

Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

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 (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 rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation and on proposals to further update the encryption provisions of the EAR are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, PO Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 734

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

15 CFR Parts 740 and 748

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

15 CFR Parts 742, 770, and 774

Exports, Foreign trade.

■ Accordingly, parts 734, 740, 742, 748, 770, and 774 of the Export

Administration Regulations (15 CFR parts 730-799) are amended as follows:

PART 734—[AMENDED]

■ 1. The authority citation for 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. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 2. Section 734.4 is amended by revising paragraph (b) to read as follows:

§ 734.4 De minimis U.S. content.

(a) * * *

(b) There is no *de minimis* level for foreign-made items that incorporate U.S.-origin items controlled for "EI" reasons under ECCN 5A002, 5D002 or 5E002 on the Commerce Control List (Supplement No. 1 to part 774 the EAR). However, exporters may, as part of an encryption review request, ask that software controlled for EI reasons under ECCN 5D002 and eligible for export under the "retail" or "source code" provisions of license exception ENC, and parts and components controlled under ECCN 5A002, be made eligible for *de minimis* treatment. The review of *de minimis* eligibility will take U.S. national security interests into account. Other encryption items controlled for NS or AT reasons under ECCNs 5D002, 5A992, 5D992, and 5E992 are not eligible for *de minimis* treatment, unless exporters have complied with the applicable notification or review requirements described in § 740.13(e), § 742.15(b)(1), and § 742.15(b)(2) of the EAR. Encryption items controlled by ECCN 5A992, 5D992, or 5E992 and described in § 742.15(b)(3) of the EAR are not subject to these notification or review requirements.

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PART 740—[AMENDED]

■ 3. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; sec. 901-911, Pub. L. 106-387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 4. Section 740.9 is amended by revising paragraph (a)(2)(i) 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"). All 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 laptops, handheld devices and other computers and equipment loaded with encryption commodities or software, refer to item interpretation 13 in § 770.2 of the EAR.

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5. Section 740.14 is amended by revising "items" in the last sentence of paragraph (b)(4) to read "commodities and software" and by revising paragraphs (d) and (f) to read as follows:

§ 740.14 Baggage (BAG).

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(d) *Special provision: unaccompanied baggage.* Individuals departing the United States may ship unaccompanied baggage, which is baggage sent from the United States on a carrier other than that on which an individual departs. Crew members of exporting carriers may not ship unaccompanied baggage. Unaccompanied shipments under this License Exception shall be clearly marked "BAGGAGE." Shipments of unaccompanied baggage may be made at the time of, or within a reasonable time before or after departure of the consignee or owner from the United States. Personal baggage controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), encryption items (EI) or nuclear nonproliferation (NP) must be shipped within 3 months before or after the month in which the consignee or owner departs the United States. However, commodities controlled for