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§740.1

INTRODUCTION

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) Scope

A "License Exception" is an authorization contained in this part that allows you to export or reexport under stated conditions, items subject to the Export Administration Regulations (EAR) that would otherwise require a license under General Prohibition One, Two, or Three, as indicated under one or more of the Export Control Classification Numbers (ECCNs) in the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR. If your export or reexport is subject to General Prohibitions Six for embargoed destinations, refer to part 746 of the EAR to determine the availability of any License Exceptions. Special commodity controls apply to short supply items. License Exceptions for items listed on the CCL as controlled for Short Supply reasons are found in part 754 of the EAR. If your export or reexport is to subject to General Prohibition Five, consult part 744 of the EAR. If your export or reexport is subject to General Prohibitions Four, Seven, Eight, Nine, or Ten, then no License Exceptions apply.

(b) Certification

By using any of the License Exceptions you are certifying that the terms, provisions, and conditions for the use of the License Exception described in the EAR have been met. Please refer to part 758 of the EAR for clearance of shipments and documenting the use of License Exceptions.

(c) License Exception symbols

Each License Exception bears a three letter symbol that will be used for export clearance purposes (see paragraph (d) of this section).

(d) Shipper's Export Declaration

You must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the correct License Exception symbol (*e.g.*, LVS, GBS, CIV) and the correct Export Control Classification Number (ECCN) (*e.g.*, 4A003, 5A002) for all shipments of items exported under a License Exception. Items temporarily in the United States meeting the provisions of License Exception TMP, under §740.9(b)(3), are excepted from this requirement. See §758.1 of the EAR for Shipper's Export Declaration requirements or §758.2 of the EAR for Automated Export System (AES) requirements.

(e) Destination Control Statement

You may be required to enter an appropriate Destination Control Statement on commercial documents in accordance with Destination Control Statement requirements of §758.6 of the EAR.

(f) Recordkeeping

Records of transactions involving exports under any of the License Exceptions must be maintained in accordance with the recordkeeping requirements of part 762 of the EAR.

§740.2

RESTRICTIONS ON ALL LICENSE EXCEPTIONS

(a) You may not use *any* License Exception if any one or more of the following apply:

(1) Your authorization to use a License Exception has been suspended or revoked, or your intended export does not qualify for a License Exception.

(2) The export or reexport is subject to one of the ten General Prohibitions, is not eligible for a

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License Exception, and has not been authorized by BXA.

(3) The item is for surreptitious interception of wire or oral communications, controlled under ECCN 5A980, unless you are a U.S. Government agency (see §740.11(b)(2)(ii) of this part, Governments (GOV)).

(4) The commodity you are shipping is a specially designed crime control an detection instrument or equipment described in §742.7 of the EAR and you are not shipping to Iceland, New Zealand, or countries listed in Country Group A:1 (see Supplement No. 1 to part 740), unless the shipment is authorized under License Exception BAG, §740.14(e) of this part (shotguns and shotgun shells).

(5) The item is controlled for missile technology (MT) reasons, except that the items described in ECCNs 6A008, 7A001, 7A002, 7A004, 7A101, 7A102, 7A103, 7A104, 7B001, 7D001, 7D002, 7D003, 7D101, 7D102, 7E003, or 7E101, may be exported as part of a manned aircraft, land vehicle or marine vehicle or in quantities appropriate for replacement parts for such applications under §740.9(a)(2)(ii) (License Exception TMP for kits consisting of replacement parts), §740.10 (License Exception RPL), §740.13 (License Exception TSU), or §740.15(c) (License Exception AVS for equipment and spare parts for permanent use on a vessel or aircraft).

(b) All License Exceptions are subject to revision, suspension, or revocation, in whole or in part, without notice. It may be necessary for BXA to stop a shipment or an export transaction at any stage of its progress, e.g., in order to prevent an unauthorized export or reexport. If a shipment is already en route, it may be further necessary to order the return or unloading of the shipment at any port of call.

(c) BXA may by informing the exporter, suspend or revoke any License Exception in order to comply with U.S. Wassenaar obligations. In addition, BXA may inform an exporter, that before using any License Exception, a notice be submitted with BXA concerning the proposed export.

§740.3

SHIPMENTS OF LIMITED VALUE (LVS)

(a) Scope

License Exception LVS authorizes the export and reexport in a single shipment of eligible commodities as identified by "LVS - $(value limit)" on the CCL.

(b) Eligible Destinations

This License Exception is available for all destinations in Country Group B (see Supplement No. 1 to part 740), provided that the net value of the commodities included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified in the LVS paragraph for that entry.

(c) Definitions

(1) **Order.** The term "order" as used in this §740.3 means a communication from a person in a foreign country, or that person's representative, expressing an intent to import commodities from the exporter. Although all of the details of the order need not be finally determined at the time of export, terms relating to the kinds and quantities of the commodities to be exported, as well as the selling prices of these commodities, must be finalized before the goods can be exported under License Exception LVS.

(2) **Net value: for LVS shipments.** The actual selling price of the commodities that are included in the same order and are controlled under the same entry on the CCL, less shipping charges, or the current market price of the commodities to the

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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 unrestricted encryption source code. Note that encryption software 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

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required) is not approved by the Bureau of Export Administration.

(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).[3]

(2) Software not eligible for this License Exception. This License Exception is not available for certain encryption software controlled under ECCN 5D002. (Refer to the Cryptography Note in Category 5 - part 2 of the Commerce Control List for information on Mass Market Encryption commodities and software. Also refer to §§742.15(b)(1) and 748.3(b) of the EAR for information on item classifications for release from "EI" controls and "NS" controls).

[3]"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 requirements.

(3) Provisions and destinations.

(i) *Destinations.* "Mass market" software is available to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(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) Unrestricted encryption source code*

(1) Encryption source code controlled under ECCN 5D002, which would be considered publicly available under §734.3(b)(3) of the EAR and which is not subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed with the source code is released from EI controls and may be exported or reexported without review under License Exception TSU, provided you have submitted written notification to BXA of the Internet location (e.g., URL or Internet address) or a copy of the source code by the time of export. Send the notification to BXA at crypt@bxa.doc.gov with a copy to ENC Encryption Request Coordinator, or see §740.17(e)(5) for the mailing addresses. Intellectual property protection (e.g., copyright, patent or trademark) will not, by itself, be construed as an express agreement for the payment of a licensing fee or royalty for

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commercial production or sale of any product developed using the source code.

(2) Object code resulting from the compiling of source code which would be considered publicly available can be exported under TSU if the requirements of this section are otherwise met and no fee or payment (other than reasonable and customary fees for reproduction and distribution) is required for the object code. See §740.17(b)(4)(i) for the treatment of object code where a fee or payment is required.

(3) You may not knowingly export or reexport source code or products developed with this source code to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria.

(4) 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, including that described in paragraph (e)(2) of this section. 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.

§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

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