

CB, MT, NS, EI or NP may not be exported under this License Exception as unaccompanied baggage to Country Groups D:1, D:2, D:3, D:4, or E:1. (See Supplement No. 1 of this part).

\* \* \* \* \*

(f) *Special provisions: encryption commodities and software subject to EI controls on the Commerce Control List.* (1) A U.S. citizen or permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(20) may use this license exception to export or reexport encryption commodities and software to any destination not in Country Group E:1 of Supplement No. 1 of this part.

(2) A person other than a U.S. citizen or permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(20) (except a national of a country listed in Country Group E:1 of Supplement No. 1 of this part who is not a U.S. citizen or permanent resident alien of the United States) may also use this license exception to export or reexport encryption commodities and software to any destination not in Country Group E:1 of Supplement No. 1 of this part.

■ 6. Section 740.17 is amended by revising paragraph (b)(3)(iii)(H) to read as follows:

**§ 740.17 Encryption Commodities and Software (ENC).**

\* \* \* \* \*

- (b) \* \* \*  
(3) \* \* \*  
(iii) \* \* \*

(H) Short-range wireless components and software that do not qualify as mass market. Commodities and software that would not otherwise be controlled under Category 5 (telecommunications and “information security”) of the Commerce Control List, but which are controlled under ECCN 5A002 or 5D002 only because they incorporate components or software that provide short-range wireless encryption functions (e.g., with an operating range typically not exceeding 100 meters), may be exported or reexported under the retail provisions of License Exception ENC, without review or reporting.

\* \* \* \* \*

**PART 742—[AMENDED]**

■ 7. The authority citation for 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; sec. 901–911, Pub. L. 106–387; sec. 221, Pub. L. 107–56; 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. 12938, 59

FR 59099, 3 CFR, 1994 Comp., p. 950; 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.

■ 8. Section 742.15 is amended by revising the first two sentences of paragraph (b) (1), and revising paragraph (b)(3)(ii) to read as follows:

**§ 742.15 Encryption items.**

\* \* \* \* \*

- (b) \* \* \*

(1) *Notification requirement for specified encryption items.* You may export or reexport encryption items controlled under ECCN 5A992, 5D992 or 5E992 and identified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section to most destinations without a license (NLR: No License Required), provided that you have submitted to BIS, by the time of export, the information described in paragraphs (a) through (e) of Supplement No. 6 of this part. For notifications submitted under paragraph (b)(1)(i) of this section, you must also provide specific information describing how your products qualify for mass market treatment under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2, of the Commerce Control List (Supplement No. 1 to part 774 of the EAR). \* \* \*

\* \* \* \* \*

- (3) \* \* \*

(ii) *Mass market short-range wireless commodities or software.* Mass market commodities or software that would not otherwise be controlled under Category 5 (telecommunications and “information security”) of the Commerce Control List, but which are controlled under ECCN 5A992 or 5D992 only because they incorporate components or software that provide short-range wireless encryption functions (e.g., wireless products with an operating range typically not exceeding 100 meters).

\* \* \* \* \*

■ 9. Part 742 is amended by adding a new Supplement No. 5 to read as follows:

**SUPPLEMENT NO. 5 TO PART 742—  
CHECKLIST ON ENCRYPTION AND OTHER  
“INFORMATION SECURITY” FUNCTIONS**

1. Does your product perform “cryptography”, or otherwise contain any parts or components that are capable of performing any of the following “information security” functions? (Mark with an “X” all that apply)

- a. \_\_\_\_\_ encryption  
b. \_\_\_\_\_ decryption only (no encryption)  
c. \_\_\_\_\_ key management/public key infrastructure (PKI)

- d. \_\_\_\_\_ authentication (e.g., password protection, digital signatures)  
e. \_\_\_\_\_ copy protection  
f. \_\_\_\_\_ anti-virus protection  
g. \_\_\_\_\_ other (please explain) :

h. \_\_\_\_\_ NONE/NOT APPLICABLE

2. For items with encryption, decryption and/or key management functions (1.a, 1.b, 1.c above):

a. What symmetric algorithms and key lengths (e.g., 56-bit DES, 112/168-bit Triple-DES, 128/256-bit AES/Rijndael) are implemented or supported?

b. What asymmetric algorithms and key lengths (e.g., 512-bit RSA/Diffie-Hellman, 1024/2048-bit RSA/Diffie-Hellman) are implemented or supported?

c. What encryption protocols (e.g., SSL, SSH, IPSEC or PKCS standards) are implemented or supported?

d. What type of data is encrypted?

3. For products that contain an “encryption component”, can this encryption component be easily used by another product, or else accessed/re-transferred by the end-user for cryptographic use?

**PART 748—[AMENDED]**

■ 10. The authority citation for part 748 continues to read as follows:

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

■ 11. Section 748.3 is amended by adding a sentence to the end of paragraph (a), and revising (d) to read as follows:

**§ 748.3 Classification requests, advisory opinions, and encryption review requests.**

(a) *Introduction.* \* \* \* A review of the questions provided in Supplement No. 5 to part 742 of the EAR may assist in determining whether you must submit an encryption review request (see paragraph (d) of this section) for your particular item.

\* \* \* \* \*

(d) *Review requests for encryption items.* A Department of Commerce review of encryption items transferred from the U.S. Munitions List consistent with Executive Order 13026 of November 15, 1996 (3 CFR, 1996 Comp., p. 228) and pursuant to the Presidential Memorandum of that date may be required to determine eligibility under License Exception ENC or for release from “EI” controls. Refer to Supplement No. 5 to part 742 of the EAR for questions that provide initial guidance in determining whether you must submit an encryption review request for your item. Refer to Supplement No. 6 to part 742 of the EAR for a complete list of technical information that is required for encryption review requests. Refer