

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 non-proliferation, 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 pro-

grams and the projected annual value of exports of humanitarian donations.

[61 FR 64282, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996; 62 FR 25458, May 9, 1997]

§ 740.13 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); "mass market" software subject to the General Software Note; and encryption source code (and corresponding object code) that would be considered publicly available under § 734.3(b)(3) of the EAR. Note that encryption software subject to the EAR is not subject to the General Software Note (see paragraph (d)(2) of this section).

(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 Industry and Security.

(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).¹

(2) *Exclusions*. The provisions of this paragraph (d) are not available for encryption software controlled for “EI” reasons under ECCN 5D002 or for encryption software with symmetric 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

¹“Mass market” software may fall under the classification of “general use” software for export clearance purposes. Exporters should consult the Census Bureau FTSR for possible SED or AES requirements.

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 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 pro-

vided in Supplement No. 3 to part 732 of the EAR.

(f) *Special recordkeeping requirements: ECCNs 2D983 and 2E983.* In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this paragraph, when exporting operation software or technology controlled under ECCNs 2D983 and 2E983, respectively, under License Exception TSU. Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. The following information must be specially maintained for each export or reexport transaction, under License Exception TSU, of operation software and technology controlled by ECCNs 2D983 and 2E983:

(1) A description of the software or technology exported or reexported, including the ECCN, as identified on the CCL;

(2) A description of the equipment for which the software or technology is intended to be used, including the ECCN, as identified on the CCL;

(3) The intended end-use of the software or technology;

(4) The name and address of the end-user;

(5) The quantity of software shipped; and

(6) The location of the equipment for which the software or technology is intended to be used, including the country of destination.

[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; 68 FR 16211, Apr. 3, 2003; 68 FR 50472, Aug. 21, 2003]

§ 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.