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### § 770.1 INTRODUCTION

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

### § 770.2 ITEM INTERPRETATIONS

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

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

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

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

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

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

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

(c) [RESERVED]

*(d) Interpretation 4: Telecommunications equipment and systems*

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

*(e) Interpretation 5: Numerical control systems.*

**(1) Classification of “Numerical Control”**

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

**(2) Export documentation requirement.**

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

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

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

Parts, accessories, or equipment that are being shipped as scrap should be described on the SED or AES record in sufficient detail to be identified under the proper ECCN. When commodities

declared as parts, accessories, or equipment are shipped in bulk, or are otherwise not packaged, packed, or sorted in accordance with normal trade practices, the Customs Officer may require evidence that the shipment is not scrap. Such evidence may include, but is not limited to, bills of sale, orders and correspondence indicating whether the commodities are scrap or are being exported for use as parts, accessories, or equipment.

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

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

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

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

**(3)** Other commodities that may have been on the U.S. Munitions List are “scrap”, and therefore under the jurisdiction of the Department of Commerce, if they have been rendered useless beyond the possibility of restoration to their original identity only by means of mangling, crushing, or cutting. When in doubt as to whether a commodity covered by the Munitions List has been rendered useless, exporters should consult the Directorate of Defense Trade Controls, U.S. Department of State, Washington, D.C. 20520, or the Exporter Counseling Division, Office of Exporter Services, Room

1099A, U.S. Department of Commerce, Washington, D.C. 20230, before reporting a shipment as metal scrap.

*(h) Interpretation 8: Ground vehicles*

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

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

(i) Pneumatic tire casings of a kind designed to be bullet-proof or to run when deflated;

(ii) Tire inflation pressure control systems, operated from inside a moving vehicle;

(iii) Armored protection of vital parts, (e.g., fuel tanks or vehicle cabs); and

(iv) Special reinforcements for mountings for weapons.

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

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

arms or other specialized military equipment described in 22 CFR 121.

**(i) Interpretation 9: Civil aircraft and Civil aircraft equipment (including parts, accessories, attachments, components, and related training equipment).**

Aircraft and related training equipment, parts, accessories, and components defined in Categories VIII and IX of the Munitions List are under the export licensing authority of the U.S. Department of State (22 CFR parts 120 through 130). All other aircraft, parts, accessories and components are subject to the EAR and under the export licensing authority of the U.S. Department of Commerce, as follows:

**(1) Aircraft and related training equipment.**

(i) Aircraft not specifically designed, modified or equipped for military purposes, and

(ii) The following aircraft, so long as they have not been specifically equipped, re-equipped, or modified for military operations:

- (A) Cargo aircraft bearing “C” designations and numbered C-45 through C-118 inclusive, C-121 through C-125 inclusive, and C-131, using reciprocating engines only.
- (B) Trainer aircraft bearing “T” designations and using reciprocating engines or turboprop engines with less than 600 horsepower (s.h.p.).
- (C) Utility aircraft bearing “U” designations and using reciprocating engines only.
- (D) All liaison aircraft bearing an “L” designation.
- (E) All observation aircraft bearing “O” designations and using reciprocating engines.

**(2) Engines.**

(i) All reciprocating engines, and

(ii) All other aircraft engines not specifically designed or modified for military aircraft, except those defined in category VIII(f) of 22 C.F.R. Part 121.

**(3) Components, parts, accessories, attachments, and associated equipment.** Any aircraft tires as well as any components, parts, accessories, attachments and associated equipment that are not specifically designed or modified for aircraft on the Munitions List and all components and parts not on the Munitions List by virtue of the criteria set forth in the note to Category VIII (h) of 22 CFR part 121.

**(j) Interpretation 10: Civil aircraft inertial navigation equipment**

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

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

**(k) Interpretation 11: Precursor chemicals**

The following chemicals are controlled by ECCN 1C350. The appropriate Chemical Abstract Service Registry (C.A.S.) number and synonyms, (i.e., alternative names) are included to help you determine whether or not your chemicals are controlled by this entry.

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

Acid ammonium fluoride

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

- (13) (C.A.S. #96-79-7)  
 N,N-Diisopropyl-.beta.-aminoethyl chloride  
 2-Chloro-N,N-diisopropylethanamine  
 1-Chloro-N,N-diisopropylaminoethane  
 2-Chloro-N,N-diisopropylethylamine  
 N-(2-chloroethyl)-N-(1-methylethyl)-2-prop  
 anamine  
 N-(2-Chloroethyl) diisopropylamine  
 N,N-Diisopropyl-2-chloroethylamine  
 1-(Diisopropylamino)-2-cholorethane  
 2-(Diisopropylamino)ethyl chloride  
 Diisopropylaminoethyl chloride  
 .beta.-Diisopropylaminoethyl chloride
- (14) (C.A.S. #108-18-9) Diisopropylamine  
 N,N-Diisopropylamine  
 N-(1-Methylethyl)-2-propanamine
- (15) (C.A.S. #6163-75-3) Dimethyl  
 ethylphosphonate  
 Dimethyl ethanephosphonate  
 Ethylphosphonic acid dimethyl ester
- (16) (C.A.S. #756-79-6) Dimethyl  
 methylphosphonate  
 Dimethoxymethyl phosphine oxide  
 Dimethyl methanephosphonate  
 Methanephosphonic acid dimethyl ester  
 Methylphosphonic acid dimethyl ester
- (17) (C.A.S. #868-85-9) Dimethyl phosphite  
 Dimethoxyphosphine oxide  
 Dimethyl acid phosphite  
 Dimethyl hydrogen phosphite  
 Dimethyl phosphonate  
 Hydrogen dimethyl phosphite  
 Methyl phosphate
- (18) (C.A.S. #124-40-3) Dimethylamine  
 N-Methyl methanamine
- (19) (C.A.S. #506-59-2) Dimethylamine  
 hydrochloride  
 Dimethylammonium chloride  
 N-Methyl methanamine hydrochloride
- (20) [RESERVED]
- (21) (C.A.S. #1498-40-4) Ethylphosphonous  
 dichloride  
 Dichloroethylphosphine  
 Ethyl phosphonous dichloride  
 Ethyldichlorophosphine
- (22) (C.A.S. #430-78-4) Ethylphosphonous  
 difluoride  
 Ethyldifluorophosphine
- (23) (C.A.S. #1066-50-8) Ethylphosphonyl  
 dichloride  
 Dichloroethylphosphine oxide  
 Ethanephosphonyl chloride  
 Ethylphosphinic dichloride  
 Ethylphosphonic acid dichloride  
 Ethylphosphonic dichloride
- (24) [RESERVED]
- (25) (C.A.S. #7664-39-3) Hydrogen fluoride  
 Anhydrous hydrofluoric acid  
 Fluorhydric acid  
 Fluorine monohydride  
 Hydrofluoric acid gas
- (26) (C.A.S. #3554-74-3)  
 3-Hydroxyl-1-methylpiperidine  
 3-Hydroxy-N-methylpiperidine  
 1-Methyl-3-hydroxypiperidine  
 N-Methyl-3-hydroxypiperidine  
 1-Methyl-3-piperidinol  
 N-Methyl-3-piperidinol
- (27) (C.A.S. #76-89-1) Methyl benzilate  
 Benzilic acid methyl ester  
 .alpha.-Hydroxy-.alpha.-phenylbenzeneacetic  
 acid methyl ester  
 Methyl .alpha.-phenylmandelate  
 Methyl diphenylglycolate
- (28) [RESERVED]
- (29) [RESERVED]
- (30) [RESERVED]

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

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

Phosphorus acid trimethyl ester  
Trimethoxyphosphine

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

***(l) Interpretation 12: Computers***

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

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

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

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

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

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

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

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

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

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

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

Phosphorous acid triethyl ester  
Triethoxyphosphine  
Tris(ethoxy)phosphine

Encryption commodities and software controlled for EI reasons under ECCNs 5A002 and 5D002 may be pre-loaded on a laptop, handheld device or other computer or equipment and exported under the tools of trade provision of License Exception TMP or the personal use exemption under License Exception BAG, subject to the terms and conditions of such License Exceptions. This provision replaces the personal use exemption of the International Traffic and Arms Regulations (ITAR) that existed for such software prior to December 30, 1996. Neither License Exception TMP nor License Exception

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



BAG contains a reporting requirement. Like other “information security” “software”, components, “electronic assemblies” or modules, the control status of encryption commodities and software is determined in Category 5, part 2 even if they are bundled, commingled or incorporated in a computer or other equipment. However, commodities and software specially designed for medical end-use that incorporate an item in Category 5, part 2 are not controlled in Category 5, part 2. See Note 1 to Category 5, part 2 (“Information Security”) of Supplement No. 1 to Part 774 (the Commerce Control List) of the EAR.

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

#### (a) *Introduction*

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

#### (b) *Scope of licenses*

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

#### (c) *Commingled technology and software*

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

(2) U.S.-origin software that is incorporated into or commingled with foreign-origin software does not lose its U.S.-origin. Such commingled software is subject to the EAR in the same manner as the original U.S.-origin software, including license requirements, unless the commingled software is not subject to the EAR by reason of the *de minimis* exclusions described in §734.4 of the EAR.

#### (d) *Certain License Exception*

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

#### (1)(i) **Question 1.**

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

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

**(ii) Answer 1.** Export of technology includes release of U.S.-origin data in a foreign country, and “release” includes “application to situations abroad of personal knowledge or technical experience acquired in the United States.” As the release of technology in the circumstances described here would exceed that permitted under the License Exception TSU for operation technology and software described in §740.13(a) of the EAR, a license would be required even though the technician could apply the data without disclosing it to the customer.

**(2)(i) Question 2.** We plan, according to our normal business practices, to train customer engineers to maintain equipment that we have exported under a license, License Exception, or NLR. The training is contractual in nature,

provided for a fee, and is scheduled to take place in part in the customer's facility and in part in the U.S. Can we now proceed with this training at both locations under a License Exception?

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

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