2,000 MTOPS.

(c) Computer Tier 2.

(1) Eligible countries. The countries that are eligible to receive exports under this License Exception include Antigua and Barbuda, Argentina, Bahamas, Barbados, Bangladesh, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central Africa, Chad, Chile, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia (The), Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Indonesia, Jamaica, Kenya, Kiribati, Korea (Republic of), Lesotho, Liberia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Micronesia (Federated States of), Mozambique, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Rwanda, St. Kitts & Nevis, St. Lucia, St.

Vincent and Grenadines, Sao Tome & Principe, Senegal, Seychelles, Sierra Leone, Singapore, Slovak Republic, Slovenia, Solomon Islands, Somalia, South Africa, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Tuvalu, Uganda, Uruguay, Venezuela, Western Sahara, Western Samoa, Zaire, Zambia, and Zimbabwe.

(2) Eligible computers. The computers eligible for License Exception CTP are those having a Composite Theoretical Performance (CTP) greater than 2000, but equal to or less than 10,000 Millions of Theoretical Operations Per Second (MTOPS).

(d) Computer Tier 3.

(1) Eligible countries. The countries that are eligible to receive exports and reexports under this License Exception are Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Estonia, Georgia, India, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lithuania, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Romania, Russia, Saudi Arabia, Serbia & Montenegro, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.

(2) Eligible computers. The computers eligible for License Exception CTP are those

having a Composite Theoretical Performance (CTP) greater than 2,000 Millions of Theoretical Operations Per Second (MTOPS), but less than or equal to 7,000 MTOPS.

(3) Eligible exports. Only exports and reexports to permitted end-users and end-uses located in countries in Computer Tier 3. License Exception CTP does not authorize exports and reexports to Computer Tier 3 for military end-users and end-uses and nuclear, chemical, biological, or missile end-users and end-uses defined in part 744 of the EAR. Exports and reexports under this License Exception may not be made to known military end-users or to known military end-uses or known proliferation end-uses or end-users defined in part 744 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Retransfers to military end-users or end-uses and defined proliferation end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(e) Restrictions.

(1) Computers eligible for License Exception CTP may not be accessed either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria, except that commercial consignees described in §742.12 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(2) Computers, software and specially designed technology eligible for License

Exception CTP may not be reexported/retransferred without prior authorization from BXA i.e., a license, a permissive reexport, another License Exception, or "No License Required". This restriction must be conveyed to the consignee, via the Destination Control Statement, see §758.6 of the EAR.

(f) Recordkeeping requirements. In addition to the recordkeeping requirements in part 762 of the EAR, you must keep records of each export under License Exception CTP. These records will be made available to the U.S. Government on request. The records must include the following information:

- (1) Date of shipment;
- (2) Name and address of the end-user and each intermediate consignee;
- (3) CTP of each computer in shipment;
- (4) Volume of computers in shipment;
- (5) Dollar value of shipment; and
- (6) End-use.

§740.8 Temporary imports, exports, and reexports (TMP). This License Exception authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software.

(a) Temporary exports and reexports. (1) Scope. You may export and reexport commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exclusions described in paragraph (a)(4) of this section. Commodities and software shipped as temporary exports or reexports under the provisions of this paragraph (a) must be returned to the country from which they were exported as soon as practicable but, except in circumstances described in this section, no later than one year from the date of export. This requirement does not apply if the commodities and software are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the EAR or in writing by BXA.

(2) Eligible commodities and software. The following commodities and software are eligible to be shipped under this paragraph (a):

(i) Tools of trade. Usual and reasonable kinds and quantities of 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.)

(ii) Kits consisting of replacement parts. Kits consisting of replacement parts may be exported or reexported to all destinations, except Country Group E:2 (see Supplement No. 1 to part 740), provided that:

(A) The parts would qualify for shipment under paragraph (a)(2)(ii)(C) of this section if exported as one-for-one replacements;

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

(C) All parts in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception RPL

and the defective parts returned (see "parts", §740.9(a) of this part).

(iii) 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 and software may not be used for their intended purpose while abroad, except to the minimum extent required for effective demonstration. The commodities and software may not be exhibited or demonstrated at any one site more than 120 days after installation and debugging, unless authorized by BXA. However, before or after an exhibition or demonstration, pending movement to another site, return to the United States or the foreign reexporter, or BXA approval for other disposition, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains effective control over their disposition. The export documentation for this type of transaction must show the U.S. exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

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

(v) Containers. Containers for which another License Exception is not available and that are necessary for export of commodities. However, this "containers" provision does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export under either a License Exception or a license.

(vi) Broadcast material.

(A) Video tape containing program material recorded in the country of export to be publicly broadcast in another country.

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

(vii) Assembly in Mexico. Commodities to be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquiladora), provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(viii) News media. (A) Commodities necessary for news-gathering purposes

(and software necessary to use such commodities) may accompany "accredited" news media personnel (i.e., persons with credentials from a news gathering or reporting firm) to Country Groups D:1 or E:2 (see Supplement No. 1 to part 740) if the commodities:

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

(2) Remain in the physical possession of the news media personnel. The term physical possession for purposes of this paragraph (a)(2)(viii), news media, is defined as maintaining effective measures to prevent unauthorized access (e.g., securing equipment in locked facilities or hiring security guards to protect the equipment); and

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

(B) When exporting under this paragraph (a)(2)(viii) from the United States, the exporter must send a copy of the packing list or similar identification of the exported commodities, to: U.S. Department of Commerce, Bureau of 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 the temporary exports and reexports provisions of this License Exception are being used properly.

(C) Commodities or software necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported or reexported under paragraph (a)(2)(i), tools of trade, of this section if owned by the news gathering firm, or if they are personal property of the individual news media personnel. Note that paragraphs (a)(2)(i), tools of trade and (a)(2)(viii), news media, of this section do not preclude independent "accredited" contract personnel, who are under control of news gathering firms while on assignment, from utilizing these provisions, provided that the news gathering firm designate an employee of the contract firm to be responsible for the equipment.)

(3) Special restrictions. (i) Destinations. (A) No commodity or software may be exported to Country Group E:2 (see Supplement No. 1 to part 740) except as permitted by paragraph (a)(2)(viii), news media, of this section;

(B) No commodity or software may be exported to Country Group D:1 (see Supplement No. 1 to part 740) except:

(1) Commodities and software exported under paragraph (a)(2)(viii), news media, of this section;

(2) Commodities and software exported under paragraph (a)(2)(i), tools of trade, of this section; and

(3) Commodities exported as kits of replacement parts, consistent with the requirements of paragraph (a)(2)(ii) of this section.

(C) These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country in Country Group D:1 or E:2, or any national thereof. (See Supplement No. 1 to part 740.)

(ii) Ineligible commodities or software. Commodities or software that will be used outside of Country Group A:1 (see Supplement No. 1 to part 740), Iceland, or New Zealand, either directly or indirectly in any sensitive nuclear activity as described in §744.2 of the EAR may not be exported or reexported to any destination under the temporary exports and reexports provisions of this License Exception.

(iii) Use or disposition. No commodity or software may be exported or reexported under this paragraph (a) if:

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

(B) The exporter has prior knowledge that the commodity or software will stay abroad beyond the terms described in this paragraph (a); or

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

(4) Return or disposal of commodities and software. All commodities and software exported or reexported under these provisions must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, to the United States or other country from which the commodities and software were so exported, or shall be disposed of or retained in one of the following ways:

(i) Permanent export or reexport. If the exporter or the reexporter wishes to sell or otherwise dispose of the commodities or software abroad, except as permitted by this or other applicable License Exception, the exporter must request authorization by submitting a license application to BXA at the address listed in part 748 of the EAR. (See part 748 of the EAR for more information on license applications.) The request should comply with all applicable provisions of the EAR covering export directly from the United States to the proposed destination. The request must also be supported by any documents that would be required in support of an application for export license for shipment of the same commodities or software directly from the United States to the proposed destination. BXA will advise the exporter of its decision.

(ii) Use of a license. An outstanding license may also be used to dispose of commodities or software covered by the provisions of this paragraph (a), provided that the outstanding license authorizes direct shipment of the same commodity or software to the same new ultimate consignee in the new country of destination.

(iii) Authorization to retain abroad beyond one year. If the exporter wishes to retain a commodity or software abroad beyond the 12 months authorized by paragraph (a) of this section, the exporter must request authorization by submitting Form 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 the EAR and should include the name and address of the exporter, the date the commodities or software were exported, a brief product description, and the justification for the extension. If 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 (a)(4)(i) of this section.

(5) Reexports. Commodities and software legally exported from the United States may be reexported to a new country(ies) of destination under this paragraph (a) provided its terms and conditions are met and the commodities and software are returned to the country

from which the reexport occurred.

(b) Exports of items temporarily in the United States: Scope. The provisions of this paragraph (b) describe the conditions for exporting foreign-origin items temporarily in the United States. The provisions include the export of items moving in transit through the United States, imported for display at a U.S. exhibition or trade fair, returned because unwanted, or returned because refused entry.

Note 1 to paragraph (b) of this section: A commodity withdrawn from a bonded warehouse in the United States under a "withdrawal for export" customs entry is considered as "moving in transit". It is not considered as "moving in transit" if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.

Note 2 to paragraph (b) of this section: Items shipped on board a vessel or aircraft and passing through the United States from one foreign country to another may be exported without a license provided that (a) while passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, and (b) they are not originally manifested to the United States.)

(1) Items moving in transit through the United States. Subject to the following

conditions, the provisions of paragraph (b)(1) of this section authorize export of items moving in transit through the United States under a Transportation and Exportation (T.& E.) customs entry or an Immediate Exportation (I.E.) customs entry made at a U.S. Customs Office.

(i) Items controlled for national security, nuclear proliferation, missile technology, or chemical and biological weapons reasons may not be exported to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740), respectively, under this paragraph (b)(1).

(ii) Items may not be exported to Country Group E:2 under this paragraph (b)(1).

(iii) The following may not be exported in transit from the United States under §740.8(b)(1):

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

(B) Chemicals controlled under ECCN 1C350; or

(C) Horses for export by sea (refer to short supply controls in part 754 of the EAR).

(iv) The provisions of paragraph (b)(1) apply to all shipments from Canada moving in transit through the United States to any foreign destination, regardless of the nature of the commodities or software or their origin. For such shipments the customs office at the U.S. port of export will require a copy of Form B-13, Canadian Customs Entry, certified or stamped by Canadian customs authorities, except where the shipment is valued at less than \$50.00. (In transit shipments originating in Canada that are exempt from U.S. licensing, or made under a U.S. license or other applicable U.S. License Exception do not require this form.) The commodity or software description, quantity, ultimate consignee, country of ultimate destination, and all other pertinent details of the shipment must be the same on a required Form B-13, as on Commerce Form 7513, or when Form 7513 is not required, must be the same as on Customs Form 7512. When there is a material difference, a corrected Form B-13 authorizing the shipment is required.

(2) Items imported for display at U.S. exhibitions or trade fairs. Subject to the following conditions, the provisions of this paragraph (b)(2) authorize the export of items that were imported into the United States for display at an exhibition or trade fair and were either entered under bond or permitted temporary free import under bond providing for their export and are being exported in accordance with the terms of that bond.

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

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

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

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

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

(3) Return of unwanted shipments. A foreign-origin item may be returned to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States. No foreign-origin items may be returned to Cuba, Libya, or North Korea.

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

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

(ii) A destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department, unless such return is licensed or otherwise authorized by the Treasury Department, Office of Foreign Assets Control (31 CFR part 500).

(c) Exports of beta test software. (1) Scope. The provisions of paragraph (c) authorize exports and reexports to eligible countries of beta test software intended for distribution to the general public.

(2) Eligible countries. The countries that are eligible to receive exports and reexports are all countries except those in Country Group E:2.

(3) Eligible software. All software that is controlled by the CCL (part 774 of the EAR), and under Commerce licensing jurisdiction, is eligible for export and reexport, subject to the restrictions in this paragraph (c).

(4) Conditions for use. Any beta test software program may be exported or reexported to eligible countries if all of the conditions under this section are met:

(i) The software producer intends to market the software to the general public

after completion of the beta testing, as described in the General Software Note found in Supplement No. 2 to part 774 of the EAR;

(ii) The software producer provides the software to the testing consignee free-of-charge or at a price that does not exceed the cost of reproduction and distribution; and

(iii) The software is designed for installation by the end-user without further substantial support from the supplier.

(5) Importer Statement. Prior to shipping any eligible software, the exporter or reexporter must obtain the following statement from the testing consignee, which may be included in a contract, non-disclosure agreement, or other document that identifies the importer, the software to be exported, the country of destination, and the testing consignee.

"We certify that this beta test software will only be used for beta testing purposes, and will not be rented, leased, sold, sublicensed, assigned, or otherwise transferred. Further, we certify that we will not transfer or export any product, process, or service that is the direct product of the beta test software."

(6) Use limitations. Only testing consignees that provide the importer statement required by paragraph (c)(5) of this section may execute any software received.

(7) Return or disposal of software. All beta test software exported must be destroyed abroad or returned to the exporter within 30 days of the end of the beta test period as defined by the software producer or, if the software producer does not define a test period, within 30 days of completion of the consignee's role in the test. Among other methods, this requirement may be satisfied by a software module that will destroy the software and all its copies at or before the end of the beta test period.

§740.9 Servicing and replacement of parts and equipment (RPL). This License Exception authorizes exports and reexports associated with one-for-one replacement of parts or servicing and replacement of equipment.

(a) Parts. (1) Scope. The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts for previously exported equipment.

(2) One-for-one replacement of parts.

(i) The term "replacement parts" as used in this section means parts needed for the immediate repair of equipment, including replacement of defective or worn parts. (It includes subassemblies but does not include test instruments or operating supplies). (The term "subassembly" means a number of components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as

those composed of a number of subassemblies.) Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment upon which they are installed, are not deemed to be replacement parts. For kits consisting of replacement parts, consult §740.8(a)(2)(ii) of this part.

(ii) Parts may be exported only to replace, on a one-for-one basis, parts contained in commodities that were: legally exported from the United States; legally reexported; or made in a foreign country incorporating authorized U.S.-origin parts. The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has confirmed the appropriate authority for the original transaction.

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

(3) Exclusions. (i) No replacement parts may be exported to repair a commodity exported under a license if that license included a condition that any subsequent replacement parts must be exported only under a license.

(ii) No parts may be exported to be held abroad as spare parts or equipment for

future use. Replacement parts may be exported to replace spare parts that were authorized to accompany the export of equipment, as those spare parts are utilized in the repair of the equipment. This will allow maintenance of the stock of spares at a consistent level as parts are used.

(iii) No parts may be exported to any destination except Iceland, New Zealand, or the countries listed in Country Group A:1 (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 related to activities described in §744.2(a) of the EAR, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in §744.2(a) of the EAR.

(iv) No replacement parts may be exported to 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" (as defined in part 772 of the EAR) or national security controlled commodity.

(v) The conditions described in this paragraph (a)(3) relating to replacement of parts do not apply to reexports to a foreign country of parts as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the exceptions

in §734.4 of the EAR.

(4) Reexports. Parts exported from the United States may be reexported to a new country of destination, provided that the restrictions described in paragraphs (a)(2) and (3) of this section are met. A party reexporting U.S.-origin one-for-one replacement parts shall ensure that the commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be legally used, and that either before or promptly after reexport of the replacement parts, the replaced parts are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to part 740) that shipped the replacement parts.

(b) Servicing and Replacement. (1) Scope. The provisions of this paragraph (b) authorize the export and reexport of items that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(2) Commodities and software sent to a United States or foreign party for servicing.

(i) Definition. "Servicing" as used in this section means inspection, testing, calibration or repair, including overhaul and reconditioning. The servicing shall not have improved or changed the basic characteristics, e.g., as to accuracy, capability, performance, or productivity of the commodity or software as originally authorized for export or reexport.

(ii) Return of serviced commodities and software. When the serviced commodity or software is returned, it may include any replacement or rebuilt parts necessary to its repair and may be accompanied by any spare part, tool, accessory, or other item that was sent with it for servicing.

(iii) Commodities and software imported from Country Group D:1 except the PRC. Commodities and software 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 to the country from which it was sent, provided that both of the following conditions are met:

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

(B) The end-use and the end-user of the serviced commodities or software and other particulars of the transaction, as set forth in the application and supporting documentation that formed the basis for issuance of the license have not changed.

(iv) Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. No repaired commodity or software may be exported or reexported to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(3) Replacements for defective or unacceptable U.S.-origin equipment.

(i) Subject to the following conditions, commodities or software may be exported or reexported to replace defective or otherwise unusable (e.g., erroneously supplied) items.

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

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

(C) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the equipment as originally approved for export or reexport under a license issued by BXA.

(D) 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.

(ii) Special conditions applicable to exports to Country Group B and Country Group D:1. (See Supplement No. 1 to part 740.) In addition to the general conditions in paragraph (b)(3)(i) of this section, the following conditions apply to exports or reexports of replacements for defective or unacceptable U.S.-origin commodities or software to a destination in Country Group B or Country Group D:1:

(A) By making such an export or reexport, the exporter represents that all the requirements of this paragraph (b) have been met and undertakes to destroy or return the replaced parts as provided in paragraph (b)(3)(ii)(C) of this section.

(B) The defective or otherwise unusable equipment must be replaced free of charge, except for transportation and labor charges. If exporting to the countries listed in Country Group D:1 (except the PRC), the exporter shall replace the commodity or software within the warranty period or within 12 months of its shipment to the ultimate consignee in the country of destination, whichever is shorter.

(C) The commodity or software to be replaced must either be destroyed abroad or returned to the United States, or to a foreign firm in Country Group B that is under the effective control of the 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.

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

§740.10 Governments and international organizations (GOV).

This Licenses Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel, and agencies of cooperating governments.

(a) International safeguards. (1) Scope. You may export and reexport commodities or software to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (Euratom), and reexports by IAEA and Euratom for official international safeguard use, as follows:

(i) Commodities or software consigned to the IAEA at its headquarters in Vienna, Austria, or field offices in Toronto, Ontario, Canada or Tokyo, Japan for official international safeguards use. The IAEA is an international organization that establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

(ii) Commodities or software consigned to the Euratom Safeguards Directorate

in Luxembourg, Luxembourg for official international safeguards use. Euratom is an international organization of European countries with headquarters in Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

(iii) Commodities consigned to IAEA or Euratom may be reexported to any country for IAEA or Euratom international safeguards use provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities and returns the commodities to the locations described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section when they become obsolete, are no longer required, or are replaced.

(iv) Commodity or software shipments may be made by commercial companies under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(v) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited safeguarded nuclear activities described in §744.2(a)(3) of the EAR.

(vi) When commodities or software originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may only be disposed of in accordance with the regulations in the EAR.

(2) Exclusions. No computers with a CTP greater than 10,000 MTOPS may be exported or reexported to countries listed in Computer Tiers 3 or 4. See §742.12 of the EAR for a complete list of the countries within Computer Tiers 3 and 4.

(b) Governments. (1) Scope. The provisions of paragraph (b) authorize exports and reexports of the items listed in paragraph (b)(2) of this section to personnel and agencies of the U.S. Government or agencies of cooperating governments.

(2) Eligibility.

(i) Items for personal use by personnel and agencies of the U.S. Government.

This provision is available for items in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to public international organizations), and their immediate families and servants. Items for personal use include household effects, food, beverages, and other daily necessities.

(ii) Items for official use by personnel and agencies of the U.S. Government.

This provision is available for items consigned to and for the official use of any agency of the U.S. Government.

(iii) Items for official use within national territory by agencies of cooperating governments. This provision is available for all items consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, except:

(A) Computers with a CTP greater than 10,000 MTOPS when destined for Argentina, Hong Kong, South Korea, Singapore, or Taiwan;

(B) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons; or

(C) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6D102, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101, as described in §742.6(a)(1) of the EAR.

(iv) Diplomatic and consular missions of a cooperating government. This provision is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to part 740), except:

(A) Computers with a CTP greater than 10,000 MTOPS when destined

for Argentina, Hong Kong, South Korea, Singapore, or Taiwan;

(B) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons; or

(C) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6D102, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101, as described in §742.6 (a)(1) of the EAR.

(3) Definitions. (i) "Agency of the U.S. Government" includes all civilian and military departments, branches, missions, government-owned corporations, and other agencies of the U.S. Government, but does not include such national agencies as the American Red Cross or international organizations in which the United States participates such as the Organization of American States. Therefore, shipments may not be made to these non-government national or international agencies, except as provided in paragraph (b)(2)(i) of this section for U.S. representatives to these organizations.

(ii) "Agency of a cooperating government" includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. Cooperating governments are the national governments of countries listed in Country Group A:1 (see Supplement No. 1 to part 740) and the national governments of

Argentina, Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Singapore, Sweden, Switzerland, and Taiwan.

§740.11 Gift parcels and humanitarian donations (GFT).

(a) Gift parcels. (1) Scope. The provisions of paragraph (a) authorize exports and reexports of gift parcels by an individual (donor) addressed to an individual, or a religious, charitable or educational organization (donee) located in any destination for the use of the donee or the donee's immediate family (and not for resale). The gift parcel must be provided free of charge to the donee. However, payment by the donee of any handling charges or of any fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the donee for purposes of this definition of "gift parcel."

Note to paragraph (a) of this section: A gift parcel, within the context of this paragraph (a), does not include multiple parcels exported in a single shipment for delivery to individuals residing in a foreign country. Such multiple gift parcels, if subject to the General Prohibitions described in §734.2(b) of the EAR, must be licensed by BXA. (See Supplement No. 2 to part 748 of the EAR for licensing of multiple gift parcels).

(2) Commodity, value and other limitations.

(i) Eligible commodities. The eligible commodities are as follows:

(A) 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 the EAR); and

(B) The commodity must be of a type and in quantities normally given as gifts between individuals.

(1) For Cuba, the only commodities that may be included in a gift parcel are the following items: 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.

(2) For all other destinations, eligible commodities include all items described in paragraph (a)(2)(i)(B)(1) 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 to paragraph (a) of this section. A watch or piece of jewelry is normally sent as a gift. However, multiple watches, either in one package or in subsequent shipments, would not qualify for such gift parcels because the quantity exceeds that normally given between individuals. Similarly, a sewing machine or bicycle, within the dollar limits of this License Exception, may be an appropriate gift. However, subsequent shipments of the same item to the same donee would not be a gift normally given between individuals.

(3) For purposes of paragraph (a)(2)(i)(B) 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.

(ii) Import requirements. The commodities must be acceptable in type and quantity by the recipient country for import as gifts. Commodities exceeding the import limits may not be included in gift parcels.

(iii) Frequency. 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.

(iv) Value. The combined total domestic retail value of all commodities included in a gift parcel may not exceed \$400, except for gift parcels to Cuba where the value of non-food items may not exceed \$200. There is no dollar value limit on food contained in a gift parcel to Cuba.

(3) How to export gift parcels. (i) A gift parcel must be sent directly to the donee by the individual donor, or for such donor by a commercial or other gift-forwarding service or organization. Each gift parcel must show, on the outside wrapper, the name and address of the donor, as well as the name and address of the donee, regardless of whether sent by the donor or by a forwarding service.

(ii) Each parcel must have the notation "GIFT -- Export License Not Required" written on the addressee side of the package and the symbol "GFT" written on any required customs declaration.

(b) Humanitarian donations. (1) Scope. The provisions of paragraph (b) authorize exports by groups or organizations of donations to meet basic human needs when those groups or organizations have experience in maintaining a verifiable system of distribution that ensures delivery to the intended beneficiaries.

(2) Basic human needs. Basic human needs are defined as those requirements essential to individual well-being: health, food, clothing, shelter, and education. These needs

are considered to extend beyond those of an emergency nature and those that meet direct needs for mere subsistence.

(3) Eligible donors. Eligible donors are U.S. charitable organizations that have an established record of involvement in donative programs and experience in maintaining and verifying a system of distribution to ensure delivery of commodities and software to the intended beneficiaries. Eligible distribution arrangements may consist of any one or more of the following:

(i) A permanent staff maintained in the recipient country to monitor the receipt and distribution of the donations to the intended beneficiaries;

(ii) Periodic spot-checks in the recipient country by members of the exporter's staff; or

(iii) An agreement to utilize the services of a charitable organization that has a monitoring system in place.

(4) Donations. To qualify for export under the provisions of this paragraph (b), the items must be provided free of charge to the beneficiary. The payment by the beneficiary, however, of normal handling charges or fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the beneficiary for purposes of this

paragraph (b).

(5) Ineligible commodities and software. The following commodities and software are not eligible:

(i) Commodities and software controlled for national security, chemical or biological weapons, and nuclear nonproliferation, missile technology or crime control reasons (see supplement No. 1 to part 774 of the EAR);

(ii) Exports for large-scale projects of the kind associated with comprehensive economic growth, such as dams and hydroelectric plants; or

(iii) Exports to Cuba of medical items excluded by §746.2(a)(3) of the EAR.

(6) Eligible items. Eligible commodities and software are those listed in Supplement No. 2 to part 740.

(7) Additional recordkeeping requirements. In addition to the recordkeeping requirements in part 762 of the EAR, donors must keep records containing the following information:

(i) The donor organization's identity and past experience as an exporter of

goods to meet basic human needs;

(ii) Past and current countries to which the donative programs have been and are being directed, with particular reference to donative programs in embargoed destinations;

(iii) Types of projects and commodities involved in the donative programs;

(iv) Specific class(es) of beneficiaries of particular donated goods intended to be exported under this License Exception; and

(v) Information concerning the source of funding for the donative programs and the projected annual value of exports of humanitarian donations.

§740.12 Technology and software -- unrestricted (TSU). This License Exception authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); and "mass market" software subject to the General Software Note.

(a) Operation technology and software. (1) Scope. The provisions of paragraph (a) permit exports and reexports of operation technology and software. "Operation technology" is the minimum technology necessary for the installation, operation, maintenance (checking), and

repair of those products that are lawfully exported or reexported under a license, a License Exception, or NLR. The "minimum necessary" operation technology does not include technology for development or production and includes use technology only to the extent required to ensure safe and efficient use of the product. Individual entries in the software and technology subcategories of the CCL may further restrict the export or reexport of operation technology.

(2) Provisions and destinations. (i) Provisions. Operation software may be exported or reexported provided that both of the following conditions are met:

(A) The operation software is the minimum necessary to operate equipment authorized for export or reexport; and

(B) The operation software is in object code.

(ii) Destinations. Operation software and technology may be exported or reexported to any destination to which the equipment for which it is required has been or is being legally exported or reexported.

(b) Sales technology. (1) Scope. The provisions of paragraph (b) authorize exports and reexports of sales technology. "Sales technology" is data supporting a prospective or actual

quotation, bid, or offer to sell, lease, or otherwise supply any item.

(2) Provisions and destinations.

(i) Provisions. Sales technology may be exported or reexported provided that:

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

(B) Neither the export nor the reexport will disclose the detailed design, production, or manufacture technology, or the means of reconstruction, of either the quoted item or its product. The purpose of this limitation is to prevent disclosure of technology so detailed that the consignee could reduce the technology to production.

(ii) Destinations. Sales technology may be exported or reexported to any destination.

NOTE: Neither this section nor its use means that the U.S. Government intends, or is committed, to approve a license application for any commodity, plant, software, or technology that may be the subject of the transaction to which such quotation, bid, or offer relates. Exporters are advised to include in any quotations, bids, or offers, and in any contracts entered into pursuant to such quotations, bids, or offers, a provision relieving themselves of

liability in the event that a license (when required) is not approved by the Bureau of Export Administration.

(c) Software updates. The provisions of paragraph (c) authorize exports and reexports of software updates that are intended for and are limited to correction of errors ("fixes" to "bugs") in software lawfully exported or reexported (original software). Such software updates may be exported or reexported only to the same consignee to whom the original software was exported or reexported, and such software updates may not enhance the functional capacities of the original software. Such software updates may be exported or reexported to any destination to which the software for which they are required has been legally exported or reexported.

(d) General Software Note: "mass market" software. (1) Scope. The provisions of paragraph (d) authorize exports and reexports of "mass market" software subject to the General Software Note (see Supplement No. 2 to part 774 of the EAR; also referenced in this section).

(2) Provisions and destinations.

(i) Destinations. The "mass market" provisions of this paragraph (d) for software are available to all destinations except Cuba, Iran, Libya, North Korea, Sudan, and Syria.

(ii) Provisions. "Mass market" treatment is available for software that is generally available to the public by being:

(A) Sold from stock at retail selling points, without restriction, by means of:

- (1) Over the counter transactions;
- (2) Mail order transactions; or
- (3) Telephone call transactions; and

(B) Designed for installation by the user without further substantial support by the supplier.

* * * * *

17A. The introductory text of newly designated §740.14 is revised to read as follows:

§740.14 Aircraft and vessels (AVS).

This License Exception authorizes departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. civil aircraft for temporary

sojourn abroad; the export of equipment and spare parts for permanent use on a vessel or aircraft; and exports to vessels or planes of U.S. or Canadian registry and U.S. or Canadian Airlines' installations or agents. Generally, no License Exception symbol is necessary for export clearance purposes; however, when necessary, the symbol "AVS" may be used.

* * * * *

PART 742 - [AMENDED]

18. Section 742.4 is amended by revising the last sentence of paragraph (a) to read as follows:

§742.4 National security.

(a) License requirements. * * * License Exception GBS is available for the export and reexport of certain national security controlled items to Country Group B (see §740.4 and Supplement No. 1 to part 740 of the EAR).

* * * * *

19. In §742.12(a)(1), the reference in the fourth sentence to "§743.3(e)" is revised to

read "§740.7".

20. Section 742.12 is amended by revising the last sentence of paragraph (a)(2) to read as follows:

§742.12 High performance computers.

(a) * * *

(2) * * * Countries included in Computer Tiers 1, 2, and 3 are listed in License Exception CTP in §740.7 of the EAR. Computer Tier 4 consists of Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

* * * * *

PART 744 - [AMENDED]

21. Section 744.2 is amended by revising paragraph (c) to read as follows:

§744.2 Restrictions on certain nuclear end-uses.

* * * * *

(c) Exceptions. Despite the prohibitions described in paragraphs (a) and (b) of this section, you may export technology subject to the EAR under the operation technology and software or sales technology and software provisions of License Exception TSU (see §740.12(a) and (b)), but only to and for use in countries listed in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), Iceland and New Zealand. Notwithstanding the provisions of part 740 of the EAR, the provisions of §740.12(a) and (b) will only overcome general prohibition five for countries listed in Country Group A:1, Iceland and New Zealand.

PART 746 - [AMENDED]

21. Section 746.2 is amended by revising paragraph (a)(1) to read as follows:

§746.2 Cuba.

(a) * * *

(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 the EAR (License Exceptions). Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Temporary exports and reexports (TMP) by the news media (see §740.8(a)(2)(viii) of the EAR).

(ii) Operation technology and software (TSU) for legally exported commodities (see §740.12(a) of the EAR).

(iii) Sales technology (TSU) (see §740.12(b) of the EAR).

(iv) Software updates (TSU) for legally exported software (see §740.12(c) of the EAR).

(v) Parts (RPL) for one-for-one replacement in certain legally exported commodities (see §740.9(a) of the EAR).

(vi) Baggage (BAG) (see §740.13 of the EAR).

(vii) Governments and international organizations (GOV) (see §740.10 of the EAR).

(viii) Gift parcels and humanitarian donations (GFT) (see §740.11 of the EAR).

(ix) Items in transit (TMP) from Canada through the U.S. (see §740.8(b)(1)(iv) of the EAR).

(x) Aircraft and vessels (AVS) for certain aircraft on temporary sojourn (see §740.14(a) of the EAR).

* * * * *

23. Section 746.3 is amended by revising paragraph (a)(1) to read as follows:

§746.3 Iraq.

(a) * * *

(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. Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Baggage (BAG) (See §740.13 of the EAR).

(ii) Governments and international organizations (GOV) (See §740.10 of the

EAR).

* * * * *

24. Section 746.4 is amended by revising paragraph (b) to read as follows:

§746.4 Libya.

* * * * *

(b) License requirements.

(1) Exports. OFAC and BXA both require a license for virtually all exports (including transshipments) to Libya. Except as noted in paragraph (b) of this section or specified in OFAC regulation, you may not use any BXA License Exception or other BXA authorization to export or transship to Libya. You will need a license from OFAC for all direct exports and transshipments to Libya except those eligible for the following BXA License Exceptions:

(i) Baggage (BAG) (see §740.13 of the EAR).

(ii) Governments and international organizations (GOV) (see §740.11 of the EAR).

(iii) Gift parcels (GFT) (see §740.11(a) of the EAR).

(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 the EAR, or any national security-controlled foreign-produced direct product of U.S. technology or software, as defined in §734.2(b)(3) of the EAR, exported from the U.S. after March 12, 1982. You will need a license from BXA to reexport all items subject to the EAR (see part 734 of the EAR) to Libya, except:

(i) Food, medicines, medical supplies, and agricultural commodities;

(ii) Reexports eligible for the following License Exceptions (read each License Exception carefully, as the provisions available for embargoed countries are generally narrow):

(A) Temporary exports and reexports (TMP): reexports by the news media (see §740.8(a)(2)(viii) of the EAR).

(B) Operation technology and software (TSU) for legally exported commodities (see §740.12(a) of the EAR).

(C) Sales technology (TSU) (see §740.12(b) of the EAR).

(D) Software updates (TSU) for legally exported software (see §740.12(c) of the EAR).

(E) Parts (RPL) for one-for-one replacement in certain legally exported commodities (§740.9(a) of the EAR).

(F) Baggage (BAG) (§740.13 of the EAR).

(G) Aircraft and vessels (AVS) for vessels only (see §740.14(c)(1) of the EAR).

(H) Governments and international organizations (GOV) (see §740.10 of the EAR).

(I) Gift parcels and humanitarian donations (GFT) (see §740.11 of the EAR).

* * * * *

25. Section 746.5 is amended by revising paragraphs (a)(1) and (b)(1) to read as

follows:

§746.5 North Korea.

(a) * * *

(1) License Exceptions. You may export without a license if your transaction meets all the applicable terms and conditions of any of the License Exceptions specified in this paragraph. To determine scope and eligibility requirements, you will need to turn to the sections or specific paragraphs of part 740 of the EAR (License Exceptions). Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Temporary exports and reexports (TMP) by the news media (see §740.8(a)(2)(viii) of the EAR).

(ii) Operation technology and software (TSU) for legally exported commodities (see §740.12(a) of the EAR).

(iii) Sales technology (TSU) (see §740.12(b) of the EAR).

(iv) Software updates (TSU) for legally exported software (see §740.12(c) of the EAR).

(v) Parts (RPL) for one-for-one replacement in certain legally exported commodities (§740.9(a) of the EAR).

(vi) Baggage (BAG) (§740.13 of the EAR).

(vii) Aircraft and vessels (AVS) for fishing vessels under governing international fishery agreements and foreign- registered aircraft on temporary sojourn in the U.S.¹ (see §740.14(a) and (c)(1) of the EAR).

(viii) Governments and international organizations (GOV) (see § 740.10 of the EAR).

(ix) Gift parcels and humanitarian donations (GFT) (see §740.11 of the EAR).

* * * * *

(b) Licensing policy. * * *

(1) BXA will review on a case-by-case basis applications for export of donated human-needs items listed in Supplement No. 2 to Part 740 of the EAR that do not qualify for the humanitarian donation provisions of License Exception GFT (see §740.11(b) of the EAR).

¹ Export of U.S. aircraft on temporary sojourn or vessels is prohibited, 44 CFR Ch. IV, Part 403 "Shipping restrictions: North Korea (T-2)."

Such applications include single transactions involving exports to meet emergency needs.

* * * * *

PART 748 - [AMENDED]

26. Supplement No. 2 to part 748 is amended by revising the introductory text of paragraphs (d), (e), and (p) to read as follows:

SUPPLEMENT NO. 2 TO PART 748 - UNIQUE LICENSE APPLICATION
REQUIREMENTS

* * * * *

(d) Gift parcels; consolidated in a single shipment. If you are submitting a license application to export multiple gift parcels for delivery to individuals residing in a foreign country, you must include the following information in your license application. NOTE: Each gift parcel must meet the terms and conditions described for gift parcels in License Exception GFT (See §740.11(a) of the EAR).

* * * * *

(e) Intransit through the United States. If you are submitting a license application for items moving intransit through the United States that do not qualify for the intransit provisions of License Exception TMP (see §740.8(b)(1) of the EAR), you must provide the following information with your license application:

* * * * *

(p) Temporary exports or reexports. If you are submitting a license application for the temporary export or reexport of an item (not eligible for the temporary exports and reexports provisions of License Exception TMP (see §740.9(a) of the EAR)) you must include the following certification in Block 24:

* * * * *

26. Supplement No. 5 to part 748 is amended by revising paragraph (a)(6)(vii) to read as follows:

SUPPLEMENT NO. 5 TO PART 748 - U.S. IMPORT CERTIFICATE AND DELIVERY VERIFICATION PROCEDURE

(a) * * *

(6) * * *

(vii) Reexport or transshipment of items after delivery to U.S. Items imported into the U.S. under the provisions of a U.S. International Import Certificate may not be reexported to any destination under the intransit provisions of License Exception TMP (see §740.8(b)(1) of the EAR). However, all other provisions of the EAR applicable to items of domestic origin shall apply to the reexport of items of foreign origin shipped to the U.S. under a U.S. International Import Certificate.

* * * * *

PART 750 - [AMENDED]

28. Section 750.7 is amended by revising paragraph (h)(2) to read as follows:

§750.7 Issuance of licenses.

(h) * * *

(2) Intransit within the United States. If you have been issued a license authorizing an intransit shipment (that does not qualify for the intransit provisions of License Exception TMP) through the United States, your license will be valid only for the export of the intransit shipment wholly of foreign origin and for which a Transportation and Exportation customs entry or an Immediate Exportation customs entry is outstanding.

* * * * *

PART 752 - [AMENDED]

29. Section 752.5 is amended by revising the introductory text of paragraph (c)(8)(i) to read as follows:

§752.5 Steps you must follow to apply for an SCL.

(c) * * *

(8) * * *

(i) Temporary exports. Proposed consignees that plan to exhibit or demonstrate items in countries other than those in which they are located or are authorized under an SCL, an approved Form BXA-752, or a License Exception provision described in §740.8(a)(2)(iii) of the EAR may obtain permission to do so by including the following additional certification on company letterhead, and attaching it to Form BXA-752.

* * * * *

PART 758 - [AMENDED]

30. Section 758.1 is amended by revising the first sentence of paragraph (d)(2)(vi) to

read as follows:

§758.1 Export clearance requirements.

(d) * * *

(2) * * *

(vi) Software and technology. If you are exporting software or technology, the export of which is authorized under the License Exceptions in §740.6 or §740.12 of the EAR, you do not need to make any notation on the package. * * *

* * * * *

31. Section 758.3 is amended by revising the third and fourth sentences of paragraph (h)(2) introductory text and the introductory text of paragraph (m)(3)(ii)(C) to read as follows:

§758.3 Shipper's Export Declaration (SED).

* * * * *

(h) * * *

(2) Exports not needing a license. * * * If the item(s) will be exported under the provisions of License Exceptions GBS, CIV, or LVS, or under the "NLR" provisions of the

EAR (as described in §758.1(a) of this part) and the item(s) are covered by entries on the Commerce Control List that have the column identifier "NS Column 2" controlled for "NS" reasons, the ECCN must also be shown in the designated space on the SED or SED continuation sheet. The following apply for notations made on SED:

* * * * *

(m) * * *

(3) * * *

(ii) * * *

(C) For intransit shipments of items of U.S.- origin eligible for the intransit provisions of License Exception TMP (see §740.8(b) of the EAR), enter the following statement:

* * * * *

32. Section 758.6 is amended by revising paragraph (a)(1)(ii) to read as follows:

§758.6 Destination control statement.

(a) * * *

(1) * * *

(ii) The export is made under the authority of the following License

Exceptions: LVS, GBS, CIV, CTP, TMP, or RPL; or

* * * * *

PART 770 - [AMENDED]

33. Section 770.3 is amended by revising paragraphs (d)(1)(i)(B), (d)(1)(ii), and (d)(2)(ii) to read as follows:

§770.3 Interpretations related to exports of technology and software to destinations in Country Group D:1.

(d) * * *

(1) * * *

(i) * * *

(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 for operation technology and software described in §740.12(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?

(2) * * *

(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 for operation technology and software described in §740.12(a) of the EAR, a license would be required even though the technician could apply the data without disclosing it to the customer.

* * * * *

(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 for operation technology and software described in §740.12(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 §740.12(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.

DATED:

Sue E. Eckert

Assistant Secretary

for Export Administration