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and (a)(2) of this AD, in accordance with Heath Tecna Service Bulletin H0655-33-01, dated March 28, 1996.

(1) Perform a visual inspection to detect discrepancies (i.e., damage, burn marks, and black or brown discoloration) of the electrical plugs and receptacles of the sidewall lighting system in the passenger cabin, and to verify that the ends of all pins and sockets are even and that they are seated and locked into place, in accordance with the service bulletin. If any discrepancy is detected, prior to further flight, replace the discrepant part with a new part in accordance with the service bulletin.

(2) Modify the electrical wiring and connectors of the sidewall lighting system in the passenger cabin in accordance with paragraph 2.H. of the Accomplishment Instructions of the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Heath Tecna Service Bulletin H0655-33-01, dated March 28, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hexcel Interiors (formerly Heath Tecna Aerospace), 3225 Woburn Street, Bellingham, Washington 98226. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 27, 1998.

Issued in Renton, Washington, on September 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-25145 Filed 9-21-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 732, 734, 740, 742, 743, 748, 750, 752, 770, 772, and 774

[Docket No. 980911233-8233-01]

RIN 0694-AB60

Encryption Items

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Export Administration Regulations (EAR) by clarifying controls on the export and reexport of encryption items (EI) controlled for "EI" reasons on the Commerce Control List. This rule incorporates public comments on an interim rule published in the **Federal Register** on December 30, 1996, and implements new licensing policies for general purpose non-recoverable non-voice encryption commodities or software of any key length for distribution to banks and financial institutions in specified countries.

DATES: Effective Date: This rule is effective September 22, 1998. Comments: Comments on this rule must be received on or before November 6, 1998.

ADDRESSES: Written comments on this rule should be sent to Nancy Crowe, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: James Lewis, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482-0092.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1996, the Bureau of Export Administration (BXA) published in the **Federal Register** (61 FR 68572) an interim rule that exercises jurisdiction over, and imposes new combined national security and foreign policy controls on, certain encryption items that were on the United States Munitions List, consistent with Executive Order (E.O.) 13026 and pursuant to the Presidential Memorandum of that date, both issued by President Clinton on November 15, 1996.

BXA received comments from 45 commenters, and the comments fall into three broad categories: general concerns and objections to the policy embodied in the regulations; recommendations for specific changes or clarifications to the regulations that are consistent with the broad encryption policy implemented in the December 30 rule; and recommendations for additional changes to encryption policy.

Suggestions for Changes to Clarify Existing Policy

A number of commenters provided specific suggestions for changes or clarifications which are consistent with the intent of the policy and which would streamline or improve the regulations. Many of these suggestions are implemented in this rule, such as clarifying that the tools of trade provisions of License Exception TMP and License Exception BAG apply globally and clarifying that anti-virus software does not require a license for export.

Several commenters asked the Department of Commerce to adopt exemptions to license requirements which were available for encryption exporters under § 123.16(b)(2) and (b)(9) of the International Traffic and Arms Regulations (ITAR), such as those which allowed the export of components to a U.S. subsidiary or which allowed the export of spare parts and components without a license for an already approved sale. This rule adds these new provisions under License Exception TMP, making them applicable to encryption controlled items as well as other items eligible for TMP treatment.

Two commenters asked that the regulations clarify that the ITAR licensing policy for equipment specially made for and limited to the encryption of interbanking transactions had not changed with the transfer of jurisdiction of encryption products to the Department of Commerce. This interim rule clarifies that this equipment is not subject to EI controls.

Several commenters recommended a number of changes to the Key Escrow Product and Agent criteria found in Supplement Nos. 4 and 5 part to 742 of the EAR. These recommendations were to simplify the criteria, and to modify some of the specific prescriptions to allow for greater flexibility and variation on the part of exporters. Many commenters found the criteria too bureaucratic and legalistic to help advance U.S. encryption policy goals, while others noted that the criteria were still overly focused on key escrow and not consistent with the broader approach to key recovery found elsewhere in the regulation. Several commenters also encouraged the administration to make clear that it had moved beyond key escrow to key recovery in its policy. One commenter

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focused on weaknesses and omissions found in the key escrow product and agent criteria found in Supplement Nos. 4 and 5 to part 742 of the EAR, and provided suggested additions to the criteria to make them more consistent with emerging business practices. The criteria specified in Supplement Nos. 4 and 5 were discussed extensively with industry prior to publication of the December 30 interim rule, and the rule reflects these discussions. However, BXA continues to look for ways to streamline the criteria, and will address revisions in a future regulation.

Several commenters expressed concerns over the longer processing time required for licenses at the Department of Commerce. Some commenters noted that the involvement of Departments of Energy and State, the Arms Control and Disarmament Agency and other agencies which did not review license applications for encryption products submitted to the Department of State added unnecessary levels of review and caused unwarranted delays. BXA is continuing to work with other reviewing Departments and Agencies to ensure expeditious review of encryption license applications. Many commenters noted that the requirements for a Department of Commerce license were substantially greater than what was required at the Department of State. The Department of Commerce, for example, requires an end-use certificate to be obtained for some destinations before approving an export; the Department of State did not and exporters question the need for this change. Other commenters noted that the Department of State licensing system was more flexible and faster for approvals of distribution and manufacturing arrangements. The Department of Commerce has no equivalent licenses, but is reviewing the possibility of such licenses. Many oral comments received since the close of the comment period note that unlike the Department of State, the Department of Commerce does not allow licenses to be amended, so that if an exporter has, for example, a license which allows him to ship to thirty countries and wishes to add one more, the Department of Commerce requires submission of an entire new license while the Department of State was content with a simple letter noting the requested change. This rule will now allow the addition of countries to an Encryption Licensing Arrangement by letter. BXA understands industry concerns about the license process under the EAR, and continues to look for ways to streamline the process.

Additional Recommendations for Changes to Encryption Policy

A number of commenters asked that the Administration revisit a number of decisions made in the course of the development of the encryption policy as reflected in the December 30 interim rule. Several asked that we reconsider and liberalize the treatment of Cryptographic Application Program Interface. Others questioned the addition of "defense services" controls similar to that contained in the ITAR (which prohibits U.S. persons from assisting foreign entities from developing their own indigenous encryption products). Several commenters objected to the structure of License Exception KMI for non-recoverable 56 bit products, with its requirement for a review every six months. Other commenters also called for a reversal of the decision to exempt transferred encryption items from normal Department of Commerce regulatory practices. Finally, several commenters recommended that the licensing criteria and License Exceptions applicable to other dual-use items be fully applicable to encryption products, such as considerations of foreign availability, the *de minimis* content exclusion, public domain treatment and the use of License Exceptions. This rule focuses on clarifications to existing encryption policy.

Based on public comments to the December 30 interim rule, this interim rule specifically makes the following changes:

—In §§ 732.2(d) and 732.3(e)(2), makes editorial corrections to clarify that encryption items controlled for "EI" reasons under ECCNs 5A002, 5D002 and 5E002 are not eligible for *De Minimis* treatment.

—In § 734.2, clarifies that downloading or causing the downloading of encryption source code and object code in Canada is not controlled and does not require a license.

—In § 740.6, clarifies that letters of assurance required for exports under License Exception TSR may be accepted in the form of a letter or any other written communication from the importer, including communications via facsimile.

—§ 740.8 is also amended by adding a new paragraph to authorize, after a one-time technical review, exports and reexports under License Exception KMI of non-recoverable financial-specific encryption software (which is not eligible under the provisions of License Exception TSU for mass market software, such as SET or similar protocols) and commodities of any key length that are restricted by design (e.g., highly field-formatted with validation procedures, and not easily diverted to other end-uses) for financial applications to secure financial transactions, for end-uses such as financial transfers or electronic commerce. No business and marketing plan to develop, produce, or market encryption items with recoverable features is required. Such exports and reexports are eligible to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. Conforming changes are also made in § 742.15.

—§ 740.8 is also amended to authorize, after a one time review, exports and reexports under License Exception KMI of general purpose non-recoverable non-voice encryption commodities or software of any key length for distribution to banks and financial institutions (as defined in part 772 of the EAR) in destinations listed in new Supplement No. 3 to part 740, provided the end-use is limited to secure business financial communications or transactions or financial communications/transactions between the bank or financial institution and its customers. No customer to customer communications or transactions are permitted. Software and commodities that have already received a one-time technical review through a classification request or have been licensed for export under an Encryption Licensing Arrangement or a license are eligible for export to banks and financial institutions under License Exception KMI without an additional one-time technical review. Note that no business or marketing plan is required. Conforming changes are also made in § 742.15. Software and commodities that have already been approved under an Encryption Licensing Arrangement to banks in specified countries may now be exported or reexported to other banks and financial institutions in those countries under the same Encryption Licensing Arrangement.

—In § 740.9, removes the reference to Country Group D:1. With this change, commodities and software are eligible for export under the tools of trade provisions of License Exception TMP to all destinations except countries listed in country group E:2 or Sudan. This also clarifies that encryption software controlled for EI reasons under ECCN 5D002 may be pre-loaded on a laptop and temporarily exported under the tools of trade provisions of License Exception TMP

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to most countries, including those listed in Country Group D:1.

—Also in § 740.9, adds a new paragraph (a)(2)(ix) to authorize under License Exception TMP the export of components, parts, tools or test equipment exported by a U.S. person to its subsidiary, affiliate or facility in a country in Country Group B that is owned or controlled by the U.S. person, if the components, part, tool or test equipment is to be used for manufacture, assembly, testing, production or modification, provided that no components, parts, tools or test equipment or the direct product of such components, parts, tools or test equipment are transferred or reexported to a country other than the United States from such subsidiary, affiliate or facility without a license or other authorization from BXA.

—In § 740.11, excludes items controlled for EI reasons from eligibility under the International Safeguards provisions of License Exception GOV.

—In § 740.14, clarifies existing provisions of License Exception BAG to distinguish temporary from permanent exports and imposes a restriction on the use of BAG for exports or reexports of EI-controlled items to terrorist supporting destinations or by persons other than U.S. citizens and permanent residents.

—New Supplement No. 3 to part 740 is added to list the countries eligible to receive under License Exception KMI general purpose non-recoverable non-voice encryption commodities or software of any key length for distribution to banks and financial institutions.

—In § 742.15, adds 40-bit DES as being eligible for consideration under the 15-day review, for mass-market eligibility, subject to the additional criteria listed in Supplement No. 6 to part 742.

—In § 742.15(b)(1), clarifies that subsequent bundling, updates or releases may be exported and reexported under applicable provisions of the EAR without a separate one-time technical review so long as the functional encryption capacity of the originally reviewed mass-market encryption software has not been modified or enhanced.

—New paragraph (b)(4) is added to § 742.15 to authorize exports and reexports under an Encryption Licensing Arrangement of general purpose non recoverable, non-voice encryption commodities and software of any key length for use by banks/financial institutions as defined in part 772 of the EAR in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Syria and Sudan. No business or marketing plan is required. Exports and reexports for the end-uses to secure business financial communications or between the bank and/or financial institution and its customers will receive favorable consideration. No customer to customer communications or transactions are eligible under the Encryption Licensing Arrangement.

—In Supplement No. 4 to part 742, paragraph (3), revises "reasonable frequency" to "at least once every three hours" to resolve the ambiguity on how often the output must identify the key recovery agent and material/information required to decrypt the ciphertext.

—In Supplement No. 4 to part 742, paragraph (6)(i), clarifies that the U.S. government must be able to obtain the key(s) or other material/information needed to decrypt all data, without restricting the means by which the key recoverable products allow this.

—In Supplement No. 6 to part 742 for 7-day mass-market classification requests, clarifies that a copy of the encryption subsystem source code may be used instead of a test vector to determine eligibility for License Exception TSU for mass market software.

—In § 743.1, requires reporting under the Wassenaar Arrangement for items controlled under ECCNs 5A002 and 5D002 when exported under specific provisions of License Exception KMI. This is not a new reporting requirement, but replaces and narrows the scope of the reporting requirement under the Encryption License Arrangement for financial-specific commodities and software and general purpose non-recoverable non-voice encryption commodities and software of any key length for distribution to banks and financial institutions that are eligible for License Exception KMI.

—In §§ 748.9 and 748.10, clarifies a long-standing policy that no support documentation is required for exports of technology or software, and it removes the requirement for such support documentation for exports of technology or software to Bulgaria, Czech Republic, Hungary, Poland, Romania, or Slovakia. This rule also exempts from support documentation requirements all encryption items controlled under ECCNs 5A002, 5B002, 5D002 and 5E002. This conforms with the practice under the ITAR prior to December 30, 1996.

—In § 750.7, allows requests to add countries of destination to Encryption Licensing Arrangements by letter.

—In § 752.3, excludes encryption items controlled for EI reasons from eligibility for a Special Comprehensive License.

—In § 770.2, adds a new interpretation to clarify that encryption software controlled for EI reasons under ECCN 5D002 may be pre-loaded on a laptop and exported under the tools of trade provision of License Exception TMP or the personal use exemption under License Exception BAG, subject to the terms and conditions of such License Exceptions.

—In part 772, adds new definitions for "bank", "effective control", "encryption licensing arrangement", and "financial institution".

—In Supplement No. 1 to part 774, Category 5—Telecommunications and Information Security is amended by revising ECCN 5A002 to authorize exports of components and spare parts under License Exception LVS, provided the value of each order does not exceed $500 and the components and spare parts are destined for items previously authorized for export, and to clarify that equipment for the encryption of interbanking transactions is not controlled under that entry.

—Revises the phrase "up to 56-bit key length DES" where it appears to read "56-bit DES or equivalent", and makes other editorial changes.

Note that this rule does not affect exports or reexports authorized under licenses issued prior to the effective date of this rule.

Several commenters also noted that the exemptions found under § 125.4(b) of the ITAR should be implemented in the EAR. Most of the exemptions found in § 125.4(b) of the ITAR are already available under existing provisions of the EAR. For example, § 125.4(b)(4) of the ITAR authorizes exports without a license of copies of technical data previously authorized for export. The EAR has no restrictions on the number of copies sent to a consignee authorized to receive technology under license or a License Exception. Section 125.4(b)(5) authorizes exports without a license of technical data in the form of basic operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export provided the technical data is for use by the same recipient. Further, Section 125.4(2) authorizes exports of technical data in furtherance of a manufacturing license or technical assistance agreement. License Exception

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TSU for operation technology and software (see § 740.13 of the EAR) authorizes the export and reexport of the minimum technology necessary for the installation, operation, maintenance and repair of those products (including software) that are lawfully exported or reexported under a license, a License Exception, or non license required (NLR). Section 125.4(b)(7) of the ITAR allows the return of technical data to the original source of import. License Exception TMP similarly authorizes the return of any foreign-origin item, including technology, to the country from which it was imported if the characteristics have not been enhanced while in the United States (see § 740.9(b)(3) of the EAR).

BXA has also received many inquiries on Shipper's Export Declaration (SED) requirements for Canada. Note that the EAR do not require exporters to file an SED for exports of any item to Canada for consumption in Canada, unless a license is required. Further note that a license is not required for exports of encryption items for consumption in Canada, including certain exports over the Internet. Finally, BXA has received many requests for clarification on SED requirements for electronic transfers. Neither the EAR nor the FTSR provide for the filing of SEDs for electronic transfers of items controlled by the Department of Commerce under the EAR.

As further clarifications and changes to the encryption provisions of the EAR are intended, in particular regarding Supplement Nos. 4 and 5 to part 742 of the EAR, BXA will publish additional interim rules in the **Federal Register**.

Rulemaking Requirements

1. This interim rule has been determined to be significant for purposes of E. O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 52.5 minutes per submission; and 0694–0104, "Commercial Encryption Items Transferred from the Department of State to the Department of Commerce," which carries the following burden hours: marketing plans (40 hours each); semiannual progress reports (8 hours each); safeguard procedures (4 hours); recordkeeping (2 hours); annual reports (4 hours); and Encryption Licensing Arrangement letters (15 minutes).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department of Commerce encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close November 6, 1998. The Department of Commerce will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department of Commerce will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department of Commerce requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations (CFR). Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

List of Subjects

15 CFR Parts 732, 740, 743, 748, 750, and 752

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Parts 742, 770, 772 and 774

Exports, foreign trade.

Accordingly, 15 CFR chapter VII, subchapter C, is amended as follows:

1. The authority citation for 15 CFR parts 732, 740, 748, 752 and 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

2. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

3. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*;

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22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

4. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

5. The authority citation for 15 CFR part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); E.O. 12981, 60 FR 62981; Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

6. The authority citation for 15 CFR part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

7. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Executive Order 13026 (November 15, 1996, 61 FR 58767); Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

PART 732—[AMENDED]

§ 732.2 [Amended]

8. Section 732.2(d) amended by revising the phrase "ECCN 5A002 or ECCN 5D002" to read "ECCNs 5A002, 5D002 or 5E002".

§ 732.3 [Amended]

9. Section 732.3(e)(2) is amended by revising the phrase "ECCN 5A002 or ECCN 5D002" to read "ECCNs 5A002, 5D002 or 5E002".

PART 734—[AMENDED]

10. Section 734.2 is amended by revising paragraph (b)(9)(ii) to read as follows:

§ 734.2 Important EAR terms and principles.

(a) * * *
(b) * * *
(9) * * *

(ii) The export of encryption source code and object code software controlled for EI reasons under ECCN 5D002 on the Commerce Control List (see Supplement No. 1 to part 774 of the EAR) includes downloading, or causing the downloading of, such software to locations (including electronic bulletin boards, Internet file transfer protocol, and World Wide Web sites) outside the U.S. (except Canada), or making such software available for transfer outside the United States (except Canada), over wire, cable, radio, electromagnetic, photo optical, photoelectric or other comparable communications facilities accessible to persons outside the United States (except Canada), including transfers from electronic bulletin boards, Internet file transfer protocol and World Wide Web sites, unless the person making the software available takes precautions adequate to prevent unauthorized transfer of such code outside the United States or Canada. Such precautions shall include ensuring that the facility from which the software is available controls the access to and transfers of such software through such measures as:

(A) The access control system, either through automated means or human intervention, checks the address of every system requesting or receiving a transfer and verifies that such systems are located within the United States or Canada;

(B) The access control system provides every requesting or receiving party with notice that the transfer includes or would include cryptographic software subject to export controls under the Export Administration Regulations, and that anyone receiving such a transfer cannot export the software without a license; and

(C) Every party requesting or receiving a transfer of such software must acknowledge affirmatively that he or she understands that the cryptographic software is subject to export controls under the Export Administration Regulations and that anyone receiving the transfer cannot export the software without a license. BXA will consider acknowledgments in electronic form provided that they are adequate to assure legal undertakings similar to written acknowledgments.

* * * * *

§ 734.4 [Amended]

11. Section 734.4 is amended by revising the phrase "ECCN, 5A002, ECCN 5D002, and 5E002" in paragraph (b)(2) to read "ECCNs 5A002, 5D002, and 5E002".

PART 740—[AMENDED]

12. Section 740.3 is amended by adding a new paragraph (d)(5) to read as follows:

§ 740.3 Shipments of limited value (LVS).

* * * * *

(d) * * *

(5) *Exports of encryption items.* For components or spare parts controlled for "EI" reasons under ECCN 5A002, exports under this License Exception must be destined to support an item previously authorized for export.

* * * * *

13. Section 740.6 is amended by revising the first sentence in paragraph (a)(3) to read as follows:

§ 740.6 Technology and software under restriction (TSR).

(a) * * *

(3) *Form of written assurance.* The required assurance may be made in the form of a letter or any other written communication from the importer, including communications via facsimile, or the assurance may be incorporated into a licensing agreement that specifically includes the assurances. * * *

* * * * *

14. Section 740.8 is amended:

(a) By revising paragraph (b)(2);

(b) By revising the phrase "recovery encryption software and equipment" in paragraph (d)(1) to read "recoverable encryption items";

(c) By revising the phrase "March 1 and no later than September 1" in paragraph (e)(2) to read "February 1 and no later than August 1", as follows:

§ 740.8 Key management infrastructure.

* * * * *

(b) * * *

(2)(i) *Non-recoverable encryption commodities and software.* Eligible items are non-recoverable 56-bit DES or equivalent strength commodities and software controlled under ECCNs 5A002 and 5D002 that are made eligible as a result of a one-time BXA review. You may initiate this review by submitting a classification request for your product in accordance with paragraph (d)(2) of this section.

(ii) *Non-recoverable financial-specific encryption commodities and software of any key length.* (A)(1) After a one-time technical review through a classification request (see § 748.3 of the EAR), non-recoverable, financial-specific encryption software (which is not eligible under the provisions of License Exception TSU for mass market software such as SET or similar protocols); and commodities of any key length that are

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restricted by design (e.g., highly field-formatted with validation procedures, and not easily diverted to other end-uses) for financial applications to secure financial communications/transactions for end-uses such as financial transfers, or electronic commerce will be permitted under License Exception KMI for export and reexport to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(2) For such classification requests, indicate "License Exception KMI" in block #9 on Form BXA748P. Submit the original request to BXA in accordance with § 748.3 of the EAR and send a copy of the request to: Attn: Financial Specific Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246.

(B) Upon approval of your classification request for a non-recoverable financial-specific encryption commodities or software, you will become eligible to use License Exception KMI. This approval allows the export or reexport of encryption commodities and software specifically designed and limited for use in the processing of electronic financial (commerce) transactions, which implements cryptography in specifically delineated fields such as merchant's identification, the customer's identification and address, the merchandise purchased, and the payment mechanism. It does not allow for encryption of data, text or other media except as directly related to these elements of the electronic transaction to support financial communications/transactions. For exports and reexports under the provisions of this paragraph (b)(2)(ii), no business and marketing plan is required, and the reporting requirements of paragraph (e) of this section and the criteria described in Supplement Nos. 4 and 5 to part 742 of the EAR are not applicable. However, you are subject to the reporting requirements of the Wassenaar Arrangement (see § 743.1 of the EAR)

(iii) *General purpose non-recoverable encryption commodities or software of any key length for use by banks/financial institutions.* (A)(1) After a one-time technical review through a classification request (see § 748.3 of the EAR), exports and reexports of general purpose non-recoverable non-voice encryption commodities or software of any key length will be permitted under License Exception KMI for distribution to banks and financial institutions as defined in part 772 of the EAR in all destinations listed in Supplement No. 3 to part 740 of the EAR, and to branches of such banks and financial institutions wherever located. The end-use is limited to secure business financial communications or transactions and financial communications/ transactions between the bank and/or financial institution and its customers. No customer to customer communications/ transactions are permitted.

(2) For such classificiation requests, indicate "License Exception KMI" in block #9 on Form BXA748P. Submit the original request to BXA in accordance with § 748.3 of the EAR and send a copy of the request to: Attn: Financial Specific Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246.

(3) Upon approval of your classification request for a non-recoverable financial-specific encryption commodities or software, you will become eligible to use License Exception KMI.

(B) Software and commodities that have already received a one-time technical review through a classification request or have been licensed for export under an Encryption Licensing Arrangement or a license are eligible for export under the provisions of this paragraph (b)(2)(iii) without an additional one-time technical review.

(C) Software and commodities that have already been approved under an Encryption Licensing Arrangement to banks and financial institutions in specified countries may now be exported or reexported to other banks and financial institutions in those countries under the same Encryption Licensing Arrangement.

(D) For exports and reexports under the provisions of this paragraph (b)(2)(iii), no business and marketing plan is required and the reporting requirements of paragraph (e) of this section are not applicable. However, you are subject to the reporting requirements of the Wassenaar Arrangement (see § 743.1 of the EAR).

* * * * *

15. Section 740.9 is amended:

a. By revising paragraph (a)(2)(i);

b. By revising the reference to "§ 740.9(a)" in paragraph (a)(2)(ii)(C) to read "§ 740.10(a)";

c. By revising the reference to "under § 740.8(b)(1)" in the introductory text of paragraph (b)(1)(iii) to read "under this paragraph (b)(1)"; and

d. By adding a new paragraph (a)(2)(ix) to read as follows:

§ 740.9 Temporary imports, exports, and reexports (TMP).

* * * * *

(a) * * *

(2) * * *

(i) *Tools of trade.* Usual and reasonable kinds and quantities of tools of trade (commodities and software) for use by the exporter or employees of the exporter in a lawful enterprise or undertaking of the exporter. Eligible tools of trade may include, but are not limited to, such equipment and software as is necessary to commission or service goods, provided that the equipment or software is appropriate for this purpose and that all goods to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been legally exported or reexported. The tools of trade must remain under the effective control of the exporter or the exporter's employee (see part 772 of the EAR for a definition of "effective control"). The shipment of tools of trade may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure. No tools of the trade may be taken to Country Group E:2 (see Supplement No. 1 to part 740) or Sudan. For exports under this License Exception of laptop computers loaded with encryption software, refer to item interpretation 13 in § 770.2 of the EAR.

* * * * *

(ix) *Temporary exports to a U.S. subsidiary, affiliate or facility in Country Group B.* (A) Components, parts, tools or test equipment exported by a U.S. person to its subsidiary, affiliate or facility in a country listed in Country Group B (see Supplement No. 1 to this part) that is owned or controlled by the U.S. person, if the components, part, tool or test equipment is to be used for manufacture, assembly, testing, production or modification, provided that no components, parts, tools or test equipment or the direct product of such components, parts, tools or test equipment are transferred or reexported to a country other than the United States from such subsidiary, affiliate or facility without prior authorization by BXA.

(B) For purposes of this paragraph (a)(2)(ix), U.S. person is defined as follows: an individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2) or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). U.S. person also means any juridical person organized under the laws of the United States, or any jurisdiction within the United States (e.g., corporation, business association, partnership, society, trust, or any other entity, organization or group that is

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incorporated to do business in the United States).

* * * * *

§740.10 [Amended]

16. Section 740.10 is amended by revising the reference to "§740.8(a)(2)(ii)" in paragraph (a)(2)(i) to read "§740.9(a)(2)(ii)".

17. Section 740.11 is amended by adding new paragraph (a)(3) to read as follows:

§740.11 Governments and International organizations (GOV).

* * * * *

(a) *International safeguards.* * * *

(3) No encryption items controlled for EI reasons under ECCNs 5A002, 5D002, or 5E002 may be exported under the provisions of this paragraph (a).

* * * * *

18. Section 740.14 is amended by revising paragraphs (a), (b), and (c); by adding a sentence to the end of paragraph (d); and by adding paragraph (f) to read as follows:

§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) * * * No items controlled for EI reasons may be exported or reexported as unaccompanied baggage.

* * * * *

(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.

19. New Supplement No. 3 is added to read as follows:

Supplement No. 3 To Part 740—Countries Eligible To Receive General Purpose Encryption Commodities and Software for Banks and Financial Institutions

Anguilla
Antigua
Argentina
Aruba
Australia
Austria
Bahamas
Barbados
Belgium
Brazil
Canada
Croatia
Denmark
Dominica
Ecuador
Finland
France
Germany
Greece
Hong Kong
Hungary
Iceland
Ireland
Italy
Japan
Kenya
Luxembourg
Monaco
Netherlands
New Zealand
Norway
Poland
Portugal
St. Kitts & Nevis
St. Vincent/Grenadines
Seychelles
Singapore
Spain
Sweden
Switzerland
Trinidad & Tobago
Turkey
Uruguay
United Kingdom

PART 742—[AMENDED]

20. Section 742.15 is amended:

a. By revising paragraph (b)(1);

b . By revising the phrase "up to 56-bit key length DES or equivalent strength" to read "56-bit DES or equivalent" in paragraph (b)(3) wherever it appears;

c.–d. By revising the phrase "The use of License Exception KMI" in the seventh sentence of paragraph (b)(3)(i) to read "Authorization to use License Exception KMI";

e. By redesignating paragraphs (b)(4) and (5) as (b)(6) and (7);

f. By adding new paragraphs (b)(4) and (b)(5); and

g. By revising newly designated paragraph (b)(6)(i) to read as follows:

§742.15 Encryption items.

* * * * *

(b) * * *

(1) *Certain mass-market encryption software.* (i) Consistent with E.O. 13026 of November 15, 1996 (61 FR 58767), certain encryption software that was transferred from the U.S. Munitions List to the Commerce Control List pursuant to the Presidential Memorandum of November 15, 1996 may be released from EI controls and thereby made eligible for mass market treatment after a one-time technical review. To determine eligibility for mass market

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treatment, exporters must submit a classification request to BXA. 40-bit mass market encryption software using RC2 or RC4 may be eligible for a 7-day review process, and company proprietary software or 40-bit DES implementations may be eligible for 15-day processing. Refer to Supplement No. 6 to part 742 and § 748.3(b)(3) of the EAR for additional information. Note that the one-time technical review is for a determination to release encryption software in object code only unless otherwise specifically requested. Exporters requesting release of the source code should refer to paragraph (b)(3)(v)(E) of Supplement No. 6 to part 742.

(ii) If, after a one-time technical review, BXA determines that the software is released from EI controls, such software is eligible for all provisions of the EAR applicable to other software, such as License Exception TSU for mass-market software. Furthermore, for such software released from EI controls, subsequent bundling, updates, or releases consisting of or incorporating this software may be exported and reexported without a separate one-time technical review, so long as the functional encryption capacity (e.g., algorithm, key modulus) of the originally reviewed mass-market encryption software has not been modified or enhanced. However, if BXA determines that the software is not released from EI controls, a license is required for export and reexport to all destinations, except Canada, and license applications will be considered on a case-by-case basis.

(2) * * *

(3) * * *

(4) *General purpose non-recoverable encryption commodities or software of any key length for use by banks/financial institutions.* (i) Commodities and software that have already received a one-time technical review through a classification request or have been licensed for export under an Encryption Licensing Arrangement or a license are eligible for export under License Exception KMI (see § 740.8(b)(2)(iii) of the EAR) without an additional one-time technical review, providing that the export meets all the terms and conditions of License Exception KMI.

(ii) For exports not eligible under License Exception KMI, exports of general purpose non-recoverable non-voice encryption commodities or software of any key length will be permitted under an Encryption Licensing Arrangement for use by banks and financial institutions as defined in part 772 of the EAR in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Syria and Sudan. No business or marketing plan is required. Applications for such commodities and software will receive favorable consideration when the end-use is limited to secure business financial communications or transactions and financial communications/ transactions between the bank and/or financial institution and its customers, and provided that there are no concerns about the country or financial end-user. No customer to customer communications or transactions are allowed. Furthermore, licenses for such exports will require the license holder to report to BXA information concerning the export such as export control classification number, number of units in the shipment, and country of ultimate destination. Note that any country or end-user prohibited to receive encryption commodities and software under a specific Encryption Licensing Arrangement is reviewed on a case-by-case basis, and may be considered by BXA for eligibility under future Encryption Licensing Arrangement requests.

(5) *Non-recoverable financial-specific encryption items of any key length.* After a one-time technical review via a classification request, non-recoverable financial-specific encryption items of any key length that are restricted by design (e.g. highly field-formatted and validation procedures, and not easily diverted to other end-uses) for financial applications will be permitted for export and reexport under License Exception KMI (see § 740.8 of the EAR). No business and marketing plan is required.

(6) *All other encryption items.* (i) *Encryption licensing arrangement.* Applicants may submit license applications for exports and reexports of certain encryption commodities and software in unlimited quantities for all destinations except Cuba, Iran, Iraq, Libya, North Korea, Syria, and Sudan. Applications will be reviewed on a case-by-case basis. If approved, encryption licensing arrangements may be valid for extended periods as requested by the applicant in block #24 on Form BXA–748P. In addition, the applicant must specify the sales territory and class(es) of end-user(s). Such licenses may require the license holder to report to BXA certain information such as ECCN, item description, quantity, and end-user name and address.

* * * * *

21. Part 742 is amended by revising Supplement Nos. 4 and 6 to read as follows:

Supplement No. 4 to Part 742—Key Escrow or Key Recoverable Products Criteria

Key Recoverable Feature

(1) The key(s) or other material/information required to decrypt ciphertext shall be accessible through a key recoverable feature.

(2) The product's cryptographic functions shall be inoperable until the key(s) or other material/information required to decrypt ciphertext is recoverable by government officials under proper legal authority and without the cooperation or knowledge of the user.

(3) The output of the product shall automatically include, in an accessible format and with a frequency of at least once every three hours, the identity of the key recovery agent(s) and information sufficient for the key recovery agent(s) to identify the key(s) or other material/information required to decrypt the ciphertext.

(4) The product's key recoverable functions shall allow access to the key(s) or other material/information needed to decrypt the ciphertext regardless of whether the product generated or received the ciphertext.

(5) The product's key recoverable functions shall allow for the recovery of all required decryption key(s) or other material/information required to decrypt ciphertext during a period of authorized access without requiring repeated presentations of access authorization to the key recovery agent(s).

Interoperability Feature

(6) The product's cryptographic functions may:

(i) Interoperate with other key recoverable products that meet these criteria, and shall not interoperate with products whose key recovery feature has been altered, bypassed, disabled, or otherwise rendered inoperative;

(ii) Send information to non-key recoverable products only when assured access is permitted to the key(s) or other material/information needed to decrypt ciphertext generated by the key recoverable product. Otherwise, key length is restricted to less than or equal to 56-bit DES or equivalent.

(iii) Receive information from non-key recoverable products with a key length restricted to less than or equal to 56-bit DES or equivalent.

Design, Implementation and Operational Assurance

(7) The product shall be resistant to efforts to disable or circumvent the attributes described in criteria one through six.

(8) The product's cryptographic function's key(s) or other material/information required to decrypt ciphertext shall be escrowed with a key recovery agent(s) (who may be a key recovery agent(s) internal to the user's organization) acceptable to BXA, pursuant to the criteria in supplement No. 5 to part 742. Since the establishment of a key management infrastructure and key recovery agents may take some time, BXA will, while the infrastructure is being built, consider exports of key recoverable encryption products which facilitate establishment of the key management infrastructure before a key recovery agent is named.

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Supplement No. 6 To Part 742—Guidelines for Submitting a Classification Request for a Mass Market Software Product That Contains Encryption

Classification requests for release of certain mass market encryption software from EI controls must be submitted on Form BXA–748P, in accordance with § 748.3 of the EAR. To expedite review of the request, clearly mark the envelope "Attn.: Mass Market Encryption Software Classification Request". In Block 9: Special Purpose of the Form BXA–748P, you must insert the phrase "Mass Market Encryption Software. Failure to insert this phrase will delay processing. In addition, the Bureau of Export Administration recommends that such requests be delivered via courier service to: Bureau of Export Administration, Office of Exporter Services, Room 2705, 14th Street and Pennsylvania Ave., NW, Washington, DC 20230.

In addition, send a copy of the request and all supporting documents by Express Mail to: Attn: Mass Market Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246.

(a) Requests for mass market encryption software that meet the criteria in paragraph (a)(2) of this Supplement will be processed in seven (7) working days from receipt of a properly completed request. Those requests for mass market encryption software that meet the criteria of paragraph (a)(1) of this supplement only will be processed in fifteen (15) working days from receipt of a properly completed request. When additional information is requested, the request will be processed within 15 working days of the receipt of the requested information.

(1) A mass market software product that meets all the criteria established in this paragraph will be processed in fifteen (15) working days from receipt of the properly completed request:

(i) The commodity must be mass market software. Mass market software is computer software that is available to the public via sales from stock at retail selling points by means of over-the-counter transactions, mail order transactions, or telephone call transactions;

(ii) The software must be designed for installation by the user without further substantial support by the supplier. Substantial support does not include telephone (voice only) help line services for installation or basic operation, or basic operation training provided by the supplier; and

(iii) The software includes encryption for data confidentiality.

(2) A mass market software product that meets all the criteria established in this paragraph will be processed in seven (7) working days from receipt of the properly completed request:

(i) The software meets *all* the criteria established in paragraph (a)(1)(i) through (iii) of this supplement;

(ii) The data encryption algorithm must be RC4 or RC2 with a key space no longer than 40-bits. The RC4 and RC2 algorithms are proprietary to RSA Data Security, Inc. To ensure that the subject software is properly licensed and correctly implemented, contact RSA Data Security, (415) 595–8782;

(iii) If any combination of RC4 or RC2 are used in the same software, their functionality must be separate. That is, no data can be operated sequentially on by both routines or multiply by either routine;

(iv) The software must not allow the alteration of the data encryption mechanism and its associated key spaces by the user or any other program;

(v) The key exchange used in data encryption must be:

(A) A public key algorithm with a key space less than or equal to a 512-bit modulus and/or;

(B) A symmetrical algorithm with a key space less than or equal to 64-bits; and

(vi) The software must not allow the alteration of the key management mechanism and its associated key space by the user or any other program.

(b) To submit a classification request for a product that is eligible for the seven-day handling, you must provide the following information in a cover letter to the classification request. Send the original to the Bureau of Export Administration. Send a copy of the application and all supporting documentation by Express Mail to: Attn.: Mass Market Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246.

Instructions for the preparation and submission of a classification request that is eligible for seven day handling are as follows:

(1) If the software product meets the criteria in paragraph (a)(2) of this supplement, you must call the Department of Commerce on (202) 482–0092 to obtain a test vector, or submit to BXA a copy of the encryption subsystem source code. The test vector or source code must be used in the classification process to confirm that the software has properly implemented the approved encryption algorithms.

(2) Upon receipt of the test vector, the applicant must encrypt the test plain text input provided using the commodity's encryption routine (RC2 and/or RC4) with the given key value. The applicant should not pre-process the test vector by any compression or any other routine that changes its format. Place the resultant test cipher text output in hexadecimal format on an attachment to form BXA–748P.

(3) You must provide the following information in a cover letter to the classification request:

(i) Clearly state at the top of the page "Mass Market Encryption Software—7 Day Expedited Review Requested";

(ii) State that you have reviewed and determined that the software subject to the classification request meets the criteria of paragraph (a)(2) of this supplement;

(iii) State the name of the single software product being submitted for review. A separate classification request is required for each product;

(iv) State how the software has been written to preclude user modification of the encryption algorithm, key management mechanism, and key space;

(v) Provide the following information for the software product:

(A) Whether the software uses the RC2 or RC4 algorithm and how the algorithm(s) is used. If any combination of these algorithms are used in the same product, also state how the functionality of each is separated to assure that no data is operated by more than one algorithm;

(B) Pre-processing information of plaintext data before encryption (e.g. the addition of clear text header information or compression of the data);

(C) Post-processing information of cipher text data after encryption (e.g. the addition of clear text header information or packetization of the encrypted data);

(D) Whether a public key algorithm or a symmetric key algorithm is used to encrypt keys and the applicable key space;

(E) For classification requests regarding source code:

(1) Reference the applicable executable product that has already received a one-time technical review;

(2) Include whether the source code has been modified by deleting the encryption algorithm, its associated key management routine(s), and all calls to the algorithm from the source code, or by providing the encryption algorithm and associated key management routine(s) in object code with all calls to the algorithm hidden. You must provide the technical details on how you have modified the source code;

(3) Include a copy of the sections of the source code that contain the encryption algorithm, key management routines, and their related calls; and

(F) Provide any additional information which you believe would assist in the review process.

(c) Instructions for the preparation and submission of a classification request that is eligible for 15-day handling are as follows:

(1) If the software product meets only the criteria in paragraph (a)(1) of this supplement, you must prepare a classification request. Send the original to the Bureau of Export Administration. Send a copy of the application and all supporting documentation by Express Mail to: Attn.: Mass Market Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246.

(2) You must provide the following information in a cover letter to the classification request:

(i) Clearly state at the top of the page "Mass Market Software and Encryption: 15-Day Expedited Review Requested";

(ii) State that you have reviewed and determined that the software subject of the classification request, meets the criteria of paragraph (a)(1) of this supplement;

(iii) State the name of the single software product being submitted for review. A separate classification request is required for each product;

(iv) State that a duplicate copy, in accordance with paragraph (c)(1) of this supplement, has been sent to the 15-day Encryption Request Coordinator; and

(v) Ensure that the information provided includes brochures or other documentation or specifications relating to the software, as well as any additional information which you believe would assist in the review process.

(3) Contact the Bureau of Export Administration on (202) 482–0092 prior to

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submission of the classification to facilitate the submission of proper documentation.

PART 743—[AMENDED]

§ 743.1 [Amended]

22. Section 743.1 is amended by revising the phrase "and GOV" in paragraph (b) to read "GOV and KMI (under the provisions of § 740.8(b)(2)(ii) and (iii) only".

PART 748—[AMENDED]

23. Section 748.9 is amended by revising paragraph (a)(7) and by adding new paragraph (a)(8) to read as follows:

§ 748.9 Support documents for license applications.

(a) * * *

(7) The license application is submitted to export or reexport software or technology.

(8) The license application is submitted to export or reexport encryption items controlled under ECCNs 5A002, 5B002, 5D002 and 5E002.

* * * * *

24. Section 748.10 is amended by revising paragraph (b)(1) to read as follows:

§ 748.10 Import and End-User Certificates.

* * * * *

(b) * * *

(1) Any commodities on your license application are controlled for national security (NS) reasons, except for items controlled under ECCN 5A002 or 5B002;

* * * * *

PART 750—[AMENDED]

25. Section 750.3 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 750.3 Review of license applications by BXA and other government agencies and departments.

* * * * *

(b) * * *

(2) * * *

(i) The Department of Defense is concerned primarily with items controlled for national security and regional stability reasons and with controls related to encryption items;

* * * * *

26. Section 750.7 is amended:

a. By redesignating paragraphs (c) introductory text through (c)(5) as (c)(1) introductory text through (c)(1)(v);

b. By redesignating paragraphs (c)(6) introductory text through (c)(6)(v) as (c)(1)(vi) introductory text through (c)(1)(vi)(E);

c. By redesignating paragraphs (c)(7) and (8) as (c)(1)(vii) and (viii); and

d. By adding a new paragraph (c)(2) to read as follows:

§ 750.7 Issuance of licenses.

* * * * *

(c) * * *

(2)(i) For Encryption Licensing Arrangements issued by BXA for exports and reexports of items controlled under ECCN 5A002, 5B002, and 5D002, and for encryption commodities and software previously on the U.S. Munitions List and currently authorized for export or reexport under a State Department license, distribution arrangement or any other authority of the State Department, you must by letter to BXA a request for approval of any additional country of destination.

(ii) Letters requesting changes pursuant to paragraph (c)(2)(i) of this section should be made by the license holder on company letterhead, clearly identifying the original license number and the requested change. In addition, requests for changes to State licenses or other authorizations must be accompanied by a copy of the original State license or authorization. The requested changes may not take effect until approved in writing by BXA. Send requests for changes to the following address: Office of Strategic Trade, Bureau of Export Administration, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Ave., NW, Washington, DC 20230, Attn: Encryption Division.

* * * * *

PART 752—[AMENDED]

27. Section 752.3 is amended by redesignating paragraphs (a)(5) through (a)(10) as (a)(6) through (a)(11) and adding a new paragraph (a)(5) to read as follows:

§ 752.3 Eligible items.

(a) * * *

(5) Items controlled for EI reasons on the CCL;

* * * * *

PART 758—[AMENDED]

28. Section 758.1 is amended by adding a new paragraph (e)(1)(i)(D) to read as follows:

§ 758.1 Export clearance requirements.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(D) Exports of tools of trade under License Exception TMP or BAG.

* * * * *

PART 770—[AMENDED]

29. Section 770.2 is amended by revising the section title and adding a new paragraph (m) to read as follows:

§ 770.2 Item interpretations.

* * * * *

(m) *Interpretation 13: Encryption software controlled for EI reasons.* Encryption software controlled for EI reasons under ECCN 5D002 may be pre-loaded on a laptop and exported under the tools of trade provision of License Exception TMP or the personal use exemption under License Exception BAG, subject to the terms and conditions of such License Exceptions. This provision replaces the personal use exemption of the International Traffic and Arms Regulations (ITAR) that existed for such software prior to December 30, 1996. Neither License Exception TMP nor License Exception BAG contains a reporting requirement.

PART 772—[AMENDED]

30. Part 772 is amended by adding, in alphabetical order, new definitions for "Bank", "Effective control", "Encryption licensing arrangement", and "Financial Institution", and revising paragraph (b) under the definition of "U.S. person" to read as follows:

* * * * *

Bank. Means any of the following:

(a) Bank, savings association, credit union, bank holding company, bank or savings association service corporation, Edge Act corporation, Agreement corporation, or any insured depository institution, which is organized under the laws of the United States or any State and regulated or supervised by a Federal banking agency or a State bank supervisor; or

(b) A company organized under the laws of a foreign country and regulated or supervised by a foreign bank regulatory or supervisory authority which engages in the business of banking, including without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating; or

(c) An entity engaged in the business of providing clearing or settlement services, that is, or whose members are, regulated or supervised by a Federal banking agency, a State bank supervisor, or a foreign bank regulatory or supervisory authority; or

(d) A branch or affiliate of any of the entities listed in paragraphs (a), (b), or

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(c) of this definition, regulated or supervised by a Federal banking agency, a State bank supervisor or a foreign bank regulatory or supervisory authority; or

(e) An affiliate of any of the entities listed in paragraph (a), (b), (c), or (d) of this definition, engaged solely in the business of providing data processing services to a bank or financial institution, or a branch of such an affiliate.

* * * * *

Effective control. You maintain effective control over an item when you either retain physical possession of the item, or secure the item in such an environment as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility. Retention of effective control over an item is a condition of certain temporary exports and reexports.

Encryption licensing arrangement. A license that allows the export of specified products to specified destinations in unlimited quantities. In certain cases, exports are limited to specified end-users for specified end-uses. Generally, reporting of all sales of the specified products is required at six month intervals. This includes sales made under distribution arrangements and distribution and warehousing agreements that were previously issued by the Department of State for encryption items.

* * * * *

Financial Institution. Means any of the following:

(a) A broker, dealer, government securities broker or dealer, self-regulatory organization, investment company, or investment adviser, which is regulated or supervised by the Securities and Exchange Commission or a self-regulatory organization that is registered with the Securities and Exchange Commission; or

(b) A broker, dealer, government securities broker or dealer, investment company, investment adviser, or entity that engages in securities activities that, if conducted in the United States, would be described by the definition of the term "self-regulatory organization" in the Securities Exchange Act of 1934, which is organized under the laws of a foreign country and regulated or supervised by a foreign securities authority; or

(c) A US board of trade that is designated as a contract market by the Commodity Futures Trading Commission or a futures commission merchant that is regulated or supervised by the Commodity Futures Trading Commission; or

(d) A US entity engaged primarily in the business of issuing a general purpose charge, debit, or stored value card, or a branch of, or affiliate controlled by, such an entity; or

(e) A branch or affiliate of any of the entities listed in paragraphs (a), (b), or (c) of this definition regulated or supervised by the Securities and Exchange Commission, the Commodity Futures Trading Commission, or a foreign securities authority; or

(f) An affiliate of any of the entities listed in paragraph (a), (b), (c), or (e) of this definition, engaged solely in the business of providing data processing services to one or more bank or financial institutions, or a branch of such an affiliate.

* * * * *

U.S. person. (a) * * *

(b) See also §§ 740.9 and 740.14, and parts 746 and 760 of the EAR for definitions of "U.S. person" that are specific to those parts.

* * * * *

PART 774—[AMENDED]

31. In Supplement No. 1 to part 774, Category 5—Telecommunications and Information Security is amended by revising ECCNs 5A002 and 5D002 to read as follows:

5A002 Systems, equipment, application specific "assemblies", modules or integrated circuits for "information security", and specially designed components therefor.

License Requirements

Reason for Control: NS, AT, EI.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.

EI applies to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. Refer to § 742.15 of this subchapter.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports of commodities controlled under 5A002 and exported under License Exceptions LVS or GOV.

License Exceptions

LVS: Yes: $500 for components and spare parts only. N/A for equipment.

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: $ value

Related Controls: See also 5A992. This entry does not control: (a) "Personalized smart cards" or specially designed components therefor, with any of the following characteristics: (1) Not capable of message traffic encryption or encryption of user-supplied data or related key management functions therefor; or (2) When restricted for use in equipment or systems excluded from control under the note to 5A002.c, or under paragraphs (b) through (h) of this note. (b) Equipment containing "fixed" data compression or coding techniques; (c) Receiving equipment for radio broadcast, pay television or similar restricted audience television of the consumer type, without digital encryption and where digital decryption is limited to the video, audio or management functions; (d) Portable or mobile radiotelephones for civil use (e.g., for use with commercial civil cellular radiocommunications systems) that are not capable of end-to-end encryption; (e) Decryption functions specially designed to allow the execution of copy-protected "software", provided the decryption functions are not user-accessible; (f) Access control equipment, such as automatic teller machines, self-service statement printers or point of sale terminals, that protects password or personal identification numbers (PIN) or similar data to prevent unauthorized access to facilities but does not allow for encryption of files or text, except as directly related to the password or PIN protection; (g). Data authentication equipment that calculates a Message Authentication Code (MAC) or similar result to ensure no alteration of text has taken place, or to authenticate users, but does not allow for encryption of data, text or other media other than that needed for the authentication; (h) Cryptographic equipment specially designed, developed or modified for use in machines for banking or money transactions, and restricted to use only in such transactions. Machines for banking or money transactions include automatic teller machines, self-service statement printers, point of sale terminals, or equipment for the encryption of interbanking transactions.

Related Definitions: For the control of global navigation satellite systems receiving equipment containing or employing decryption (i.e. GPS or GLONASS), see 7A005. *Items:*

a. Systems, equipment, application specific "assemblies", modules or integrated circuits for "information security", and specially designed components therefor:

a.1. Designed or modified to use "cryptography" employing digital techniques to ensure "information security";

a.2. Designed or modified to perform cryptoanalytic functions;

a.3. Designed or modified to use "cryptography" employing analog techniques to ensure "information security";

Note: 5A002.a.3 does not control the following:

1. Equipment using "fixed" band scrambling not exceeding 8 bands and in which the transpositions change not more frequently than once every second;

2. Equipment using "fixed" band scrambling exceeding 8 bands and in which the transpositions change not more frequently than once every ten seconds;

3. Equipment using "fixed" frequency inversion and in which the transpositions change not more frequently than once every second;

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4. Facsimile equipment;

5. Restricted audience broadcast equipment; and 6. Civil television equipment;

a.4. Designed or modified to suppress the compromising emanations of information-bearing signals;

Note: 5A002.a.4 does not control equipment specially designed to suppress emanations for reasons of health and safety.

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" or the hopping code for "frequency agility" systems;

a.6. Designed or modified to provide certified or certifiable "multilevel security" or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;

a.7. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

* * * * *

5D002 Information Security—"Software".

License Requirements

Reason for Control: NS, AT, EI

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.

EI applies to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. Refer to § 742.15 of the EAR.

Note: Encryption software is controlled because of its functional capacity, and not because of any informational value of such software; such software is not accorded the same treatment under the EAR as other "software"; and for the export licensing purposes encryption software is treated under the EAR in the same manner as a commodity included in ECCN 5A002. License Exceptions for commodities are not applicable.

Note: Encryption software controlled for EI reasons under this entry remains subject to the EAR even when made publicly available in accordance with part 734 of the EAR, and it is not eligible for the General Software Note ("mass market" treatment under License Exception TSU for mass market software). After a one-time BXA review, certain encryption software may be released from EI controls and made eligible for the General Software Note treatment as well as other provisions of the EAR applicable to software. Refer to § 742.15(b)(1) of the EAR, and Supplement No. 6 to part 742 of the EAR.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports of software controlled under 5D002 and exported under License Exception GOV.

License Exceptions

CIV: N/A

TSR: N/A

List of Items Controlled

Unit: $ value

Related Controls: See also 5D992. This entry does not control "software" "required" for the "use" of equipment excluded from control under to 5A002 or "software" providing any of the functions of equipment excluded from control under 5A002.

Related Definitions: N/A

Items:

a. "Software" specially designed or modified for the "development", "production" or "use" of equipment or "software" controlled by 5A002, 5B002 or 5D002.

b. "Software" specially designed or modified to support "technology" controlled by 5E002.

c. Specific "software" as follows:

c.1. "Software" having the characteristics, or performing or simulating the functions of the equipment controlled by 5A002 or 5B002;

c.2. "Software" to certify "software" controlled by 5D002.c.1.

Dated: September 14, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 401 and 402

[Docket No. FR-4298-N-02]

RIN 2502-AH09

Notice of Public Meetings Multifamily Housing Mortgage and Housing Assistance Restructuring (Mark-to-Market) Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of public forums.

SUMMARY: On September 11, 1998 (63 FR 48925), the Department published in the **Federal Register** an interim rule implementing the Mark-to-Market Program. The Program was enacted by the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). The purpose of the program is to preserve low-income rental housing affordability while reducing the long-term costs of Federal rental assistance, including project-based assistance, and minimizing the adverse effect on the FHA insurance funds. The authorizing statute provides that before publishing the final rule HUD is to conduct at least three public forums at which organizations representing various groups identified in the statute may express views concerning HUD's proposed disposition of recommendations from those groups. This notice announces the time and places for these public forums.

DATES: The public forums will be held on Thursday, October 1, 1998, from 1 p.m. to 7:30 p.m. local time.

ADDRESSES: The public forums will be held at the following three locations:

Midland Hotel (Adams Room), 175 West Adams, Chicago, Illinois

Holiday Inn Golden Gateway, 1500 Van Ness Avenue, San Francisco, California

The College of Insurance, 101 Murray Street, New York, New York.

FOR FURTHER INFORMATION CONTACT: Leslie Breden, (202) 708-6423, ext. 5603. For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1-800-877-8339. For registration information call 1-800-685-8470, the Multifamily Housing Clearinghouse, (fax) (301)-519-5161. (Except for the 800 numbers, these are not toll-free numbers.) Additional information is available on HUD's Internet web site, at http://www.hud.gov/fha/mfh/pre/premenu.html.

SUPPLEMENTARY INFORMATION:

What Will Be Discussed at the Forums?

Section 522(a)(3)(A) of MAHRA directed HUD to seek recommendations on implementing the participating administrative entity selection criteria (see section 513(b) of MAHRA and § 401.201 of the interim rule) and on mandatory renewal of project-based assistance (see section 515(c)(1) of MAHRA and § 401.420 of the interim rule). In accordance with section 513(a)(3)(A), HUD has received recommendations from at least the following organizations: State housing finance agencies and local housing agencies; other potential participating administering entities; tenants; owners and managers of eligible multifamily housing projects; States and units of general local government; and qualified mortgagees. The recommendations covered the scope of the interim rule.

In accordance with section 522(a)(3)(B) of MAHRA, HUD is holding these public forums to provide participants with an opportunity to express their views on § 401.201 and § 401.420 of the interim rule. HUD will not be making any presentations at these forums. The purpose of these forums is for HUD to listen and record the comments of the forum participants for consideration in drafting the final rule.

How Can I Register for a Forum?

You can get registration information through HUD's portfolio reengineering

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