

Exceptions. License Exception Governments, International Organizations, and International Inspections Under the Chemical Weapons Convention (GOV) also is available to export and reexport items controlled under ECCNs 2A983, 2D983 and 2E983 for official use by personnel and agencies of the U.S. Government.

**DATES:** Effective Date: This rule is effective April 3, 2003.

**Comment Dates:** Comments on this rule must be received on or before May 19, 2003.

**ADDRESSES:** Written comments on this rule should be sent to Sheila Quartermann, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, or to E-mail address [squartermann@bis.doc.gov](mailto:squartermann@bis.doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Joan Roberts, Director, Foreign Policy Controls Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, Telephone: (202) 482-0171, E-mail: [jroberts@bis.doc.gov](mailto:jroberts@bis.doc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

##### *Imposition and Expansion of Foreign Policy Controls*

The Bureau of Industry and Security (BIS), in this rule, amends the Export Administration Regulations (EAR) by expanding the scope of explosives detection equipment controlled under Export Control Classification Number (ECCN) 2A983, previously 2A993, to include equipment that detects the presence of explosives, explosive residue, or detonators. This rule also creates new ECCNs 2D983 and 2E983 for software and technology designed or modified for the "development", "production" or "use" of explosives detection equipment controlled under 2A983. This software and technology was previously classified as EAR99. The change in the second digit of the ECCN for explosives detection equipment, from 2A993 to 2A983, more accurately indicates the expanded number of countries to which BIS will control the equipment and related software and technology.

##### *Regional Stability Controls*

This rule imposes regional stability (RS) controls on exports and reexports of explosives detection equipment controlled under ECCN 2A983, as well as software and technology controlled under ECCNs 2D983 and 2E983, to all destinations except countries in Country Group A:1, The Czech Republic,

Hungary, Iceland, New Zealand and Poland. This is noted in the Country Chart, Supplement 1 to Part 738, by an X in RS column 2. Applications will be reviewed on a case-by-case basis, consistent with the licensing policy set forth for these items in section 742.6 of the EAR.

##### *Anti-Terrorism Controls*

Anti-terrorism controls for explosives detection equipment classified under ECCN 2A983, previously 2A993, remain in effect for Iran, North Korea, Sudan, Syria, Cuba and Libya. With the creation of new ECCNs 2D983 and 2E983, BIS is imposing new license requirements for exports or reexports of such related software and technology to Iran, North Korea, Sudan and Syria for anti-terrorism reasons. Controls are maintained on this software and technology with respect to Cuba and Libya, since these items, previously classified as EAR99, were controlled to these countries under part 746 of the EAR. Applications to export or reexport such items to Cuba, Libya, Iran, North Korea, Sudan, and Syria are subject to a general policy of denial. Applications to export items controlled for more than one reason are reviewed under all applicable licensing policies, as provided in § 742.1(f).

##### *Respective Licensing Responsibilities of BIS and the Department of the Treasury*

With regard to licensing jurisdiction and licensing responsibilities of BIS and the Department of the Treasury's Office of Foreign Assets Control (OFAC) for exports to embargoed countries, this rule does not affect exports to destinations subject to comprehensive export restrictions—Cuba, Libya, Iran, Iraq and Sudan—since a general policy of denial already applies to such exports. For most of these destinations, BIS and OFAC have allocated licensing responsibility so that exporters need to obtain a license from only one agency. Exporters need a license only from OFAC for exports and reexports to Iraq and Iran, and for exports to Libya. A license is required from both OFAC and BIS for exports and reexports of items controlled under 2A983, 2D983 and 2E983 to Sudan and reexports involving U.S. persons to Libya. Exporters need a license only from BIS for exports and reexports of items controlled under 2A983, 2D983 and 2E983 to Cuba and for reexports of such items by non-U.S. persons to Libya. Exporters need a license only from BIS for exports and reexports of items controlled under 2A983, 2D983 and 2E983 to North Korea and Syria, non-embargoed countries.

BIS will consider transactions involving contracts predating March 21, 2003 for exports or reexports of 2A983, 2D983 and 2E983 items to countries other than those in Country Group E (Supplement 1 to part 740) as set forth in section 742.6(c), as revised herein. For exports of such items to Iran, North Korea, Syria and Sudan, contract sanctity will apply as set forth in Supplement 2 of part 742.

##### *Available License Exceptions—RPL, TSU and GOV*

License Exception Servicing and Replacement of Parts and Equipment (RPL) may be used to export and reexport one-for-one replacement parts, and servicing and replacement of equipment to most destinations. The use of RPL, as provided in section 740.10, is restricted to the repair or servicing of explosives detection equipment controlled under ECCN 2A983 and related software controlled under ECCN 2D983 that were previously legally exported or reexported. As set forth in new section 740.10(a)(3)(v), the one-for-one replacement of parts provision set forth in section 740.10(a) may not be used for exports of explosives detection equipment controlled under ECCN 2A983 and related software controlled under ECCN 2D983 to countries in Country Group E:1. Also, as currently set forth in paragraph 740.10(b)(2)(iv), repaired equipment or software may not be exported or reexported to countries in Country Group E:1. Also note that as provided in paragraph 740.10(b)(3)(i)(D), shipments may not be made to Country Group E:1 or to any other destinations to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any E:1 country.

In addition, License Exception Technology and Software—Unrestricted (TSU), as provided in section 740.13(a), may be used to export and reexport operation technology and software controlled under ECCNs 2D983 and 2E983. This operation technology is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those products legally exported or reexported that are controlled under 2A983. TSU section 740.13(c) may be used to export and reexport software updates only to correct errors ("fixes" to "bugs") in software controlled under 2D983 legally exported or reexported (original software). The software updates may be exported or reexported only to the same consignee to whom the software was originally exported or reexported and the software updates may not enhance