

§ 740.20 License Exception Strategic Trade Authorization (STA).

(a) *Introduction.* This section authorizes exports, reexports, and transfers (in-country), including releases within a single country of software source code and technology to foreign nationals, in lieu of a license that would otherwise be required pursuant to part 742 of the EAR.

NOTE 1 TO PARAGRAPH (a): License Exception STA authorizes transfers (in-country) but is only needed to authorize a transfer (in-country) when an EAR authorization is required. If a transfer (in-country) is not being made under STA, the requirements specified in this section do not apply (see Note 1 to paragraphs (b)(2) and (b)(3) of this section for requirements specific to staying within the scope of the original License Exception STA authorization and the concept of ‘completing the chain’ for purposes of ‘600 series’ items originally authorized under License Exception STA).

(b) *Requirements and Limitations—(1) Requirements for Using License Exception STA.* (i) All of the reasons for control that impose a part 742 license requirement on the *export, reexport or in country transfer* must be addressed in at least one authorizing paragraph of this section.

(ii) The party using License Exception STA must comply with all of the requirements in paragraph (d) of this section.

(2) *Limitations on Use of License Exception STA.* The prohibitions and limits of this paragraph (b)(2) apply notwithstanding the authorizations in paragraph (c) of this section.

(i) License Exception STA may not be used in lieu of any license requirement imposed by “Part 744—Control Policy: End User and End Use Based” or by “Part 746—Embargoes and Other Special Controls” of the EAR.

(ii) License Exception STA may not be used for:

(A) Any item controlled in ECCNs 0A501.a, .b, .c, .d, or .e; 0A981; 0A982; 0A983; 0A503; 0E504; 0E982; or

(B) Shotguns with barrel length less than 18 inches controlled in 0A502.

(iii) License Exception STA may not be used for any item that is controlled for reason of encryption items (EI), short supply (SS), surreptitious listen-

ing (SL), missile technology (MT) or chemical weapons (CW).

(iv) License Exception STA may not be used for any item identified on the CCL as being subject to the exclusive export control jurisdiction of another agency, such as the Department of State, the Department of Energy, or the Nuclear Regulatory Commission.

(v) License Exception STA may not be used for any item controlled by ECCN 1C351.a, .b, .c, .d.14, .d.15 or .e, ECCNs 1C353, 1C354, 1E001 (*i.e.*, for technology, as specified in ECCN 1E001, for items controlled by ECCN 1C351.a, .b, .c, .d.14, .d.15 or .e or ECCNs 1C353 or 1C354) or ECCN 1E351.

(vi) [Reserved]

(vii) Commerce Control List Category 7 limitation on use of License Exception STA. License Exception STA may not be used for 7E004 “technology,” except for “technology” controlled under 7E004.a.7.

(viii) Commerce Control List Category 9 limitations on use of License Exception STA.

(A) License Exception STA may not be used for 9B001 when destined to a country in Country Group A:6.

(B) License Exception STA may not be used for 9D001 or 9D002 “software” that is “specially designed” or modified for the “development” or “production” of:

(1) Components of engines controlled by ECCN 9A001 if such components incorporate any of the “technologies” controlled by 9E003.a.1, 9E003.a.2, 9E003.a.3, 9E003.a.4, 9E003.a.5, 9E003.c, 9E003.h, or 9E003.i (other than technology for fan or power turbines); or

(2) Equipment controlled by 9B001.

(C) License Exception STA may not be used for 9D001 “software” that is “specially designed” or modified for the “development” of “technology” controlled by 9E003.a.1, 9E003.a.2, 9E003.a.3, 9E003.a.4, 9E003.a.5, 9E003.c, 9E003.h, or 9E003.i (other than technology for fan or power turbines).

(D) License Exception STA may not be used for 9D004.f or 9D004.g “software”.

(E) License Exception STA may not be used for “technology” in 9E003.a.1, 9E003.a.2, 9E003.a.3, 9E003.a.4, 9E003.a.5, 9E003.c, 9E003.h, or 9E003.i (other than technology for fan or power turbines).

(ix) [Reserved]

(x) License Exception STA may not be used for items controlled by ECCN 6A002; 6D002 (software “specially designed” for the “use” of commodities controlled under 6A002.b); 6D003.c; 6D991 (software “specially designed” for the “development,” “production,” or “use” of commodities controlled under 6A002 or 6A003); 6E001 (“technology” for the “development” of commodities controlled under ECCN 6A002 or 6A003); or 6E002 “technology” (for the “production” of commodities controlled under ECCN 6A002 or 6A003).

(xi) License Exception STA may not be used for any commodity controlled by ECCN 3A001.b.2 or b.3 (except those that are being exported or reexported for use in civil telecommunications applications), or any “technology” controlled by 3E001 for the “production” or “development” of commodities controlled by 3A001.b.2 or b.3.

(3) *Limitations on the Use of STA that are Specific to “600 series” Items.* (i) License Exception STA may not be used for any “600 series” items identified in the relevant ECCN as not being eligible for STA.

(ii) License Exception STA may be used to export, reexport, and transfer (in-country) “600 series” items to persons, whether non-governmental or governmental, if they are in and, for natural persons, nationals of a country listed in Country Group A:5 (See supplement no. 1 to part 740 of the EAR) or the United States and if:

(A) The *ultimate* end user for such items is the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5, or the United States Government;

(B) For the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of an item in one of the countries listed in Country Group A:5 or the United States that will be for one, or more, of the following purposes:

(1) Ultimately to be used by any such government agencies in one of the countries listed in Country Group A:5 or the United States Government; or

(2) Sent to a person in the United States and not for subsequent export

under §740.9(b)(1) (License Exception TMP for items moving in transit through the United States); or

(C) The United States Government has otherwise authorized the ultimate end use, the license or other authorization is in effect, and the consignee verifies in writing that such authorization exists and has provided the license or other approval identifier to the exporter, reexporter or transferor (as applicable).

(iii) License Exception STA may not be used to export, reexport, or transfer (in-country) end items described in ECCN 0A606.a, ECCN 8A609.a, ECCN 8A620.a or .b, or ECCN 9A610.a until after BIS has approved their export under STA under the procedures set out in §740.20(g).

(iv) License Exception STA may not be used to export, reexport, or transfer (in-country) “600 series” items if they are “600 Series Major Defense Equipment” and the value of such items in the contract requiring their export exceeds \$25,000,000.

NOTE 1 TO PARAGRAPHS (b)(2) AND (b)(3): Any export, reexport, or transfer (in-country) originally authorized under License Exception STA must stay within the scope of the original authorization. For example, for “600 series” items authorized under License Exception STA, such items must be provided to an eligible ultimate end user, such as a Country Group A:5 military, to stay in compliance with the original authorization. This requirement for the “600 series” is referred to as ‘completing the chain,’ meaning regardless of how many times the “600 series” item is transferred (in-country) or whether the “600 series” item is incorporated into higher level assemblies or other items, the “600 series” item must ultimately be provided to an eligible ultimate end user, or be otherwise authorized under the EAR. This applies regardless of whether the “600 series” item has been incorporated into a foreign-made item that may no longer be “subject to the EAR.” Because the other items eligible for authorization under License Exception STA (9x515 and other non-600 series ECCNs) do not include the “600 series” requirements specific to ultimate end user, this ‘completing the chain’ concept does not apply to 9x515 and other non-600 series ECCNs authorized under License Exception STA. However, the original export, reexport, or transfer (in-country) made under License Exception STA for 9x515 and other non-600 series ECCNs still must comply with the original authorization—meaning the terms and conditions of License Exception STA.

(c) *Authorizing paragraphs*—(1) *Multiple reasons for control.* Exports, reexports, and transfers (in-country) in which the only applicable reason(s) for control is (are) national security (NS); chemical or biological weapons (CB); nuclear nonproliferation (NP); regional stability (RS); crime control (CC), and/or significant items (SI) are authorized for destinations in or nationals of Country Group A:5 (See supplement no.1 to part 740 of the EAR).

NOTE TO PARAGRAPH (c)(1). *License Exception STA under § 740.20(c)(1) may be used to authorize the export, reexport, or transfer (in-country) of “600 series” items only if the purchaser, intermediate consignee, ultimate consignee, and end user have previously been approved on a license or other approval, i.e., Directorate of Defense Trade Controls (DDTC) Manufacturing License Agreement (MLA), Technical Assistance Agreement (TAA), Warehouse Distribution Agreement (WDA), or General Correspondence approval (GC) issued by BIS or DDTC at the U.S. Department of State.*

(2) *Controls of lesser sensitivity.* Exports, reexports and transfers (in-country) in which the only applicable reason for control is national security (NS) and the item being exported, reexported or transferred (in-country) is not designated in the STA paragraph in the License Exception section of the ECCN that lists the item are authorized for destinations in or nationals of Country Group A:6 (See supplement no. 1 to this part).

(d) *Conditions*—(1) *Requirement to furnish Export Control Classification Number.* (i) The exporter must furnish to the consignee the ECCN of each item to be exported pursuant to this section. Once furnished to a particular consignee, the ECCN that applies to any item need not be refurnished to that consignee at the time the same exporter makes an additional export of the same item, if the information remains accurate at the time of the additional export.

(ii) A reexporter or transferor must furnish to subsequent consignees the ECCN, provided by the exporter or a prior reexporter or transferor, of each item to be reexported or transferred (in-country) pursuant to this section. Once furnished to a particular consignee, the ECCN that applies to any item need not be refurnished to that consignee at the time the same re-

exporter or transferor makes an additional reexport or transfer (in-country) of the same item, if the information remains accurate at the time of the additional reexport or transfer (in-country).

(iii) For purposes of determining reexport or transfer eligibility under this section, the consignee may rely on the ECCN provided to it by the party required to furnish the ECCN under paragraph (d)(1)(i) or (ii) of this section unless the consignee knows that the ECCN is incorrect or has changed. The word “knows” has the same meaning as the term “knowledge” in § 772.1 of the EAR.

(2) *Prior Consignee Statement.* The requirements in this paragraph (d)(2) apply to each party using License Exception STA to export, reexport, or transfer (in-country), including reexporters and transferors of items previously received under License Exception STA. The exporter, reexporter, or transferor must obtain the following statement in writing from its consignee(s) prior to exporting, reexporting, or transferring (in-country) the item and must retain the statement in accordance with part 762 of the EAR. One statement may be used for multiple exports, reexports, or transfers (in-country) of the same items between the same parties so long as the party names, the description(s) of the item(s) and the ECCNs are correct. The exporter, reexporter, or transferor must maintain a log or other record (such as documents created in the ordinary course of business) that identifies each shipment made pursuant to this section and the specific consignee statement that is associated with each shipment. For purposes of this paragraph (d)(2), a log or other record is not required for intangible (*i.e.*, electronic or in an otherwise intangible form) exports, reexports, or transfers (in-country) made under License Exception STA, but an exporter, reexporter, or transferor is required, prior to making any export, reexport, or transfer (in-country), to ensure that a prior consignee statement has been obtained pursuant to the requirements of this paragraph (d)(2). (See Note 1 to paragraph (d)(3) of this section for additional guidance on intangible exports,

reeports, and transfers (in-country), including best practices). Paragraphs (d)(2)(i) through (vi) of this section are required for all transactions. In addition, paragraph (d)(2)(vii) is required for all transactions in “600 series” items and paragraph (viii) of this section is required for transactions in “600 series” items if the consignee is not the government of a country listed in Country Group A:5 (See supplement no. 1 to part 740 of the EAR). Paragraph (d)(2)(viii) is also required for transactions including 9x515 items.

[INSERT NAME(S) OF CONSIGNEE(S)]:

(i) Is aware that [INSERT GENERAL DESCRIPTION AND APPLICABLE ECCN(S) OF ITEMS TO BE SHIPPED (*e.g.*, aircraft parts and components classified under ECCN 9A610)] will be shipped pursuant to License Exception Strategic Trade Authorization (STA) in § 740.20 of the United States Export Administration Regulations (15 CFR 740.20);

(ii) Has been informed of the ECCN(s) noted above by [INSERT NAME OF EXPORTER, REEXPORTER OR TRANSFEROR];

(iii) Understands that items shipped pursuant to License Exception STA may not subsequently be reexported pursuant to paragraphs (a) or (b) of License Exception APR (15 CFR 740.16(a) or (b));

(iv) Agrees to obtain a prior consignee statement when using License Exception STA for any reexport or transfer (in-country) of items previously received under License Exception STA;

(v) Agrees not to export, reexport, or transfer these items to any destination, use or user prohibited by the United States’ Export Administration Regulations;

(vi) Agrees to provide copies of this document and all other export, reexport, or transfer records (*i.e.*, the documents described in 15 CFR part 762) relevant to the items referenced in this statement to the U.S. Government as set forth in 15 CFR 762.7;

(vii) Understands that License Exception STA may be used to export, reexport, and transfer (in-country) “600 series” items to persons, whether non-governmental or governmental, only if they are in and, for natural persons, nationals of a country listed in Country Group A:5 (See supplement no. 1 to part 740 of the EAR) or the United States and if:

(A) The *ultimate* end user for such items is the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5 or the United States Government;

(B) For the “development,” “production,” operation, installation, maintenance, repair,

overhaul, or refurbishing of an item in one of the countries listed in Country Group A:5 or the United States that will be for one, or more, of the following purposes:

(1) Ultimately to be used by any such government agencies in one of the countries listed in Country Group A:5 or the United States Government; or

(2) Sent to a person in the United States and not for subsequent export under § 740.9(b)(1) (License Exception TMP for items moving in transit through the United States); or

(C) The United States Government has otherwise authorized the ultimate end use, the license or other authorization is in effect, and the consignee verifies in writing that such authorization exists and has provided the license or other approval identifier to the exporter, reexporter or transferor (as applicable).

(vii) Agrees to permit a U.S. Government end-use check with respect to the items.

[INSERT NAME(S) AND TITLE(S) OF PERSON(S) SIGNING THIS DOCUMENT, AND DATE(S) DOCUMENT IS SIGNED].

NOTE 1 TO PARAGRAPH (d)(2): When multiple consignees who form a network engaged in a production process (or other type of collaborative activity, such as joint development) will be receiving items under License Exception STA, a single prior consignee statement for multiple consignees may be used for any item eligible for export, reexport, or transfer (in-country) under License Exception STA, provided all of the applicable requirements of License Exception STA are met, including those specified in paragraph (d)(2).

NOTE 2 TO PARAGRAPH (d)(2): Country Group A:5 and A:6 government consignees are not required to sign or provide a prior consignee statement.

(3) *Notification to consignee of STA shipment.* With each shipment under License Exception STA, the exporter (or reexporter or transferor as applicable), must notify the consignee in writing that the shipment is made pursuant to License Exception STA. The notice must either specify which items are subject to License Exception STA or state that the entire shipment is made pursuant to License Exception STA. The notice must clearly identify the shipment to which it applies. The written notice may be conveyed by paper documents or by electronic methods such as facsimile or email.

NOTE 1 TO PARAGRAPH (d)(3): While the exporter, reexporter, and transferor must furnish the applicable ECCN and obtain a consignee statement prior to export, reexport or

transfer (in-country) made under License Exception STA in accordance with the requirements of paragraphs (d)(1) and (d)(2) of this section, intangible (i.e., electronic or in an otherwise intangible form) exports, reexports, and transfers (in-country) made under License Exception STA are not subject to the notification requirements of paragraph (d)(3) of this section. However, any export, reexport, or transfer (in-country) made under STA must stay within the scope of the original authorization.

(4) *Requirements for releases of software source code or technology within a single country.* Instead of the requirement of paragraphs (d)(1) through (d)(3) of this section, the party releasing software source code or technology to a national of a country listed in Country Group A:5 or A:6 (See supplement no. 1 to this part) must notify the recipient of the software source code or technology of the restrictions upon further release of the software source code or technology. The notification must either expressly inform the recipient that the EAR impose limits on further disclosure or must be in the form of an agreement in which the recipient agrees to limits on further disclosure. Any such agreement must impose limits that are equivalent to or more restrictive than all limits on further disclosure that are imposed by the EAR. The notification must be in writing and a copy of it must be retained by the party making the release and the recipient of the release. The notification may be in a separate document or included in a document such as a contract or a nondisclosure agreement. If the document has an expiration date, it must provide that the restrictions on disclosure do not expire.

(e) *Limitation on subsequent exports, reexports or in country transfers.* If a commodity has been exported, reexported or transferred in-country pursuant to this section, it may not be subsequently exported, reexported or transferred in-country pursuant to paragraphs (a) or (b) of License Exception APR (§740.16(a) or (b) of the EAR). Paragraphs (a) and (b) of License Exception APR do not authorize exports of software or technology.

(f) *Applicability of Wassenaar Arrangement reporting requirements.* See §743.1 of the EAR for special reporting requirements that apply to some exports made pursuant to this section.

(g) *License Exception STA eligibility requests for 9x515 and “600 series” items—*

(1) *Applicability.* Any person may request License Exception STA eligibility for end items described in ECCN 0A606.a, ECCN 8A609.a, ECCNs 8A620.a or .b, “spacecraft” in ECCNs 9A515.a.1, .a.2, .a.3, or .a.4, “sub-orbital craft,” or items in 9A515.g, 9A610.a, or technology ECCNs 9E515.b, .d, .e, or .f.

(2) *Required information and manner of requests.* Requests for License Exception STA eligibility must be made via the BIS Simplified Network Application Process-Redesign (SNAP-R) system unless BIS authorizes submission via the paper BIS-748-P Multipurpose Application form. For situations in which BIS 748-P submissions may be authorized, see §748.1(d)(1). For required information specific to License Exception STA eligibility requests, see supplement no. 1 to part 748, Blocks 5 and 6 and supplement no. 2 to part 748, paragraph (w). In SNAP-R the work type for these applications is “Export.”

(3) *Timeline for USG review.* The Departments of Commerce, Defense and State will review License Exception STA eligibility requests in accordance with the timelines set forth in Executive Order 12981 and §750.4. If the License Exception STA request is approved, the process outlined in paragraph (g)(5)(i) of this section is followed.

(4) *Review criteria.* The Departments of Commerce, Defense and State will determine whether the “end item” is eligible for this license exception based on an assessment of whether it provides a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies. If the “end item” does not provide a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies, the Departments will determine that License Exception STA is available unless an overarching foreign policy rationale for restricting STA availability can be articulated. Consensus among the Departments is required in order for an “end item” to be eligible for License Exception STA. Such determinations

are made by the departments' representatives to the Advisory Committee on Export Policy (ACEP), or their designees.

(5) *Disposition of License Exception STA eligibility requests*—(i) *Approvals*. If the request for STA eligibility is approved, the applicant will receive notification from BIS authorizing the use of the additional License Exception STA for the specific end items requested. This will be in the form of a notice generated by SNAP-R to the applicant. Applicants who receive an approval notification may share it with companies affiliated with them, such as a branch or distributor, and may also take steps to make it public (e.g., on their Web site) if the applicants so wish. In addition, BIS will add a description of the approved end item in the relevant ECCN and in an online table posted on the BIS Web site, which removes the restriction on the use of License Exception STA for the end item identified in the approved request. BIS will publish, as needed, a final rule adding this license exception eligibility to the EAR for that ECCN entry or end item.

(ii) *Denials*. If the STA eligibility request is not approved, the applicant will receive written notification from BIS. This will be in the form of a notice generated by SNAP-R to the applicant. Applicants may re-submit STA eligibility requests at any time.

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 740.20, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 740.21 Support for the Cuban People (SCP).

(a) *Introduction*. This License Exception authorizes certain exports and re-exports to Cuba that are intended to support the Cuban people by improving their living conditions and supporting independent economic activity; strengthening civil society in Cuba; and improving the free flow of information to, from, and among the Cuban people.

(b) *Improving living conditions and supporting independent economic activity*. This paragraph authorizes the export

or reexport to Cuba of items designated as EAR99, or controlled on the Commerce Control List (CCL) (supplement no. 1 to part 774 of the EAR) only for anti-terrorism reasons (*i.e.*, anti-terrorism must be the only reason for control that applies to the item as set forth in the Export Control Classification Number (ECCN) that controls the item). If any other reason for control applies to the item, it is not authorized for export or reexport by this paragraph. The item must be within one or more of the following categories:

(1) Items for use by the Cuban private sector for private sector economic activities, except for items that would be used to:

(i) Primarily generate revenue for the state; or

(ii) Contribute to the operation of the state, including through the construction or renovation of state-owned buildings.

(2) Items sold directly to individuals in Cuba for their personal use or their immediate family's personal use, other than officials identified in paragraphs (d)(4)(ii) or (iii) of this section.

(2) Items sold directly to individuals in Cuba for their personal use or their immediate family's personal use, other than officials identified in paragraphs (d)(4)(ii) or (iii) of this section.

(c) *Strengthening civil society*. This paragraph authorizes the export or re-export to Cuba of certain items for use in specified activities that can strengthen civil society. The items authorized pursuant this paragraph are limited to those designated as EAR99 or controlled only for anti-terrorism reasons on the CCL (*i.e.*, anti-terrorism must be the only reason for control that applies to the item as set forth in the ECCN that controls the item). If any other reason for control applies to the item, it is not authorized for export or reexport by this paragraph. The export or reexport must be within one or more of the following categories:

(1) The export or reexport to Cuba of *donated* items for use in scientific, archaeological, cultural, ecological, educational, historic preservation, or sporting activities. The items may not be donated to organizations administered or controlled by the Cuban government or communist party, and must