

§ 740.16

- (iii) Food stores;
- (iv) Slop chest articles;
- (v) Saloon stores or supplies; and
- (vi) Equipment and spare parts.

[61 FR 12678, Mar. 25, 1996. Redesignated and amended at 61 FR 64274, 64283, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996; 65 FR 38150, June 19, 2000; 66 FR 42110, Aug. 10, 2001; 68 FR 50472, Aug. 21, 2003]

**§ 740.16 Additional permissive reexports (APR).**

This License Exception allows the following reexports:

(a) *Reexports from Country Group A:1 and cooperating countries.* Reexports may be made from Country Group A:1 or from cooperating countries, provided that:

(1) The reexport is made in accordance with the conditions of an export authorization from the government of the reexporting country;

(2) The commodities being reexported are not controlled for NP, CB, MT, SI, or CC reasons; and

(3) The reexport is destined to *either*:

(i) A country in Country Group B that is not also included in Country Group D:2, D:3, or D:4; Cambodia; or Laos; and the commodity being reexported is both controlled for national security reasons and not controlled for export to Country Group A:1; or

(ii) A country in Country Group D:1 (National Security) (see Supplement No. 1 to part 740), other than Cambodia, Laos, or North Korea and the commodity being reexported is controlled for national security reasons.

(b) *Reexports to and among Country Group A:1 and cooperating countries.* Reexports may be made to and among Country Group A:1 and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (see Supplement No. 1 to part 740) or cooperating country, or for reexport from such country in accordance with other provisions of the EAR. All commodities are eligible except those controlled for nuclear nonproliferation reasons or missile technology reasons.

(c) Reexports to a destination to which direct shipment from the United States is authorized under an unused outstanding license may be made under the terms of that license. Such reex-

ports shall be recorded in the same manner as exports are recorded, regardless of whether the license is partially or wholly used for reexport purposes. (See part 762 of the EAR for recordkeeping requirements.)

(d) Reexports of any item from Canada that, at the time of reexport, may be exported directly from the United States to the new country of destination under any License Exception.

(e) Reexports (return) to the United States of any item. If the reexporting party requests written authorization because the government of the country from which the reexport will take place requires formal U.S. Government approval, such authorization will generally be given.

(f) Reexports from a foreign destination to Canada of any item if the item could be exported to Canada without a license.

(g) Reexports between Switzerland and Liechtenstein.

(h) Shipments of foreign-made products that incorporate U.S.-origin components may be accompanied by U.S.-origin controlled spare parts, provided that they do not exceed 10 percent of the value of the foreign-made product, subject to the restrictions in § 734.4 of the EAR.

(i) Reexports to Sudan of items controlled by ECCNs 2A994; 3A992.a; 5A991.f; 5A992; 6A991; 6A998; 7A994; 8A992.d, .e, .f, and .g; 9A990.a and .b; and 9A991.d and .e. In addition, items in these ECCNs are not counted as controlled U.S. content for purposes of determining license requirements for U.S. parts, components, and materials incorporated in foreign-made products. However, the export from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Sudan is prohibited without a license.

(j) Reexports of items controlled by NP Column 1 (see Supplement No. 1 to part 774 of the EAR) to, among, and from countries described in Country Group A:4 (see Supplement No. 1 to part 740), except:

(1) Reexports from countries that are not identified in Country Group A:1 of

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; 67 FR 10614, Mar. 8, 2002]

**§ 740.17 Encryption commodities and software (ENC).**

License Exception ENC authorizes the export and reexport of encryption items controlled under ECCN 5A002, 5D002 or 5E002, and “information security” test, inspection, and production equipment controlled under ECCN 5B002. Encryption items exported and reexported under License Exception ENC remain subject to “EI” controls. No encryption items may be exported or reexported, under this license exception, to countries listed in Country Group E:1 of Supplement No. 1 to this Part—this includes exports and reexports (as defined in § 734.2 of the EAR) of encryption source code and technology to nationals of these countries. Review and reporting requirements apply to certain exports under this license exception (paragraph (d) of this section describes how to submit encryption items for review; paragraph (e) of this section describes which exports are subject to reporting requirements). Certain exports and reexports to government end-users are authorized under paragraphs (a) and (b)(3) of this section. Section 772.1 of the EAR defines the term “government end-user” as it applies to encryption items. Section 742.15 of the EAR describes the license requirements and policies that apply to exports and reexports of encryption items.

(a) *Exports and reexports to countries listed in Supplement 3 to this part.* Encryption items controlled under ECCN 5A002, 5D002 or 5E002 (except cryptanalytic items as defined in Part 772 of the EAR), and “information security” test, inspection, and production equipment controlled under ECCN 5B002, are authorized for immediate export and reexport to government and

non-government end-users located in the countries listed in Supplement 3 to this part 740, subject to the review requirements described in paragraph (d) of this section. Cryptanalytic items are authorized to non-government end-users, only, under this paragraph (a). Encryption items and “information security” test, inspection, and production equipment may also be exported or reexported to any destination eligible under this license exception 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. (Note that License Exception ENC prohibits exports and reexports of encryption source code and technology to nationals of countries listed in Country Group E:1 of Supplement No. 1 to this part.) Before you export an item for the first time under this license exception, you must submit to BIS and the ENC Encryption Request Coordinator a review request for that item, as described in paragraph (d) of this section. See paragraph (e) of this section for applicable semi-annual reporting requirements.

(b) *Exports and reexports to all other eligible countries.* (1) *Encryption items for U.S. subsidiaries.* Exports and reexports of encryption items controlled under ECCN 5A002, 5D002 or 5E002 and “information security” test, inspection, and production equipment controlled under ECCN 5B002, are authorized under this license exception, without review, to foreign subsidiaries of U.S. companies for any end-use not prohibited elsewhere in the EAR. This paragraph (b)(1) also authorizes exports and reexports by U.S. companies and their subsidiaries of any such items (including encryption source code and technology), to foreign nationals working as contractors, interns or employees of said U.S. companies and their subsidiaries, provided that the items are for internal company use, including the development of new products. (Note that License Exception ENC prohibits exports and reexports of encryption source code and technology to nationals of countries listed in Country Group E:1 of Supplement No. 1 to this part). All items produced or developed by U.S. subsidiaries with encryption