

§ 740.17

items that are controlled for NS reasons to destinations in Country Group D:1; and

(2) Reexports to destinations in Country Group E:2 and Country Group D:2.

[61 FR 12768, Mar. 25, 1996. Redesignated at 61 FR 64274, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, and amended at 62 FR 25458, May 9, 1997; 63 FR 42228, Aug. 7, 1998; 65 FR 38150, June 19, 2000; 65 FR 60855, Oct. 13, 2000]

§ 740.17 Encryption commodities and software (ENC).

License Exception ENC authorizes the export and reexport of encryption items classified under ECCNs 5A002, 5D002 and 5E002. No encryption item(s) may be exported under this license exception to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria. Reporting requirements apply to exports made under the authority of License Exception ENC; see paragraph (e) of this section for these requirements.

(a) *Exports and reexports of encryption items.* Exports and reexports of encryption items classified under ECCNs 5A002, 5D002 and 5E002 are authorized to any end-user located in the countries listed in Supplement 3 to this part 740, except for exports of cryptanalytic items (as defined in Part 772 of the EAR) to government end-users. These items may also be exported or reexported to any destination for the internal use of foreign subsidiaries or offices of firms, organizations and governments headquartered in Canada or in countries listed in Supplement 3 to this part 740.

(b) For all other countries, you may export and reexport encryption commodities, software and components (as defined in part 772 of the EAR) under the provisions of License Exception ENC as enumerated in this section. For exports and reexports of encryption items which contain an open cryptographic interface (as defined in part 772 of the EAR), see paragraph (b)(5) of this section.

(1) *Encryption items for U.S. subsidiaries.* Exports and reexports of any encryption item classified under ECCNs 5A002, 5D002 and 5E002 of any key length are authorized to foreign subsidiaries of U.S. companies (as de-

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defined in part 772 of the EAR) without review and classification. This includes source code and technology for internal company use, such as the development of new products. License Exception ENC also authorizes transfers by U.S. companies of encryption technology controlled under 5E002 to foreign nationals in the United States, (except nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria) for internal company use, including the development of new products. All items produced or developed by U.S. subsidiaries with encryption commodities, software and technology exported under this paragraph are subject to the EAR and require review and classification before any sale or retransfer outside of the U.S. company.

(2) *Encryption commodities and software.* (i) Exports and reexports of any encryption commodity, general purpose toolkit, software and component are authorized after review and classification by BXA under ECCNs 5A002 and 5D002 to any individual, commercial firm or other non-government end-user outside the countries (except Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria) listed in Supplement 3 to this part 740. Encryption products classified under this paragraph require a license before export and reexport to governments (as defined in part 772 of the EAR) outside the countries listed in Supplement 3 to this part 740. The restriction limiting exports or reexports to internal company proprietary use is removed.

(ii) Certain restrictions apply to Internet and telecommunications service providers. Internet and telecommunications service providers can obtain and use any encryption product for their internal use and to provide any service under License Exception ENC. However, a license is required for the use of any product not classified as retail to provide services specific to government end-users outside the countries listed in Supplement 3 to this part 740, e.g., WAN, LAN, VPN, voice and dedicated-link services; application specific and e-commerce services and PKI encryption services specifically for government end-users.

(3) *Retail encryption commodities and software.* Exports and reexports to any

end-user of encryption commodities, software and components are authorized after review and classification by BXA as retail under ECCNs 5A002 and 5D002. Encryption products exported or reexported under this paragraph (b)(3) can be used to provide services to any entity. Internet or telecommunications service providers can obtain retail products under License Exception ENC and use them to provide any service to any entity. Retail encryption commodities, software and components are products:

(i) Generally available to the public by means of any of the following:

(A) Sold in tangible form through retail outlets independent of the manufacturer;

(B) Specifically designed for individual consumer use and sold or transferred through tangible or intangible means; or

(C) Which are sold or will be sold in large volume without restriction through mail order transactions, electronic transactions, or telephone call transactions; and

(ii) Meeting all of the following:

(A) The cryptographic functionality cannot be easily changed by the user;

(B) Substantial support is not required for installation and use;

(C) The cryptographic functionality has not been modified or customized to customer specification; and

(D) Are not network infrastructure products such as high end routers or switches designed for large volume communications.

(iii) Subject to the criteria in paragraphs (b)(3)(i) and (ii) of this section, retail encryption products include (but are not limited to) general purpose operating systems and their associated user-interface client software or general purpose operating systems with embedded networking and server capabilities; non-programmable encryption chips and chips that are constrained by design for retail products; low-end routers, firewalls and networking or cable equipment designed for small office or home use; programmable database management systems and associated application servers; low-end servers and application-specific servers (including client-server applications, e.g., Secure Socket Layer (SSL)-based ap-

plications) that interface directly with the user; and encryption products distributed without charge or through free or anonymous downloads.

(iv) Encryption products and network-based applications which provide functionality equivalent to other encryption products classified as retail will be considered retail.

(v) 56-bit products with key exchange mechanisms greater than 512 bits and up to and including 1024 bits, or equivalent products not classified as mass market, or finance-specific encryption commodities and software of any key length restricted by design (e.g., highly field-formatted with validation procedures and not easily diverted to other end-uses) and used to secure financial communications such as electronic commerce may be exported under the retail provisions of this section immediately after submitting a completed classification request to BXA.

(vi) Items which would be controlled only because they incorporate components or software which provide short-range wireless encryption functions may be exported without review and classification by BXA and without reporting under the retail provisions of this section.

(4) *Commercial encryption source code.* Exports and reexports of encryption source code not released under §740.13(e) are authorized subject to the following provisions:

(i) Encryption source code which would be considered publicly available under §734.3(b)(3) of the EAR and which is subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code (or object code resulting from compiling of any encryption such source code which would be considered publicly available) can be exported or reexported using License Exception ENC to any end-user without review and classification provided you have submitted to BXA (with a copy to the ENC Encryption Request Coordinator) by the time of export, written notification of the Internet location (e.g. URL or Internet address) or a copy of the source code. You may not knowingly export or reexport source code, object code or products developed with this

source code to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria. Posting of the source code or corresponding object code on the Internet (e.g., FTP or World Wide Web site) where it may be downloaded by anyone would not establish “knowledge” of a prohibited export or reexport. In addition, such posting would not trigger “red flags” necessitating the affirmative duty to inquire under the “Know Your Customer” guidance provided in Supplement No. 3 to part 732 of the EAR.

(ii) Encryption source code which would not be considered publicly available and which does not include source code that when compiled provides an open cryptographic interface (see paragraph (b)(5) of this section), may be exported or reexported using License Exception ENC to any individual, commercial firm or other non-government end-user after submitting a complete classification request to BXA with a copy to the ENC Coordinator.

(5) *Cryptographic interfaces.* (i) Exports or reexports of encryption commodities, software and components which provide an open cryptographic interface (as defined in part 772 of the EAR) may be exported under License Exception ENC to any end-user located in any country listed in Supplement 3 to this part 740. Exports or reexports to other destinations of encryption commodities, software and components which provide an open cryptographic interface are not eligible to use License Exception ENC and require a license (unless exported to a subsidiary of a U.S. company under paragraph (b)(1) of this section). This does not apply to source code that would be considered publicly available under § 734.3(b)(3) of the EAR.

(ii) Encryption items which are limited to allowing foreign-developed cryptographic products to operate with U.S. products (e.g. signing) can be exported or reexported under License Exception ENC to any end-user. Such exports are subject to reporting requirements (see paragraph (e)(3) of this section). No review of the foreign-developed cryptography is required.

(c) *Reexports and Transfers.* U.S. or foreign distributors, resellers or other entities who are not original manufacturers of encryption commodities and

software are permitted to use License Exception ENC only in instances where the export or reexport meets the applicable terms and conditions of this section. Transfers of encryption items listed in paragraph (b) of this section to government end-users or end-users within the same country are prohibited unless otherwise authorized by license or license exception. Foreign products developed with or incorporating U.S.-origin encryption source code, components or toolkits remain subject to the EAR but do not require review and classification by BXA and can be exported or reexported without further authorization.

(d) *Eligibility for License Exception ENC.* (1) *Review and classification.* You may initiate review and classification of your encryption items as required by this section by submitting a classification request in accordance with the provisions of § 748.3(b) and Supplement 6 to Part 742 of the EAR. Indicate “License Exception ENC” in Block 9: Special purpose, on form BXA-748P. Submit the original request to BXA and send a copy of the request to ENC Encryption Request Coordinator (see paragraph (e)(5) of this section for mailing addresses).

(i) Exporters may immediately export and reexport any encryption item except “cryptanalytic items” as defined in part 772 of the EAR to any end-user located in the countries listed in Supplement 3 to this part 740 provided the exporter has submitted to BXA a completed classification request by the time of export.

(ii) Exporters may, thirty days after receipt of a completed classification request by BXA, export and reexport to any non-government end-user located outside the countries listed in Supplement 3 to this part 740 any encryption product eligible under paragraph (b)(2), (b)(3) or (b)(4) of this section unless otherwise notified by BXA. No exports to government end-users located outside of countries listed in Supplement 3 to this part 740 are allowed under this provision. BXA reserves the right to suspend eligibility to export under this provision while a classification is pending.

(2) *Grandfathering.* Finance-specific and 56-bit products previously reviewed

and classified by BXA can be exported and reexported to any end-user without further review. Other encryption commodities, software or components previously approved for export can be exported and reexported without further review to any end-user in countries listed in Supplement 3 to this part 740 countries and to any non-government end-user outside of the countries listed in Supplement 3 to this part 740. This includes products approved under a license, an Encryption Licensing Arrangement, or classified as eligible to use License Exception ENC (except for those products which were only authorized for export to U.S. subsidiaries). Exports of products not classified by BXA as "retail" to governments of countries not listed in Supplement 3 to this part 740 require a license.

(3) *Key length increases.* Exporters can increase the key lengths of previously classified products and continue to export without another review. No other change in the cryptographic functionality is allowed.

(i) Any product previously classified as 5A002 or 5D002 can, with any upgrade to the key length used for confidentiality or key exchange algorithms, be exported or reexported under provisions of License Exception ENC to any non-government end-user without an additional review. Another classification is necessary to determine eligibility as a "retail" product under paragraph (b)(3) of this section.

(ii) Exporters must certify to BXA in a letter from a corporate official that the only change to the encryption product is the key length for confidentiality or key exchange algorithms and there is no other change in cryptographic functionality. Certifications must include the original authorization number issued by BXA and the date of issuance. BXA must receive this certification prior to any export of an upgraded product. The certification should be sent to BXA, with a copy sent to the ENC Encryption Request Coordinator (see paragraph (e)(5) of this section for mailing addresses).

(e) *Reporting requirements.* (1) No reporting is required for exports of:

- (i) Any encryption to U.S. subsidiaries for internal company use;
- (ii) Finance-specific products;

(iii) Encryption commodities or software with a symmetric key length not exceeding 64 bits or otherwise classified as qualifying for mass market treatment;

(iv) Retail products exported to individual consumers;

(v) Items exported via free or anonymous download;

(vi) Encryption items from or to a U.S. bank, financial institution or their subsidiaries, affiliates, customers or contractors for banking or financial operations;

(vii) Items which incorporate components limited to providing short-range wireless encryption functions;

(viii) Retail operating systems, or desktop applications (e.g. e-mail, browsers, games, word processing, data base, financial applications or utilities) designed for, bundled with, or pre-loaded on single CPU computers, laptops or hand-held devices;

(ix) Client Internet appliance and client wireless LAN cards;

(x) Foreign products developed by bundling or compiling of source code.

(2) Exporters must provide all available information as follows:

(i) For items exported to a distributor or other reseller, including subsidiaries of U.S. firms, the name and address of the distributor or reseller, the item and the quantity exported and, if collected as part of the distribution process by the exporter, the end-user's name and address;

(ii) For items exported through direct sale, the name and address of the recipient, the item, and the quantity exported (except for retail products if the end-user is an individual consumer); and

(iii) For exports of 5E002 items to be used for technical assistance and which are not released by § 744.9 of the EAR, the name and address of the end-user.

(3) For direct sales or transfers of encryption components, commercial source code described under paragraph (b)(4) of this section, technology or general purpose encryption toolkits to foreign manufacturers when intended for use in foreign products developed for commercial sale, you must submit the names and addresses of the manufacturers using these items and, when

the product is made available for commercial sale, a non-proprietary technical description of the foreign products for which the component, source code or toolkit are being used (e.g., brochures, other documentation, descriptions or other identifiers of the final foreign product; the algorithm and key lengths used; general programming interfaces to the product, if known; any standards or protocols that the foreign product adheres to; and source code, if available.).

(4) Exporters of encryption commodities, software and components which were previously classified under License Exception ENC, or which have been licensed for export under an Encryption Licensing Arrangement, must comply with the reporting requirements of this section.

(5) You must submit reports required under this section semi-annually to BXA, unless otherwise provided in this paragraph (e)(5). For exports occurring between January 1 and June 30, a report is due no later than August 1 of

that year. For exports occurring between July 1 and December 31, a report is due no later than February 1 the following year. Reports must include the classification or other authorization number. These reports must be provided in electronic form to BXA; suggested file formats for electronic submission include spreadsheets, tabular text or structured text. Exporters may request other reporting arrangements with BXA to better reflect their business models. Reports should be sent electronically to crypt@bxa.doc.gov, or disks and CDs can be mailed to the following addresses:

(i) Department of Commerce, Bureau of Export Administration, Office of Strategic Trade and Foreign Policy Controls, 14th Street and Pennsylvania Ave., N.W., Room 2705, Washington, D.C. 20230, Attn: Encryption Reports.

(ii) A copy of the report should be sent to: Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6131, Ft. Meade, MD 20755-6000.

[65 FR 62605, Oct. 19, 2000]

SUPPLEMENT NO. 1 TO PART 740

COUNTRY GROUP A

Country	[A:1]	Missile technology control regime [A:2]	Australia group [A:3]	Nuclear suppliers group [A:4]
Argentina		X	X	X
Australia	X	X	X	X
Austria ¹		X	X	X
Belgium	X	X	X	X
Brazil		X		
Bulgaria				X
Canada	X	X	X	X
Czech Republic			X	X
Denmark	X	X	X	X
Finland ¹		X	X	X
France	X	X	X	X
Germany	X	X	X	X
Greece	X	X	X	X
Hong Kong ¹				
Hungary		X	X	X
Iceland		X	X	
Ireland ¹		X	X	X
Italy	X	X	X	X
Japan	X	X	X	X
Korea, South ¹			X	X
Luxembourg	X	X	X	X
Netherlands	X	X	X	X
New Zealand ¹		X	X	X
Norway	X	X	X	X
Poland			X	X
Portugal	X	X	X	X
Romania			X	X
Russia		X		X
Slovakia			X	X
South Africa		X		X

COUNTRY GROUP A—Continued

Country	[A:1]	Missile technology control regime [A:2]	Australia group [A:3]	Nuclear suppliers group [A:4]
Spain	X	X	X	X
Sweden ¹ .....	.....	X	X	X
Switzerland ¹ .....	.....	X	X	X
Turkey	X	.....	.....	.....
United Kingdom	X	X	X	X
United States	X	X	X	X

¹ Cooperating Countries.

Country Group B

Countries

Afghanistan	Greece	Palau
Algeria	Grenada	Panama
Andorra	Guatemala	Papua New Guinea
Angola	Guinea	Paraguay
Antigua	Guinea-Bissau	Peru
Argentina	Guyana	Philippines
Australia	Haiti	Poland
Austria	Honduras	Portugal
Bahamas	Hong Kong	Qatar
Bahrain	Hungary	Rwanda
Bangladesh	Iceland	Saint Kitts & Nevis
Barbados	India	Saint Lucia
Barbuda	Indonesia	Saint Vincent
Belgium	Ireland	San Marino
Belize	Israel	Sao Tome & Principe
Benin	Italy	Saudi Arabia
Bhutan	Jamaica	Senegal
Bolivia	Japan	Serbia and Montengro
Bosnia & Herzegovina	Jordan	Seychelles
Botswana	Kenya	Sierra Leone
Brazil	Kiribati	Singapore
Brunei	Korea, South	Slovakia
Burkina Faso	Kuwait	Slovenia
Burma	Lebanon	Solomon Islands
Burundi	Lesotho	Somalia
Cameroon	Liberia	South Africa
Canada	Liechtenstein	Spain
Cape Verde	Luxembourg	Sri Lanka
Central African Republic	Macedonia, the Former	Surinam
Chad	Yugoslav Republic of	Swaziland
Chile	Madagascar	Sweden
Colombia	Malawi	Switzerland
Comoros	Malaysia	Taiwan
Congo	Maldives	Tanzania
Costa Rica	Mali	Thailand
Cote d'Ivoire	Malta	Togo
Croatia	Marshall Islands	Tonga
Cyprus	Mauritania	Trinidad & Tobago
Czech Republic	Mauritius	Tunisia
Denmark	Mexico	Turkey
Djibouti	Micronesia, Federated	Tuvalu
Dominica	States of	Uganda
Dominican Republic	Monaco	United Arab Emirates
Ecuador	Morocco	United Kingdom
Egypt	Mozambique	United States
El Salvador	Namibia	Uruguay
Equatorial Guinea	Nauru	Vanuatu
Eritrea	Nepal	Vatican City
Ethiopia	Netherlands	Venezuela
Fiji	New Zealand	Western Sahara
Finland	Nicaragua	Western Samoa
France	Niger	Yemen
Gabon	Nigeria	Zaire
Gambia, The	Norway	Zambia
Germany	Oman	Zimbabwe
Ghana	Pakistan	

EDITORIAL NOTE 1: At 64 FR 60341, Nov. 5, 1999, Supplement No. 1 to part 740 is amended by removing “Serbia and Montenegro” from the list of “Country Group B” countries and by adding in alphabetical order, “Kosovo (Serbian province of)” and “Montenegro”. Changes to this illustration are effective Nov. 5, 1999.

EDITORIAL NOTE 2: At 65 FR 14859, Mar. 20, 2000, Supplement No. 1 to part 740, Country Group B, is amended by revising "Antigua" to read "Antigua". Changes to this illustration are effective Mar. 20, 2000.

Supplement No. 1 to Part 740

Country Group C

[Reserved]

• COUNTRY GROUP D

Country	[D: 1] National Security	[D: 2] Nuclear	[D: 3] Chemical & Biological	[D: 4] Missile Technology
Afghanistan			X	
Albania	X			
Algeria				
Andorra				
Angola				
Armenia	X		X	
Azerbaijan	X		X	
Bahrain			X	X
Belarus	X		X	
Bulgaria	X		X	
Burma			X	
Cambodia	X			
China (PRC)	X		X	X ¹
Comoros				
Cuba		X	X	
Djibouti				
Egypt			X	X
Estonia	X			
Georgia	X		X	
India		X	X	X ¹
Iran		X	X	X ¹
Iraq		X	X	X
Israel		X	X	X
Jordan			X	X
Kazakhstan	X		X	
Korea, North	X	X	X	X ¹
Kuwait			X	X
Kyrgyzstan	X		X	
Laos	X			
Latvia	X			
Lebanon			X	X
Libya		X	X	X
Lithuania	X			
Macau	X		X	X
Micronesia, Federated States of				
Moldova	X		X	
Mongolia	X		X	
Oman			X	X
Pakistan		X	X	X ¹
Qatar			X	X
Romania	X			
Russia	X		X	
Saudi Arabia			X	X
Syria			X	X
Taiwan			X	
Tajikistan	X		X	
Turkmenistan	X		X	
Ukraine	X		X	
United Arab Emirates			X	X
Uzbekistan	X		X	

• COUNTRY GROUP D—Continued

Country	[D: 1] National Security	[D: 2] Nuclear	[D: 3] Chemical & Biological	[D: 4] Missile Technology
Vanuatu				
Vietnam	X		X	
Yemen			X	X

¹ Certain Missile Technology projects have been identified in the following countries:
 China—M Series Missiles CSS-2.
 India—Agni, Prithvi, SLV-3 Satellite Launch Vehicle, Augmented Satellite Launch Vehicle (ASLV), Polar Satellite Launch Vehicle (PSLV), Geostationary Satellite Launch Vehicle (GSLV).
 Iran—Surface-to-Surface Missile Project, Scud Development Project.
 Korea, North—No Dong I, Scud Development Project.
 Pakistan—Half Series Missiles.

COUNTRY GROUP E

Country	[E:1] UN embargo	[E:2] uni- lateral embargo
Angola	X	
Cuba		X
Iraq	X	
Libya	X	X
Rwanda	X	
Serbia and Montenegro	X	

[61 FR 12768, Mar. 25, 1996, as amended at 62 FR 6686, Feb. 12, 1997; 62 FR 25458, May 9, 1997; 62 FR 42048, Aug. 5, 1997; 63 FR 37769, July 14, 1998; 64 FR 28908, May 28, 1999; 65 FR 38151, June 19, 2000]

SUPPLEMENT NO. 2 TO PART 740—ITEMS THAT MAY BE DONATED TO MEET BASIC HUMAN NEEDS UNDER THE HUMANITARIAN LICENSE EXCEPTION

- (a) *Health*
- Equipment for the Handicapped
- Hospital Supplies and Equipment
- Laboratory Supplies and Equipment
- Medical Supplies and Devices
- Medicine-Processing Equipment
- Medicines
- Vitamins
- Water Resources Equipment
- Food
- Agricultural Materials and Machinery Suited to Small-Scale Farming Operations
- Agricultural Research and Testing Equipment
- Fertilizers
- Fishing Equipment and Supplies Suited to Small-Scale Fishing Operations
- (b) *Food*
- Insecticides
- Pesticides
- Seeds
- Small-Scale Irrigation Equipment
- Veterinary Medicines and Supplies
- (c) *Clothes and Household Goods*
- Bedding
- Clothes
- Cooking Utensils
- Fabric

- Personal Hygiene Items
- Soap-Making Equipment
- Weaving and Sewing Equipment
- (d) *Shelter*
- Building Materials
- Hand Tools
- (e) *Education*
- Books
- Individual School Supplies
- School Furniture
- Special Education Supplies and Equipment for the Handicapped
- (f) *Basic Support Equipment and Supplies Necessary To Operate and Administer the Donative Program*
- Audio-Visual Aids for Training
- Generators
- Office Supplies and Equipment

SUPPLEMENT NO. 3 TO PART 740—LICENSE EXCEPTION ENC COUNTRY GROUP

- Austria
 - Australia
 - Belgium
 - Czech Republic
 - Denmark
 - Finland
 - France
 - Germany
 - Greece
 - Hungary
 - Ireland
 - Italy
 - Japan
 - Luxembourg
 - Netherlands
 - New Zealand
 - Norway
 - Poland
 - Portugal
 - Spain
 - Sweden
 - Switzerland
 - United Kingdom
- [65 FR 62607, Oct. 19, 2000]