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between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Winchester, VA. to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 14 SIAP to Winchester Regional Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Winchester, VA [Revised]

Winchester Regional Airport, VA
(Lat. 39°08'37" N., long. 78°08'40" W.)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Winchester Regional Airport.

* * * * *

Issued in Jamaica, New York, on December 18, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–34689 Filed 12–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740, 742, 743, 772 and 774

[Docket No. 9809–11233–8318–02]

RIN 0694–AB80

Encryption Items

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule amends the Export Administration Regulations (EAR) for exports and reexports of encryption commodities and software to U.S. subsidiaries, insurance companies, health and medical end-users, on-line merchants and foreign commercial firms. This rule implements the Administration's initiative to update it's encryption policy, and will streamline U.S. encryption export and reexport controls.

DATES: This rule is effective: December 31, 1998. Comments must be received on or before March 1, 1999.

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. Express mail address: Nancy Crowe, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylanvia Ave, N.W., Room 2705, Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION: On September 16, 1998, the Administration announced a series of steps to update its encryption policy in a way that meets the full range of national interests. These steps will promote electronic commerce, support law enforcement and national security, and protect privacy. They also further streamline exports and reexports of key recovery products, and other recoverable encryption products, which allow for the recovery of plaintext, and permit exports and reexports of encryption of any key length (with or without key recovery) to several industry sectors. This interim rule amends the EAR for exports and reexports of encryption commodities and software to U.S. subsidiaries, insurance companies, health and medical end-users, on-line merchants and foreign commercial firms. Specifically, this rule amends the EAR in the following ways:

1. In § 740.8, Key Management Infrastructure, removes the key recovery agent requirements for License Exception KMI eligibility for exports and reexports of recovery encryption commodities and software. Further, key recovery commitment plans and the six month progress reviews are eliminated and exporters are no longer required to name or submit to BXA additional information on a key recovery agent prior to export. The products may be exported or reexported under License Exception KMI after a technical review. Note also that 56-bit products supported by a KMI plan that have been classified after a technical review and are eligible under License Exception KMI are now eligible for export and reexport under License Exception ENC (see § 740.17(a)(3) of the EAR).

2. Also in § 740.8, removes and adds to newly created License Exception ENC the paragraphs concerning financial-specific encryption commodities and software and general purpose encryption commodities and software for banks and financial institutions. This transfer will simplify the use of License Exceptions for encryption commodities and software and creates no change in policy.

3. In part 740, creates new License Exception ENC by adding § 740.17, Encryption commodities and software. This new License Exception is divided into two significant parts: a global

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category including the use of License Exception ENC for exports and reexports of encryption commodities and software to all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria; and a country specific category permitting the use of License Exception ENC for exports and reexports of encryption commodities and software to countries listed in Supplement No. 3 to part 740. This new License Exception allows the following exports and reexports of encryption commodities and software that are classified under ECCNs 5A002 and 5D002, after a technical review that considers the cryptographic functionality of the product:

a. Exports and reexports of encryption commodities, software and technology, including source code of any key length are also eligible under this license exception to U.S. subsidiaries for internal company proprietary use to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. Encryption chips, integrated circuits, toolkits, executable or linkable modules, which can modify or enhance the cryptographic functionality (e.g., the confidentiality algorithm, key space and key exchange mechanism) or incorporate the cryptographic function in another item are eligible for license exception ENC only for export to U.S. subsidiaries. Note that exports to "strategic partners" of U.S. companies, such as subcontractors and joint ventures, will be considered favorably under a license when the end-use is for the protection of U.S. company proprietary information. For the purposes of this regulation, consideration as a "strategic partner," as defined in part 772, should not be deemed to alter or affect any legal relationship that might otherwise exist between the relevant parties.

b. Encryption commodities, including mass market and non-mass market, and non-mass market software incorporating symmetric algorithms with key lengths up to and including 56-bits, such as DES or equivalent (such as RC2, RC4, RC5 and CAST) to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. Encryption chips, integrated circuits, toolkits and executable or linkable modules are not authorized for export under License Exception ENC and will require a license or an Encryption Licensing Arrangement. Note that subsequent bundling, updates or releases may be exported and reexported under applicable provisions of the EAR without a separate technical review as long as the functional encryption capacity of the originally reviewed encryption commodities, including mass market and non-mass market, and non-mass market software has not been modified or enhanced.

c. Authorizes insurance companies to receive general purpose encryption commodities and software of any key length that have been classified after a technical review. This change corresponds with the addition of insurance companies to the definition of financial institutions in part 772. With this change, exports and reexports of general purpose encryption commodities and software are eligible under License Exception ENC to financial institutions (including insurance companies) in all destinations listed in Supplement No. 3 to part 740, and to branches of these entities located worldwide except countries that support international terrorism (Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria).

d. Encryption commodities and software of any key length to health and medical end-users in all destinations listed in Supplement No. 3 to part 740. Exports and reexports of such commodities and software are not eligible under License Exception ENC to non-U.S. biochemical and pharmaceutical manufacturers and non-U.S. military health and medical entities. Licenses for such entities will be considered on a case-by-case basis.

e. Encryption commodities and software of any key length for on-line merchants in all destinations listed in Supplement No. 3 to part 740. Such commodities and software must be limited to client-server applications (e.g., Secure Socket Layer (SSL) based applications) or applications specially designed for on-line transactions. End-use is limited to the purchase or sale of goods and software; and services connected with the purchase or sale of goods and software, including interactions between purchasers and sellers necessary for ordering, payment and delivery of goods and software. No other end-uses or customer to customer communications or transactions are allowed. Foreign on-line merchants or their separate business units who are engaged in the manufacturing and distribution of items or services controlled on the U.S. Munitions List are excluded. Foreign government end-users also are excluded from this License Exception.

Examples of permitted end-uses under License Exception ENC for on-line merchants include buying and selling goods and software through an electronic medium, which may involve the ordering of, and payment for goods and software; placing and receiving orders; pricing, configuration, validation and ordering of products; obtaining copies of invoices; reviewing shipping schedules; notification of shipments or changes; and placing reservations and purchasing airline tickets. It allows for contract manufacturers to directly access demand and inventory information; direct purchasing with trading partners; approval functions for requisitions which require approval; and on-line catalogue purchases, and the electronic exchange of purchase or sales information by multiple trading partners. It does not include such end-uses as general purpose messaging, collaborative research projects (e.g., collaborative engineering), data warehousing, remote computing services or electronic communications services.

4. In Supplement No. 3 to part 740, adds Czech Republic and United States to the list of countries to clarify that branches of Czech Republic and U.S. banks and financial institutions, located worldwide except in countries that support international terrorism (Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria) may receive general purpose encryption commodities and software limited to secure business financial communications or transactions and financial communications or transactions between the bank and/or financial institution and its customers. Supplement No. 3 is also amended to reflect the licensing policy for exports and reexports of recoverable encryption commodities and software to commercial entities located in certain countries and subsidiaries of commercial entities headquartered in certain countries, wherever located, except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

5. In §742.15, revises the licensing policy for exports and reexports of encryption items as follows:

a. Removes the business and marketing plan requirement for exports of non-recovery 56-bit DES or equivalent encryption items.

b. Authorizes upgrades of 40-bit mass-market encryption software that has already been classified after a technical review and released from EI controls. Such software may be upgraded to 56-bits for the confidentiality algorithm without an additional technical review.

c. Makes certain encryption commodities eligible for mass-market treatment.

d. For exports and reexports of general purpose encryption commodities and software of any key length that are not eligible under License Exception ENC, insurance companies are now eligible to receive

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such products under an Encryption Licensing Arrangement. This is consistent with the addition of insurance companies to the definition of financial institutions in part 772. Such encryption commodities and software will receive favorable consideration when the end-use is limited to secure financial communications or transactions, provided that there are no concerns about the country or specific end-user.

e. For exports and reexports of encryption commodities and software of any key length not eligible under License Exception ENC, such commodities and software will generally be approved under an Encryption Licensing Arrangement to all health and medical end-users, except non-U.S. biochemical and pharmaceutical manufacturers and non-U.S. military health and medical entities, in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

f. For exports and reexports of encryption commodities and software of any key length not eligible under License Exception ENC, such commodities and software will generally be approved under an Encryption Licensing Arrangement to on-line merchants in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. The end-use is limited to the purchase or sale of goods and software; and services connected with the purchase or sale of goods and software including interactions between purchasers and sellers necessary for ordering, payment and delivery of goods and software. No other end-uses or customer-to-customer communications or transactions are allowed.

g. Exports and reexports of recoverable encryption commodities and software of any key length for use by commercial entities will generally be approved under an Encryption Licensing Arrangement to destinations listed in Supplement No. 3 to part 740 for the protection of company proprietary information. Such encryption commodities and software will also generally be approved for export and reexport to worldwide foreign subsidiaries of commercial firms headquartered in certain countries, except to subsidiaries located in Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

Note that any country or end-user prohibited in the past from receiving 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. All other exports and reexports of encryption items are reviewed on a case-by-case basis under a license application.

6. Also in § 742.15, clarifies the reporting requirement for exports to certain end-users.

7. In part 772, revises the definition of financial institution to include the meaning of insurance company and adds definitions for business unit, health and medical end-user, on-line merchant, recoverable commodities and software, strategic partner (of a U.S. company), and U.S. subsidiary. Also clarifies that such definitions only apply to encryption items.

BXA will in the near future update these regulations to reflect changes to encryption controls in the Wassenaar Arrangement and to address public comments on the September 22, 1998 rule (63 FR 50516) that implemented new licensing policies for banks and financial institutions.

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." The Department has submitted to OMB an emergency request for approval of the changes to the collection of information under OMB control number 0694–0104. Comments on collection 0694–0104 will be accepted until March 1, 1999.

It will take companies 15 minutes to complete each certification. It will take companies 15 minutes to complete notifications. For reporting under License Exception KMI, it will take companies 1 hour to complete KMI reporting. For reporting under License Exception ENC, it will take companies 4 hours to complete ENC reporting.

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 March 1, 1999. The Department 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 will return such comments and materials to the persons 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 requires comments in written form. Comments should be provided with 5 copies.

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.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records

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Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 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. Information about the inspection and copying of records at the facility may be obtained from Henry Gaston, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–0500.

The reporting burden for this collection is estimated to be approximately 815 hours, including the time for gathering and maintaining the data needed for completing and reviewing the collection of information. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments regarding these burden estimates or any other aspect of the collection of information, including suggestions for reducing the burdens, should be forward to Nancy Crowe, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044, and David Rostker, Office of Management and Budget, OMB/OIRA, 725 17th Street, NW, NEOB Rm. 10202, Washington, D.C. 20503.

List of Subjects

15 CFR Parts 740 and 743

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

15 CFR Parts 742, 772 and 774

Exports, foreign trade.

Accordingly, 15 CFR Chapter 7, Subchapter C, is amended as follows:

1. The authority citation for 15 CFR parts 740 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 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.*; 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, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

3. 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).

4. 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 740—[AMENDED]

5. Section 740.8 is amended:

a. By revising the section title;

b. By revising paragraph (b);

c. By removing paragraph (d); and

d. By redesignating paragraph (e) as paragraph (d) to read as follows:

§ 740.8 Key management infrastructure (KMI)

(a) * * *

(b) *Eligible commodities and software.* (1) Recovery encryption commodities and software of any key length controlled under ECCNs 5A002 and 5D002 that have been classified after a technical review through a classification request. Key escrow and key recovery commodities and software must meet the criteria identified in Supplement No. 4 to part 742 of the EAR.

(2) For such classification requests, indicate "License Exception KMI" in block 9 on Form BXA–748P. Submit the original request to BXA in accordance with § 748.3 of the EAR and send a copy of the request to:

Attn: KMI Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246

* * * * *

6. Part 740 is amended by adding a new § 740.17 to read as follows:

§ 740.17 Encryption commodities and software (ENC).

(a) *Exports and reexports of encryption commodities and software to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.*

(i) *Financial-specific encryption commodities and software of any key length.*

(i) *Scope.* You may export and reexport financial-specific encryption commodities and software (which are not eligible under the provisions of License Exception TSU for mass market software such as SET or similar protocols) 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 communications/transactions for end-uses such as financial transfers, or electronic commerce.

(ii) *Eligible commodities and software.* Encryption commodities and software of any key length classified under ECCNs 5A002 and 5D002 after a technical review (see paragraph (c) of this section). These commodities and software must be 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. Notwithstanding the provisions of paragraph (c)(2) of this section, financial-specific commodities and software that were made eligible for License Exception KMI after a technical review prior to December 31, 1998, are now eligible for export and reexport under License Exception ENC under the provisions of this paragraph (a)(1).

(iii) *Eligible destinations.* Upon approval of your classification request, you may export and reexport under License Exception ENC financial-specific encryption commodities and software, as defined in this paragraph (a)(1), of any key length to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

(iv) *Reporting requirements.* There are no reporting requirements.

(2) *Encryption commodities and software of any key length for U.S. subsidiaries. (i) Scope.* You may export

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and reexport encryption commodities and software of any key length under License Exception ENC to U.S. subsidiaries (as defined in part 772 of the EAR) subject to the conditions of this paragraph (a)(2). Note that distributors, resellers or other entities that are not manufacturers of the encryption commodities and software are permitted to use License Exception ENC for U.S. subsidiaries only in instances where the export or reexport meets the terms and conditions of this paragraph (a)(2).

(ii) *Eligible commodities and software.* Encryption commodities, software and technology of any key length classified under ECCNs 5A002, 5D002 and 5E002 after a technical review (see paragraph (c) of this section). This includes encryption chips, integrated circuits, toolkits, executable or linkable modules, source code and technology to U.S. subsidiaries for internal company proprietary use, including the development of new products.

(iii) *Eligible destinations; retransfers.* You may export and reexport under License Exception ENC encryption commodities, software and technology of any key length to U.S. subsidiaries for internal company proprietary use, including the development of new products, in all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. All items developed using U.S. encryption commodities, software and technology are subject to the EAR. For exports and reexports to strategic partners of U.S. companies (as defined in part 772) see § 742.15(b)(8) of the EAR. Retransfers to other end-users or end-uses are prohibited without prior authorization.

(iv) *Reporting requirements.* There are no reporting requirements.

(3) *Encryption commodities, including mass market and non-mass market, and non-mass market encryption software incorporating symmetric algorithms with key lengths up to and including 56-bits, such as DES or equivalent.* (i) *Scope.* You may export and reexport encryption commodities, including mass market and non-mass market commodities, and non-mass market software with key lengths up to and including 56-bits, such as DES or equivalent, under License Exception ENC subject to the conditions of this paragraph (a)(3). For information concerning the technical review of encryption mass market commodities and mass market software refer to § 742.15(b)(1) of the EAR. Note that encryption mass market software remains eligible under License Exception TSU.

(ii) *Eligible commodities and software.* (A) Mass market and non-mass market encryption commodities and non-mass market software having symmetric algorithms with key lengths up to and including 56-bits, such as DES or equivalent (such as RC2, RC4, RC5, and CAST) which are classified as a result of a technical review (see paragraph (c) of this section). The commodity or software must not allow the alteration of the cryptographic functionality by the user or any other program. Encryption chips, integrated circuits, toolkits and executable or linkable modules are not authorized for export under the provisions of paragraph (a)(3).

(B)(*1*) For mass market and non-mass market encryption commodities and non-mass market encryption software, exporters of 40-bit or less encryption commodities and software which have been made eligible for License Exception KMI or License Exception TSU or have been licensed for export under an Encryption Licensing Arrangement or a license prior to December 31, 1998, will be permitted to export and reexport these commodities and software under license exception ENC with increased key lengths up to and including 56-bits for the confidentiality algorithm, with key exchange mechanisms including symmetric algorithms with the same or double key length authorized for the confidentiality algorithm, and asymmetric algorithms for key exchange with key space of 512, 768 or up to and including 1024 bits without an additional technical review, provided that there is no other change in cryptographic functionality. Exporters must certify to BXA that the only change to the encryption is the increase in the key length for the confidentiality algorithm, the asymmetric or symmetric key exchange algorithms and that there is no other change in cryptographic functionality. Such certifications must be in the form of a letter from senior corporate management and include the original authorization number issued by BXA, the date of issuance and the information identified in paragraphs (a)(2) (iii) throught (v) of Supplement No. 6 to part 742 of the EAR. (If this information was submitted previously, then only identify the modifications.) BXA must receive such certification by March 31, 1999, and prior to any export of such upgraded product.

(*2*) The certification should be sent to:

Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230, Attn: Encryption Upgrade

(*3*) A copy of the certification should be sent to:

Attn: ENC Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246

(C) After March 31, 1999, any increase (upgrade) in the confidentiality algorithm and the key exchange algorithm must be reviewed by BXA through a classification request (see § 748.3 of the EAR). In Block 9 of form BXA–748P, indicate "Key Length Upgrade."

(iii) *Eligible destinations.* License Exception ENC is available for exports and reexports of encryption commodities and software with key length up to and including 56-bits, such as DES or equivalent to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

(iv) *Reporting requirements.* See paragraph (d) of this section for reporting requirements.

(b) *Exports and reexports of certain encryption commodities and software to countries listed in Supplement No. 3 to part 740 of the EAR.* (1) *General purpose encryption commodities and software of any key length for use by banks/financial institutions.* (i) *Scope.* You may export and reexport general purpose, non-voice encryption commodities and software of any key length to banks and financial institutions (as defined in part 772 of the EAR) in specified destinations, subject to the conditions of this paragraph (b)(1). Note that distributors, resellers or other entities who are not manufacturers of the encryption commodities and software are permitted to use License Exception ENC for banks and financial institutions only in instances where the export or reexport meets the terms and conditions of this paragraph (b)(1).

(ii) *Eligible commodities and software.* General purpose, non-voice encryption commodities and software of any key length classified under ECCNs 5A002 and 5D002 after a technical review (see paragraph (c) of this section). Note that 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.

(iii) *Eligible destinations; retransfers.* Upon approval of your classification request, you may export and reexport

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under License Exception ENC general purpose, non-voice encryption commodities and software, as defined in this paragraph (b)(1), of any key length to banks and financial institutions in all destinations listed in Supplement No. 3 to this part and to branches of such banks and financial institutions wherever established, except Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. 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 or transactions are allowed. Retransfers to other end-users or end-uses are prohibited without prior authorization.

(iv) *Reporting requirements.* There are no reporting requirements.

(2) *Health and medical end-users.* (i) *Scope.* You may export and reexport encryption commodities and software of any key length under License Exception ENC to health and medical end-users (as defined in part 772 of the EAR) in specified destinations, subject to the conditions of this paragraph (b)(2). Note that distributors, resellers or other entities who are not manufacturers of the encryption commodities and software are permitted to use License Exception ENC for health and medical end-users only in instances where the export or reexport meets the terms and conditions of this paragraph (b)(2).

(ii) *Eligible commodities and software.* Encryption commodities and software of any key length classified under ECCNs 5A002 and 5D002 after a technical review (see paragraph (c) of this section).

(iii) *Eligible destinations; retransfers.* You may export and reexport under License Exception ENC encryption commodities and software of any key length to health and medical end-users in all destinations listed in Supplement No. 3 to this part. Non-U.S. biochemical and pharmaceutical manufacturers, and non-U.S. military health and medical entities are not eligible to receive encryption commodities and software under License Exception ENC (see §742.15 of the EAR for licensing information on these end-users, as well as additional countries). End-use is limited to securing health and medical transactions to health and medical end-users. No customer to customer communications or transactions are allowed. Retransfers to other end-users or end-uses are prohibited without prior authorization.

(iv) *Reporting requirements.* See paragraph (d) of this section for reporting requirements for exports under this License Exception.

(3) *Encryption commodities and software of any key length for on-line merchants.* (i) *Scope.* You may export and reexport encryption commodities and software of any key length under License Exception ENC to on-line merchants (as defined in part 772 of the EAR) in specified destinations, subject to the conditions of this paragraph (b)(3). End-use is limited to: the purchase or sale of goods and software; and services connected with the purchase or sale of goods and software including interactions between purchasers and sellers necessary for ordering, payment and delivery of goods and software. No other end-uses or customer to customer communications or transactions are allowed. Foreign on-line merchants or their separate business units (as defined in part 772 of the EAR) who are engaged in the manufacturing and distribution of items or services controlled on the U.S. Munitions List are excluded. Foreign government end-users are also excluded from this License Exception. Note that distributors, resellers or other entities who are not manufacturers of the encryption commodities and software are permitted to use License Exception ENC for on-line merchants only in instances where the export or reexport meets the terms and conditions of this paragraph (b)(3).

(ii) *Eligible commodities and software.* Encryption commodities and software of any key length classified under ECCNs 5A002 and 5D002 after a technical review (see paragraph (c) of this section). Such commodities and software must be limited to client-server applications (e.g. Secure Socket Layer (SSL) based applications) or applications specially designed for on-line transactions for the purchase or sale of goods and software; and services connected with the purchase or sale of goods and software, including interactions between purchasers and sellers necessary for ordering, payment and delivery of goods and software. Notwithstanding the provisions of paragraph (c)(2) of this section, commodities and software that were eligible for export to on-line merchants under an Encryption Licensing Arrangement or license prior to December 31, 1998, are now eligible for export and reexport under License Exception ENC under the provisions of this paragraph (b)(3).

(iii) *Eligible destinations; retransfers.* You may export and reexport encryption commodities and software under License Exception ENC to on-line merchants in all destinations listed in Supplement No. 3 to this part, except to foreign on-line merchants or their separate business units who are engaged in the manufacturing and distribution of items or services controlled on the U.S. Munitions List. Retransfers to other end-users or end-uses are prohibited without prior authorization.

(iv) *Reporting requirements.* See paragraph (d) of this section for reporting requirements for exports under this License Exception.

(c) *Technical review to determine eligibility for License Exception ENC.* (1) You may initiate a technical review required by paragraph (a) or (b) of this section by submitting a classification request for your product in accordance with the provisions of §748.3(b) of the EAR. Indicate "License Exception ENC" in Block 9: Special purpose, on form BXA–748P. Submit the original request to BXA in accordance with §748.3 of the EAR and send a copy of the request to:

Attn: ENC Encryption Request Coordinator, P.O. Box 246, Annapolis Junction, MD 20701–0246

(2) Commodities and software that have been made eligible for License Exception TSU or KMI or which have been approved for export under an Encryption Licensing Arrangement or a license prior to December 31, 1998 are eligible for export and reexport under all paragraphs of License Exception ENC, except paragraphs (a)(1) and (b)(3) of this section, without an additional technical review, provided that the export or reexport meets all the terms and conditions of this License Exception. For all other commodities and software, a technical review will determine eligibility for License Exception ENC by reviewing the confidentiality algorithm, key space, and key exchange mechanism.

(3) For export and reexport of encryption commodities and software under paragraph (a)(3) of this section, examples of eligible key exchange mechanisms include, but are not limited to, symmetric algorithms with the same or double the key length authorized for the confidentiality algorithm, asymmetric algorithms with key space of 512, 768 or up to and including 1024 bits, proprietary key exchange mechanisms, or others.

(4) For export and reexport of encryption commodities and software under paragraph (b)(3) of the License Exception ENC, exporters, in order to expedite review of the classification, should submit, as applicable, the following types of information to support the classification request:

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Part III

Department of Commerce

Bureau of Export Administration

15 CFR Parts 734, 740, et al.
Revisions to Encryption Items; Interim Final Rule

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