

§ 740.10

software under this paragraph (c), the exporter or reexporter must obtain the following statement from the testing consignee, which may be included in a contract, non-disclosure agreement, or other document that identifies the importer, the software to be exported, the country of destination, and the testing consignee.

“We certify that this beta test software will only be used for beta testing purposes, and will not be rented, leased, sold, sub-licensed, assigned, or otherwise transferred. Further, we certify that we will not transfer or export any product, process, or service that is the direct product of the beta test software.”

(6) *Use limitations.* Only testing consignees that provide the importer statement required by paragraph (c)(5) of this section may execute any beta test software that was exported or re-exported to them under the provisions of this paragraph (c).

(7) *Return or disposal of software.* All beta test software exported must be destroyed abroad or returned to the exporter within 30 days of the end of the beta test period as defined by the software producer or, if the software producer does not define a test period, within 30 days of completion of the consignee's role in the test. Among other methods, this requirement may be satisfied by a software module that will destroy the software and all its copies at or before the end of the beta test period.

(8) *Notification of beta test encryption software.* For beta test encryption software eligible under this license exception you must, by the time of export or reexport, submit the information described in paragraphs (a) through (e) of Supplement No. 6 to part 742 of the EAR by e-mail to BIS at crypt@bis.doc.gov and to the ENC Encryption Request Coordinator at enc@nsa.gov.

[61 FR 64277, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996.]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 740.9, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

15 CFR Ch. VII (1–1–13 Edition)

§ 740.10 Servicing and replacement of parts and equipment (RPL).

This License Exception authorizes exports and reexports associated with one-for-one replacement of parts or servicing and replacement of equipment.

(a) *Parts—(1) Scope.* The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts for previously exported equipment.

(2) *One-for-one replacement of parts.* (i) The term *replacement parts* as used in this section means parts needed for the immediate repair of equipment, including replacement of defective or worn parts. (It includes subassemblies but does not include test instruments or operating supplies). (The term *sub-assembly* means a number of components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as those composed of a number of subassemblies.) Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment upon which they are installed, are not deemed to be replacement parts. For kits consisting of replacement parts, consult § 740.9(a)(2)(ii) of this part.

(ii) Parts may be exported only to replace, on a one-for-one basis, parts contained in commodities that were: legally exported from the United States; legally reexported; or made in a foreign country incorporating authorized U.S.-origin parts. (For exports or reexports to the installed base in Libya see § 764.7 of the EAR). The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has confirmed the appropriate authority for the original transaction.

(iii) The parts to be replaced must either be destroyed abroad or returned promptly to the person who supplied the replacement parts, or to a foreign firm that is under the effective control of that person.

(3) *Exclusions.* (i) No replacement parts may be exported to repair a commodity exported under a license if that license included a condition that any subsequent replacement parts must be exported only under a license.

(ii) No parts may be exported to be held abroad as spare parts or equipment for future use. Replacement parts may be exported to replace spare parts that were authorized to accompany the export of equipment, as those spare parts are utilized in the repair of the equipment. This will allow maintenance of the stock of spares at a consistent level as parts are used.

(iii) No parts may be exported to any destination, except the countries listed in supplement no. 3 to part 744 of the EAR (Countries Not Subject to Certain Nuclear End-Use Restrictions in §744.2(a)) if the item is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing related to activities described in §744.2(a) of the EAR, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in §744.2(a) of the EAR.

(iv) No replacement parts may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an “aircraft” (as defined in part 772 of the EAR) or national security controlled commodity.

(v) No replacement parts may be exported to countries in Country Group E:1 if the commodity to be repaired is explosives detection equipment controlled under ECCN 2A983 or related software controlled under ECCN 2D983.

(vi) No replacement parts may be exported to countries in Country Group E:1 if the commodity to be repaired is concealed object detection equipment controlled under ECCN 2A984 or related software controlled under ECCN 2D984.

(vii) The conditions described in this paragraph (a)(3) relating to replacement of parts do not apply to reexports to a foreign country of parts as replacements in foreign-origin products,

if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the exceptions in §734.4 of the EAR.

(4) *Reexports.* Parts exported from the United States may be reexported to a new country of destination, provided that the restrictions described in paragraphs (a)(2) and (3) of this section are met. A party reexporting U.S.-origin one-for-one replacement parts shall ensure that the commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be legally used, and that either before or promptly after reexport of the replacement parts, the replaced parts are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to part 740) that shipped the replacement parts.

(b) *Servicing and replacement—(1) Scope.* The provisions of this paragraph (b) authorize the export and reexport of items that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(2) Commodities and software sent to a United States or foreign party for servicing.

(i) *Definition.* *Servicing* as used in this section means inspection, testing, calibration or repair, including overhaul and reconditioning. The servicing shall not have improved or changed the basic characteristics, e.g., as to accuracy, capability, performance, or productivity of the commodity or software as originally authorized for export or reexport.

(ii) *Return of serviced commodities and software.* When the serviced commodity or software is returned, it may include any replacement or rebuilt parts necessary to its repair and may be accompanied by any spare part, tool, accessory, or other item that was sent with it for servicing.

(iii) *Commodities and software imported from Country Group D:1 except the People’s Republic of China (PRC).* Commodities and software legally exported or reexported to a consignee in Country Group D:1 (except the People’s Republic of China (PRC)) (see Supplement No. 1 to part 740) that are sent to the

United States or a foreign party for servicing may be returned to the country from which it was sent, provided that both of the following conditions are met:

(A) The exporter making the shipment is the same person or firm to whom the original license was issued; and

(B) The end-use and the end-user of the serviced commodities or software and other particulars of the transaction, as set forth in the application and supporting documentation that formed the basis for issuance of the license have not changed.

(iv) *Terrorist supporting countries.* No repaired commodity or software may be exported or reexported to countries in Country Group E:1 (see Supplement No. 1 to this part).

(3) *Replacements for defective or unacceptable U.S.-origin equipment.* (i) Subject to the following conditions, commodities or software may be exported or reexported to replace defective or otherwise unusable (e.g., erroneously supplied) items.

(A) The commodity or software to be replaced must have been previously exported or reexported in its present form under a license or authorization granted by BIS.

(B) No commodity or software may be exported or reexported to replace equipment that is worn out from normal use, nor may any commodity or software be exported to be held in stock abroad as spare equipment for future use.

(C) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the equipment as originally approved for export or reexport under a license issued by BIS.

(D) No shipment may be made to countries in Country Group E:1 (see Supplement No. 1 to this part), or to any other destination to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any of those countries.

(ii) *Special conditions applicable to exports to Country Group B and Country Group D:1.* (See Supplement No. 1 to part 740.) In addition to the general conditions in paragraph (b)(3)(i) of this

section, the following conditions apply to exports or reexports of replacements for defective or unacceptable U.S.-origin commodities or software to a destination in Country Group B or Country Group D:1:

(A) By making such an export or reexport, the exporter represents that all the requirements of this paragraph (b) have been met and undertakes to destroy or return the replaced parts as provided in paragraph (b)(3)(ii)(C) of this section.

(B) The defective or otherwise unusable equipment must be replaced free of charge, except for transportation and labor charges. If exporting to the countries listed in Country Group D:1 (except the PRC), the exporter shall replace the commodity or software within the warranty period or within 12 months of its shipment to the ultimate consignee in the country of destination, whichever is shorter.

(C) The commodity or software to be replaced must either be destroyed abroad or returned to the United States, or to a foreign firm in Country Group B that is under the effective control of the exporter, or to the foreign firm that is providing the replacement part or equipment. The destruction or return must be effected before, or promptly after, the replacement item is exported from the United States.

(D) A party reexporting replacements for defective or unacceptable U.S.-origin equipment must ensure that the commodities or software being replaced were shipped to their present location in accordance with U.S. law and continue to be legally used. See § 764.7 of the EAR for exports or reexports to the installed base in Libya.

(c) *Special recordkeeping requirements: ECCNs 2A983, 2A984, 2D983 and 2D984.* (1) In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair or service previously legally exported or reexported items controlled under ECCNs 2A983, 2A984, 2D983 and 2D984. The following information must be specially maintained for each such export or reexport transaction:

- (i) A description of the equipment replaced, repaired or serviced;
- (ii) The type of repair or service;
- (iii) Certification of the destruction or return of equipment replaced;
- (iv) Location of the equipment replaced, repaired or serviced;
- (v) The name and address of who received the items for replacement, repair or service;

- (vi) Quantity of items shipped; and
- (vii) Country of ultimate destination.

(2) Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR.

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§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

This License Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel, and agencies of cooperating governments; international inspections under the Chemical Weapons Convention; and the International Space Station.

(a) *International safeguards.* (1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 5A001.h, 6A001.a.1.b.1 systems or transmitting and receiving arrays, designed for object detection and location, having a sound pressure level exceeding 210 dB (reference 1 µPa at 1 m) and an operating frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

(i) Commodities or software consigned to the IAEA at its headquarters in Vienna, Austria, or field offices in Toronto, Ontario, Canada or Tokyo, Japan for official international safeguards use. The IAEA is an international organization that establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

(ii) Commodities or software consigned to the Euratom Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use. Euratom is an international organization of European countries with headquarters in Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

(iii) Commodities consigned to IAEA or Euratom may be reexported to any country for IAEA or Euratom international safeguards use provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities and returns the commodities to the locations described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section when they become obsolete, are no longer required, or are replaced.

(iv) Commodity or software shipments may be made by commercial companies under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(v) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited safeguarded nuclear activities described in § 744.2(a)(3) of the EAR.

(vi) When commodities or software originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may only be disposed of in accordance with the regulations in the EAR.

(2) The following items controlled for national security (NS) reasons under Export Control Classification Numbers