

§ 740.14

key length exceeding 64-bits that qualifies as mass market encryption software under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2, of the Commerce Control List (Supplement No. 1 to Part 774 of the EAR). (Once such mass market encryption software has been reviewed by BIS and released from “EI” and “NS” controls pursuant to § 742.15(b)(2) of the EAR, it is controlled under ECCN 5D992 and is thus outside the scope of License Exception TSU.) See § 742.15(b)(2) of the EAR for exports and reexports of mass market encryption products controlled under ECCN 5D992.

(3) Provisions and destinations—

(i) *Destinations.* “Mass market” software is available to all destinations except destinations in Country Group E:1 (see Supplement No. 1 to this part).

(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.

(e) *Encryption source code (and corresponding object code).* (1) *Scope.* The provisions of paragraph (e) of this section authorize exports and reexports, without review, of encryption source code controlled under ECCN 5D002 that would be considered publicly available under § 734.3(b)(3) of the EAR, and corresponding object code resulting from the compiling of such source code.

(2) *Eligible Software.* Encryption source code is eligible for export and reexport under License Exception TSU, provided that it would be considered publicly available under § 734.3(b)(3) of the EAR. Such encryption source code is eligible for License Exception TSU even if it 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. Corresponding object code resulting from the compiling of such source code is also eligible for License Exception TSU treatment if such

15 CFR Ch. VII (1–1–03 Edition)

object code would also be considered publicly available under § 734.3(b)(3) of the EAR.

(3) *Restrictions.* Encryption software controlled under ECCN 5D002 that would not be considered publicly available, but which incorporates or is specially designed to use encryption software that would be considered publicly available, is not eligible for export or reexport under this paragraph (e).

(4) *Country restrictions.* You may not knowingly export or reexport source code, corresponding object code or products developed with this source code to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria.

(5) *Notification requirement.* You must provide BIS written notification of the Internet location (e.g., URL or Internet address) of the source code or a copy of the source code by the time of export. Submit the notification by email to BIS at crypt@bis.doc.gov, and provide a copy of the notification to the ENC Encryption Request Coordinator at enc@ncsc.mil.

(6) *“Knowledge” of a prohibited export or reexport.* Posting of 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. See § 740.13(e)(4) of the EAR for prohibited knowing exports to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. 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.

[61 FR 64283, Dec. 4, 1996, as amended at 61 FR 65464, Dec. 13, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, as amended at 61 FR 68580, Dec. 30, 1996; 62 FR 25458, May 9, 1997; 65 FR 2496, Jan. 14, 2000; 65 FR 62604, Oct. 19, 2000; 66 FR 42110, Aug. 10, 2001; 67 FR 38862, June 6, 2002]

§ 740.14 Baggage (BAG).

(a) *Scope.* This License Exception authorizes individuals leaving the United States either temporarily (i.e., traveling) or longer-term (i.e., moving) and crew members of exporting or reexporting carriers to take to any destination, as personal baggage, the classes

of commodities and software described in this section.

(b) *Eligibility.* Individuals leaving the United States may export or reexport any of the following commodities or software for personal use of the individuals or members of their immediate families traveling with them to any destination or series of destinations. Individuals leaving the United States temporarily (i.e., traveling) must bring back items exported and reexported under this License Exception unless they consume the items abroad or are otherwise authorized to dispose of them under the EAR. Crew members may export or reexport only commodities and software described in paragraphs (b)(1) and (b)(2) of this section to any destination.

(1) *Personal effects.* Usual and reasonable kinds and quantities for personal use of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects, and their containers.

(2) *Household effects.* Usual and reasonable kinds and quantities for personal use of furniture, household effects, household furnishings, and their containers.

(3) *Vehicles.* Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, trailers, motorcycles, bicycles, tricycles, perambulators, and their containers.

(4) *Tools of trade.* Usual and reasonable kinds and quantities of tools, instruments, or equipment and their containers for use in the trade, occupation, employment, vocation, or hobby of the traveler or members of the household being moved. For special provisions regarding encryption items subject to EI controls, see paragraph (f) of this section.

(c) *Limits on eligibility.* The export of any commodity or software is limited or prohibited, if the kind or quantity is in excess of the limits described in this section. In addition, the commodities or software must be:

(1) Owned by the individuals (or by members of their immediate families) or by crew members of exporting carriers on the dates they depart from the United States;

(2) Intended for and necessary and appropriate for the use of the individuals or members of their immediate families traveling with them, or by the crew members of exporting carriers;

(3) Not intended for sale or other disposal; and

(4) Not exported under a bill of lading as cargo if exported by crew members.

(d) *Special provision: unaccompanied baggage.* Individuals departing the United States may ship unaccompanied baggage, which is baggage sent from the United States on a carrier other than that on which an individual departs. Crew members of exporting carriers may not ship unaccompanied baggage. Unaccompanied shipments under this License Exception shall be clearly marked "BAGGAGE." Shipments of unaccompanied baggage may be made at the time of, or within a reasonable time before or after departure of the consignee or owner from the United States. Personal baggage controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS) or nuclear nonproliferation (NP) must be shipped within 3 months before or after the month in which the consignee or owner departs the United States. However, commodities controlled for CB, MT, NS, or NP may not be exported under this License Exception to Country Groups D:1, D:2, D:3, D:4, E:2, or Sudan. (See Supplement No. 1 to part 740.) No items controlled for EI reasons may be exported or reexported as unaccompanied baggage.

(e) *Special provisions: shotguns and shotgun shells.* (1) A United States citizen or a permanent resident alien leaving the United States may export or reexport shotguns with a barrel length of 18 inches or over and shotgun shells under this License Exception, subject to the following limitations:

(i) Not more than three shotguns may be taken on any one trip.

(ii) The shotguns and shotgun shells must be with the person's baggage but they may not be mailed.

(iii) The shotguns and shotgun shells must be for the person's exclusive use for legitimate hunting or lawful sporting purposes, scientific purposes, or personal protection, and not for resale or other transfer of ownership or control. Accordingly, except as provided in

§ 740.15

15 CFR Ch. VII (1-1-03 Edition)

(e)(2) of this section, shotguns may not be exported permanently under this License Exception. All shotguns and unused shotgun shells must be returned to the United States. Note that since certain countries may require an Import Certificate or a U.S. export license before allowing the import of a shotgun, you should determine the import requirements of your country of destination in advance.

(2) A nonresident alien leaving the United States may export or reexport under this License Exception only such shotguns and shotgun shells as he or she brought into the United States under the provisions of Department of Treasury Regulations (27 CFR 178.115(d)).

(f) *Special provisions: encryption software subject to EI controls.* (1) Only a U.S. citizen or permanent resident as defined by 8 U.S.C. 1101(a)(20) may permanently export or reexport encryption items controlled for EI reasons under this License Exception.

(2) The U.S. citizen or permanent resident must maintain effective control of the encryption items controlled for EI reasons.

(3) The encryption items controlled for EI reasons may not be exported or reexported to Country Group E:2, Iran, Iraq, Sudan, or Syria.

[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 50522, Sept. 22, 1998; 64 FR 17973, Apr. 13, 1999]

§ 740.15 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.

(a) *Aircraft on temporary sojourn*—(1) *Foreign registered aircraft.* An operating civil aircraft of foreign registry that

has been in the United States on a temporary sojourn may depart from the United States under its own power for any destination, provided that:

(i) No sale or transfer of operational control of the aircraft to nationals of a destination in Country Group E:1 (see Supplement No. 1 to this part) has occurred while in the United States;

(ii) The aircraft is not departing for the purpose of sale or transfer of operational control to nationals of a destination in Country Group E:1 (see Supplement No. 1 to this part); and

(iii) It does not carry from the United States any item for which an export license is required and has not been granted by the U.S. Government.

(2) *U.S. registered aircraft.* (i) A civil aircraft of U.S. registry operating under an Air Carrier Operating Certificate, Commercial Operating Certificate, or Air Taxi Operating Certificate issued by the Federal Aviation Administration or conducting flights under operating specifications approved by the Federal Aviation Administration pursuant to 14 CFR part 129 of the regulations of the Federal Aviation Administration, may depart from the United States under its own power for any destination, provided that:

(A) The aircraft does not depart for the purpose of sale, lease or other disposition of operational control of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(B) The aircraft's U.S. registration will not be changed while abroad;

(C) The aircraft is not to be used in any foreign military activity while abroad; and

(D) The aircraft does not carry from the United States any item for which a license is required and has not been granted by the U.S. Government.

(ii) Any other operating civil aircraft of U.S. registry may depart from the United States under its own power for any destination, except to a destination in Country Group E:1 (see Supplement No. 1 to this part) (flights to these destinations require a license), provided that:

(A) The aircraft does not depart for the purpose of sale, lease or other disposition of operational control of the