

U.S. EXPORT RULES FOR ENCRYPTION PRODUCTS¹

	Mass Market Products	ENC Unrestricted (Formerly “Retail”) Products	ENC Restricted (Formerly “Non-Retail”) Products
Pre-Export Review	<ul style="list-style-type: none"> one-time review by Bureau of Industry and Security (BIS) automatically granted (if product qualifies for requested status) 30 days after review request is registered (unless BIS place on Hold Without Action) 	<ul style="list-style-type: none"> same as mass market 	<ul style="list-style-type: none"> same as mass market
Export Authority	<ul style="list-style-type: none"> ECCN 5A992 (hardware), 5D992 (software) no license required (except to prohibited countries) 	<ul style="list-style-type: none"> ECCN 5A002 (hardware), 5D002 (software) License Exception ENC (§740.17(b)(3)) 	<ul style="list-style-type: none"> ECCN 5A002 (hardware), 5D002 (software) License Exception ENC (§740.17(b)(2))
Prohibited Countries	<ul style="list-style-type: none"> Cuba, Iran, North Korea, Sudan, Syria restrictions may not apply to foreign items incorporating U.S. item as <i>de minimis</i> component 	<ul style="list-style-type: none"> same as mass market 	<ul style="list-style-type: none"> same countries <i>de minimis</i> exception does not apply
Prohibited End-Users	<ul style="list-style-type: none"> Denied Persons (http://www.bis.doc.gov/DPL/default.shtm) entities on BIS Entity List (http://www.bis.doc.gov/Entities/default.htm) Specially-Designated Nationals and Blocked Persons (http://www.ustreas.gov/ofac/t11sdn.pdf) entities known to be engaging in activities relating to nuclear weapons/propulsion, missile technology, or chemical and biological weapons 	<ul style="list-style-type: none"> same 	<ul style="list-style-type: none"> same, plus “government end-users” (see 15 C.F.R. Part 772 for definition) in countries other than EU member countries and Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland, and Turkey (“Favored Countries”)
Post-Export Reporting	<ul style="list-style-type: none"> no reporting required 	<ul style="list-style-type: none"> must report to BIS and National Security Agency name, address, product, authorization number and quantity shipped for each customer (and for end-users of distributors, if such information is gathered by exporter in ordinary course of business) reporting also for re-exports from Canada no reporting required for exports (1) to “individual consumers”, (2) to subsidiaries of U.S. companies (and to their employees for internal use), (3) to private-sector entities headquartered in the Favored Countries for internal development of new products, (4) by free and anonymous download, (5) from or to U.S. banks and financial institutions for banking or financial operations, and (6) of products that (a) use keys of 64 bits or less, (b) are general purpose operating systems, (c) are desktop applications, (d) are foreign products developed from US-origin source code, (e) provide “short-distance wireless encryption”, or (f) are client Internet appliances or wireless LAN cards reports due Feb. 1 (for previous July 1 – Dec. 31) and Aug. 1 (for previous Jan. 1 – June 30) 	<ul style="list-style-type: none"> same as ENC Unrestricted, except that there are no reporting exceptions for exports (1) to “individual consumers” or (2) of general purpose operating systems or desktop applications
Customer Screening	<ul style="list-style-type: none"> check information gathered from customers for prohibited destinations and end-users no prohibited destination and end-user check required for anonymous downloads warning regarding applicable export restrictions is highly recommended² 	<ul style="list-style-type: none"> same 	<ul style="list-style-type: none"> check information gathered from customers for prohibited destinations and end-users for downloads, address check for foreign government/military domains and prohibited countries notify customer of export restrictions, and obtain customer acceptance of restrictions (e.g., in license agreement)³

¹ This chart is a summary, and does not comprehensively state the rules that apply to encryption products under the U.S. Export Administration Regulations. Additional legal advice may be required with respect to particular exports. The chart is current as of the date above, and may not reflect subsequent developments.

² Recommended warning language: “This hardware/software is subject to the U.S. Export Administration Regulations and other U.S. law, and may not be exported or re-exported to certain countries (currently Cuba, Iran, North Korea, Sudan and Syria) or to persons or entities prohibited from receiving U.S. exports (including those (a) on the Bureau of Industry and Security Denied Parties List or Entity List, (b) on the Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, and (c) involved with missile technology or nuclear, chemical or biological weapons).”

³ Recommended language: “Customer acknowledges that this hardware/software is subject to the U.S. Export Administration Regulations and other U.S. law, and may not be exported or re-exported to certain countries (currently Cuba, Iran, North Korea, Sudan and Syria); to non-commercial government end-users in countries other than EU Member countries plus Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland, and Turkey; or to persons or entities prohibited from receiving U.S. exports (including those (a) on the Bureau of Industry and Security Denied Parties List or Entity List, (b) on the Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, and (c) involved with missile technology or nuclear, chemical or biological weapons).”