

## § 740.16

destination in Country Group E:1 (see Supplement No. 1 to this part).

(5) No vessels may be exported or re-exported under this License Exception to a country in Country Group E:1.

[61 FR 12678, Mar. 25, 1996. Redesignated and amended at 61 FR 64274, 64283, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996; 65 FR 38150, June 19, 2000; 66 FR 42110, Aug. 10, 2001; 68 FR 50472, Aug. 21, 2003; 69 FR 23628, Apr. 29, 2004; 70 FR 14390, Mar. 22, 2005; 70 FR 67348, Nov. 7, 2005; 71 FR 51717, Aug. 31, 2006; 73 FR 35, Jan. 2, 2008; 73 FR 49328, Aug. 21, 2008]

### § 740.16 Additional permissive reexports (APR).

This License Exception allows the following reexports:

(a) *Reexports from Country Group A:1 and cooperating countries.* Reexports may be made from Country Group A:1 or from cooperating countries, provided that:

(1) The reexport is made in accordance with the conditions of an export authorization from the government of the reexporting country;

(2) The commodities being reexported are not controlled for NP, CB, MT, SI or CC reasons and are not military commodities described in ECCN 0A919 or cameras described in ECCN 6A003.b.4.b; and

(3) The reexport is destined to *either*:

(i) A country in Country Group B that is not also included in Country Group D:2, D:3, or D:4; and the commodity being reexported is both controlled for national security reasons and not controlled for export to Country Group A:1; or

(ii) A country in Country Group D:1 (National Security) (see Supplement No. 1 to part 740), other than North Korea and the commodity being reexported is controlled for national security reasons.

(b) *Reexports to and among specified countries.* (1) Commodities that are not controlled for nuclear nonproliferation or missile technology reasons and that are not listed in paragraph (b)(2) or (b)(3) of this section may be reexported to and among Country Group A:1 and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (see Supplement No. 1 to part 740) or cooperating country, or for reexport

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from such country in accordance with other provisions of the EAR.

(2) Except as provided in paragraph (b)(3) of this section, cameras described in ECCN 6A003.b.4.b and “military commodities” described in ECCN 0A919 may not be exported under this paragraph (b).

(3) Cameras described in ECCN 6A003.b.4.b may be exported or reexported to and among: Albania, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, and the United Kingdom if:

(i) Such cameras are fully packaged for use as consumer ready civil products; or,

(ii) Such cameras with not more than 111,000 elements are to be embedded in civil products.

(c) Reexports to a destination to which direct shipment from the United States is authorized under an unused outstanding license may be made under the terms of that license. Such reexports shall be recorded in the same manner as exports are recorded, regardless of whether the license is partially or wholly used for reexport purposes. (See part 762 of the EAR for recordkeeping requirements.)

(d) Reexports of any item from Canada that, at the time of reexport, may be exported directly from the United States to the new country of destination under any License Exception.

(e) Reexports (return) to the United States of any item. If the reexporting party requests written authorization because the government of the country from which the reexport will take place requires formal U.S. Government approval, such authorization will generally be given.

(f) Reexports from a foreign destination to Canada of any item if the item could be exported to Canada without a license.

(g) Reexports between Switzerland and Liechtenstein.

(h) Shipments of foreign-made products that incorporate U.S.-origin components may be accompanied by U.S.-origin controlled spare parts, provided that they do not exceed 10 percent of the value of the foreign-made product, subject to the restrictions in § 734.4 of the EAR.

(i) Reexports to Sudan of items controlled by ECCNs 2A994; 3A992.a; 5A991.g; 5A992; 6A991; 6A998; 7A994; 8A992.d, .e, .f, and .g; 9A990.a and .b; and 9A991.d and .e. In addition, items in these ECCNs are not counted as controlled U.S. content for purposes of determining license requirements for U.S. parts, components, and materials incorporated in foreign-made products. However, the export from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Sudan is prohibited without a license.

(j) Reexports of items controlled by NP Column 1 (see Supplement No. 1 to part 774 of the EAR) to, among, and from countries described in Country Group A:4 (see Supplement No. 1 to part 740), except:

(1) Reexports from countries that are not identified in Country Group A:1 of items that are controlled for NS reasons to destinations in Country Group D:1; and

(2) Reexports to destinations in Country Group E:2 and Country Group D:2.

[61 FR 12768, Mar. 25, 1996. Redesignated at 61 FR 64274, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, and amended at 62 FR 25458, May 9, 1997; 63 FR 42228, Aug. 7, 1998; 65 FR 38150, June 19, 2000; 65 FR 60855, Oct. 13, 2000; 67 FR 10614, Mar. 8, 2002; 72 FR 43531, Aug. 6, 2007; 74 FR 23945, May 22, 2009; 74 FR 68145, Dec. 23, 2009]

**§ 740.17 Encryption commodities, software and technology (ENC).**

License Exception ENC authorizes export and reexport of software and commodities and components thereof that are classified under ECCNs 5A002.a.1, a.2, a.5, a.6 or a.9, 5B002, 5D002, and technology that is classified under ECCN 5E002. This License Exception ENC does not authorize export or reexport to, or provision of any service in any country listed in Country Group E:1 in Supplement No. 1 to part 740 of

the EAR, or release of source code or technology to any national of a country listed in Country Group E:1. Reexports and transfers under License Exception ENC are subject to the criteria set forth in paragraph (c) of this section. Paragraph (d) of this section sets forth information about review requests required by this section. Paragraph (e) sets forth reporting required by this section.

(a) *No prior review or post export reporting required—(1) Internal “development” or “production” of new products.* License Exception ENC authorizes exports and reexports of items described in paragraph (a)(1)(i) of this section, to end-users described in paragraph (a)(1)(ii) of this section, for the intended end-use described in paragraph (a)(1)(iii) of this section without prior review by the U.S. Government.

(i) *Eligible items.* Eligible items are those classified under ECCNs 5A002.a.1, .a.2, .a.5, .a.6, or .a.9, 5B002, 5D002, or 5E002.

(ii) *Eligible end-users.* Eligible end-users are “private sector end-users” wherever located, except to countries listed in Country Group E:1 (see Supplement No. 1 to part 740 of the EAR) that are headquartered in a country listed in Supplement No. 3 of this part.

NOTE TO PARAGRAPH (a)(1)(ii): A “private sector end-user” is:

(1) An individual who is not acting on behalf of any foreign government; or

(2) A commercial firm (including its subsidiary and parent firms, and other subsidiaries of the same parent) that is not wholly owned by, or otherwise controlled by or acting on behalf of, any foreign government.

(iii) *Eligible end-use.* The eligible end-use is internal “development” or “production” of new products by those end-users.

NOTE TO PARAGRAPH (a)(1)(iii): All items produced or developed with items exported or reexported under this paragraph (a)(1) are subject to the EAR. These items may require review and authorization before sale, reexport or transfer, unless otherwise authorized by license or license exception.

(2) *Exports and reexports to “U.S. Subsidiaries.”* License Exception ENC authorizes export and reexport of items classified under ECCNs 5A002.a.1, .a.2, .a.5, .a.6, or .a.9, 5B002, 5D002, or 5E002