

§ 740.8

Foreign National Review (FNR) request to BIS, as required under § 748.8(s) of the EAR. Your FNR request must include information about the foreign national required under § 748.8(t) of the EAR and set forth in Supplement No. 2 of part 748 of the EAR.

(ii) *Confirmation of eligibility.* You may not use License Exception APP, until you have obtained confirmation of eligibility via either BIS's System for Tracking Export License Applications (STELA) (<https://snapr.bis.doc.gov/stela>) from BIS's Simplified Network Application Procedure (SNAP). See <http://www.bis.doc.gov/SNAP/index.htm> for more information about SNAP.

(iii) *Action by BIS.* Within nine business days of the registration of the FNR request, BIS will electronically refer the FNR request for interagency review, or if necessary return the FNR request without action (*e.g.*, if the information provided is incomplete). Processing time starts at the point at which the notification is registered into BIS's electronic system.

(iv) *Review by other departments or agencies.* The Departments of Defense, State, Energy, and other agencies, as appropriate, may review the FNR request. Within 30 calendar days of receipt of the BIS referral, the reviewing agency will provide BIS with a recommendation either to approve or deny the FNR request. A reviewing agency that fails to provide a recommendation within 30 days shall be deemed to have no objection to the final decision of BIS.

(v) *Action on the FNR Request.* After the interagency review period, BIS will promptly notify the applicant regarding the FNR request, *i.e.*, whether the FNR request is approved, denied, or more time is needed to consider the request.

(e) *Reporting requirements.* See § 743.1 of the EAR for reporting requirements of certain items under License Exception APP.

[71 FR 20883, Apr. 24, 2006, as amended at 71 FR 51717, Aug. 31, 2006; 71 FR 68439, Nov. 27, 2006; 72 FR 13441, Mar. 22, 2007; 72 FR 60249, Oct. 24, 2007; 73 FR 51218, Sept. 2, 2008; 73 FR 68324, Nov. 18, 2008; 75 FR 31680, June 4, 2010; 75 FR 36514, June 28, 2010; 76 FR 36988, June 24, 2011; 76 FR 54930, Sept. 6, 2011; 76 FR 70339, Nov. 14, 2011; 77 FR 39367, July 2, 2012]

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§ 740.8 [Reserved]

§ 740.9 Temporary imports, exports, re-exports, and transfers (in-country) (TMP).

This License Exception authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software.

(a) *Temporary exports, reexports, and transfers (in-country).* License Exception TMP authorizes exports, reexports, and transfers (in-country) of items for temporary use abroad (including use in or above international waters) subject to the conditions specified in this paragraph (a). No item may be exported, reexported, or transferred (in-country) under this paragraph (a) if an order to acquire the item, such as a purchase order, has been received before shipment; with prior knowledge that the item will stay abroad beyond the terms of this License Exception; or when the item is for subsequent lease or rental abroad. The references to various countries and country groups in these TMP-specific provisions do not limit or amend the prohibitions in § 740.2 of the EAR on the use of license exceptions generally, such as for exports of “600 series” items to destinations in Country Group D:5.

(1) *Tools of trade.* Exports, reexports, or transfers (in-country) of commodities and software as tools of trade for use by the exporter or employees of the exporter may be made only to destinations other than Country Group E:1; for Sudan, see paragraph (a)(2) of this section. The tools of trade must remain under the “effective control” of the exporter or the exporter's employee. Eligible items are usual and reasonable kinds and quantities of tools of trade for use in a lawful enterprise or undertaking of the exporter. Tools of trade include, but are not limited to, commodities and software as is necessary to commission or service items, provided that the commodity or software is appropriate for this purpose and that all items to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been lawfully exported, reexported, or transferred.

Tools of trade may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure. Software used as a tool of trade must be protected against unauthorized access. Examples of security precautions to help prevent unauthorized access include the following:

(i) Use of secure connections, such as Virtual Private Network connections, when accessing IT networks for activities that involve the transmission and use of the software authorized under this license exception;

(ii) Use of password systems on electronic devices that store the software authorized under this license exception; and

(iii) Use of personal firewalls on electronic devices that store the software authorized under this license exception.

(2) *Sudan: Tools of Trade.* (i) *Permissible users.* A non-governmental organization or an individual staff member, employee or contractor of such organization traveling to Sudan at the direction or with the knowledge of such organization may export, reexport, or transfer (in-country) under this paragraph (a)(2).

(ii) *Authorized purposes.* Any tools of trade exported, reexported, or transferred (in-country) under this paragraph must be used to support activities to implement the Doha Document for Peace in Darfur; to provide humanitarian or development assistance in Sudan, to support activities to relieve human suffering in Sudan, or to support the actions in Sudan for humanitarian or development purposes; by an organization authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC) pursuant to 31 CFR 538.521 in support of its OFAC-authorized activities; or to support the activities to relieve human suffering in Sudan in areas that are exempt from the Sudanese Sanctions Regulations by virtue of the Darfur Peace and Accountability Act and Executive Order 13412.

(iii) *Method of export and maintenance of control.* The tools of trade must accompany (either hand carried or as

checked baggage) a traveler who is a permissible user of this provision or be shipped or transmitted to such user by a method reasonably calculated to assure delivery to the permissible user of this provision. The permissible user of this provision must maintain "effective control" of the tools of trade while in Sudan.

(iv) *Eligible items.* The only tools of trade that may be exported, reexported or transferred (in-country) to Sudan under this paragraph (a)(2) are:

(A) Commodities controlled under ECCNs 4A994.b and "software" controlled under ECCNs 4D994 or 5D992 to be used on such commodities. Software must either be loaded onto the commodities prior to export, reexport, or transfer (in-country) or be exported, reexported, or transferred (in-country) solely for servicing or in-kind replacement of legally exported or reexported software. All such software must remain loaded on the commodities while in Sudan;

(B) Telecommunications equipment controlled under ECCN 5A991 and "software" controlled under ECCN 5D992 to be used in the operation of such equipment. Software must be loaded onto such equipment prior to export or be exported or reexported solely for servicing or in-kind replacement of legally exported or reexported software. All such software must remain loaded on such equipment while in Sudan;

(C) Global positioning systems (GPS) or similar satellite receivers controlled under ECCN 7A994; and

(D) Commodities that are controlled under ECCN 5A992, including commodities that are installed with, or contained in, commodities in paragraphs (a)(2)(iv)(A) and (B) of this section and that remain installed with or contained in such commodities while in Sudan.

(3) *Tools of trade: temporary exports, reexports, and transfers (in-country) of technology by U.S. persons.* (i) This paragraph authorizes exports, reexports, and transfers (in-country) of usual and reasonable kinds and quantities of technology for use in a lawful enterprise or undertaking of a U.S. person to destinations other than Country Group

E:1. Only U.S. persons or their employees traveling or on temporary assignment abroad may export, reexport, transfer (in-country) or receive technology under the provisions of this paragraph (a)(3).

(A) Because this paragraph (a)(3) does not authorize any new release of technology, employees traveling or on temporary assignment abroad who are not U.S. persons may only receive under TMP such technology abroad that they are already eligible to receive through a current license, a license exception other than TMP, or because no license is required;

(B) A U.S. employer of individuals who are not U.S. persons must demonstrate and document for record-keeping purposes the reason that the technology is needed by such employees in their temporary business activities abroad on behalf of the U.S. person employer, prior to using this paragraph (a)(3). This documentation must be created and maintained in accordance with the recordkeeping requirements of part 762 of the EAR; *and*

(C) The U.S. person must retain supervision over the technology that has been authorized for export, reexport, or transfer (in-country) under these or other provisions.

(ii) The exporting, reexporting, or transferring party and the recipient of the technology must take security precautions to protect against unauthorized release of the technology while the technology is being shipped or transmitted and used overseas. Examples of security precautions to help prevent unauthorized access include the following:

(A) Use of secure connections, such as Virtual Private Network connections, when accessing IT networks for email and other business activities that involve the transmission and use of the technology authorized under this license exception;

(B) Use of password systems on electronic devices that will store the technology authorized under this license exception; *and*

(C) Use of personal firewalls on electronic devices that will store the technology authorized under this license exception.

(iii) Technology authorized under these provisions may not be used for foreign production purposes or for technical assistance unless authorized by BIS.

(iv) Encryption technology controlled by ECCN 5E002 is ineligible for this license exception.

(4) *Kits consisting of replacement parts or components.* Kits consisting of replacement parts or components may be exported, reexported, or transferred (in-country) to all destinations except Country Group E:1 (see Supplement No. 1 to part 740 of the EAR), provided that:

(i) The parts and components would qualify for shipment under paragraph (a)(4)(iii) of this section if exported as one-for-one replacements;

(ii) The kits remain under effective control of the exporter or an employee of the exporter; *and*

(iii) All parts and components in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception RPL and the defective parts and components returned (see Parts, Components, Accessories and Attachments in § 740.10(a) of this part).

(5) *Exhibition and demonstration.* This paragraph (a)(5) authorizes exports, re-exports, and transfers (in-country) of commodities and software for exhibition or demonstration in all destinations except Country Group E:1 (see Supplement No. 1 to this part) provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains "effective control" over the commodities and software while they are abroad. The commodities and software may not be used when abroad for more than the minimum extent required for effective demonstration. The commodities and software may not be exhibited or demonstrated at any one site for longer than 120 days after installation and debugging, unless authorized by BIS. However, before or after an exhibition or demonstration, pending movement to another site, return to the United States or the foreign reexporter, or BIS approval for other disposition, the

commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains “effective control” over their disposition. The export documentation for this type of transaction must show the exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(6) *Inspection and calibration.* Commodities to be inspected, tested, calibrated, or repaired abroad may be exported, reexported, and transferred (in-country) under this paragraph (a)(6) to all destinations except Country Group E:1.

(7) *Containers.* Containers for which another license exception is not available and that are necessary for shipment of commodities may be exported, reexported, and transferred (in-country) under this paragraph (a)(7). However, this paragraph does not authorize the export of the container’s contents, which, if not exempt from licensing, must be separately authorized for export under either a license exception or a license.

(8) *Assembly in Mexico.* Commodities may be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico’s in-bond industrialization program (Maquiladora) under this paragraph (a)(8), provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(9) *News media.* (i) Commodities necessary for news-gathering purposes (and software necessary to use such commodities) may be temporarily exported or reexported for accredited news media personnel (i.e., persons with credentials from a news-gathering or reporting firm) to Cuba, North Korea, Sudan, or Syria (see Supplement No. 1 to part 740) if the commodities:

(A) Are retained under “effective control” of the exporting news-gathering firm in the country of destination;

(B) Remain in the physical possession of the news media personnel in the country of destination. The term phys-

ical possession for purposes of this paragraph (a)(9) means maintaining effective measures to prevent unauthorized access (e.g., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(C) Are removed with the news media personnel at the end of the trip.

(ii) When exporting under this paragraph (a)(9) from the United States, the exporter must email a copy of the packing list or similar identification of the exported commodities, to bis.compliance@bis.doc.gov specifying the destination and estimated dates of departure and return. The Office of Export Enforcement (OEE) may check returns to assure that the provisions of this paragraph (a)(9) are being used properly.

(iii) Commodities or software necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported, reexported, or transferred (in-country) under paragraph (a)(1), *tools of trade*, of this section if owned by the news gathering firm, or if they are personal property of the individual news media personnel. Note that paragraphs (a)(1), *tools of trade*, and (a)(9), *news media*, of this section do not preclude independent accredited contract personnel, who are under control of news-gathering firms while on assignment, from using these provisions, provided that the news gathering firm designates an employee of the contract firm to be responsible for the equipment.

(10) *Temporary exports to a U.S. person’s foreign subsidiary, affiliate, or facility abroad.* Components, parts, tools, accessories, or test equipment exported by a U.S. person to a subsidiary, affiliate, or facility owned or controlled by the U.S. person, if the components, parts, tools, accessories, or test equipment are to be used to manufacture, assemble, test, produce, or modify items, provided that such components, parts, tools, accessories or test equipment are not transferred (in-country) or reexported from such subsidiary, affiliate, or facility, alone or incorporated into another item, without prior authorization by BIS.

(11) [Reserved]

(12) *U.S. persons.* For purposes of this § 740.9, a U.S. person is defined as follows: an individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2) or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). U.S. person also means any juridical person organized under the laws of the United States, or any jurisdiction within the United States (e.g., corporation, business association, partnership, society, trust, or any other entity, organization or group that is authorized to do business in the United States).

(13) *Destinations.* Destination restrictions apply to temporary exports, reexports, or transfers (in-country) to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country specified in any authorizing paragraph of this section, or any national thereof.

(14) *Return or disposal of items.* All items exported, reexported, or transferred (in-country) under these provisions must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, reexport, or transfer to the United States or other country from which the items were so transferred. Items not returned shall be disposed of or retained in one of the following ways:

(i) *Permanent export, reexport, or transfer (in-country).* An exporter or re-exporter who wants to sell or otherwise dispose of the items abroad, except as permitted by this or other applicable provision of the EAR, must apply for a license in accordance with §§ 748.1, 748.4 and 748.6 of the EAR. (Part 748 of the EAR contains more information about license applications.) The application must be supported by any documents that would be required in support of an application for export license for shipment of the same items directly from the United States to the proposed destination.

(ii) *Use of a license.* An outstanding license may also be used to dispose of items covered by the provisions of this paragraph (a), provided that the outstanding license authorizes direct ship-

ment of the same items to the same new ultimate consignee or end-user.

(iii) *Authorization to retain item abroad beyond one year.* An exporter, re-exporter or transferor who wants to retain an item at the temporary location beyond one year must apply for a license in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS at least 90 days prior to the expiration of the one-year period. The application must include the name and address of the exporter, the date the items were exported, a brief product description, and the justification for the extension. If BIS approves the extension, the applicant will receive authorization for an extension not to exceed four years from the date of initial export, reexport, or transfer. Any request for retaining the items abroad for a period exceeding four years must be made in accordance with the requirements of paragraph (a)(14)(i) of this section.

(b) *Exports of items temporarily in the United States.* (1) *Items moving in transit through the United States.* Subject to the following conditions, the provisions of this paragraph (b)(1) authorize export of items moving in transit through the United States under a Transportation and Exportation (T.&E.) customs entry or an Immediate Exportation (I.E.) customs entry made at a U.S. Customs and Border Protection Office.

(i) Items controlled for national security (NS) reasons, nuclear proliferation (NP) reasons, or chemical and biological weapons (CB) reasons may not be exported to Country Group D:1, D:2, or D:3 (see Supplement No. 1 to part 740), respectively, under this paragraph (b)(1).

(ii) Items may not be exported to Country Group E:1 under this section.

(iii) The following may *not* be exported from the United States under this paragraph (b)(1):

(A) Commodities shipped to the United States under an International Import Certificate, Form BIS-645P;

(B) Chemicals controlled under ECCN 1C350; or

(C) Horses for export by sea (refer to short supply controls in part 754 of the EAR).

(iv) The authorization to export in paragraph (b)(1) shall apply to all shipments from Canada moving in transit through the United States to any foreign destination, regardless of the nature of the commodities or software or their origin, notwithstanding any other provision of this paragraph (b)(1).

(2) *Items imported for marketing, or for display at U.S. exhibitions or trade fairs.* Subject to the following conditions, the provisions of this paragraph (b)(2) authorize the export of items that were imported into the United States for marketing, or for display at an exhibition or trade fair and were either entered under bond or permitted temporary free import under bond providing for their export and are being exported in accordance with the terms of that bond.

(i) Items may be exported to the country from which imported into the United States. However, items originally imported from Cuba may not be exported unless the U.S. Government had licensed the import from that country.

(ii) Items may be exported to any destination other than the country from which imported except:

(A) Items imported into the United States under an International Import Certificate;

(B) Exports to Country Group E:1 (see Supplement No. 1 to part 740); or

(C) Exports to Country Group D:1, D:2, or D:3 (see Supplement No. 1 to part 740) of items controlled for national security (NS) reasons, nuclear nonproliferation (NP) reasons, or chemical and biological weapons (CB) reasons, respectively.

(3) *Return of foreign-origin items.* A foreign-origin item may be returned under this license exception to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States, except that no foreign-origin items may be returned to Cuba.

(4) *Return of shipments refused entry.* Shipments of items refused entry by the U.S. Customs and Border Protection, the Food and Drug Administration, or other U.S. Government agency may be returned to the country of origin, except to:

(i) A destination in Cuba; or

(ii) A destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department, unless such return is licensed or otherwise authorized by the Treasury Department, Office of Foreign Assets Control (31 CFR parts 500–599).

NOTE 1 TO PARAGRAPH (b): A commodity withdrawn from a bonded warehouse in the United States under a ‘withdrawal for export’ customs entry is considered as ‘moving in transit’. It is not considered as ‘moving in transit’ if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.

NOTE 2 TO PARAGRAPH (b): Items shipped on board a vessel or aircraft and passing through the United States from one foreign country to another may be exported without a license provided that (a) while passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, and (b) they are not originally manifested to the United States.

NOTE 3 TO PARAGRAPH (b): A shipment originating in Canada or Mexico that incidentally transits the United States en route to a delivery point in the same country does not require a license.

(c) *Exports of beta test software*—(1) *Scope.* The provisions of this paragraph (c) authorize exports and reexports to eligible countries of beta test software intended for distribution to the general public.

(2) *Eligible countries.* Encryption software controlled under ECCN 5D002 is not eligible for export or reexport to a country in Country Group E:1 under the provisions of this paragraph (c). All other beta test software is eligible for export or reexport to all destinations, except Cuba, Iran, and Sudan under the provisions of this paragraph (c).

(3) *Eligible software.* All software that is controlled by the Commerce Control List (Supplement No.1 to part 774 of the EAR), and under Commerce licensing jurisdiction, is eligible for export and reexport, subject to the restrictions of this paragraph (c). Encryption software controlled for ‘EI’ reasons under ECCN 5D002 is eligible for export and reexport under this paragraph (c), provided that the exporter has submitted the information described in paragraph (c)(8) of this section by the time of export. Final encryption products produced by the testing consignee

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are subject to any applicable provisions in § 742.15(b) of the EAR (for mass market encryption commodities and software with symmetric key length exceeding 64-bits) or § 740.17 of the EAR (License Exception ENC), including review and reporting requirements.

(4) *Conditions for use.* Exports or reexports of beta test software programs under the provisions of this paragraph (c) must meet all of the following conditions:

(i) The software producer intends to market the software to the general public after completion of the beta testing, as described in the General Software Note (see supplement no. 2 to part 774 of the EAR) or the Cryptography Note in Category 5, Part 2 (“Information Security”) of the Commerce Control List (see Supplement No.1 to part 774 of the EAR);

(ii) The software producer provides the software to the testing consignee free-of-charge or at a price that does not exceed the cost of reproduction and distribution; and

(iii) The software is designed for installation by the end-user without further substantial support from the supplier.

(5) *Importer Statement.* Prior to exporting or reexporting any eligible 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 de-

stroyed 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.

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

License Exception RPL authorizes exports and reexports associated with one-for-one replacement of parts, components, accessories, and attachments. License Exception RPL also authorizes exports and reexports of certain items currently “subject to the EAR” to or for, or to replace, a defense article described in an export or reexport authorization issued under the authority of the Arms Export Control Act. It does not, however, authorize the export or reexport of defense articles subject to the ITAR, i.e., described on the United States Munitions List (22 CFR 121.1).

(a) *Parts, components, accessories, and attachments—(1) Scope.* The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts, components, accessories, and attachments for previously exported equipment or other end items.

(2) *One-for-one replacement of parts, components, accessories, or attachments.*