§ 734.4 De minimis U.S. content.

(a) Items for which there is no de minimis level. (1) There is no de minimis level for the export from a foreign country of a foreign-made computer with an Adjusted Peak Performance (APP) exceeding 0.75 Weighted TeraFLOPS (WT) containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 to Computer Tier 3; or exceeding an APP of 0.002 WT containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 or high speed interconnect devices (ECCN 4A994.j) to Cuba, Iran, North Korea, Sudan, and Syria.

(2) Foreign produced encryption technology that incorporates U.S. origin encryption technology controlled by ECCN 5E002 is subject to the EAR regardless of the amount of U.S. origin content.

(3) There is no de minimis level for foreign-made:

(i) Commercial primary or standby instrument systems of the type described in ECCN 7A994 on the Commerce Control List (Supplement No. 1 to part 774 the EAR) when the systems integrate QRS11–00100–100/101 Micro-machined Angular Rate Sensors;

(ii) Commercial automatic flight control systems when the systems integrate QRS11–00100–100/101 Micro-machined Angular Rate Sensors; and

(iii) Aircraft of the type described in ECCN 9A991 when such aircraft incorporate a primary or standby instrument system integrating a QRS11–00100–100/101 sensor or an automatic flight control system integrating a QRS11–00100–100/101 sensor.

NOTE TO PARAGRAPH (a)(3): QRS11 Micro-machined Angular Rate Sensors are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls, except when the QRS11–00100–100/101 version of the sensor is integrated into and included as an integral part of an aircraft.

§ 734.4 De minimis U.S. content.

(a) Items for which there is no de minimis level. (1) There is no de minimis level for the export from a foreign country of a foreign-made computer with an Adjusted Peak Performance (APP) exceeding 0.75 Weighted TeraFLOPS (WT) containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 to Computer Tier 3; or exceeding an APP of 0.002 WT containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 or high speed interconnect devices (ECCN 4A994.j) to Cuba, Iran, North Korea, Sudan, and Syria.

(2) Foreign produced encryption technology that incorporates U.S. origin encryption technology controlled by ECCN 5E002 is subject to the EAR regardless of the amount of U.S. origin content.

(3) There is no de minimis level for foreign-made:

(i) Commercial primary or standby instrument systems of the type described in ECCN 7A994 on the Commerce Control List (Supplement No. 1 to part 774 the EAR) when the systems integrate QRS11–00100–100/101 Micro-machined Angular Rate Sensors;

(ii) Commercial automatic flight control systems when the systems integrate QRS11–00100–100/101 Micro-machined Angular Rate Sensors; and

(iii) Aircraft of the type described in ECCN 9A991 when such aircraft incorporate a primary or standby instrument system integrating a QRS11–00100–100/101 sensor or an automatic flight control system integrating a QRS11–00100–100/101 sensor.

NOTE TO PARAGRAPH (a)(3): QRS11 Micro-machined Angular Rate Sensors are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls, except when the QRS11–00100–100/101 version of the sensor is integrated into and included as an integral part of an aircraft.
part of a commercial primary or standby instrument system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates a commercial primary or standby instrument that has such a sensor integrated, or is exported solely for integration into such systems; or when the QRS11-00050-443/569 is integrated into a commercial automatic flight control system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates an automatic flight control system that has such a sensor integrated, or is exported solely for integration into such a system.

(4) There is no de minimis level for U.S.-origin technology controlled by ECCN 9E003a.1 through .a.11, and .h. when redrawn, used, consulted, or otherwise commingled abroad.

(5) There is no de minimis level for foreign made military commodities that incorporate cameras classified under ECCN 6A003.b.4.b if such cameras would be subject to the EAR as separate items and if the foreign made military commodity is not subject to the International Traffic in Arms Regulations (22 U.S.C. Parts 120–130).

(6) Under certain rules issued by the Office of Foreign Assets Control, certain exports from abroad by U.S.-owned or controlled entities may be prohibited notwithstanding the de minimis provisions of the EAR. In addition, the de minimis rules do not relieve U.S. persons of the obligation to refrain from supporting the proliferation of weapons of mass-destruction and missiles as provided in §744.6 of the EAR.

(b) Special requirements for certain encryption items. Foreign made items that incorporate U.S. origin items that are listed in this paragraph are subject to the EAR unless they meet the de minimis level and destination requirements of paragraph (c) or (d) of this section and the requirements of this paragraph.

(1) The U.S. origin commodities or software, if controlled under ECCNs 5A002.a.1, a.2, .a.5, or .a.6, or 5D002, must have been:

(ii) Authorized for License Exception ENC by BIS after a review pursuant to §740.17(b)(3) of the EAR;

(iii) Authorized for License Exception ENC by BIS after a review pursuant to §740.17(b)(2), and the foreign made product will not be sent to any destination in Country Group E:1 in Supplement No. 1 to part 740 of the EAR; or

(iv) Authorized for License Exception ENC pursuant to §740.17(b)(4).

(2) U.S. origin encryption items classified under ECCNs 5A992, 5D992, or 5E992.

NOTE TO PARAGRAPH (B): See supplement No. 2 to this part for de minimis calculation procedures and reporting requirements.

(c) 10% De Minimis Rule. Except as provided in paragraphs (a) and (b)(1)(iii) of this section and subject to the provisions of paragraphs (b)(1)(i), (b)(1)(ii) and (b)(2) of this section, the following reexports are not subject to the EAR when made to any country in the world. See Supplement No. 2 of this part for guidance on calculating values.

(1) Reexports of a foreign-made commodity incorporating controlled U.S.-origin commodities or “bundled” with U.S.-origin software valued at 10% or less of the total value of the foreign-made commodity;

NOTES TO PARAGRAPH (C)(1): (1) U.S.-origin software is not eligible for the de minimis exclusion and is subject to the EAR when exported or reexported separately from (i.e., not bundled or incorporated with) the foreign-made item.

(2) For the purposes of this section, ‘bundled’ means software that is reexported together with the item and is configured for the item, but is not necessarily physically integrated into the item.

(3) The de minimis exclusion under paragraph (c)(1) only applies to software that is listed on the Commerce Control List (CCL) and has a reason for control of anti-terrorism (AT) only or software that is designated as EAR99 (subject to the EAR, but not listed on the CCL). For all other software, an independent assessment of whether the software by itself is subject to the EAR must be performed.

(2) Reexports of foreign-made software incorporating controlled U.S.-origin software valued at 10% or less of the total value of the foreign-made software;

(3) Reexports of foreign technology commingled with or drawn from controlled U.S.-origin technology valued at 10% or less of the total value of the foreign technology. Before you may rely upon the de minimis exclusion for foreign-made technology commingled...
with controlled U.S.-origin technology, you must file a one-time report. See Supplement No. 2 to part 734 for submission requirements.

(d) 25% De Minimis Rule. Except as provided in paragraph (a) of this section and subject to the provisions of paragraph (b) of this section, the following reexports are not subject to the EAR when made to countries other than those listed in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. See Supplement No. 2 to this part for guidance on calculating values.

(1) Reexports of a foreign-made commodity incorporating controlled U.S.-origin commodities or “bundled” with U.S.-origin software valued at 25% or less of the total value of the foreign-made commodity:

NOTES TO PARAGRAPH (D)(1):
(1) U.S.-origin software is not eligible for the de minimis exclusion and is subject to the EAR when exported or reexported separately from (i.e., not bundled or incorporated with) the foreign-made item.
(2) For the purposes of this section, “bundled” means software that is reexported together with the item and is configured for the item, but is not necessarily physically integrated into the item.
(3) The de minimis exclusion under paragraph (d)(1) only applies to software that is listed on the Commerce Control List (CCL) and has a reason for control of anti-terrorism (AT) only or software that is classified as EAR99 (subject to the EAR, but not listed on the CCL). For all other software, an independent assessment of whether the software by itself is subject to the EAR must be performed.

(2) Reexports of foreign-made software incorporating controlled U.S.-origin software valued at 25% or less of the total value of the foreign-made software; or

(3) Reexports of foreign technology commingled with or drawn from controlled U.S.-origin technology valued at 25% or less of the total value of the foreign technology. Before you may rely upon the de minimis exclusion for foreign-made technology commingled with controlled U.S.-origin technology, you must file a one-time report. See Supplement No. 2 to part 734 for submission requirements.

(e) You are responsible for making the necessary calculations to determine whether the de minimis provisions apply to your situation. See Supplement No. 2 to part 734 for guidance regarding calculation of U.S. controlled content.

(f) See §770.3 of the EAR for principles that apply to commingled U.S.-origin technology and software.

(g) Recordkeeping requirement. The method by which you determined the percentage of U.S. content in foreign software or technology must be documented and retained in your records in accordance with the recordkeeping requirements in part 762 of the EAR. Your records should indicate whether the values you used in your calculations are actual arms-length market prices or prices derived from comparable transactions or costs of production, overhead, and profit.

[61 FR 12746, Mar. 25, 1996]

EDITORIAL NOTE: For Federal Register citations affecting §734.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 734.6 Assistance available from BIS for determining licensing and other requirements.

(a) If you are not sure whether a commodity, software, technology, or activity is subject to the EAR, or is subject to licensing or other requirements under the EAR, you may ask BIS for an advisory opinion, classification, or a determination whether a particular item or activity is subject to the EAR. In many instances, including