

PART 736

GENERAL PROHIBITIONS

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§736.1

INTRODUCTION

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. A person may undertake transactions subject to the EAR without a license or other authorization, unless the regulations affirmatively state such a requirement. As such, if an export, reexport, or activity is subject to the EAR, the general prohibitions contained in this part and the License Exceptions specified in part 740 of the EAR must be reviewed to determine if a license is necessary. In the case of all exports from the United States, you must document your export as described in part 762 of the EAR regarding recordkeeping and clear your export through the U.S. Customs Service as described in part 758 of the EAR regarding export clearance requirements. Also note that for short supply controls all prohibitions and License Exceptions are in part 754 of the EAR.

(a) In this part we tell you:

- (1) The facts that make your proposed export, reexport, or conduct subject to these general prohibitions, and
- (2) The ten general prohibitions.

(b) Your obligations under the ten general prohibitions and under the EAR depend in large part upon the five types of information described in §736.2(a) of this part and upon the general prohibitions described in §736.2(b) of this part. The ten general prohibitions contain cross-references to other parts of the EAR that further define the breadth of the general prohibitions. For that reason, this part is not freestanding. In part 732, we provide certain steps you may follow in proper order to help you understand the general prohibitions and their relationship to other parts of the EAR.

(c) If you violate any of these ten general prohibitions, or engage in other conduct contrary to the Export Administration Act, the EAR, or any order, license, License Exception, or authorization issued thereunder, as described in part 764 of the EAR regarding enforcement, you will be subject to the sanctions described in that part.

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GENERAL PROHIBITIONS AND DETERMINATION OF APPLICABILITY

(a) *Information or facts that determine the applicability of the general prohibitions*

The following five types of facts determine your obligations under the ten general prohibitions and the EAR generally:

- (1) **Classification of the item.** The classification of the item on the Commerce Control List (see part 774 of the EAR);
- (2) **Destination.** The country of ultimate destination for an export or reexport (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List);
- (3) **End-user.** The ultimate end user (see General Prohibition Four (paragraph (b)(4) of this section) and Supplement No. 1 to part 764 of the EAR for references to persons with whom your transaction may not be permitted; see General Prohibition Five (Paragraph (b)(5) of this section) and part 744 for references to end-users for whom you may need an export or reexport license).
- (4) **End-use.** The ultimate end-use (see General Prohibition Five (paragraph (b)(5) of this section) and part 744 of the EAR for general end-use restrictions); and

(5) Conduct. Conduct such as contracting, financing, and freight forwarding in support of a proliferation project as described in part 744 of the EAR.

(b) General prohibitions

The following ten general prohibitions describe certain exports, reexports, and other conduct, subject to the scope of the EAR, in which you may not engage unless you either have a license from the Bureau of Industry and Security (BIS) or qualify under part 740 of the EAR for a License Exception from each applicable general prohibition paragraph. The License Exceptions at part 740 of the EAR apply only to General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports); however, selected License Exceptions are specifically referenced and authorized in part 746 of the EAR concerning embargo destinations and in §744.2(c) of the EAR regarding nuclear end-uses.

(1) General Prohibition One — Export and reexport of controlled items to listed countries (Exports and Reexports). You may not, without a license or License Exception, export any item subject to the EAR to another country or reexport any item of U.S.-origin if each of the following is true:

(i) The item is controlled for a reason indicated in the applicable Export Control Classification Number (ECCN), and

(ii) Export to the country of destination requires a license for the control reason as indicated on the Country Chart at part 738 of the EAR. (The scope of this prohibition is determined by the correct classification of your item and the ultimate destination as that

combination is reflected on the Country Chart).¹ Note that each License Exception described at part 740 of the EAR supersedes General Prohibition One if all terms and conditions of a given License Exception are met by the exporter or reexporter.

•(2) General Prohibition Two - Reexport and export from abroad of foreign-made items incorporating more than a *de minimis* amount of controlled U.S. content (U.S. Content Reexports).

• (i) You may not, without a license or license exception, reexport or export from abroad foreign-made commodities that incorporate controlled U.S.-origin commodities, foreign-made commodities that are ‘bundled’ with controlled U.S.-origin software, foreign-made software that is commingled with controlled U.S.-origin software, or foreign-made technology that is commingled with controlled U.S.-origin technology if such items require a license according to any of the provisions in the EAR and incorporate or are commingled with more than a *de minimis* amount of controlled U.S. content, as defined in § 734.4 of the EAR concerning the scope of the EAR.

(A) It incorporates more than the *de minimis* amount of controlled U.S. content, as defined in §734.4 of the EAR concerning the scope of the EAR;

(B) It is controlled for a reason indicated in the applicable ECCN; and

(C) Its export to the country of destination requires a license for that control reason as indicated on the Country Chart. (The scope of this prohibition is determined by the correct classification of your foreign-made item and the ultimate destination, as that combination is reflected on the Country Chart.)

¹ See part 738 of the EAR for selected controls that are not specified on the Country Chart.

(ii) Each License Exception described in part 740 of the EAR supersedes General Prohibition Two if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(3) General Prohibition Three — Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software (Foreign-Produced Direct Product Reexports).

(i) *Country scope of prohibition.* You may not, without a license or License Exception, reexport, or export from abroad items subject to the scope of this General Prohibition Three to Cuba, or a destination in Country Group D:1 (See Supplement No. 1 to part 740 of the EAR).

(ii) *Product scope of foreign-made items subject to prohibition.* This General Prohibition 3 applies if an item meets either the Conditions defining the direct product of technology or the Conditions defining the direct product of a plant in paragraph (b)(3)(ii)(A) of this section:

(A) *Conditions defining direct product of technology.* Foreign-made items are subject to this General Prohibition 3 if they meet both of the following conditions:

(1) They are the direct product of technology or software that requires a written assurance as a supporting document for a license, as defined in paragraph (o)(3)(i) of Supplement No. 2 to part 748 of the EAR, or as a precondition for the use of License Exception TSR at §740.6 of the EAR, and

(2) They are subject to national security controls as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR.

(B) *Conditions defining direct product of a plant.* Foreign-made items are also subject to this

General Prohibition 3 if they are the direct product of a complete plant or any major component of a plant if both of the following conditions are met:

(1) Such plant or component is the direct product of technology that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR at §740.6 of the EAR, and

(2) Such foreign-made direct products of the plant or component are subject to national security controls as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR.

(iii) *License Exceptions.* Each License Exception described at part 740 of the EAR supersedes this General Prohibition Three if all terms and conditions of a given exception are met by the exporter or reexporter.

(4) General Prohibition Four (Denial Orders) — Engaging in actions prohibited by a denial order.

(i) You may not take any action that is prohibited by a denial order issued under part 766 of the EAR, Administrative Enforcement Proceedings. These orders prohibit many actions in addition to direct exports by the person denied export privileges, including some transfers within a single country, either in the United States or abroad, by other persons. You are responsible for ensuring that any of your transactions in which a person who is denied export privileges is involved do not violate the terms of the order. Orders denying export privileges are published in the *Federal Register* when they are issued and are the legally controlling documents in accordance with their terms. BIS also maintains compilations of persons denied export privileges on its Web site at <http://www.bis.doc.gov>. BIS may, on an exceptional basis, authorize activity otherwise prohibited by a denial order. See Sec. 764.3(a)(2) of the EAR.

(ii) There are no License Exceptions described in part 740 of the EAR that authorize conduct prohibited by this General Prohibition Four.

(5) General Prohibition Five — Export or reexport to prohibited end-uses or end-users (End-Use End-User). You may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.

(6) General Prohibition Six — Export or reexport to embargoed destinations (Embargo).

(i) You may not, without a license or License Exception authorized under part 746, export or reexport any item subject to the EAR to a country that is embargoed by the United States or otherwise made subject to controls as both are described at part 746 of the EAR.

(ii) License Exceptions to General Prohibition Six are described in part 746 of the EAR, on Embargoes and Other Special Controls. Unless a License Exception or other authorization is authorized in part 746 of the EAR, the License Exceptions described in part 740 of the EAR are not available to overcome this general prohibition.

(7) General Prohibition Seven — Support of Proliferation Activities (U.S. Person Proliferation Activity).

(i) *Support of Proliferation Activities (U.S. Person Proliferation Activity).*

(A) If you are a U.S. person as that term is defined in §744.6(c) of the EAR, you may not engage in any activities prohibited by §744.6(a) or (b) of the EAR, which prohibits the performance, without a license from BIS, of certain financing, contracting, service, support, transportation, freight forwarding, or employment that you know will assist in certain proliferation

activities described further in part 744 of the EAR. There are no License Exceptions to this General Prohibition Seven in part 740 of the EAR unless specifically authorized in that part.

(B) If you are a U.S. person as that term is defined in §744.6(c) of the EAR, you may not export a Schedule 1 chemical listed in Supplement No. 1 to part 745 without first complying with the provisions of §§742.18 and 745.1 of the EAR.

(C) If you are a U.S. person as that term is defined in §744.6(c) of the EAR, you may not export a Schedule 3 chemical listed in Supplement No. 1 to part 745 to a destination *not* listed in Supplement No. 2 to part 745 without complying with the End-Use Certificate requirements in §745.2 of the EAR that apply to Schedule 3 chemicals controlled for CW reasons in ECCN 1C350, ECCN 1C355, and ECCN 1C395.

(ii) You may not, without a license from BIS, provide certain technical assistance to foreign persons with respect to encryption items, as described in §744.9 of the EAR.

(8) General Prohibition Eight — In transit shipments and items to be unladen from vessels or aircraft (Intransit).

(i) *Unloading and shipping in transit.* You may not export or reexport an item through or transit through a country listed in paragraph (b)(8)(ii) of this section unless a License Exception or license authorizes such an export or reexport directly to such a country of transit, or unless such an export or reexport is eligible to such a country of transit without a license.

(ii) *Country scope.* This General Prohibition Eight applies to Albania, Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

(9) General Prohibition Nine — Violation of any order, terms, and conditions (Orders, Terms, and Conditions). You may not violate terms or conditions of a license or of a License Exception issued under or made a part of the EAR, and you may not violate any order issued under or made a part of the EAR. There are no License Exceptions to this General Prohibition Nine in part 740 of the EAR. Supplements Nos. 1 and 2 to this part provide for certain General Orders and Administrative Orders.

•(10) General Prohibition Ten — Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur). You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR.

GENERAL ORDERS

General Order No. 1

General Order No. 1 of September 16, 1998; Establishing a 24-month validity period on reexport authorizations issued without a validity period and revoking those exceeding that period.

(a) Reexport authorizations issued within 24-months of the General Order

All reexport authorizations issued with no validity period within the 24-months preceding September 16, 1998 shall be deemed to have an expiration date which shall be the date 24-months from the date of issuance of the reexport authorization or November 16, 1998, whichever is longer.

(b) Reexport authorizations issued before the 24-month period preceding the General Order

For reexport authorizations issued with no validity period before the 24-month period preceding September 16, 1998:

(1) Effective September 16, 1998, all such outstanding reexport authorizations for terrorist-supporting countries (see parts 742 and 746 of the EAR) are revoked.

(2) Effective November 16, 1998, all other such outstanding reexport authorizations are revoked.

(c) Extensions

If necessary, you may request extensions of such authorizations according to procedures set forth in §750.7(g) of the EAR.

(d) Specific Notice from BIS

If you have received, or should you receive, specific notice from BIS with regard to a reexport authorization covered by this General Order, informing you of a revocation, suspension, or revision (including validity period) of any such reexport authorization, then the terms of that specific notice will be controlling.

(e) Definition of “authorization”

The term “authorization” as used in this General Order encompasses the range of reexport authorizations granted by BIS, which includes licenses, individual letters, and other types of notifications.

General Order No. 2

General Order No. 2 of May 14, 2004; Sections 5(a)(1) and 5(a)(2)(A) of the Syria Accountability and Lebanese Sovereignty Act of 2003 (Public Law 108-175, codified as a note to 22 USC 2151) (the SAA), require (1) a prohibition on the export to Syria of all items on the Commerce Control List (in 15 CFR Part 774) (CCL) and (2) a prohibition on the export to Syria of products of the United States, other than food and medicine. The President has also exercised national security waiver authority pursuant to Section 5(b) of the SAA for certain transactions. This Order is issued consistent with Executive Order 13338 of May 11, 2004 which implements the SAA.

(a) License requirements

Effective May 14, 2004, a license is required for export or reexport to Syria of all items subject to the EAR, except food and medicine classified as

EAR99 (medicine is defined in Part 772 of the EAR). A license is required for the “deemed export” and “deemed reexport,” as described in Section 734.2(b) of the EAR, of any technology or source code on the Commerce Control List (CCL) to a Syrian foreign national. “Deemed exports” and “deemed reexports” involving technology or source code subject to the EAR but not listed on the CCL do not require a license to Syrian foreign nationals.

• **(b) Revocation of Authority to Export under Existing Licenses**

Effective May 14, 2004, the authority to export or reexport to Syria under existing licenses is hereby revoked (see savings clause in paragraph (e) of this General Order). License conditions requiring written U.S. Government authorization for the reexport, transfer (in-country), or resale of items already exported or reexported remain in effect, and requests for BIS authorization to reexport, transfer (in-country), or sell such items will require interagency approval.

(c) License Exceptions

Effective May 14, 2004, no License Exceptions to the license requirements set forth in paragraph (a) of this General Order are available for exports or reexports to Syria, except the following:

- (1) TMP for items for use by the news media as set forth in §740.9(a)(2)(viii) of the EAR,
- (2) GOV for items for personal or official use by personnel and agencies of the U.S. Government as set forth in §740.11(b)(2)(i) and (ii) of the EAR,
- (3) TSU for operation technology and software, sales technology and software updates pursuant to the terms of §740.13(a), (b), or (c) of the EAR,

(4) BAG for exports of items by individuals leaving the United States as personal baggage pursuant to the terms of §740.14(a) through (d), only, of the EAR, and

(5) AVS for the temporary sojourn of civil aircraft reexported to Syria pursuant to the terms of §740.15(a)(4) of the EAR.

(d) Licensing policy

All license applications for export or reexport to Syria are subject to a general policy of denial. License applications for “deemed exports” and “deemed reexports” of technology and source code will be reviewed on a case-by-case basis. BIS may consider, on a case-by-case basis, license applications for exports and reexports of items necessary to carry out the President’s constitutional authority to conduct U.S. foreign affairs and as Commander-in-Chief, including those exports and reexports of items necessary for the performance of official functions by the United States Government personnel abroad. BIS may also consider the following license applications on a case-by-case basis: items in support of activities, diplomatic or otherwise, of the United States Government (to the extent that regulation of such exportation or reexportation would not fall within the President's constitutional authority to conduct the nation's foreign affairs); medicine (on the CCL) and medical devices (both as defined in Part 772 of the EAR); parts and components intended to ensure the safety of civil aviation and the safe operation of commercial passenger aircraft; aircraft chartered by the Syrian Government for the transport of Syrian Government officials on official Syrian Government business; telecommunications equipment and associated computers, software and technology; and items in support of United Nations operations in Syria. The total dollar value of each approved license for aircraft parts for flight safety normally will be limited to no more than \$2 million over the 24-

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month standard license term, except in the case of complete overhauls. In addition, consistent with Part 734 of the EAR, the following are not subject to this General Order: informational materials in the form of books and other media; publicly available software and technology; and technology exported in the form of a patent application or an amendment, modification, or supplement thereto or a division thereof (see 15 CFR 734.3(b)(1)(v), (b)(2) and (b)(3)).

(e) Savings Clause

Items that are on dock for loading, on lighter, laden aboard an exporting carrier or en route aboard a carrier to a port of export on May 14, 2004 shall be subject to the licensing rules applicable to such items as of May 13, 2004. Any such items not actually exported or reexported before midnight May 28, 2004 may be exported or reexported only if authorized pursuant to this General Order.

● General Order No. 3

[RESERVED]

● General Order No. 4

General Order No. 4 of June 13, 2008 adding mobile phones and related software, batteries, memory cards, chargers and other accessories therefor to existing licenses for exports of consolidated gift parcels to Cuba.

(a) Section 740.12(a) of the EAR authorizes, among other things, certain exports of gift parcels to Cuba pursuant to a license exception. However, consolidated shipments of multiple gift parcels to Cuba require a license even if all of the individual items within the consolidated gift parcel would be eligible for this license exception if shipped alone.

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(b) In addition to the items stated on the license itself, licenses authorizing the export to Cuba of the consolidated gift parcels described in paragraph (a) of this order that are effective on June 13, 2008 also authorize the export of consolidated gift parcels containing the mobile phones and software, batteries, chargers, memory cards and other accessories therefor that may be exported in gift parcels to Cuba pursuant to §740.12(a)(2)(i)(B)(I) of the EAR.

(c) This General Order does not change any of the other terms (including total value of items that may be exported or expiration date) of the licenses it affects.

ADMINISTRATIVE ORDERS

Administrative Order One: Disclosure of License Issuance and Other Information. Consistent with section 12(c) of the Export Administration Act of 1979, as amended, information obtained by the U.S. Department of Commerce for the purpose of consideration of or concerning license applications, as well as related information, will not be publicly disclosed without the approval of the Secretary of Commerce. Shipper's Export Declarations also are exempt from public disclosure, except with the approval of the Secretary of Commerce, in accordance with §301(g) of Title 13, United States Code.

Administrative Order Two: Conduct of Business and Practice in Connection with Export Control Matters.

(a) Exclusion of persons guilty of unethical conduct or not possessing required integrity and ethical standards

(1) Who may be excluded. Any person, whether acting on his own behalf or on behalf of another, who shall be found guilty of engaging in any unethical activity or who shall be demonstrated not to possess the required integrity and ethical standards, may be excluded from (denied) export privileges on his own behalf, or may excluded from practice before BIS on behalf of another, in connection with any export control matter, or both, as provided in part 764 of the EAR.

(2) Grounds for exclusion. Among the grounds for exclusion are the following:

(i) Inducing or attempting to induce by gifts, promises, bribes, or otherwise, any officer or employee of BIS or any customs or post office official, to take any action with respect to the

issuance of licenses or any other aspects of the administration of the Export Administration Act, whether or not in violation of any regulation;

(ii) Offering or making gifts or promises thereof to any such officer or employee for any other reason;

(iii) Soliciting by advertisement or otherwise the handling of business before BIS on the representation, express or implied, that such person, through personal acquaintance or otherwise, possesses special influence over any officer or employee of BIS;

(iv) Charging, or proposing to charge, for any service performed in connection with the issuance of any license, any fee wholly contingent upon the granting of such license and the amount or value thereof. This provision will not be construed to prohibit the charge of any fee agreed to by the parties; provided that the out-of-pocket expenditures and the reasonable value of the services performed, whether or not the license is issued and regardless of the amount thereof, are fairly compensated; and

(v) Knowingly violating or participating in the violation of, or an attempt to violate, any regulation with respect to the export of commodities or technical data, including the making of or inducing another to make any false representations to facilitate any export in violation of the Export Administration Act or any order or regulation issued thereunder.

(3) Definition. As used in this Administration Order, the terms “practice before BIS” and “appear before BIS” include:

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(i) The submission on behalf of another of applications for export licenses or other documents required to be filed with BIS, or the execution of the same;

(ii) Conferences or other communications on behalf of another with officers or employees of BIS for the purpose of soliciting or expediting approval by BIS of applications for export licenses or other documents, or with respect to quotas, allocations, requirements or other export control actions, pertaining to matters within the jurisdiction of BIS;

(iii) Participating on behalf of another in any proceeding pending before BIS; and

(iv) Submission to a customs official on behalf of another of a license or Shipper's Export Declaration or other export control document.

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(4) Proceedings. All proceedings under this Administrative Order shall be conducted in the same manner as provided in part 766 of the EAR.

(b) Employees and former employees

Persons who are or at any time have been employed on a full-time or part-time, compensated or uncompensated, basis by the U.S. Government are subject to the provisions of Title 18, U.S. Code, §§203, 205, and 207 (P.L. 87-849, 87th Congress) in connection with representing a private party or interest before the U.S. Department of Commerce in connection with any export control matter.