

also to § 742.15(b) of the EAR for instructions regarding mass market encryption commodities and software. Refer to § 740.17 of the EAR for the provisions of License Exception ENC.

■ 12. Part 748, Supplement No. 1 is amended by revising the paragraph labeled “Block 5” to read as follows:

SUPPLEMENT NO. 1 TO PART 748—BIS—748P, BIS—748P—A; ITEM APPENDIX, AND BIS—748P—B; END USER APPENDIX; MULTIPURPOSE APPLICATION INSTRUCTIONS

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Block 5: Type of Application. *Export*. If the items are located within the United States, and you wish to export those items, mark the Box labeled “Export” with an (X). *Reexport*. If the items are located outside the United States, mark the Box labeled “Reexport” with an (X). *Classification*. If you are requesting BIS to classify your item against the Commerce Control List (CCL), mark the Box labeled “Classification Request” with an (X). *Encryption Review*. If you are requesting encryption review under License Exception ENC (§ 740.17 of the EAR) or “mass market” encryption provisions (§ 742.15(b)(2) of the EAR), mark the Box labeled “Classification Request” with an (X). *Special Comprehensive License*. If you are submitting a Special Comprehensive License application in accordance with the procedures described in part 752 of the EAR, mark the Box labeled “Special Comprehensive License” with an (X).

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■ 13. Part 748, Supplement No. 2 is amended by adding a new paragraph (r) immediately following paragraph (q) and reading as follows:

SUPPLEMENT NO. 2 TO PART 748—UNIQUE LICENSE APPLICATION REQUIREMENTS

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(r) *Encryption review requests*. Enter, in Block 9 (Special Purpose) of the BIS—748P, “License Exception ENC” if you are submitting an encryption review request for License Exception ENC (§ 740.17 of the EAR) or “mass market encryption” if you are submitting an encryption review request under the mass market encryption provisions (§ 742.15(b)(2) of the EAR). If you seek an encryption review for another reason, enter “encryption—other”.

PART 770—[AMENDED]

■ 14. The authority citation for 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. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; notice of August 14, 2002, 67 FR 53721, August 16, 2002.

■ 15. Section 770.2 is amended by revising paragraph (m) to read as follows:

§ 770.2 Item interpretations.

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(m) *Interpretation 13: Encryption commodities and software controlled for EI reasons*. Encryption commodities and software controlled for EI reasons under ECCNs 5A002 and 5D002 may be pre-loaded on a laptop, handheld device or other computer or equipment 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. Like other “information security” “software”, components, “electronic assemblies” or modules, the control status of encryption commodities and software is determined in Category 5, part 2 even if they are bundled, commingled or incorporated in a computer or other equipment. However, commodities and software specially designed for medical end-use that incorporate an item in Category 5, part 2 are not controlled in Category 5, part 2. *See* Note 1 to Category 5, part 2 (“Information Security”) of Supplement No. 1 to Part 774 (the Commerce Control List) of the EAR.

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PART 774—[AMENDED]

Supplement No. 1 to Part 774 (The Commerce Control List)—[Amended]

■ 16. The authority citation for 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; 30 U.S.C. 185(s), 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; sec. 901–911, Pub. L. 106–387; sec. 221, Pub. L. 107–56; 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.

■ 17. Supplement No. 1 to Part 774 (Commerce Control List), Category 5—Telecommunications and “Information Security”, following the heading II—“INFORMATION SECURITY” is amended by adding a new Nota Bene (“N.B.”) immediately following Note 1, and amending Export Control Classification Number (ECCN) 5A002 by revising the *Related Controls* paragraph of the List of Items Controlled section as set forth below:

SUPPLEMENT NO. 1 TO PART 774—THE COMMERCE CONTROL LIST

* * * * *

Category 5—Telecommunications and “Information Security”

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Part II. “Information Security”

Note 1: * * *

N.B. to Note 1: Commodities and software specially designed for medical end-use that incorporate an item in Category 5, part 2 are not classified in any ECCN in Category 5, part 2.

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A. SYSTEMS, EQUIPMENT AND COMPONENTS

5A002 Systems, equipment, application specific “electronic assemblies”, modules and integrated circuits for “information security”, as follows (*see* List of Items Controlled), and other specially designed components therefor.

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List of Items Controlled

Unit * * *

Related Controls: *See also* 5A992. This entry does not control: (a) “Personalized smart cards”: (1) Where the cryptographic capability is restricted for use in equipment or systems excluded from control paragraphs (b) through (f) of this note; or (2) For general public-use applications where the cryptographic capability is not user-accessible and it is specially designed and limited to allow protection of personal data stored within. Note that if a “personalized smart card” has multiple functions, the control status of each function is assessed individually; (b) Receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type, without digital encryption except that exclusively used for sending the billing or program-related information back to the broadcast providers; (c) Portable or mobile radiotelephones for civil use (*e.g.*, for use with commercial civil cellular radio communications systems) that are not capable of end-to-end encryption; (d) Equipment where the cryptographic capability is not user-accessible and which is specially designed and limited to allow any of the following: (1) Execution of copy-protected “software”; (2) Access to any of the following: (a) Copy-protected contents stored on read-only media; or (b) Information stored in encrypted form on media (*e.g.*, in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets to the public; or (3) Copying control of copyright protected audio/video data; (e) Cryptographic equipment specially designed and limited for banking use or money transactions; (f) Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*e.g.*, a single, unrelayed hop between terminal and home basestation) is less than 400 meters according to the manufacturer’s specifications. These items are controlled under ECCN 5A992.