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§ 740.1 INTRODUCTION

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) Scope

A "License Exception" is an authorization contained in this part that allows you to export or reexport under stated conditions, items subject to the Export Administration Regulations (EAR) that would otherwise require a license under General Prohibition One, Two, Three, or Eight as indicated under one or more of the Export Control Classification Numbers (ECCNs) in the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR and items subject to the EAR that would require a license based on the embargo policies described in part 746 of the EAR. If your export or reexport is subject to General Prohibition Six for embargoed destinations, refer to part 746 of the EAR to determine the availability of any License

Exceptions. Special commodity controls apply to short supply items. License Exceptions for items listed on the CCL as controlled for Short Supply reasons are found in part 754 of the EAR. If your export or reexport is to subject to General Prohibition Five, consult part 744 of the EAR. If your export or reexport is subject to General Prohibitions Four, Seven, Nine, or Ten, then no License Exceptions apply. Any license exception authorizing reexports also authorizes in-country transfers, provided the terms and conditions for reexports under that license exception are met.

(b) Certification

By using any of the License Exceptions you are certifying that the terms, provisions, and conditions for the use of the License Exception described in the EAR have been met. Please refer to part 758 of the EAR for clearance of shipments and documenting the use of License Exceptions.

(c) License Exception symbols

Each License Exception bears a three letter symbol that will be used for export clearance purposes (see paragraph (d) of this section).

(d) Electronic Export Information (EEI) filing.

You must enter on any required EEI filing the correct License Code that corresponds to the appropriate license exception symbol (e.g., LVS, GBS, CIV) and the correct Export Control Classification Number (ECCN) (e.g., 4A003, 5A002) for all exports of items under a license exception. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are excepted from this requirement. See § 758.1 of the EAR and 15 CFR Part 30 of the FTR for EEI requirements.

(e) Destination Control Statement

You may be required to enter an appropriate Destination Control Statement on commercial documents in accordance with Destination Control Statement requirements of § 758.6 of the EAR.

(f) Recordkeeping

Records of transactions involving exports under any of the License Exceptions must be maintained in accordance with the recordkeeping requirements of part 762 of the EAR.

§ 740.2 RESTRICTIONS ON ALL LICENSE EXCEPTIONS

***(a)* You may not use *any* License Exception if any one or more of the following apply:**

(1) Your authorization to use a License Exception has been suspended or revoked, or your intended export does not qualify for a License Exception.

(2) The export or reexport is subject to one of the ten General Prohibitions, is not eligible for a License Exception, and has not been authorized by BIS.

(3) The item is primarily useful for surreptitious interception of wire, oral, or electronic communications, or related software, controlled under ECCNs 5A001.f.1, 5A980, 5D001 (for 5A001.f.1 or for 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1))), or 5D980, unless the item is consigned to and for the official use of an agency of the U.S. Government (see § 740.11(b)(2)(ii) of this part, Governments (GOV)). No license exceptions apply for 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1)) or for 5E980.

(4) The item being exported or reexported is subject to the license requirements described in §742.7 of the EAR and the export or reexport is not:

(i) Being made to Australia, India, Japan, New Zealand, or a NATO (North Atlantic Treaty Organization) member state (see NATO membership listing in §772.1 of the EAR);

(ii) Authorized by §740.11(b)(2)(ii) (official use by personnel and agencies of the U.S. government);

(iii) Authorized by §740.14(e) of the EAR (certain shotguns and shotgun shells for personal use); or

(iv) Authorized by § 740.20 of the EAR (License Exception STA).

(5)(i) The item is controlled for missile technology (MT) reasons, except that the items described in ECCNs 6A008, 7A001, 7A002, 7A004, 7A101, 7A102, 7A103, 7A104, 7A105, 7B001, 7D001, 7D002, 7D003, 7D101, 7D102, 7E003, 7E101 or 9A515, may be exported as part of a spacecraft, manned aircraft, land vehicle or marine vehicle or in quantities appropriate for replacement parts for such applications under § 740.9(a)(4) (License Exception TMP for kits consisting of replacement parts), § 740.10 (License Exception RPL), § 740.13 (License Exception TSU), or § 740.15(b) (License Exception AVS for equipment and spare parts for permanent use on a vessel, aircraft or spacecraft).

(ii) MT controlled commodities described in ECCN 2A001 or 2A101 may be exported or reexported under § 740.9(a)(4) (License Exception TMP) or §740.10 (License Exception RPL) as one-for-one replacement for equipment previously legally exported or reexported.

(6) The export or reexport is to a sanctioned destination (Cuba, Iran, North Korea, Syria, and Crimea region of Ukraine) or a license is required based on a limited sanction (Russia) unless a license exception or portion thereof is specifically listed in the license exceptions paragraph pertaining to a particular sanctioned country in part 746 of the EAR.

(7) [RESERVED]

(8) The item is controlled under ECCNs 2A983, 2A984, 2D983, 2D984, 2E983 or 2E984 and the License Exception is other than:

(i) RPL, under the provisions of §740.10, including § 740.10(a)(3)(v), which prohibits exports and reexports of replacement parts to countries in Country Group E:1 (see Supplement 1 to part 740));

(ii) GOV, restricted to eligibility under the provisions of §740.11(b)(2)(ii); or

(iii) TSU, under the provisions of § 740.13(a) and (c).

(9) The item is a QRS11-00100-100/101 Micromachined Angular Rate Sensor controlled for RS reasons under ECCN 7A994.

(10) The commodity being exported or reexported is subject to the license requirements of §742.11 of the EAR.

(11) The item is a "military commodity" subject to ECCN 0A919, except that such military commodities may be reexported in accordance with § 740.11(b)(2)(ii) (official use by personnel and agencies of the U.S. Government).

(12) The item is described in a 9x515 or "600 series" ECCN and is destined to, shipped from, or was manufactured in a destination listed in Country Group D:5 (see Supplement No.1 to part 740 of the EAR), except that:

(i)"9x515 or 600 series" items destined to, or in, Country Group D:5 are eligible for License Exception GOV (§ 740.11(b)(2) of the EAR); and

(ii) 1A613.c or .d items destined to, or in, Country Group D:5 are eligible for License Exception TMP (§ 740.9(a)(11) of the EAR) or License Exception BAG (§ 740.14(h)(2) of the EAR).

(13) "600 series" items that are controlled for missile technology (MT) reasons may not be exported, reexported, or transferred (in-country) under License Exception STA (§ 740.20 of the EAR). Items controlled under ECCNs 9D610.b, 9D610.b, 9D619.b, 9E610.b, or 9E619.b or .c are

are not eligible for license exceptions except for License Exception GOV (§ 740.11(b)(2) of the EAR). Only the following license exceptions may be used to export "600 series" items to destinations other than those identified in Country Group D:5 (see Supplement No.1 to part part 740 of the EAR):

(i) License Exception LVS (§ 740.3 of the EAR);

(ii) License Exception TMP (§ 740.9 of the EAR);

(iii) License Exception RPL (§ 740.10 of the EAR);

(iv) License Exception TSU (§ 740.13(a), (b), (f) and (g) of the EAR);

(v) License Exception GOV (§ 740.11(b) or (c) of the EAR);

(vi) License Exception BAG (§ 740.14); and

(vii) License Exception STA under § 740.20(c)(1) of the EAR, provided all of the applicable terms and conditions, including those specific to the "600 series" are met.

(14) Items classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 may only be authorized by License Exception GOV (§ 740.11(b)(2)(ii)) or an item-specific license exception identified in Supplement No. 5 to part 774 for a particular ECCN 0Y521 item.

NOTE TO PARAGRAPH (a)(14): *Item-specific license exception availability is specific to each ECCN 0Y521 entry in Supplement No. 5 to part 774 and may not be used for any other ECCN 0Y521 entries in the Supplement. The U.S. Government makes a determination at the time items are classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 regarding whether any license exceptions will be available, in addition to License Exception GOV (§ 740.11(b)(2)(ii)).*

(15) If they are sold under a contract that includes $14,000,000 or more of "600 Series Major Defense Equipment" (as defined in § 772.1), exports of "600 series" items to a country not listed in Country Group A:5 (see Supplement No. 1 to Part 740 of the EAR), are not eligible for any license exception except to U.S. Government end users under License Exception GOV (§ 740.11(b) of the EAR).

(16) If they are sold under a contract that includes $25,000,000 or more of "600 Series Major Defense Equipment" (as defined in § 772.1), exports of "600 series" items to a country listed in Country Group A:5 (see Supplement No. 1 to Part 740 of the EAR), are not eligible for any license exception except to U.S. Government end users under License Exception GOV (§ 740.11(b) of the EAR).

(**17**) A party to the transaction, as described in § 748.5 of the EAR, is listed on the Unverified List in Supplement No. 6 to Part 744, see § 744.15 of the EAR.

(18) 9x515 items that are controlled for missile technology (MT) reasons may not be exported, reexported, or transferred (in-country) under License Exception STA (§ 740.20 of the EAR).

Note to paragraph (a): *Items subject to the exclusive export control jurisdiction of another agency of the U.S. Government may not be authorized by a license exception or any other authorization under the EAR. If your item is subject to the exclusive jurisdiction of another agency of the U.S. Government, you must determine your export licensing requirements pursuant to the other agency's regulations. See § 734.3(b) and Supplement No. 3 to part 730 of the EAR for other U.S. Government departments and agencies with export control responsibilities.*

(b) All License Exceptions are subject to revision, suspension, or revocation, in whole or in part, without notice. It may be necessary for BIS to stop a shipment or an export transaction at any stage of its progress, e.g., in order to prevent

an unauthorized export or reexport. If a shipment is already en route, it may be further necessary to order the return or unloading of the shipment at any port of call.

(c) BIS may by informing the exporter, suspend or revoke any License Exception in order to comply with U.S. Wassenaar obligations. In addition, BIS may inform an exporter, that before using any License Exception, a notice be submitted with BIS concerning the proposed export.

(d) See §746.3 for restrictions on certain transfers within Iraq of items exported or reexported to Iraq pursuant to a License Exception.

§ 740.3 SHIPMENTS OF LIMITED VALUE (LVS)

(a) Scope

License Exception LVS authorizes the export and reexport in a single shipment of eligible commodities as identified by "LVS - $(value limit)" on the CCL.

(b) Eligible Destinations

This License Exception is available for all destinations in Country Group B (see Supplement No. 1 to part 740), provided that the net value of the commodities included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified in the LVS paragraph for that entry.

(c) Definitions

(1) Order. The term "order" as used in this §-740.3 means a communication from a person in a foreign country, or that person's representative, expressing an intent to import commodities from the exporter. Although all of the details of the order need not be finally determined at the time of export, terms relating to the kinds and quantities of the commodities to be exported, as well as the selling prices of these commodities, must be finalized before the goods can be exported under License Exception LVS.

(2) Net value: for LVS shipments. The actual selling price of the commodities that are included in the same order and are controlled under the same entry on the CCL, less shipping charges, or the current market price of the commodities to the same type of purchaser in the United States, whichever is the larger. In determining the actual selling price or the current market price of the commodity, the value of containers in which the commodity is being exported may be excluded. The value for LVS purposes is that of the controlled commodity that is being exported, and may not be reduced by subtracting the value of any content that would not, if shipped separately, be subject to licensing. Where the total value of the containers and their contents must be shown on Shipper's Export Declarations under one Schedule B Number, the exporter, in effecting a shipment under this License Exception, must indicate the "net value" of the contained commodity immediately below the description of the commodity.

(3) Single shipment. All commodities moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even though these commodities will be forwarded to one or more ultimate consignees. Commodities being transported in this manner will be treated as a single shipment even if the commodities represent more than one order or are in separate containers.

(d) Additional eligibility requirements and restrictions

(1) Eligible orders. To be eligible for this License Exception, orders must meet the following criteria:

(i) ***Orders must not exceed the applicable "LVS" dollar value limits.*** An order is eligible for shipment under LVS when the "net value" of the commodities controlled under the same entry

on the CCL does not exceed the amount specified in the "LVS" paragraph for that entry. An LVS shipment may include more than one eligible order.

(ii) ***Orders may not be split to meet the applicable LVS dollar limits*.** An order that exceeds the applicable LVS dollar value limit may not be misrepresented as two or more orders, or split among two or more shipments, to give the appearance of meeting the applicable LVS dollar value limit. However an order that meets all the LVS eligibility requirements, including the applicable LVS dollar value limit, may be split among two or more shipments.

(iii) ***Orders must be legitimate*.** Exporters and consignees may not, either collectively or individually, structure or adjust orders to meet the applicable LVS dollar value limits.

(2) Restriction on annual value of LVS orders. The total value of exports per calendar year to the same ultimate or intermediate consignee of commodities classified under a single ECCN may not exceed 12 times the LVS value limit for that ECCN; however, there is no restriction on the number of shipments provided that value is not exceeded. This annual value limit applies to shipments to the same ultimate consignee even though the shipments are made through more than one intermediate consignee. There is no restriction on the number of orders that may be included in a shipment, except that the annual value limit per ECCN must not be exceeded.

(3) Orders where two or more LVS dollar value limits apply. An order may include commodities that are controlled under more than one entry on the CCL. In this case, the net value of the entire order may exceed the LVS dollar value for any single entry on the CCL. However, the net value of the commodities controlled under each ECCN entry shall not exceed the LVS dollar value limit specified for that entry.

Example to paragraph (3): An order includes commodities valued at $8,000. The order consists of commodities controlled under two ECCN entries, each having an LVS value limit of $5000. Commodities in the order controlled under one ECCN are valued at $3,500 while those controlled under the other ECCN are valued at $4,500. Since the net value of the commodities controlled under *each* entry falls within the LVS dollar value limits applicable to that entry, the order may be shipped under this License Exception.

(4) Prohibition against evasion of license requirements. Any activity involving the use of this License Exception to evade license requirements is prohibited. Such devices include, but are not limited to, the splitting or structuring of orders to meet applicable LVS dollar value limits, as prohibited by paragraphs (d)(1)(ii) and (iii) of this section.

(5) Exports and reexports of encryption components or spare parts. For components or spare parts controlled for "EI" reasons under ECCN 5A002, exports and reexports under this License Exception must be destined to support a commodity previously authorized for export or reexport.

(e) Reexports

Commodities may be reexported under this License Exception, provided that they could be exported from the United States to the new country of destination under LVS.

(f) Reporting requirements

See §743.1 of the EAR for reporting requirements for exports of certain commodities under License Exception LVS.

§ 740.4 SHIPMENTS TO COUNTRY GROUP B COUNTRIES (GBS)

License Exception GBS authorizes exports and reexports to Country Group B (see Supplement No. 1 to part 740) of those commodities where

the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination for national security reasons only and identified by "GBS - Yes" on the CCL. See §743.1 of the EAR for reporting requirements for exports of certain commodities under License Exception GBS.

§ 740.5 CIVIL END-USERS (CIV)

(a) Scope

License Exception CIV authorizes exports and reexports of items on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) that have a license requirement to the ultimate destination pursuant to the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) for NS reasons only; and identified by "CIV - Yes" in the License Exception section of the Export Control Classification Number (ECCN), provided the items are destined to civil end-users for civil end-uses in Country Group D:1, except North Korea (Supplement No. 1 to part 740 of this part).

(b) Restrictions

(1) Restricted end-users and end-uses. You may not use CIV if you "know" the item will be or is intended to be exported, reexported, or transferred (in-country) to military uses or military end-users. Such exports, reexports, and transfers (in-country) will continue to require a license. In addition to conventional military activities, military uses include any proliferation activities described and prohibited by part 744 of the EAR.

(2) Visa Status. Deemed exports under License Exception CIV are not authorized to foreign nationals in an expired visa status. It is the responsibility of the exporter to ensure that, in the case of deemed exports, the foreign national maintains a valid U.S. visa, if required to hold a visa from the United States.

(c) Reporting Requirement

See §743.1 of the EAR for reporting requirements for exports of certain items under this License Exception.

(d) Foreign National Review (FNR) requirement for deemed exports

(1) Submission requirement. Prior to disclosing eligible technology to a foreign national under this License Exception, you must submit a 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.

(2) Confirmation of eligibility. You may not use License Exception CIV for a deemed export until you have obtained confirmation of eligibility by checking the System for Tracking Export License Applications (https://snapr.bis.doc.gov/stela) or through the Simplified Network Application Procedure (https://snapr.bis.doc.gov).

(3) Action by BIS. Within nine business days of the registration of the FNR request, BIS will refer the FNR request electronically, along with all necessary documentation 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.

(4) 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.

(5) 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.

§ 740.6 TECHNOLOGY AND SOFTWARE UNDER RESTRICTION (TSR)

(a) Scope

License Exception TSR permits exports and reexports of technology and software where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination for national security reasons only and identified by "TSR - Yes" in entries on the CCL, provided the software or technology is destined to Country Group B. (See Supplement No. 1 to part 740.) A written assurance is required from the consignee before exporting or reexporting under this License Exception.

(1) Required assurance for export of technology. You may not export or reexport technology under this License Exception until you have received from the importer a written assurance that, without a BIS license or License Exception, the importer will not:

(i) Reexport or release the technology to a national of a country in Country Groups D:1, E:1, or E:2; or

(ii) Export to Country Groups D:1, E:1, or E:2 the direct product of the technology, if such foreign produced direct product is subject to national security controls as identified on the CCL (See General Prohibition Three, §736.2(b)(3) of the EAR); or

(iii) If the direct product of the technology is a complete plant or any major component of a plant, export to Country Groups D:1, E:1, or E:2 of the direct product of the plant or major component thereof, if such foreign produced direct product is subject to national security controls as identified on the CCL or is "subject to the ITAR" (see 22 CFR parts 120 through 130).

(2) Required assurance for export of software. You may not export or reexport software under this License Exception until you have received from the importer a written assurance that, without a BIS license or License Exception, the importer will neither:

(i) Reexport or release the software or the source code for the software to a national of a country in Country Groups D:1, E:1, or E:2; nor

(ii) Export to Country Groups D:1, E:1, or E:2 the direct product of the software, if such foreign produced direct product is subject to national security controls as identified on the CCL. (See General Prohibition Three, §736.2(b)(3) of the EAR).

(3) Form of written assurance. The required assurance may be made in the form of a letter or any other written communication from the importer, including communications via facsimile, or the assurance may be incorporated into a licensing agreement that specifically includes the assurances. An assurance included in a licensing agreement is acceptable only if the agreement specifies that the assurance will be honored even after the expiration date of the licensing agreement. If such a written assurance is not received, License Exception TSR is not applicable and a license is required. The license application must include a statement explaining why assurances could not be obtained.

(4) Other License Exceptions. The requirements in this License Exception do not apply to the export of technology or software under other License Exceptions, or to the export of technology or software included in an application for the foreign filing of a patent, provided the filing is in accordance with the regulations of the U.S. Patent Office.

(b) Reporting requirements

See §743.1 of the EAR for reporting requirements for exports of certain items under License Exception TSR. Note that reports are not required for release of technology or source code subject to the EAR to foreign nationals in the U.S. under the provisions of License Exception TSR.

§ 740.7 COMPUTERS (APP)

(a) Scope

(1) Commodities. License Exception APP authorizes exports and reexports of computers, including "electronic assemblies" and specially designed components therefor controlled by ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. When evaluating your computer to determine License Exception APP eligibility, use the APP parameter to the exclusion of other technical parameters in ECCN 4A003.

(2) Technology and software. License Exception APP authorizes exports of technology and software controlled by ECCNs 4D001 and 4E001 specially designed or modified for the "development", "production", or "use" of computers, including "electronic assemblies" and specially designed components therefor classified in ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), to Computer Tier countries as provided by this section.

(b) Restrictions

(1) Related equipment controlled under ECCN 4A003.g may not be exported or reexported under this License Exception when exported or reexported separately from eligible computers authorized under this License Exception.

(2) Access and release restrictions.

(i) [RESERVED]

(ii) ***Technology and source code.*** Technology and source code eligible for License Exception APP may not be released to nationals of Cuba, Iran, North Korea, Sudan, or Syria.

(3) Computers and software eligible for License Exception APP may not be reexported or transferred (in country) without prior authorization from BIS, *i.e.*, a license, a permissive reexport, another License Exception, or "No License Required". This restriction must be conveyed to the consignee, via the Destination Control Statement, see §758.6 of the EAR. Additionally, the end-use and end-user restrictions in paragraph (b)(5) of this section must be conveyed to any consignee in Computer Tier 3.

(4) You may not use this License Exception to export or reexport items that you know will be used to enhance the APP beyond the eligibility limit allowed to your country of destination.

(5) License Exception APP does not authorize exports, reexports and transfers (in-country) for nuclear, chemical, biological, or missile end-users and end-uses subject to license requirements under §744.2, §744.3, §744.4, and §744.5 of the EAR. Such exports, reexports and transfers (in-country) will continue to require a license and will be considered on a case-by-case basis. Reexports and transfers (in-country) to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(6) Foreign nationals in an expired visa status are not eligible to receive deemed exports of technology or source code under this License Exception. It is the responsibility of the exporter to ensure that, in the case of deemed exports, the foreign national maintains a valid U.S. visa, if required to hold a visa from the United States.

(c) Computer Tier 1 destinations

(1) Eligible destinations. The destinations that are eligible to receive exports and reexports under paragraph (c) of this section include: Albania, Antigua and Barbuda, Argentina, Aruba, Australia, Austria, Bahamas (The), Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo (Democratic Republic of the), Congo (Republic of the), Costa Rica, Cote d'Ivoire, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia (The), Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Korea (Republic of), Latvia, Lesotho, Liberia, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, Sao Tome & Principe, Samoa, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Sint Maarten (the Dutch two-fifths of the island of Saint Martin), Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Surinam, Swaziland, Sweden, Switzerland, Taiwan, Tanzania, Togo, Tonga, Thailand, Timor-Leste, Trinidad and Tobago, Turkey, Tuvalu, Uganda, United Kingdom, Uruguay, Vatican City, Venezuela, Western Sahara, Zambia, and Zimbabwe.

(2) Eligible commodities. All computers, including electronic assemblies and specially designed components therefor are eligible for export or reexport under License Exception APP to Tier 1 destinations, subject to the restrictions in paragraph (b) of this section.

(3) Eligible technology and software.

(i) Technology and software described in paragraph (a)(2) of this section for computers of unlimited APP are eligible for export or reexport under License Exception APP to: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, or the United Kingdom; and

(ii) "Development" and "production" technology and source code described in paragraph (a)(2) of this section for computers with a APP less than or equal to 25 Weighted TeraFLOPS (WT) are eligible for deemed exports under License Exception APP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(iii) "Use" technology and source code described in paragraph (a)(2) of this section for computers with a APP less than or equal to 120 WT are eligible for deemed exports under License Exception APP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(d) Computer Tier 3 destinations

(1) Eligible destinations. Eligible destinations under paragraph (d) of this section are: Afghanistan, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Burma, Cambodia, China (People's Republic of), Comoros, Djibouti, Egypt, Georgia, India, Iraq, Israel, Jordan, Kazakhstan Kosovo, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova,

Mongolia, Montenegro, Morocco, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Serbia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.

(2) Eligible commodities. None.

(3) Eligible technology and source code.

(i) "Development," and "production" technology and source code described in paragraph (a)(2) of this section for computers with a APP less than or equal to 12 Weighted TeraFLOPS (WT) are eligible for deemed exports under License Exception APP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the restrictions in paragraph (b) and the provisions of paragraph (d)(4) of this section.

(ii) "Use" technology and source code described in paragraph (a)(2) of this section for computers with an APP less than or equal to 25 WT are eligible for deemed exports under License Exception APP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the restrictions in paragraph (b) and the provisions of paragraph (d)(4) of this section.

(4) Foreign National Review (FNR) requirement for deemed exports.

(i) ***Submission requirement*****.** Prior to disclosing eligible technology or source code to a foreign national of a Computer Tier 3 country that is not also a country listed in Country Group B in Supplement No. 1 to part 740 of the EAR under this License Exception, you must submit a 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.

§ 740.8 [RESERVED]

§ 740.9 TEMPORARY IMPORTS, EXPORTS, REEXPORTS, 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 9x515 or "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. 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. Notwithstanding the exclusion of destinations in Country Group E:1 in paragraphs (a)(1) and (3) of this section, items listed in § 740.19(b) of the EAR may be exported or reexported as tools of trade to Sudan. All other requirements and limitations of this paragraph (a) apply to such exports and reexports.

(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 recordkeeping 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 e-mail 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, reexports, 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, test, calibration, and repair. 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 physical 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) *Personal protective equipment classified under ECCN 1A613.c or .d.*

(i) Temporary exports, reexports, or in-country transfers to countries not identified in Country Group D:5. U.S. persons may temporarily export or reexport one set of body armor classified under ECCN 1A613.d, which may include one helmet classified under 1A613.c, to countries not identified in Country Group D:5, provided that:

(A) The items are with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(B) The items are for that U.S. person's exclusive use and not for transfer of ownership unless reexported or transferred (in-country) to another U.S. person.

(ii) Temporary exports, reexports, or transfers (in-country) to countries identified in Country Group D:5.

(A) *Afghanistan.* U.S. persons may temporarily export or reexport one set of body armor classified under ECCN 1A613.d, which may include one helmet classified under ECCN 1A613.c, to Afghanistan for personal use provided that the requirements in paragraph (a)(11)(i) of this section are met.

(B) *Iraq*. U.S. persons may temporarily export or reexport one set of body armor classified under ECCN 1A613.d, which may include one helmet classified under ECCN 1A613.c, to Iraq for personal use provided that the requirements in paragraph (a)(11)(i) of this section are met. In addition, the U.S. person must be affiliated with the U.S. Government and traveling on official business or traveling in support of a U.S. Government contract, or the U.S. person must be traveling to Iraq under a direct authorization by the Government of Iraq and engaging in activities for, on behalf of, or at the request of, the Government of Iraq. Documentation regarding direct authorization from the Government of Iraq shall include an English translation.

(C) *Other countries in Country Group D:5*. U.S. persons may temporarily export or reexport one set of body armor classified under ECCN 1A613.d, which may include one helmet classified under ECCN 1A613.c, provided that the requirements in paragraph (a)(11)(i) of this section are met, and the U.S. person is affiliated with the U.S. Government traveling on official business or is traveling in support of a U.S. Government contract.

(iii) Items exported, reexported, or transferred (in-country) under paragraph (a)(11) of this section, if not consumed or destroyed in the normal course of authorized temporary use abroad, must be returned to the United States or other country from which the items were so transferred as soon as practicable but no later than four years after the date of export, reexport or transfer (in-country).

(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. With the exception of items described in (a)(11) of this section, all items exported, reexported, or transferred (in-country) under this section must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned to the United States or other country from which the items were so transferred as soon as practicable but no later than one year after the date of export, reexport, or transfer (in country). 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 reexporter 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 shipment of the same items to the same new ultimate consignee or end-user.

(iii) ***Authorization to retain item abroad beyond one year.*** An exporter, reexporter 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 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 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, sublicensed, 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 reexported 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 (d) 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.*

§ 740.10 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.

(i) The terms *replacement parts, components, accessories, or attachments* as used in this section mean parts, components, accessories, or attachments needed for the immediate repair of equipment or other end items, including replacement of defective or worn parts or components. (These terms include 'subassemblies,' but do not include test instruments or operating supplies. The term '*subassembly'* means a number of parts or 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 or other end item upon which they are installed, are not deemed to be replacement parts, components, accessories, or attachments. For kits consisting of replacement parts or components, consult § 740.9(a)(4) of this part.

(ii) Parts, components, accessories, and attachments may be exported only to replace, on a one-for-one basis, parts, components, accessories, or attachments, respectively, contained in commodities that were: lawfully exported from the United States; lawfully reexported; or made in a foreign country incorporating authorized parts, components, accessories, or attachments "subject to the EAR" (see § 734.2(a) of the EAR). (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, components, accessories, and attachments 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 existence of appropriate authority for the original transaction.

(iii) The parts, components, accessories, or attachments to be replaced must either be destroyed abroad or returned promptly to the

person who supplied the replacements, or to a foreign firm that is under the effective control of that person.

(3) Exclusions to License Exception RPL.

(i) No replacement parts, components, accessories, or attachments may be exported to repair a commodity exported under a license or other authorization if that license or other authorization included a condition that any subsequent replacements may be exported only under a license.

(ii) No parts, components, accessories, or attachments may be exported to be held abroad as spares for future use. Replacements may be exported to replace spares that were authorized to accompany the export of equipment or other end items as those spares are used in the repair of the equipment or other end item. This allows maintenance of the stock of spares at a consistent level as the parts, components, accessories, or attachments are used.

(iii) No parts, components, accessories, or attachments 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, components, accessories, or attachments 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 § 772.1 of the EAR) or is controlled for national security (NS) reasons.

(v) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) if the commodity to be repaired is explosives detection equipment classified under ECCN 2A983 or related software classified under ECCN 2D983.

(vi) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) if the commodity to be repaired is concealed object detection equipment classified under ECCN 2A984 or related software classified under ECCN 2D984.

(vii) The conditions described in this paragraph (a)(3) relating to replacement of parts, components, accessories, or attachments do not apply to reexports to a foreign country of parts, components accessories, or attachments 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 (*De minimis* U.S. content).

(viii) "Parts," "components," "accessories," and "attachments" classified in 9x515 or "600 series" ECCNs may not be exported or reexported to a destination listed in Country Group D:5 (see Supplement No. 1 to this part).

(4) Reexports.

(i) Parts, components, accessories, and attachments exported from the United States may be reexported to a new country of destination, provided that the conditions established in paragraphs (a)(2) and (3) of this section are met. A party reexporting one-for-one replacement parts, components, accessories, or attachments "subject to the EAR" shall ensure that the

commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be lawfully used, and that either before or promptly after reexport of the replacement parts, components, accessories, or attachments, the replaced commodities and software are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to this part) that shipped the replacement parts.

(ii) The conditions described in paragraph (a)(3) relating to replacement of "parts," "components," "accessories," or "attachments" (excluding 9x515 and "600 series" ECCNs) do not apply to reexports to a foreign country of "parts," "components," "accessories," or "attachments" 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 foreign-origin product is not subject to the EAR pursuant to § 734.4.

(b) Servicing and replacement.

(1) The provisions of this paragraph (b) authorize the export and reexport to any destination, except for 9x515 or "600 series" items to destinations identified in Country Group D:5 (see Supplement No. 1 to this part) or otherwise prohibited under the EAR, of commodities and software that were sent to the United States or to a foreign party for servicing and replacement of commodities and software "subject to the EAR" (see § 734.2(a) of the EAR) that are defective or that an end user or ultimate consignee has found unacceptable.

(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., the 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, components, accessories, or attachments necessary to its repair and may be accompanied by any spare parts, components, tools, accessories, attachments or other items 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 this part) 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 equipment "subject to the EAR."

(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 is "subject to the EAR" (see § 734.2(a) of the EAR).

(B) 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 or an authorization, e.g., a license or exemption, issued under the authority of the Arms Export Control Act.

(C) 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.

(D) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the equipment as originally authorized, e.g., under a license, license exception or an exemption, for export or reexport.

(E) 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.

(F) Commodities or "software" "subject to the EAR" and classified in 9x515 or "600 Series" ECCNs may not be exported or reexported to a destination identified in Country Group D:5 (see Supplement No. 1 to this part).

(ii) ***Special conditions applicable to exports to Country Group B and Country Group D:1.*** 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 commodities or software "subject to the EAR" (see § 734.2(a) of the EAR) to a destination in Country Group B or Country Group D:1 (see Supplement No. 1 to this part):

(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, and "600 Series" ECCNs.***

(1) In addition to the 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, replace, or service previously lawfully exported or reexported items classified under ECCNs 2A983, 2A984, 2D983 and 2D984 or a "600 Series" ECCN. The following information

must be maintained for each such export or reexport transaction:

(i) A description of the item replaced, repaired or serviced;

(ii) The type of repair or service;

(iii) Certification of the destruction or return of item replaced;

(iv) Location of the item replaced, repaired or serviced;

(v) The name and address of those 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. Records that must be included in the annual or semi-annual reports of exports and reexports of "600 Series" items under the authority of License Exception RPL are described in § 743.4 and § 762.2(b)(4), (b)(47) and (b)(48).

§ 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; agencies of cooperating governments; international inspections under the Chemical Weapons Convention; and the International Space Station.

(a) ***International Safeguards.***

(1) Scope. The International Atomic Energy Agency (IAEA) is an international organization that establishes and administers safeguards, including Additional Protocols, 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. European Atomic Energy Community **(**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. This paragraph (a) authorizes exports and reexports of commodities or software to the IAEA and Euratom, and reexports by IAEA and Euratom for official international safeguard use, as follows:

(i) Commodities or software consigned to the IAEA at its headquarters in Vienna, Austria or its field offices in Toronto, Ontario, Canada or in Tokyo, Japan for official international safeguards use.

(ii) Commodities or software consigned to the Euratom Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use.

(iii) Commodities or software 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 or software and returns the commodities or software 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 persons 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 be disposed of by destruction or by reexport or transfer in accordance with the EAR.

(2) Restrictions.

(i) Items on the Sensitive List (see Supplement No. 6 to part 774 of the EAR) may not be exported, reexported, or transferred (in-country) under this paragraph (a), *except* to the countries listed in Country Group A:5 (See Supplement No.1 to part 740 of the EAR).

(ii) Items on the Very Sensitive List (see Supplement No. 7 to part 774 of the EAR) may not be exported, reexported, or transferred (in-country) under this paragraph (a).

(iii) Encryption items controlled for EI reasons under ECCNs 5A002, 5D002, or 5E002 may not be exported, reexported, or transferred (in-country) under this paragraph (a). See § 740.17 of the EAR (License Exception ENC) for possible alternative license exception authorization.

(iv) Without prior authorization from the Bureau of Industry and Security, nationals of countries in Country Group E:1(see Supplement No. 1 to this part) may not physically or computationally access computers that have been enhanced by "electronic assemblies," which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of processors so that the APP of the aggregation exceeds the APP parameter set forth in ECCN 4A003.b.

(v) "600 series" items may not be exported or reexported under this paragraph (a), *except* to the countries listed in Country Group A:5 (see Supplement No.1 to this part).

(b) United States Government.

(1) Scope. The provisions of this paragraph (b) authorize exports, reexports, and transfers (in-country) to personnel and agencies of the U.S. Government and certain exports by the Department of Defense. "Agency of the U.S. Government" includes all civilian and military departments, branches, missions, government-owned corporations, and other agencies of the U.S. Government, but does not include such national agencies as the American Red Cross or international organizations in which the United States participates such as the Organization of American States. Therefore, shipments may not be made to these non-governmental national or international agencies, except as provided in paragraph (b)(2)(i) of this section for U.S. representatives to these organizations.

(2) Eligibility.

(i) ***Items for personal use by personnel and agencies of the U.S. Government.*** This provision is available for items in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to public international organizations), and their immediate families and household employees. Items for personal use include household effects, food, beverages, and other daily necessities.

(ii) ***Exports, reexports, and transfers (in-country) made by or consigned to a department or agency of the U.S. Government.*** This paragraph authorizes exports, reexports, and transfers of items when made by or consigned to a department or agency of the U.S. Government solely for its official use or for carrying out any U.S. Government program with foreign governments or international organizations that is authorized by law and subject to control by the

President by other means. This paragraph does not authorize a department or agency of the U.S. Government to make any export, reexport, or transfer that is otherwise prohibited by other administrative provisions or by statute. Contractor support personnel of a department or agency of the U.S. Government are eligible for this authorization when in the performance of their duties pursuant to the applicable contract or other official duties. 'Contractor support personnel' for the purpose of this provision means those persons who provide administrative, managerial, scientific or technical support under contract to a U.S. Government department or agency (e.g., contractor employees of Federally Funded Research Facilities or Systems Engineering and Technical Assistance contractors). This authorization is not available when a department or agency of the U.S. Government acts as a transmittal agent on behalf of a non-U.S. Government person, either as a convenience or in satisfaction of security requirements.

(iii) ***Exports, reexports, and transfers (in-country) made for or on behalf of a department or agency of the U.S. Government.***

(A) This paragraph authorizes exports, reexports, and transfers (in-country) of items solely for use by a department or agency of the U.S. Government, when:

(1) The items are destined to a U.S. person; and

(2) The item is exported, reexported, or transferred (in-country) pursuant to a contract between the exporter and a department or agency of the U.S. Government;

(B) This paragraph authorizes exports, reexports, and transfers (in-country) of items to implement or support any U.S. Government cooperative program, project, agreement, or arrangement with a foreign government or international organization or agency that is authorized by law and subject to control by the President by other means, when:

(1) The agreement is in force and in effect, or the arrangement is in operation;

(2) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency responsible for the program, agreement, or arrangement, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written authorization must include the scope of items to be shipped under this license exception; the end users and consignees of the items; and any restrictions on the export, reexport, or transfer (in-country) (including any restrictions on the foreign release of technology);

(3) The exporter, reexporter, or transferor has a contract with a department or agency of the U.S. Government for the provision of the items in furtherance of the agreement, or arrangement; and

(4) The items being exported, reexported, or transferred (in-country) are not controlled for Chemical Weapons Convention (CW) or proliferation of chemical and biological weapons (CB) reasons;

(C) This paragraph authorizes the temporary export, reexport, or transfer (in-country) of an item in support of any foreign assistance or sales program authorized by law and subject to the control of the President by other means, when:

(1) The item is provided pursuant to a contract between the exporter, reexporter, or transferor and a department or agency of the U.S. Government; and

(2) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency responsible for the program, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written

authorization must include the scope of items to be shipped under this license exception; the end users and consignees of the items; and any restrictions on the export, reexport, or transfer (in-country) (including any restrictions on the foreign release of technology);

(D) This paragraph authorizes the export, reexport, or transfer of commodities or software at the direction of the U.S. Department of Defense for an end use in support of an Acquisition and Cross Servicing Agreement (ACSA), when:

(1) The ACSA is between the U.S. Government and a foreign government or an international organization and is in force and in effect;

(2) The exporter, reexporter, or transferor has a contract with the department or agency of the U.S. government in furtherance of the ACSA; and

(3) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency responsible for the ACSA, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written authorization must include the scope of items to be shipped under this license exception; the end-users and consignees of the items; and any restrictions on the export, reexport, or transfer (in-country);

(E) This paragraph authorizes the export, reexport, or transfer (in-country) of Government Furnished Equipment (GFE) made by a U.S. Government contractor, when:

(1) The GFE will not be provided to any foreign person;

(2) The export, reexport, or transfer (in-country) is pursuant to a contract with a department or agency of the U.S. Government; and

(3) Shipment documents must include the following statement: "Property of [insert U.S. Government department, agency, or service]. Property may not enter the trade of the country to which it is shipped. Authorized under License Exception GOV. U.S. Government point of contact: [insert name and telephone number]."

(F) Electronic Export Information. Electronic Export Information (EEI) must be filed in the Automated Export System (AES) for any export made pursuant to paragraph (b)(iii) of this section. The EEI must identify License Exception GOV as the authority for the export and indicate that the applicant has received the relevant documentation from the contracting U.S. Government department, agency, or service. The Internal Transaction Number assigned by AES must be properly annotated on shipping documents (bill of lading, airway bill, other transportation documents, or commercial invoice).

(G) The exporter, reexporter, or transferor must obtain an authorization, if required, before any item previously exported, reexported, or transferred (in-country) under this paragraph is resold, transferred, reexported, transshipped, or disposed of to an end user for any end use, or to any destination other than as authorized by this paragraph (*e.g.*, property disposal of surplus items outside of the United States), unless:

(1) The transfer is pursuant to a grant, sale, lease, loan, or cooperative project under the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended; or

(2) The item has been destroyed or rendered useless beyond the possibility of restoration.

(iv) ***Items exported at the direction of the U.S. Department of Defense.*** This paragraph authorizes items to be exported, reexported, or transferred (in-country) pursuant to an official

written request or directive from the U.S. Department of Defense.

(v) This paragraph authorizes items sold, leased, or loaned by the U.S. Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961 when the items are delivered to representatives of such a country or organization in the United States and exported, reexported, or transferred on a military aircraft or naval vessel of that government or organization or via the Defense Transportation Service.

(vi) This paragraph authorizes transfer of technology in furtherance of a contract between the exporter and an agency of the U.S. Government, if the contract provides for such technology and the technology is not "development" or "production" technology for "600 series" items.

***(c) Cooperating Governments and the North Atlantic Treaty Organization*.**

(1) Scope. The provisions of this paragraph (c) authorize exports, reexports, and transfers (in-country) of the items listed in paragraph (c)(2) of this section to agencies of cooperating governments or agencies of the North Atlantic Treaty Organization (NATO). 'Agency of a cooperating government' includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. 'Cooperating governments' are the national governments of countries listed in Country Group A:1 (see Supplement No. 1 to this part) and the national governments of Hong Kong, Singapore and Taiwan.

(2) Eligibility.

(i) ***Items for official use within national territory by agencies of cooperating governments.*** This license exception is available for all items consigned to and for the official use of any 'agency of a cooperating government' within the territory of any cooperating government, except items excluded by paragraph (c)(3) of this section.

(ii) ***Items for official use by agencies of cooperating governments for military purposes or NATO.*** With the exception of items excluded by paragraph (c)(3) of this section, this license exception is available for all items consigned to and for the official use of:

(A) A military end user of or for the military end use of cooperating governments, or

(B) An agency of NATO.

(iii) ***Diplomatic and consular missions of a cooperating government.*** This license exception is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to this part), except items excluded by paragraph (c)(3) of this section.

(3) ***Exclusions.*** The following items may not be exported, reexported, or transferred (in-country) under this paragraph (c):

(i) Items on the Sensitive List (see Supplement No. 6 to part 774 of the EAR), *except* to or for the use by governments of countries listed in Country Group A:5 (see Supplement No.1 to this part) or an agency of NATO;

(ii) Items on the Very Sensitive List (see Supplement No. 7 to part 774 of the EAR);

(iii) Encryption items controlled for EI reasons under ECCNs 5A002, 5D002, or 5E002 (see § 740.17 of the EAR for License Exception ENC);

(iv) Regional stability items controlled under ECCNs 6A002.a.1.c, 6E001 "technology" according to the General Technology Note for the "development" of equipment in 6A002.a.1.c, and 6E002 "technology" according to the General Technology Note for the "production" of

equipment in 6A002.a.1.c.;

(v) "600 series" items, *except* to or for the use by governments of countries listed in Country Group A:5 (see Supplement No. 1 to this part) or an agency of NATO;

(vi) Items controlled for nuclear nonproliferation (NP) reasons; or

(vii) Items listed as not eligible for License Exception STA in § 740.20(b)(2)(ii) of the EAR.

(d) International inspections under the Chemical Weapons Convention (CWC or Convention).

(1) The Organization for the Prohibition of Chemical Weapons (OPCW) is an international organization that establishes and administers an inspection and verification regime under the Convention designed to ensure that certain chemicals and related facilities are not diverted from peaceful purposes to non-peaceful purposes. This paragraph (d) authorizes exports and reexports to the OPCW and exports and reexports by the OPCW for official international inspection and verification use under the terms of the Convention as follows:

(i) Commodities and software consigned to the OPCW at its headquarters in The Hague for official international OPCW use for the monitoring and inspection functions set forth in the Convention, and technology relating to the maintenance, repair, and operation of such commodities and software. The OPCW must maintain "effective control" of such commodities, software and technology.

(ii) Controlled technology relating to the training of the OPCW inspectorate.

(iii) Controlled technology relating to a CWC inspection site, including technology released as a result of:

(A) Visual inspection of U.S.-origin equipment or facilities by foreign nationals of the inspection team;

(B) Oral communication of controlled technology to foreign nationals of the inspection team in the U.S. or abroad; and

(C) The application to situations abroad of personal knowledge or technical experience acquired in the U.S.

(2) Exclusions. The following items may not be exported or reexported under the provisions of this paragraph (d):

(i) Inspection samples collected in the U.S. pursuant to the Convention;

(ii) Commodities and software that are no longer in OPCW official use. Such items must be transferred in accordance with the EAR.

(iii) "600 series" items, *except* to the countries listed in Country Group A:5 (see Supplement No.1 to this part).

(3) Confidentiality. The application of the provisions of this paragraph (d) is subject to the condition that the confidentiality of business information is strictly protected in accordance with applicable provisions of the EAR and other U.S. laws regarding the use and transfer of U.S. goods and services.

(4) Restrictions. Without prior authorization from the Bureau of Industry and Security, nationals of countries in Country Group E:1 (see Supplement No. 1 to this part) may not physically or computationally access computers that have been enhanced by "electronic assemblies," which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of processors so that the APP of the aggregation exceeds the APP parameter set forth in ECCN 4A003.b.

(e) International Space Station (ISS).

(1) Scope. The ISS is a research facility in a low-Earth orbit approximately 190 miles (350

km) above the surface of the Earth. The ISS is a joint project among the space agencies of the United States, Russia, Japan, Canada, Europe and Italy. This paragraph (e) authorizes exports and reexports required on short notice of certain commodities subject to the EAR that are classified under ECCN 9A004 to launch sites for supply missions to the ISS.

(2) Eligible commodities. Any commodity subject to the EAR that is classified under ECCN 9A004 and that is required for use on the ISS on short notice.

NOTE 1 to paragraph (e)(2): *This license exception is not available for the export or reexport of "parts," "components," "accessories," and "attachments" to overseas manufacturers for the purpose of incorporation into other items destined for the ISS.*

NOTE 2 to paragraph (e)(2): *For purposes of this paragraph (e), 'short notice' means the exporter is required to have a commodity manifested and at the scheduled launch site for hatch-closure (final stowage) no more than forty-five (45) days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS. 'Hatch-closure (final stowage)' means the final date specified by a launch provider by which items must be at a specified location in a launch country in order to be included on a mission to the ISS. The exporter or reexporter must receive the notification to supply the commodity for use on the ISS in writing. That notification must be kept in accordance with paragraph (e)(8) of this section and the Recordkeeping requirements in part 762 of the EAR.*

(3) Eligible destinations. Eligible destinations are France, Japan, Kazakhstan, and Russia. To be eligible, a destination needs to have a launch for a supply mission to the ISS scheduled by a country participating in the ISS.

(4) Requirement for commodities to be launched on an eligible space launch vehicle (SLV). Only commodities that will be delivered to the ISS using United States, Russian, ESA (French), or Japanese space launch vehicles (SLVs) are eligible under this authorization. Commodities to be delivered to the ISS using SLVs from any other countries are excluded from this authorization.

(5) Authorizations.

(i) ***Authorization to retain commodity at or near launch site for up to six months*****.** If there are unexpected delays in a launch schedule for reasons such as mechanical failures in a launch vehicle or weather, commodities exported or reexported under this paragraph (e) may be retained at or near the launch site for a period of six (6) months from the time of initial export or reexport before the commodities must be destroyed, returned to the exporter or reexporter, or be the subject of an individually validated license request submitted to BIS to authorize further disposition of the commodities.

(ii) ***Authorization to retain commodity abroad at launch country beyond six months*****.** If, after the commodity is exported or reexported under this authorization, a delay occurs in the launch schedule that would exceed the 6-month deadline in paragraph (e)(5)(i) of this section, the exporter or reexporter or the person in control of the commodities in the launch country may request a one-time 6-month extension by submitting written notification to BIS requesting a 6-month extension and noting the reason for the delay. If the requestor is not contacted by BIS within 30 days from the date of the postmark of the written notification and if the notification meets the requirements of this subparagraph, the request is deemed granted. The request must be sent to BIS at the address listed in part 748 of the EAR and should include the name and address of the exporter or reexporter, the name and address of the person who has control of the commodity, the date the commodities were exported or reexported, a brief product description, and the justification for the extension. To retain a

commodity abroad beyond the 6-month extension period, the exporter, reexporter or person in control of the commodity must request authorization by submitting a license application in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS 90 days prior to the expiration of the 6-month extension period.

(iii) ***Items not delivered to the ISS because of a failed launch*****.** If the commodities exported or reexported under this paragraph (e) of this section are not delivered to the ISS because a failed launch causes the destruction of the commodity prior to its being delivered, exporters and reexporters must make note of the destruction of the commodities in accordance with the recordkeeping requirements under paragraph (e)(8)(ii) of this section and part 762 of the EAR.

(6) Reexports to an alternate launch country. If a mechanical or weather related issue causes a change from the scheduled launch country to another foreign country after a commodity was exported or reexported, then that commodity may be subsequently reexported to the new scheduled launch country, provided all of the terms and conditions of paragraph (e) of this section are met, along with any other applicable EAR provisions. In such instances, the 6-month time limitation described in paragraph (e)(5)(i) of this section would start over again at the time of the subsequent reexport transaction. Note that if the subsequent reexport may be made under the designation No License Required (NLR) or pursuant to an authorization under the EAR, a reexporter does not need to rely on the provisions contained in this paragraph (e).

(7) Eligible recipients. Only persons involved in the launch of commodities to the ISS may receive and have access to commodities exported or reexported pursuant to this paragraph (e), except that:

(i) No commodities may be exported, reexported, or transferred (in-country) under paragraph (e) to any national of an E:1 country (see Supplement No. 1 to this part), and

(ii) No person may receive commodities authorized under paragraph (e) of this section who is subject to an end-user or end-use control described in part 744 of the EAR, including the entity list in Supplement No. 4 to part 744.

(8) Recordkeeping requirements. Exporters and reexporters must maintain records regarding exports or reexports made using this paragraph (e) of this section as well as any other applicable recordkeeping requirements under part 762 of the EAR.

(i) Exporters and reexporters must retain a record of the initial written notification they received requesting these commodities be supplied on short notice for a supply mission to the ISS, including the date the exporter or reexporter received complete documentation (i.e., the day on which the 45-day clock begins).

(ii) Exporters and reexporters must maintain records of the date of any exports or reexports made using this paragraph (e) and the date on which the commodities were launched into space for delivery to the ISS. If the commodities are not delivered to the ISS because of a failed launch whereby the item is destroyed prior to being delivered to the ISS, this must be noted for recordkeeping purposes.

(iii) The return or destruction of defective or worn out parts or components is not required. However, if defective or worn out parts or components originally exported or reexported pursuant to this paragraph (e) are returned from the ISS, then those parts and components may be either: returned to the original country of export or reexport; destroyed; or reexported or transferred (in-country) to a destination that has been designated by NASA for conducting a review and analysis of the defective or worn part or component. Documentation for this activity must be kept for recordkeeping purposes. No commodities that are subject to the EAR may be returned, under the provisions of this paragraph, to a country listed in Country Group E:1 (see Supplement No. 1 to this part) or to any person if that person is subject to an end-user or end-use control described in part 744 of the EAR. For

purposes of paragraph (e) of this section, a 'defective or worn out' part or component is a part or component that no longer performs its intended function.

§ 740.12 GIFT PARCELS AND HUMANITARIAN DONATIONS (GFT)

(a) Gift Parcels

(1) Scope. The provisions of paragraph (a) authorize exports and reexports of gift parcels by an individual (donor) addressed to an individual, or a religious, charitable or educational organization (donee) located in any destination for the use of the donee or the donee's immediate family (and not for resale). The gift parcel must be provided free of charge to the donee. However, payment by the donee of any handling charges or of any fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the donee for purposes of this definition of "gift parcel."[1]

(2) Commodity, value and other limitations.

(i) ***Item limitations*.**

(A) ***Prohibited items*.**

(*1*) For Cuba no items listed on the Commerce Control List other than items listed in § 740.19(b) of the EAR may be included in a gift parcel.

(*2*) For all destinations, no items controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), nuclear proliferation (NP) or encryption items (EI) reasons on the Commerce Control List (Supplement no. 1 to part 774 of the EAR) may be included in a gift parcel.

(*3*) *Items prohibited for destinations in Country Group D:1 or E:2*. For destinations in Country Group D:1 or E:2, military wearing apparel may not be included in a gift parcel regardless of whether all distinctive U.S. military insignia, buttons, and other markings are removed.

(*4*) Gold bullion, gold taels, and gold bars are prohibited as are items intended for resale or reexport.

(B) ***Eligible items*.** For all destinations, eligible items are food (including vitamins); medicines, medical supplies and devices (including hospital supplies and equipment and equipment for the handicapped); receive-only radio equipment for reception of commercial/civil AM/FM and short wave publicly available frequency bands, and batteries for such equipment; clothing; personal hygiene items; seeds; veterinary medicines and supplies; fishing equipment and supplies; soap-making equipment; as well as all other items of a type normally sent as gifts between individuals (including items listed in § 740.19(b) of the EAR) except for those items prohibited in paragraph (a)(2)(i)(A) of this section. Items in gift parcels must be in quantities normally given as gifts between individuals.

Example to paragraph (a)(2)(i)(B) of this section. *A watch or piece of jewelry is normally sent as a gift. However, multiple watches, either in one package or in subsequent shipments, would not qualify for such gift parcels because the quantity would exceed that normally given between individuals. Similarly, a sewing machine or bicycle within the value limit of this License Exception may be an appropriate gift. However, subsequent shipments of the same item*

[1] Many foreign countries permit the entry, duty-free, of gift parcels that conform to regulations regarding contents and marking. To secure this advantage, the sender should show the words "U.S.A. Gift Parcel" on the addressee side of the package and on any required customs declarations. Information regarding the foreign postal regulations is available at local post offices. Senders of gift parcels who wish information regarding import duties of a foreign country should contact the nearest Commercial Office, Consulate or Embassy of the country concerned.

to the same donee would not be a gift normally given between individuals.

(ii) ***Import requirements*.** The commodities must be acceptable in type and quantity by the recipient country for import as gifts. Commodities exceeding the import limits may not be included in gift parcels.

(iii) ***Frequency*.**

(A) Except for gift parcels of food to Cuba, not more than one gift parcel may be sent from the same donor to the same donee in any one calendar month.

(B) There is no frequency limit on gift parcels of food to Cuba.

(C) Parties seeking authorization to exceed the frequency limit due to compelling humanitarian concerns (e.g., for certain gifts of medicine) should submit a license application in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS with complete justification.

(iv) ***Value*.** The combined total domestic retail value of all commodities and software in a single gift parcel may not exceed $800. This limit does not apply to food sent in a gift parcel to Cuba.

(v) ***Ineligible recipients.***

(A) No gift parcel may be sent to any of the following officials of the Cuban Government: ministers and vice-ministers; members of the Council of State; members of the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; or members and employees of the Supreme Court (Tribuno Supremo Nacional).

(B) No gift parcel may be sent to any of the following officials or members of the Cuban Communist Party: members of the Politburo; the Central Committee; Department Heads of the Central Committee; employees of the Central Committee; and the secretaries and first secretaries of provincial Party central committees.

(C) No gift parcel may be sent to organizations administered or controlled by the Cuban Government or the Cuban Communist Party.

(3) How to export gift parcels.

(i) A gift parcel must be sent directly to the donee by the individual donor, or for such donor by a commercial or other gift-forwarding service or organization. Each gift parcel must show, on the outside wrapper, the name and address of the donor, as well as the name and address of the donee, regardless of whether sent by the donor or by a forwarding service.

(ii) Each parcel must have the notation "GIFT — Export License Not Required" written on the addressee side of the package and the symbol "GFT" written on any required customs declaration.

(b) Humanitarian donations

(1) Scope. The provisions of paragraph (b) authorize exports or reexports by groups or organizations of donations to meet basic human needs when those groups or organizations have experience in maintaining a verifiable system of distribution that ensures delivery to the intended beneficiaries.

(2) Basic human needs. Basic human needs are defined as those requirements essential to

individual well-being: health, food, clothing, shelter, and education. These needs are considered to extend beyond those of an emergency nature and those that meet direct needs for mere subsistence.

(3) Eligible donors. Eligible donors are U.S. charitable organizations that have an established record of involvement in donative programs and experience in maintaining and verifying a system of distribution to ensure delivery of commodities and software to the intended beneficiaries. Eligible distribution arrangements may consist of any one or more of the following:

(i) A permanent staff maintained in the recipient country to monitor the receipt and distribution of the donations to the intended beneficiaries;

(ii) Periodic spot-checks in the recipient country by members of the exporter's staff; or

(iii) An agreement to utilize the services of a charitable organization that has a monitoring system in place.

(4) Donations. To qualify for export under the provisions of this paragraph (b), the items must be provided free of charge to the beneficiary. The payment by the beneficiary, however, of normal handling charges or fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the beneficiary for purposes of this paragraph b.

(5) Ineligible commodities and software. The following commodities and software are not eligible:

(i) Commodities and software controlled for national security, chemical or biological weapons, and nuclear non-proliferation, missile technology or crime control reasons (see Supplement No. 1 to part 774 of the EAR);

(ii) Exports for large-scale projects of the kind associated with comprehensive economic growth, such as dams and hydroelectric plants; or

(iii) Exports to Cuba of medical items excluded by §746.2(b)(1) of the EAR.

(6) Eligible items. Eligible commodities and software are those listed in Supplement No. 2 to part 740.

(7) Additional recordkeeping requirements. In addition to the recordkeeping requirements in part 762 of the EAR, donors must keep records containing the following information:

(i) The donor organization's identity and past experience as an exporter of goods to meet basic human needs;

(ii) Past and current countries to which the donative programs have been and are being directed, with particular reference to donative programs in embargoed destinations;

(iii) Types of projects and commodities involved in the donative programs;

(iv) Specific class(es) of beneficiaries of particular donated goods intended to be exported under this License Exception; and

(v) Information concerning the source of funding for the donative programs and the projected annual value of exports of humanitarian donations.

§ 740.13 TECHNOLOGY AND SOFTWARE UNRESTRICTED (TSU)

This license exception authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); "mass market" software subject to the General Software Note; and encryption source code (and corresponding object code) that would be considered publicly available under §734.3(b)(3) of the EAR. Note that encryption software subject to the EAR is not subject to the General Software Note (see paragraph (d)(2) of this section).

(a) Operation technology and software

(1) Scope. The provisions of paragraph (a) permit exports and reexports of operation technology and software. "Operation technology" is the minimum technology necessary for the installation, operation, maintenance (checking), or repair of those commodities or software that are lawfully exported or reexported under a license, a License Exception, or NLR. The "minimum necessary" operation technology does not include technology for development or production and includes use technology only to the extent required to ensure safe and efficient use of the commodities or software. Individual entries in the software and technology subcategories of the CCL may further restrict the export or reexport of operation technology. This paragraph (a) authorizes training, provided the training is limited to the operation, maintenance and repair technology identified in this paragraph.

(2) Provisions and Destinations.

(i) ***Provisions*****.** Operation software may be exported or reexported provided that both of the following conditions are met:

(A) The operation software is the minimum necessary to operate equipment authorized for export or reexport; and

(B) The operation software is in object code.

(ii) ***Destinations*****.** Operation software and technology may be exported or reexported to any destination to which the equipment for which it is required has been or is being legally exported or reexported.

(b) Sales technology

(1) Scope. The provisions of paragraph (b) authorize exports and reexports of sales technology. "Sales technology" is data supporting a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any item.

(2) Provisions and destinations.

(i) ***Provisions*****.** Sales technology may be exported or reexported provided that:

(A) The technology is a type customarily transmitted with a prospective or actual quotation, bid, or offer in accordance with established business practice; and

(B) Neither the export nor the reexport will disclose the detailed design, production, or manufacture technology, or the means of reconstruction, of either the quoted item or its product. The purpose of this limitation is to prevent disclosure of technology so detailed that the consignee could reduce the technology to production.

(ii) ***Destinations*****.** Sales technology may be exported or reexported to any destination.

NOTE: *Neither this section nor its use means that the U.S. Government intends, or is committed, to approve a license application for any commodity, plant, software, or technology that may be the subject of the transaction to which such quotation, bid, or offer relates. Exporters are advised to include in any quotations, bids, or offers, and in any contracts entered into pursuant to such quotations, bids, or offers, a provision relieving themselves of liability in the event that a license (when required) is not approved by the Bureau of Industry and Security.*

(c) Software updates

The provisions of paragraph (c) authorize exports and reexports of software updates that are intended for and are limited to correction of errors ("fixes" to "bugs") in software lawfully exported or reexported (original software). Such software updates may be exported or

reexported only to the same consignee to whom the original software was exported or reexported, and such software updates may not enhance the functional capacities of the original software. Such software updates may be exported or reexported to any destination to which the software for which they are required has been legally exported or reexported.

(d) General Software Note: mass market software

(1) Scope. The provisions of paragraph (d) authorize exports and reexports of mass market software subject to the General Software Note (see Supplement No. 2 to part 774 of the EAR; also referenced in this section).[2]

(2) Exclusions. The provisions of this paragraph (d) are not available for encryption software controlled for "EI" reasons under ECCN 5D002 or for encryption software with symmetric key length exceeding 64-bits that qualifies as mass market encryption software under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2, of the Commerce Control List (Supplement No. 1 to part 774 of the EAR). (Once such mass market encryption software has been reviewed by BIS and released from "EI" and "NS" controls pursuant to § 742.15(b) of the EAR, it is controlled under ECCN 5D992.c and is thus outside the scope of License Exception TSU.) See § 742.15(b) of the EAR for exports and reexports of mass market encryption products controlled under ECCN 5D992.c.

(3) Provisions and destinations.

(i) ***Destinations*****.** Mass market software is available to all destinations except destinations in Country Group E:1 (see Supplement No. 1 to this part).

(ii) ***Provisions*****.** Mass market treatment is available for software that is generally available to the public by being:

(A) Sold from stock at retail selling points, without restriction, by means of:

(*1*) Over the counter transactions;

(*2*) Mail order transactions; or

(*3*) Telephone call transactions; *and*

(B) Designed for installation by the user without further substantial support by the supplier.

(e) Publicly available encryption source code.

(1) Scope and eligibility. Subject to the notification requirements of paragraph (e)(3) of this section, this paragraph (e) authorizes exports and reexports of publicly available encryption source code classified under ECCN 5D002 that is subject to the EAR (*see* § 734.3(b)(3) of the EAR). Such source code is eligible for License Exception TSU under this paragraph (e) even if it is subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code.

(2) Restrictions. This paragraph (e) does not authorize:

(i) Export or reexport of any encryption software classified under ECCN 5D002 that does not meet the requirements of paragraph (e)(1), even if the software incorporates or is specially designed to use other encryption software that meets the requirements of paragraph (e)(1) of this section; or

(ii) Any knowing export or reexport to a country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR.

(3) Notification requirement. You must notify BIS and the ENC Encryption Request Coordinator via e-mail of the Internet location

[2] Pursuant to 15 CFR § 30.37(f) of the Foreign Trade Regulations (FTR), Electronic Export Information (EEI) via the Automated Export System (AES) is required for mass-market software.

(e.g., URL or Internet address) of the publicly available encryption source code or provide each of them a copy of the publicly available encryption source code. If you update or modify the source code, you must also provide additional copies to each of them each time the cryptographic functionality of the source code is updated or modified. In addition, if you posted the source code on the Internet, you must notify BIS and the ENC Encryption Request Coordinator each time the Internet location is changed, but you are not required to notify them of updates or modifications made to the encryption source code at the previously notified location. In all instances, submit the notification or copy to crypt@bis.doc.gov and to enc@nsa.gov.

Note to paragraph (e)*: Posting encryption source code on the Internet (e.g., FTP or World Wide Web site) where it may be downloaded by anyone neither establishes "knowledge" of a prohibited export or reexport for purposes of this paragraph, nor triggers any "red flags" imposing a duty to inquire under the "Know Your Customer" guidance provided in Supplement No. 3 to part 732 of the EAR. Publicly available encryption object code software classified under ECCN 5D002 is not subject to the EAR when the corresponding source code meets the criteria specified in this paragraph (e), see § 734.3(b)(3) of the EAR.*

(f) Release of technology and source code in the U.S. by U.S. universities to their bona fide and full time regular employees.

(1) Scope. This paragraph authorizes the release in the United States of "technology" and source code that is subject to the EAR by U.S. universities to foreign nationals who are their bona fide and full time regular employees.

(2) Eligible foreign nationals (i.e., bona fide and full time regular employees of U.S. universities). This exception is only available if:

(i) The employee's permanent residence throughout the period of employment is in the U.S.;

(ii) The employee is not a national of a destination listed in Country Group D:5 (see Supplement No. 1 to part 740 of the EAR); and

(iii) The university informs the individual in writing that the "technology" or source code may not be transferred to other foreign nationals without prior U.S. Government authorization. The obligation not to transfer technology extends beyond the tenure of employment at the university.

(3) Regular employee. A regular employee means:

(i) An individual permanently and directly employed by the university; or

(ii) An individual in a long-term contractual relationship with the university where the individual works at the university's facilities; works under the university's direction and control; works full time and exclusively for the university; executes nondisclosure certifications for the university; and where the staffing agency that has seconded the individual has no role in the work the individual performs (other than providing that individual for that work) and the staffing agency would not have access to any controlled technology (other than where specifically authorized by a license or where a license exception is available).

(4) Exclusions.

(i) No "technology" or source code may be released to a foreign national who is subject to a part 744 end-use or end-user control or where the release would otherwise be inconsistent with part 744; and

(ii) No "technology" controlled for "EI" (encryption) reasons or "technology" or source code controlled for "MT" (Missile Technology) reasons may be released under this paragraph (f).

(g) ***Copies of technology previously authorized***

for export to same recipient.

This paragraph authorizes the export, reexport, or transfer (in-country) of copies of technology previously authorized for export, reexport, or transfer (in-country) to the same recipient. This paragraph also authorizes the export, reexport, or transfer (in-country) of revised copies of such technology provided the following three conditions are met:

(1) The item that the technology pertains to is the identical item;

(2) The revisions to the technology are solely editorial and do not add to the content of technology previously exported, reexported, or transferred (in-country) or authorized for export, reexport, or transfer (in-country) to the same recipient; and

(3) The exporter, reexporter, or transferor has no reason to believe the same recipient has used the technology in violation of the original authorization.

(h) Special Recordkeeping Requirements: ECCNs 2D983, 2D984, 2E983 and 2E984

In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this paragraph, when exporting operation software or technology controlled under ECCNs 2D983, 2D984, 2E983, and 2E984, respectively, under License Exception TSU. 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. The following information must be specially maintained for each export or reexport transaction, under License Exception TSU, of operation software and technology controlled by ECCNs 2D983, 2D984, 2E983, and 2E984:

(1) A description of the software or technology exported or reexported, including the ECCN, as identified on the CCL;

(2) A description of the equipment for which the software or technology is intended to be used, including the ECCN, as identified on the CCL;

(3) The intended end-use of the software or technology;

(4) The name and address of the end-user;

(5) The quantity of software shipped; and

(6) The location of the equipment for which the software or technology is intended to be used, including the country of destination.

§ 740.14 BAGGAGE (BAG)

(a) Scope

This License Exception authorizes individuals leaving the United States either temporarily (i.e., traveling) or longer-term (i.e., moving) and crew members of exporting or reexporting carriers to take to any destination, as personal baggage, the classes of commodities, software and technology described in this section.

(b) Eligibility

Individuals leaving the United States may export or reexport any of the following commodities or software for personal use of the individuals or members of their immediate families traveling with them to any destination or series of destinations. Individuals leaving the United States who are U.S. persons, as defined in paragraph (b)(4)(i), may export or reexport technology as a tool of trade under paragraph (b)(4) for their personal use or for the personal use of members of their immediate families who are traveling or moving with them, provided they are also U.S. persons, as defined in paragraph (b)(4)(i), to any destination or series of destinations. Technology exports and reexports authorized under paragraph (b)(4) of this section may be made as actual shipments, transmissions, or releases. Individuals leaving the United States temporarily (i.e., traveling)

must bring back items exported and reexported under this License Exception unless they consume the items abroad or are otherwise authorized to dispose of them under the EAR. Crew members may export or reexport only commodities and software described in paragraphs (b)(1) and (b)(2) of this section to any destination.

(1) Personal effects. Usual and reasonable kinds and quantities for personal use of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects, and their containers.

(2) Household effects. Usual and reasonable kinds and quantities for personal use of furniture, household effects, household furnishings, and their containers.

(3) Vehicles. Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, trailers, motorcycles, bicycles, tricycles, perambulators, and their containers.

(4) Tools of trade. Usual and reasonable kinds and quantities of tools, instruments, or equipment and their containers and also technology for use in the trade, occupation, employment, vocation, or hobby of the traveler or members of the household who are traveling or moving. For special provisions regarding encryption commodities and software subject to EI controls, see paragraph (f) of this section. For a special provision that specifies restrictions regarding the export or reexport of technology under this paragraph, see paragraph (g).

(i) For purposes of this paragraph (b), 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).

(ii) [RESERVED]

(c) Limits on eligibility

The export of any item is limited or prohibited, if the kind or quantity is in excess of the limits described in this section. In addition, the items must be:

(1) Owned by the individuals (or by members of their immediate families) or by crew members of exporting carriers on the dates they depart from the United States;

(2) Intended for and necessary and appropriate for the use of the individuals or members of their immediate families traveling with them, or by the crew members of exporting carriers;

(3) Not intended for sale or other disposal; and

(4) Not exported under a bill of lading as cargo if exported by crew members.

(d) Special provision: unaccompanied baggage

Individuals departing the United States may ship unaccompanied baggage, which is baggage sent from the United States on a carrier other than that on which an individual departs. Crew members of exporting carriers may not ship unaccompanied baggage. Unaccompanied shipments under this License Exception shall be clearly marked "BAGGAGE." Shipments of unaccompanied baggage may be made at the time of, or within a reasonable time before or after departure of the consignee or owner from the United States. Personal baggage controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), encryption items (EI) or nuclear nonproliferation (NP) must be shipped within 3 months before or after the month in which the consignee or owner departs the United States. However, commodities controlled for CB, MT, NS, EI or NP may not be exported under this License

Exception as unaccompanied baggage to Country Groups D:1, D:2, D:3, D:4, or E:1. (See Supplement No. 1 of this part).

(e) Special provisions: shotguns and shotgun shells

(1) A United States citizen or a permanent resident alien leaving the United States may export or reexport shotguns with a barrel length of 18 inches or over and shotgun shells under this License Exception, subject to the following limitations:

(i) Not more than three shotguns may be taken on any one trip.

(ii) The shotguns and shotgun shells must be with the person's baggage but they may not be mailed.

(iii) The shotguns and shotgun shells must be for the person's exclusive use for legitimate hunting or lawful sporting purposes, scientific purposes, or personal protection, and not for resale or other transfer of ownership or control. Accordingly, except as provided in (e)(2) of this section, shotguns may not be exported permanently under this License Exception. All shotguns and unused shotgun shells must be returned to the United States. Note that since certain countries may require an Import Certificate or a U.S. export license before allowing the import of a shotgun, you should determine the import requirements of your country of destination in advance.

(2) A nonresident alien leaving the United States may export or reexport under this License Exception only such shotguns and shotgun shells as he or she brought into the United States under the provisions of the Department of Justice Regulations (27 CFR 478.115(d)).

(f) Special provisions: encryption commodities and software subject to EI controls on the Commerce Control List

(1) A U.S. citizen or permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(20) may use this license exception to export or reexport encryption commodities and software to any destination not in Country Group E:1 of Supplement No. 1 of this part.

(2) A person other than a U.S. citizen or permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(20) (except a national of a country listed in Country Group E:1 of Supplement No. 1 of this part who is not a U.S. citizen or permanent resident alien of the United States) may also use this license exception to export or reexport encryption commodities and software to any destination not in Country Group E:1 of Supplement No. 1 of this part.

(g) Special provision: restrictions for Export or Reexport of Technology.

This authorization for the export or reexport of technology under the tools of trade provisions of paragraph (b)(4) of this section may be used only if:

(1) The technology is to be used overseas solely by individuals or members of their immediate families traveling with them provided they are U.S. persons as defined in paragraph (b)(4)(i).

(2) The exporting or reexporting party and the recipient take adequate security precautions to protect against unauthorized access to the technology while the technology is being transmitted and used overseas. 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 e-mail and other business activities that involve the transmission and use of the technology authorized under this license exception;

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

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

(3) The technology authorized under these provisions may not be used for foreign production purposes or for technical assistance unless authorized by BIS;

(4) Any encryption item controlled under ECCN 5E002 is not exported or reexported to any destination listed in Country Group E:1 of Supplement No. 1 of this part.

(h) ***Special provisions: personal protective equipment classified under ECCN 1A613.c or .d.***

(1) Exports, reexports, or in-country transfers to countries not identified in Country Group D:5. U.S. persons may export, reexport, or transfer (in-country) one set of body armor classified under ECCN 1A613.d, which may include one helmet classified under or ECCN 1A613.c, to countries not identified in Country Group D:5, provided that:

(i) The items are with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(ii) The items are for that person's exclusive use and not for transfer of ownership unless reexported or transferred (in-country) to another U.S. person.

(2) Exports, reexports, or in-country transfers to countries identified in Country Group D:5.

(i) Afghanistan. U.S. persons may export, reexport, or transfer (in-country) one set of body armor classified under ECCN 1A613.d, which may include one helmet classified under ECCN 1A613.c, to Afghanistan for personal use provided that the requirements in paragraph (h)(1) of this section are met.

(ii) Iraq. U.S. persons may export, reexport, or transfer (in-country) one set of body armor classified under ECCN 1A613.d, which may include one helmet classified under ECCN 1A613.c, to Iraq for personal use provided that the requirements in paragraph (h)(1) of this section are met. In addition, the U.S. person must be affiliated with the U.S. Government and traveling on official business or traveling in support of a U.S. Government contract, or the U.S. person must be traveling to Iraq under a direct authorization by the Government of Iraq and engaging in activities for, on behalf of, or at the request of, the Government of Iraq. Documentation regarding direct authorization from the Government of Iraq shall include an English translation.

(iii) Other countries in Country Group D:5. U.S. persons may export, reexport, or transfer (in-country) one set of body armor classified under ECCN 1A613.d, which may include one helmet classified under ECCN 1A613.c, provided that the requirements in paragraph (h)(1) of this section are met, and the U.S. person is affiliated with the U.S. Government traveling on official business or is traveling in support of a U.S. Government contract.

Note to paragraph (h): *Body armor controlled under ECCN 1A005 is eligible for this License Exception under paragraph (b) of this section.*

§ 740.15 AIRCRAFT, VESSELS AND SPACECRAFT (AVS)

This License Exception authorizes departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. civil aircraft for temporary sojourn abroad; the export of equipment and spare parts for permanent use on a vessel or aircraft; exports to vessels or planes of U.S. or Canadian registry and U.S. or Canadian Airlines' installations or agents; and the export of spacecraft and components for fundamental research. Generally, no License Exception symbol is necessary for export clearance

purposes; however, when necessary, the symbol "AVS" may be used.

(a) Aircraft on temporary sojourn

(1) Foreign registered aircraft. An operating civil aircraft of foreign registry that has been in the United States on a temporary sojourn may depart from the United States under its own power for any destination, provided that:

(i) No sale or transfer of operational control of the aircraft to nationals of a destination in Country Group E:1 (see Supplement No. 1 to this part) has occurred while in the United States;

(ii) The aircraft is not departing for the purpose of sale or transfer of operational control to nationals of a destination in Country Group E:1 (see Supplement No. 1 to this part); and

(iii) It does not carry from the United States any item for which an export license is required and has not been granted by the U.S. Government.

(2) U.S. registered aircraft.

(i) A civil aircraft of U.S. registry operating under an Air Carrier Operating Certificate, Commercial Operating Certificate, or Air Taxi Operating Certificate issued by the Federal Aviation Administration or conducting flights under operating specifications approved by the Federal Aviation Administration pursuant to 14 CFR part 129 of the regulations of the Federal Aviation Administration, may depart from the United States under its own power for any destination, provided that:

(A) The aircraft does not depart for the purpose of sale, lease or other disposition of operational control of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(B) The aircraft's U.S. registration will not be changed while abroad;

(C) The aircraft is not to be used in any foreign military activity while abroad; and

(D) The aircraft does not carry from the United States any item for which a license is required and has not been granted by the U.S. Government.

(ii) Any other operating civil aircraft of U.S. registry may depart from the United States under its own power for any destination, except to a destination in Country Group E:1 (see Supplement No. 1 to this part) (flights to these destinations require a license), provided that:

(A) The aircraft does not depart for the purpose of sale, lease or other disposition of operational control of the aircraft, or its equipment, parts, accessories, or components to a foreign country or any national thereof;

(B) The aircraft's U.S. registration will not be changed while abroad;

(C) The aircraft is not to be used in any foreign military activity while abroad;

(D) The aircraft does not carry from the United States any item for which an export license is required and has not been granted by the U.S. Government; and

(E) The aircraft will be operated while abroad by a U.S. licensed pilot, except that during domestic flights within a foreign country, the aircraft may be operated by a pilot currently licensed by that foreign country.

(3) Criteria. The following nine criteria each must be met if the flight is to qualify as a temporary sojourn. To be considered a temporary sojourn, the flight must not be for the purpose of sale or transfer of operational control. An export is for the transfer of operational control unless the exporter retains each of the following indicia of control:

(i) ***Hiring of cockpit crew.*** Right to hire and fire the cockpit crew.

(ii) ***Dispatch of aircraft.*** Right to dispatch the aircraft.

(iii) ***Selection of routes.*** Right to determine the aircraft's routes (except for contractual commitments entered into by the exporter for specifically designated routes).

(iv) ***Place of maintenance.*** Right to perform or obtain the principal maintenance on the aircraft, which principal maintenance is conducted outside a destination in Country Group E:1 (see Supplement No. 1 to this part), under the control of a party who is not a national of any of these countries. (The minimum necessary in-transit maintenance may be performed in any country).

(v) ***Location of spares.*** Spares are not located in a destination in Country Group E:1 (see Supplement No. 1 to this part).

(vi) ***Place of registration.*** The place of registration is not changed to a destination in Country Group E:1 (see Supplement No. 1 to this part).

(vii) ***No transfer of technology.*** No technology is transferred to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part), except the minimum necessary in transit maintenance to perform flight line servicing required to depart safely.

(viii) ***Color and logos.*** The aircraft does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 (see Supplement No. 1 to this part).

(ix) ***Flight number.*** The aircraft does not fly under a flight number issued to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part) as such a number appears in the Official Airline Guide.

(4) Reexports. Civil aircraft legally exported from the United States may be reexported under this section, provided the restrictions described in this paragraph (a) are met.

Note to paragraph (a). *An aircraft exported or reexported to a country pursuant to this paragraph (a) may not remain in that country for more than seven consecutive days before it departs for a country to which it may be exported without a license or the United States.*

(b) Equipment and spare parts for permanent use on a vessel or aircraft, and ship and plane stores

(1) Vessel. Equipment and spare parts for permanent use on a vessel, when necessary for the proper operation of such vessel, may be exported or reexported for use on board a vessel of any registry, except a vessel registered in Country Group D:1 (see Supplement No. 1 to part 740), Cuba, or owned or controlled by, or under charter or lease to any of these countries or their nationals. In addition, other equipment and services for necessary repair to fishing and fishery support vessels of Country Group D:1 may be exported for use on board such vessels when admitted into the United States under governing international fishery agreements.

(2) Aircraft. Equipment and spare parts for permanent use on an aircraft, when necessary for the proper operation of such aircraft, may be exported or reexported for use on board an aircraft of any registry, except an aircraft registered in, owned or controlled by, or under charter or lease to a country included in Country Group D:1, Cuba, or a national of any of these countries.

(3) Ship and plane stores. Usual and reasonable kinds and quantities of the following commodities may be exported for use or consumption on board an aircraft or vessel of any registry during the outgoing and immediate return flight or voyage. (Note that fuel and related commodities that qualify as ship or plane stores as described in this License Exception must be

exported under the short supply License Exception SPR (see §754.2(h) of the EAR.)

(i) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements;

(ii) Medical and surgical supplies;

(iii) Food stores;

(iv) Slop chest articles;

(v) Saloon stores or supplies.

(4) Cuba. Only 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) are eligible for export or reexport to Cuba pursuant to this paragraph (b).

(c) Shipments to U.S. or Canadian vessels, planes and airline installations or agents

(1) Exports to vessels or planes of U.S. or Canadian registry. Export may be made of the commodities set forth in paragraph (c)(3) of this section, for use by or on a specific vessel or plane of U.S. or Canadian registry located at any seaport or airport outside the United States or Canada except a port in Cuba or Country Group D:1 (excluding the PRC), (see Supplement No. 1 to part 740) provided that such commodities are all of the following:[3]

(i) Ordered by the person in command or the owner or agent of the vessel or plane to which they are consigned;

(ii) Intended to be used or consumed on board such vessel or plane and necessary for its proper operation;

(iii) In usual and reasonable kinds and quantities during times of extreme need; and

(iv) Shipped as cargo for which Electronic Export Information (EEI) is filed to the Automated Export System (AES) in accordance with the requirements of the Foreign Trade Regulations (FTR) (15 CFR Part 30), except EEI is not required to be filed when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their own use, see 15 CFR 30.37(o) of the FTR.

(2) Exports to U.S. or Canadian airline's installation or agent. Exports of the commodities set forth in paragraph (c)(3) of this section, except fuel, may be made to a U.S. or Canadian airline's[4] installation or agent in any foreign destination except Cuba or Country Group D:1 (excluding the PRC), (see Supplement No. 1 to part 740) provided such commodities are all of the following:

(i) Ordered by a U.S. or Canadian airline and consigned to its own installation or agent abroad;

(ii) Intended for maintenance, repair, or operation of aircraft registered in either the United States or Canada, and necessary for the aircraft's proper operation, except where such aircraft is located in, or owned, operated or controlled by, or leased or chartered to, Cuba or Country Group D:1 (excluding the PRC) (see Supplement No. 1 to part 740) or a national of such country;

(iii) In usual and reasonable kinds and quantities; and

(iv) Shipped as cargo for which Electronic Export Information (EEI) is filed to the

[3] Where a license is required, see §§ 748.1, 748.4 and 748.6 of the EAR.

[4] See Part 772 of the EAR for definitions of United States and Canadian airlines.

Automated Export System (AES) in accordance with the requirements of the Foreign Trade Regulations (FTR) (15 CFR Part 30), except EEI is not required to be filed when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations, see 15 CFR 30.37(o) of the FTR.

(3) Applicable commodities. This paragraph (c) applies to the following commodities, subject to the provisions in paragraph (c)(1) and (c)(2) of this section:

Note to paragraph (c)(3) of this section: *Fuel and related commodities for shipment to vessels or planes of U.S. or Canadian registry as described in this License Exception must be shipped under the short supply License Exception SPR (see §754.2(h) of the EAR);*

(i) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements;

(ii) Medical and surgical supplies;

(iii) Food stores;

(iv) Slop chest articles;

(v) Saloon stores or supplies; and

(vi) Equipment and spare parts.

(d) Vessels on temporary sojourn

(1) Foreign flagged vessels. A foreign flagged vessel in the United States may depart from the United States under its own power for any destination, provided that:

(i) No sale or transfer of operational control of the vessel to nationals of a destination in Country Group E:1 (*see* Supplement No.1 to this part) has occurred while in the United States;

(ii) The vessel is not departing for the purpose of sale or transfer of operational control to nationals of a destination in Country Group E:1 (*see* Supplement No. 1 to this part); and

(iii) The vessel does not carry from the United States any item for which a license is required and has not been granted by the U.S. Government.

(2) U.S. flagged vessels. A U.S. flagged vessel may depart from the United States under its own power for any destination, provided that:

(i) The vessel does not depart for the purpose of sale, lease, or transfer of operational control of the vessel, or its equipment, parts, accessories, or components, to a foreign country or any national thereof;

(ii) The vessel's U.S. flag will not be changed while abroad;

(iii) The vessel will not be used in any foreign military activity while abroad;

(iv) The vessel will not carry from the United States any item for which a license is required and has not been granted by the U.S. Government;

(v) Spares for the vessel are not located in a destination in Country Group E:1 (*see* Supplement No. 1 to this part);

(vi) Technology is not transferred to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part), except the minimum necessary in-transit maintenance to perform servicing required to depart and enter a port safely; and

(vii) The vessel does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 (*see* Supplement No. 1 to this part).

(3) Criteria for temporary sojourn of vessels. The following criteria must be met if a voyage is to be considered a temporary sojourn under this paragraph (d). To be considered a temporary

sojourn, the voyage must not be for the purpose of sale or transfer of operational control. A transfer of operational control occurs unless the exporter or reexporter retains each of the following indicia of control:

(i) ***Hiring of crew***. Right to hire and fire the crew.

(ii) ***Dispatch of vessel*****.** Right to dispatch the vessel.

(iii) ***Selection of routes*****.** Right to determine the vessel's routes (except for contractual commitments entered into by the exporter for specifically designated routes).

(iv) ***Place of maintenance*****.** Right to perform or obtain the principal maintenance on the vessel, which principal maintenance is conducted outside a destination in Country Group E:1 (*see* Supplement No. 1 to this part), under the control of a party who is not a national of any of these countries. (The minimum necessary in-transit maintenance may be performed in any country).

(4) Reexports. Vessels subject to the EAR may be reexported under this section on temporary sojourn, provided that:

(i) The vessel does not depart for the purpose of sale, lease, or transfer of operational control of the vessel, or its equipment, parts, accessories, or components, to a foreign country or any national thereof;

(ii) The vessel's flag will not be changed while abroad;

(iii) The vessel will not be used in any foreign military activity while abroad;

(iv) The vessel will not carry any item for which a license is required and has not been granted by the U.S. Government;

(v) Spares for the vessel are not located in a destination in Country Group E:1 (*see* Supplement No. 1 to this part);

(vi) Technology is not transferred to a national of a destination in Country Group E:1 (*see* Supplement No. 1 to this part), except the minimum necessary in-transit maintenance to perform servicing required to depart and enter a port safely; and

(vii) The vessel does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 (*see* Supplement No. 1 to this part).

(5) No vessels may be exported or reexported under this License Exception to a country in Country Group E:1.

(6) Cuba. Only the types of vessels listed in this paragraph (d)(6) departing for Cuba for the purposes listed in this paragraph (d)(6) may depart for Cuba pursuant to this paragraph (d). Vessels used to transport both passengers and items to Cuba may transport automobiles only if the export or reexport of the automobiles to Cuba have been authorized by a separate license issued by BIS (*i.e.*, not authorized by license exception).

(i) Cargo vessels for hire for use in the transportation of items;

(ii) Passenger vessels for hire for use in the transportation of passengers and/or items; and

(iii) Recreational vessels that are used in connection with travel authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC).

Note to paragraph (d). *A vessel exported or reexported to a country pursuant to this paragraph (d) may not remain in that country for more than 14 consecutive days before it departs for a country to which it may be exported without a license or the United States.*

(e) Spacecraft for launch

This paragraph (e) authorizes the export by accredited U.S. institutions of higher learning of commodities subject to the EAR fabricated only for fundamental research purposes when all of the following conditions are met:

(1) The export is to an accredited institution of higher learning, a governmental research center, or an established government funded private research center located in a country other than Country Group D:5 (see Supp. No. 1 to this part) and involves exclusively nationals of such countries;

(2) All the information about the commodity, including its design, and all of the resulting information obtained through fundamental research involving the commodity will be published and shared broadly within the scientific community, and is not restricted for proprietary reasons or specific U.S. government access and dissemination controls or other restrictions accepted by the institution or its researchers on publication of scientific and technical information resulting from the project or activity (see §734.11 of the EAR); and

(3) If the commodity is for permanent export, the platform or system into which the commodity will be incorporated must be a scientific, research, or experimental satellite and must be exclusively concerned with fundamental research and may only be launched into space from countries and by nationals of countries not identified in Country Group D:5.

§ 740.16 ADDITIONAL PERMISSIVE REEXPORTS (APR)

This License Exception allows the following reexports:

(a) Reexports from Country Group A:1 and cooperating countries

Reexports may be made from countries in Country Group A:1 or from Hong Kong, provided that:

(1) The reexport is made in accordance with the conditions of an export authorization from the government of the reexporting country;

(2) The commodities being reexported are not controlled for NP, CB, MT, SI or CC reasons and are not military commodities described in ECCN 0A919 or cameras described in ECCN 6A003.b.3 (having the characteristics listed in 6A002.a.2.a or a.2.b), 6A003.b.4.b, 6A003.b.4.c, or commodities described in 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications), 6A002.a.2.a, a.2.b, a.2.c, a.3.b.2.b, or a.3.g; and

(3) The reexport is destined to *either*:

(i) A country in Country Group B that is not also included in Country Group D:2, D:3, or D:4; and the commodity being reexported is both controlled for national security reasons and not controlled for export to Country Group A:1; or

(ii) A country in Country Group D:1 (National Security) (see Supplement No. 1 to part 740), other than North Korea and the commodity being reexported is controlled for national security reasons.

(b) Reexports to and among specified countries.

(1) Commodities that are not controlled for nuclear nonproliferation or missile technology reasons, described in 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications), nor listed in paragraph (b)(2) or (b)(3) of this section may be reexported to and among destinations in Country Group A:1 and Hong Kong, provided that eligible commodities are for use or consumption within a destination in Country Group A:1 (see Supplement No. 1 to part 740) or Hong Kong, or for reexport from such country in accordance with other provisions of the EAR.

(2) Except as provided in paragraph (b)(3) of this section, cameras described in ECCN 6A003.b.3 (having the characteristics listed in 6A002.a.2.a or a.2.b), 6A003.b.4.b, 6A003.b.4.c, or components described in 6A002.a.2.a, a.2.b, a.2.c, a.3.b.2.b, or a.3.g, and "military commodities" described in ECCN 0A919 may not be exported under this paragraph (b).

(3) Cameras described in ECCN 6A003.b.3 (having the characteristics listed in 6A002.a.2.a or a.2.b), 6A003.b.4.b, or 6A003.b.4.c may be exported or reexported to and among destinations in Country Group A:1 (see Supplement No. 1 to part 740) if:

(i) Such cameras are fully packaged for use as consumer ready civil products; or,

(ii) Such cameras with not more than 111,000 elements are to be embedded in civil products.

(c) Reexports to a destination to which direct shipment from the United States is authorized under an unused outstanding license may be made under the terms of that license. Such reexports shall be recorded in the same manner as exports are recorded, regardless of whether the license is partially or wholly used for reexport purposes. (See part 762 of the EAR for recordkeeping requirements.)

(d) Reexports of any item from Canada that, at the time of reexport, may be exported directly from the United States to the new country of destination under any License Exception.

(e) Reexports (return) to the United States of any item. If the reexporting party requests written authorization because the government of the country from which the reexport will take place requires formal U.S. Government approval, such authorization will generally be given.

(f) Reexports from a foreign destination to Canada of any item if the item could be exported to Canada without a license.

(g) [RESERVED]

(h) Shipments of foreign-made products that incorporate U.S.-origin components may be accompanied by U.S.-origin controlled spare parts, provided that they do not exceed 10 percent of the value of the foreign-made product, subject to the restrictions in §734.4 of the EAR.

(i) Reexports to Sudan of items controlled by ECCNs 2A994; 3A992.a; 5A991.g; 5A992; 6A991; 6A998; 7A994; 8A992.d, .e, .f, and .g; 9A990.a and .b; and 9A991.d and .e. In addition, items in these ECCNs are not counted as controlled U.S. content for purposes of determining license requirements for U.S. parts, components, and materials incorporated in foreign-made products. However, the export from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Sudan is prohibited without a license.

(j) Reexports of items controlled by NP Column 1 (see Supplement No. 1 to part 774 of the EAR) to, among, and from countries described in Country Group A:4 (see Supplement No. 1 to part 740), except:

(1) Reexports from countries that are not identified in Country Group A:1 of items that are controlled for NS reasons to destinations in Country Group D:1; and

(2) Reexports to destinations in Country Group E:2 and Country Group D:2.

§ 740.17 ENCRYPTION COMMODITIES, SOFTWARE AND TECHNOLOGY (ENC)

License Exception ENC authorizes export and reexport of systems, equipment, commodities and components therefor that are classified under ECCNs 5A002.a.1, a.2, a.5, a.6 or a.9, systems, equipment and components therefor classified under ECCN 5B002, and equivalent or related software and technology classified under ECCNs

5D002 or 5E002. This License Exception ENC does not authorize export or reexport to, or provision of any service in any country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR, or release of source code or technology to any national of a country listed in Country Group E:1. Reexports and transfers under License Exception ENC are subject to the criteria set forth in paragraph (c) of this section. Paragraphs (b) and (d) of this section set forth information about encryption registrations and classifications required by this section. Paragraph (e) sets forth reporting required by this section. For items exported under paragraphs (b)(1), (b)(3)(i), (b)(3)(ii) or (b)(3)(iv) of this section and therefore excluded from paragraph (e) reporting requirements, exporters are reminded of the recordkeeping requirements in part 762 of the EAR and that they may be required to make such records available upon request. All classification requests, registrations, and reports submitted to BIS pursuant to this section for encryption items will be reviewed by the ENC Encryption Request Coordinator, Ft. Meade, MD.

(a) No classification request, registration or reporting required

(1) Internal "development" or "production" of new products. License Exception ENC authorizes exports and reexports of items described in paragraph (a)(1)(i) of this section, to end-users described in paragraph (a)(1)(ii) of this section, for the intended end-use described in paragraph (a)(1)(iii) of this section without submission of encryption registration, classification request, self-classification report or sales report to BIS.

(i) *Eligible items*. Eligible items are those classified under ECCNs 5A002.a.1, .a.2, .a.5, .a.6, .a.9, or .b, ECCN 5B002, and equivalent or related software and technology classified under ECCNs 5D002 or 5E002.

(ii) *Eligible End-users*. Eligible end-users are 'private sector end-users' wherever located that are headquartered in a country listed in Supplement No. 3 of this part.

Note to paragraph (a)(1)(ii): *A 'private sector end-user' is: (1) An individual who is not acting on behalf of any foreign government; or (2) A commercial firm (including its subsidiary and parent firms, and other subsidiaries of the same parent) that is not wholly owned by, or otherwise controlled by or acting on behalf of, any foreign government.*

(iii) *Eligible End-use*. The eligible end-use is internal "development" or "production" of new products by those end-users.

Note to paragraph (a)(1)(iii): *All items produced or developed with items exported or reexported under this paragraph (a)(1) are subject to the EAR. These items may require the submission of a classification request or encryption registration before sale, reexport or transfer, unless otherwise authorized by license or license exception.*

(2) Exports and reexports to "U.S. Subsidiaries." License Exception ENC authorizes export and reexport of systems, equipment, commodities and components therefor classified under ECCNs 5A002.a.1, .a.2, .a.5, .a.6, .a.9, or .b, systems, equipment, and components therefor classified under ECCN 5B002, and equivalent or related software and technology classified under ECCNs 5D002 or 5E002, to any "U.S. subsidiary," wherever located without submission of an encryption registration, classification request, self-classification report or sales report to BIS. License Exception ENC also authorizes export or reexport of such items by a U.S. company and its subsidiaries to foreign nationals who are employees, contractors or interns of a U.S. company or its subsidiaries if the items are for internal company use, including the "development" or "production" of new products, without prior review by the U.S. Government.

Note to paragraph (a)(2): *All items produced or developed with items exported or reexported*

under this paragraph (a)(2) are subject to the EAR. These items may require the submission of a classification request or encryption registration before sale, reexport or transfer to non-"U.S. subsidiaries", unless otherwise authorized by license or license exception.

(b) Encryption registration required, with classification request or self-classification report

Exports and reexports authorized under paragraphs (b)(1), (b)(2) and (b)(3) of License Exception ENC require submission of an encryption registration in accordance with paragraph (d) of this section and the specific instructions of paragraph (r)(1) of Supplement No. 2 to part 748 of the EAR. For items self-classified under paragraph (b)(1) of this section from June 25, 2010 through August 24, 2010, and for requests for classification under paragraphs (b)(2) and (b)(3) of this section submitted from June 25, 2010 through August 24, 2010, exporters have until August 24, 2010 to submit their encryption registrations. In addition: for paragraph (b)(1) of this section a self-classification report in accordance with § 742.15(c) of the EAR is also required from specified exporters and reexporters; for paragraphs (b)(2) and (b)(3) of this section, a thirty-day (30-day) classification request is required in accordance with paragraph (d) of this section. See paragraph (f) of this section for grandfathering provisions applicable to certain encryption items reviewed and classified by BIS under this license exception prior to June 25, 2010. Only License Exception ENC authorizations under this paragraph (b) to a company that has fulfilled the requirements of encryption registration (such as the producer of the item) authorize the export and reexport of the company's encryption items by all persons, wherever located, under this license exception. When an exporter or reexporter relies on the producer's self-classification (pursuant to the producer's encryption registration) or CCATS for an encryption item eligible for export or reexport under License Exception ENC under paragraph (b)(1), (b)(2), or (b)(3) of this section, it is not required to submit an encryption registration, classification request or self-classification report. Exporters are still required to comply with semi-annual sales reporting requirements under paragraph (e) of this section, even if relying on a CCATS issued to a producer for specified encryption items described in paragraphs (b)(2) and (b)(3)(iii) of this section.

(1) Immediate authorization. Once an encryption registration is submitted to BIS in accordance with paragraph (d) of this section and an Encryption Registration Number (ERN) has been issued, this paragraph (b)(1) authorizes the exports or reexports of the associated commodities classified under ECCNs 5A002.a.1, .a.2, .a.5, .a.6, .a.9, or .b, or ECCN 5B002, and equivalent or related software classified under ECCN 5D002, except any such commodities, software or components described in (b)(2) or (b)(3) of this section, subject to submission of a self-classification report in accordance with § 742.15(c) of the EAR.

(2) Classification request required. Thirty (30) days after the submission of a classification request with BIS in accordance with paragraph (d) of this section and subject to the reporting requirements in paragraph (e) of this section, this paragraph under License Exception ENC authorizes certain exports or reexports of the items submitted for classification, as further described in paragraphs (b)(2)(i), (b)(2)(ii) and (b)(2)(iv)(B) of this section.

Note to introductory text of paragraph (b)(2): *Immediately after the classification request is submitted to BIS in accordance with paragraph (d) of this section and subject to the reporting requirements in paragraph (e) of this section, this paragraph also authorizes exports or reexports of:*

1. All submitted encryption items described in this paragraph (b)(2), except "cryptanalytic items," to any end-user located or headquartered in a country listed in Supplement No. 3 to this part;

2. Encryption source code as described in paragraph (b)(2)(i)(B) to non-"government end-users" in any country;

3. "Cryptanalytic items" to non-"government end-users", only, located or headquartered in a country listed in Supplement No. 3 to this part; and

4. Items described in paragraphs (b)(2)(iii) and (b)(2)(iv)(A) of this section, to specified destinations and end-users.

(i) ***Cryptographic commodities, software and components.*** The following items to non "government end-users" located or headquartered in a country not listed in Supplement No. 3 to this part:

(A) Network infrastructure software and commodities and components thereof (including commodities and software necessary to activate or enable cryptographic functionality in network infrastructure products) providing secure Wide Area Network (WAN), Metropolitan Area Network (MAN), Virtual Private Network (VPN), satellite, digital packet telephony/media (voice, video, data) over internet protocol, cellular or trunked communications meeting any of the following with key lengths exceeding 80-bits for symmetric algorithms:

(1) Aggregate encrypted WAN, MAN, VPN or backhaul throughput (including communications through wireless network elements such as gateways, mobile switches, and controllers) greater than 90 Mbps;

(2) Wire (line), cable or fiber optic WAN, MAN or VPN single channel input data rate exceeding 154 Mbps;

(3) Transmission over satellite at data rates exceeding 10 Mbps;

(4) Media (voice/video/data) encryption or centralized key management supporting more than 250 concurrent encrypted data channels, or encrypted signaling to more than 1,000 endpoints, for digital packet telephony / media (voice/video/data) over internet protocol communications; *or*

(5) Air interface coverage (e.g., through base stations, access points to mesh networks, and bridges) exceeding 1,000 meters, where any of the following applies:

(i) Maximum transmission data rates exceeding 10 Mbps (at operating ranges beyond 1,000 meters);

(ii) Maximum number of concurrent full-duplex voice channels exceeding 30; *or*

(iii) Substantial support is required for installation or use;

(B) Encryption source code that would not be eligible for export or reexport under License Exception TSU because it is not publicly available as that term is used in § 740.13(e)(1) of the EAR;

(C) Encryption software, commodities and components therefor, that have any of the following:

(1) Been designed, modified, adapted or customized for "government end-user(s)";

(2) Cryptographic functionality that has been modified or customized to customer specification*; or*

(3) Cryptographic functionality or "encryption component" (except encryption software that would be considered publicly available, as that term is used in § 740.13(e)(1) of the EAR) that is user-accessible and can be easily changed by the user;

(D) Encryption commodities and software that provide functions necessary for quantum cryptography, as defined in ECCN 5A002 of the Commerce Control List;

(E) Encryption commodities and software that have been modified or customized for computers classified under ECCN 4A003;

(F) Encryption commodities and software that provide penetration capabilities that are capable of attacking, denying, disrupting or otherwise impairing the use of cyber infrastructure or networks;

(G) Public safety / first responder radio (e.g., implementing Terrestrial Trunked Radio (TETRA) and/or Association of Public-Safety Communications Officials International (APCO) Project 25 (P25) standards);

(ii) Cryptanalytic commodities and software. Commodities and software classified as "cryptanalytic items" to non "government end users" located or headquartered in countries not listed in Supplement No. 3 to this part;

(iii) ***"Open cryptographic interface" items.*** Items that provide an "open cryptographic interface", to any end-user located or headquartered in a country listed in Supplement No. 3 to this part.

(iv) ***Specific encryption technology.*** Specific encryption technology as follows:

(A) ***Technology for "non-standard cryptography".*** Encryption technology classified under ECCN 5E002 for "non-standard cryptography", to any end-user located or headquartered in a country listed in Supplement No. 3 to this part;

(B) ***Other technology.*** Encryption technology classified under ECCN 5E002 except technology for "cryptanalytic items", "non-standard cryptography" or any "open cryptographic interface," to any non-"government end-user" located in a country not listed in Country Group D:1 or E:1 of Supplement No. 1 to part 740 of the EAR.

Note to paragraph (b)(2): *Commodities, software, and components that allow the end-user to activate or enable cryptographic functionality in encryption products which would otherwise remain disabled, are controlled according to the functionality of the activated encryption product.*

(3) Classification request required for specified commodities, software and components. Thirty (30) days after a classification request is submitted to BIS in accordance with paragraph (d) of this section and subject to the reporting requirements in paragraph (e) of this section, this paragraph authorizes exports or reexports of the items submitted for classification, as further described in this paragraph (b)(3), to any end-user, provided the item does not perform the functions, or otherwise meet the specifications, of any item described in paragraph (b)(2) of this section.

Note to introductory text of paragraph (b)(3): *Immediately after the classification request is submitted to BIS in accordance with paragraph (d) of this section and subject to the reporting requirements in paragraph (e) of this section, this paragraph also authorizes exports or reexports of the items described in this paragraph (b)(3) to any end-user located or headquartered in a country listed in Supplement No. 3 to this part.*

(i) Specified components classified under ECCN 5A002.a.1, .a.5 or .a.6 and equivalent or related software classified under ECCN 5D002 not described by paragraph (b)(2) of this section, as follows:

(A) Chips, chipsets, electronic assemblies and field programmable logic devices;

(B) Cryptographic libraries, modules, development kits and toolkits, including for operating systems and cryptographic service providers (CSPs);

(C) Application-specific hardware or software development kits implementing cryptography.

(ii) Encryption commodities, software and components not described by paragraph (b)(2) of this section, that provide or perform "non-standard cryptography" as defined in part 772 of the EAR.

(iii) Encryption commodities and software not described by paragraph (b)(2) of this section, that provide or perform vulnerability analysis, network forensics, or computer forensics functions characterized by any of the following:

(A) Automated network analysis, visualization, or packet inspection for profiling network flow, network user or client behavior, or network structure/topology and adapting in real-time to the operating environment; *or*

(B) Investigation of data leakage, network breaches, and other malicious intrusion activities through triage of captured digital forensic data for law enforcement purposes or in a similarly rigorous evidentiary manner.

(iv) ***Cryptographic enabling commodities and software.*** Commodities and software and components that activate or enable cryptographic functionality in encryption products which would otherwise remain disabled, where the product or cryptographic functionality is not otherwise described in paragraphs (b)(2) or (b)(3)(i) of this section.

(4) Exclusions from classification request, encryption registration and self-classification reporting requirements. License Exception ENC authorizes the export and reexport of the commodities and software described in this paragraph (b)(4) without the submission of a classification request, encryption registration or self-classification report to BIS, except that paragraph (b)(4)(ii) of this section does not authorize exports from the United States of foreign products developed with or incorporating U.S. origin encryption source code, components, or toolkits.

(i) ***Short range wireless encryption functions***. Commodities and software that are not otherwise controlled in Category 5, but are nonetheless classified under ECCN 5A002, 5B002 or 5D002 only because they incorporate components or software that provide short range wireless encryption functions (*e.g.*, with a nominal operating range not exceeding 100 meters according to the manufacturer's specifications, designed to comply with the Institute of Electrical and Electronic Engineers (IEEE) 802.11 wireless LAN standard or the IEEE 802.15.1 standard).

Note to paragraph (b)(4)(i): *An example of what this paragraph authorizes for export without classification, registration or self-classification reporting is a laptop computer that without encryption would be classified under ECCN 4A994, and the Category 5, Part 2-controlled components of the laptop only implement short-range wireless encryption functionality. On the other hand, this paragraph (b)(4)(i) does not apply to any commodities or software that would still be classified under an ECCN in Category 5 even if the short-range wireless encryption functionality were removed. For example, certain access points, gateways and bridges are classified under ECCN 5A991 without encryption functionality, and components for mobile communication equipment are classified under ECCN 5A991.g without encryption functionality. Such items, when implementing cryptographic functionality controlled by Category 5, Part 2 are not excluded from encryption classification, registration or self-classification reporting by this paragraph.*

(ii) ***Foreign products developed with or incorporating U.S.-origin encryption source code, components, or toolkits.*** Foreign products developed with or incorporating U.S. origin encryption source code, components or toolkits that are subject to the EAR, provided that the U.S. origin encryption items have previously been classified or registered and authorized by BIS and the cryptographic functionality has not been changed. Such products include foreign developed products that are designed to operate with U.S. products through a cryptographic interface.

(c) Reexport and transfer

U.S. or foreign distributors, resellers or other entities who are not original manufacturers of encryption commodities and software are permitted to use License Exception ENC only in instances where the export or reexport meets the applicable terms and conditions of this section. Transfers of encryption items listed in paragraph (b)(2) of this section to "government end-users," or for government end-uses, within the same country are prohibited, unless otherwise authorized by license or license exception.

(d) Encryption registration and classification request procedures

(1) Submission requirements and instructions. To submit an encryption registration or classification request to BIS, you must submit an application to BIS in accordance with the procedures described in §§ 748.1 and 748.3 of the EAR and the instructions in paragraph (r) of Supplement No. 2 to part 748 "Unique Application and Submission Requirements," along with other required information as follows:

(i) *Encryption registrations in support of encryption classification requests and self-classification reports*. You must submit the applicable information as described in Supplement No. 5 to part 742 of the EAR and follow the specific instructions of paragraph (r)(1) of Supplement No. 2 to part 748 of the EAR, if any of the following apply:

(A) This is your first time submitting an encryption classification request under paragraphs (b)(2) or (b)(3) of this section since August 24, 2010;

(B) You are making an encryption item eligible for export and reexport (including as defined for encryption software in § 734.2(b)(9) of the EAR) under paragraph (b)(1) of this section for the first time since August 24, 2010; *or*

(C) If you have not otherwise provided BIS the information described in Supplement No. 5 to part 742 during the current calendar year and your answers to the questions in Supplement No. 5 to part 742 have changed since the last time you provided answers to the questions.

(ii) ***Technical information submission requirements*.** In addition to the encryption registration requirements of paragraph (d)(1)(i) of this section, for all submissions of encryption classification requests for items described under paragraph (b)(2) or (b)(3) of this section, you must also provide BIS the applicable information described in paragraphs (a) through (d) of Supplement No. 6 to part 742 of the EAR (Technical Questionnaire for Encryption Items). For items authorized after submission of an encryption registration under paragraph (b)(1) of this section, you may be required to provide BIS this Supplement No. 6 to part 742 information on an as-needed basis, upon request by BIS.

(iii) ***Changes in encryption functionality following a previous classification.*** A new product encryption classification request (under paragraphs (b)(2) or (b)(3) of this section) or self-classification report (under paragraph (b)(1) of this section) is required if a change is made to the cryptographic functionality (e.g., algorithms) or other technical characteristics affecting License Exception ENC eligibility (e.g., encrypted throughput) of the originally classified product. However, a new product classification request or self-classification report is not required when a change involves: the subsequent bundling, patches, upgrades or releases of a product; name changes; or changes to a previously reviewed encryption product where the change is limited to updates of encryption software components where the product is otherwise unchanged.

(2) Action by BIS.

(i) ***Encryption registrations for paragraph (b) of this section.*** Upon submission to BIS of an encryption registration in accordance with paragraph (d)(1) of this section and acceptance of

the application by SNAP-R, BIS will issue the Encryption Registration Number (ERN) via SNAP-R, which will constitute authorization for exports and reexports of eligible items under paragraph (b)(1) of this license exception.

(ii) ***For items requiring classification by BIS under paragraphs (b)(2) and (b)(3) of this section.***

(A) For classifications that require a thirty (30) day waiting period, if BIS has not, within thirty-days (30-days) from registration in SNAP-R of your complete classification request, informed you that your item is not authorized for License Exception ENC, you may export or reexport under the applicable provisions of License Exception ENC.

(B) Upon completion of its classification, BIS will issue a Commodity Classification Automated Tracking System (CCATS) to you.

(C) ***Hold Without Action (HWA) for classification requests.*** BIS may hold your classification request without action if necessary to obtain additional information or for any other reason necessary to ensure an accurate classification. Time on such "hold without action" status shall not be counted towards fulfilling the thirty-day (30-day) processing period specified in this paragraph.

(iii) BIS may require you to supply additional relevant technical information about your encryption item(s) or information that pertains to their eligibility for License Exception ENC at any time, before or after the expiration of the thirty-day (30-day) processing period specified in this paragraph and in paragraphs (b)(2) and (b)(3) of this section, or after any registrations as required in paragraph (b)(1) of this section. If you do not supply such information within 14 days after receiving a request for it from BIS, BIS may return your classification request(s) without action or otherwise suspend or revoke your eligibility to use License Exception ENC for that item(s). At your request, BIS may grant you up to an additional 14 days to provide the requested information. Any request for such an additional number of days must be made prior to the date by which the information was otherwise due to be provided to BIS, and may be approved if BIS concludes that additional time is necessary.

(e) Reporting requirements

(1) Semiannual reporting requirement. Semiannual reporting is required for exports to all destinations other than Canada, and for reexports from Canada for items described under paragraphs (b)(2) and (b)(3)(iii) of this section. Certain encryption items and transactions are excluded from this reporting requirement, see paragraph (e)(1)(iii) of this section. For information about what must be included in the report and submission requirements, see paragraphs (e)(1)(i) and (e)(1)(ii) of this section respectively.

(i) ***Information required.*** Exporters must include for each item, the Commodity Classification Automated Tracking System (CCATS) number and the name of the item(s) exported (or reexported from Canada), and the following information in their reports:

(A) ***Distributors or resellers.*** For items exported (or reexported from Canada) to a distributor or other reseller, including subsidiaries of U.S. firms, the name and address of the distributor or reseller, the item and the quantity exported or reexported and, if collected by the exporter as part of the distribution process, the end user's name and address;

(B) ***Direct Sales.*** For items exported (or reexported from Canada) through direct sale, the name and address of the recipient, the item, and the quantity exported; or

(C) ***Foreign manufacturers and products that use encryption items.*** For exports (i.e., from the United States) or direct transfers (e.g., by a "U.S. subsidiary" located outside the United States) of encryption components, source code, general purpose toolkits, equipment controlled under ECCN 5B002, technology, or items that

provide an "open cryptographic interface", to a foreign developer or manufacturer headquartered in a country not listed in Supplement No. 3 to this part when intended for use in foreign products developed for commercial sale, the names and addresses of the manufacturers using these encryption items and, if known, when the product is made available for commercial sale, a non-proprietary technical description of the foreign products for which these encryption items are being used (*e.g.*, brochures, other documentation, descriptions or other identifiers of the final foreign product; the algorithm and key lengths used; general programming interfaces to the product, if known; any standards or protocols that the foreign product adheres to; and source code, if available).

(ii) ***Submission requirements.*** For exports occurring between January 1 and June 30, a report is due no later than August 1 of that year. For exports occurring between July 1 and December 31, a report is due no later than February 1 the following year. These reports must be provided in electronic form. Recommended file formats for electronic submission include spreadsheets, tabular text or structured text. Exporters may request other reporting arrangements with BIS to better reflect their business models. Reports may be sent electronically to BIS at crypt@bis.doc.gov and to the ENC Encryption Request Coordinator at enc@nsa.gov, or disks and CDs containing the reports may be sent to the following addresses:

(A) Department of Commerce, Bureau of Industry and Security, Office of National Security and Technology Transfer Controls, 14th Street and Pennsylvania Ave., NW, Room 2705, Washington, DC 20230, Attn: Encryption Reports, and

(B) Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6940, Ft. Meade, MD 20755-6000.

(iii) ***Exclusions from reporting requirement***. Reporting is not required for the following items and transactions:

(A) [RESERVED]

(B) Encryption commodities or software with a symmetric key length not exceeding 64 bits;

(C) Encryption items exported (or reexported from Canada) via free and anonymous download;

(D) Encryption items from or to a U.S. bank, financial institution or its subsidiaries, affiliates, customers or contractors for banking or financial operations;

(E) Items listed in paragraph (b)(4) of this section, unless it is a foreign item described in paragraph (b)(4)(ii) of this section that has entered the United States;

(F) Foreign products developed by bundling or compiling of source code;

(2) Key length increases. Reporting is required for commodities and software that, after having been classified and authorized for License Exception ENC in accordance with paragraphs (b)(2) or (b)(3) of this section, are modified only to upgrade the key length used for confidentiality or key exchange algorithms. Such items may be exported or reexported under the previously authorized provision of License Exception ENC without a classification resubmission.

(i) ***Information required.***

(A) A certification that no change to the encryption functionality has been made other than to upgrade the key length for confidentiality or key exchange algorithms.

(B) The original Commodity Classification Automated Tracking System (CCATS) authorization number issued by BIS and the date of issuance.

(C) The new key length.

(ii) ***Submission requirements.***

(A) The report must be received by BIS and the ENC Encryption Request Coordinator before the export or reexport of the upgraded product; and

(B) The report must be e-mailed to crypt@bis.doc.gov and enc@nsa.gov.

(f) Grandfathering

The following provisions apply to encryption items reviewed and classified by BIS under this license exception prior to June 25, 2010:

(1) Items described in paragraphs (b)(1) or (b)(3) of this section. For encryption commodities, software and components described in (or otherwise meeting the specifications of) paragraphs (b)(1) or (b)(3) of this section effective June 25, 2010, such items reviewed and classified by BIS prior to June 25, 2010 are authorized for export and reexport to eligible end-users and destinations under the applicable paragraph (b)(1) or (b)(3) of this license exception using the CCATS previously issued by BIS, without any encryption registration (i.e., the information described in Supplement No. 5 to part 742 of the EAR), new classification by BIS, self-classification reporting (i.e., the information described in Supplement No. 8 to part 742 of the EAR), or semi-annual sales reporting required under section 740.17(e) provided the cryptographic functionality of the item has not changed. See paragraph (d)(1)(iii) of this section regarding changes in encryption functionality following a previous classification.

(2) Items described in paragraph (b)(2) of this section.

(i) ***Commodities, software and components described in paragraph (b)(2)(i) of this section.*** For encryption commodities, software and components described in (or otherwise meeting the specifications of) paragraph (b)(2)(i) of this section effective June 25, 2010, such items reviewed and classified by BIS prior to June 25, 2010 are authorized for export and reexport to eligible end-users and destinations under paragraph (b)(2) of this license exception using the CCATS previously issued by BIS, without any encryption registration (i.e., the information described in Supplement No. 5 to part 742 of the EAR) and new classification by BIS, provided the previous CCATS established License Exception ENC § 740.17(b)(2) treatment for the item and the cryptographic functionality of the item has not changed. See paragraph (d)(1)(iii) of this section regarding changes in encryption functionality following a previous classification. An encryption registration and updated classification must be submitted to BIS for items described in paragraph (b)(2)(i) of this section effective June 25, 2010 if the items were not previously classified under § 740.17(b)(2), even if the cryptographic functionality has not changed.

(ii) ***Cryptanalytic items, open cryptographic interface items, and encryption technology.*** For items described in (or otherwise meeting the specifications of) paragraphs (b)(2)(ii), (b)(2)(iii) or (b)(2)(iv) of this section effective June 25, 2010, such items reviewed and classified by BIS prior to June 25, 2010 are authorized for export and reexport to eligible end-users and destinations under paragraph (b)(2) of this license exception using the CCATS previously issued by BIS, without any encryption registration (i.e., the information described in Supplement No. 5 to part 742 of the EAR), new classification by BIS, or self-classification reporting (i.e., the information described in Supplement No. 8 to part 742 of the EAR), provided the cryptographic functionality of the item has not changed. See paragraph (d)(1)(iii) of this section regarding changes in encryption functionality following a previous classification.

§ 740.18 AGRICULTURAL COMMODITIES (AGR)

(a) Eligibility requirements

License Exception AGR permits the export of agricultural commodities to Cuba, as well as the reexport of U.S. origin agricultural commodities to Cuba, provided your transaction meets *all* of the following criteria:

(1) The commodity meets the definition of "agricultural commodities" in part 772 of the EAR;

(2) The commodity is EAR99. You must have an official commodity classification of EAR99 from BIS for fertilizers, western red cedar and live horses before you submit a notification under this license exception. See §748.3 of the EAR for information on how to submit a commodity classification request;

(3) The export or reexport is made pursuant to a written contract, except for donations and commercial samples which are not subject to this contract requirement;

(4) The export or reexport is made within 12 months of the signing of the contract or within 12 months of notification that no objections were raised (if no contract is required). In the case of multiple partial shipments, all such shipments must be made within the 12 months of the signing of the contract or within 12 months of notification that no objections were raised (if no contract is required); and

(5) You notify BIS prior to exporting or reexporting according to the procedures set forth in paragraph (c) of this section. If you intend to engage in multiple shipments during the one-year period after the signing of the contract, you need only notify BIS prior to the first shipment.

(b) Restrictions

(1) No export or reexport to any individual or entity designated as a Specially Designated Terrorist or Foreign Terrorist Organization may be made under License Exception AGR (see part 744 of the EAR).

(2) No export or reexport to or for use in biological, chemical, nuclear warfare or missile proliferation activities may be made under License Exception AGR (see part 744 of the EAR).

(3) No U.S.-owned or controlled foreign firm may export from abroad to Cuba a foreign produced agricultural commodity containing more than 25% U.S.-origin content. Such U.S.-owned or controlled foreign firms require a specific license from BIS as well as the Department of the Treasury's Office of Foreign Assets Control (OFAC). Transactions not subject to the EAR (under 25% U.S.-origin content) require a license from OFAC.

(c) Prior notification

(1) General requirement. You must notify BIS prior to any export or reexport (or prior to the first of multiple shipments) under License Exception AGR.

(2) Procedures. You must provide prior notification of exports and reexports under License Exception AGR by submitting a completed application in accordance with § 748.1 of the EAR. The following blocks must be completed, as appropriate: Blocks 1, 2, 3, 4, 5 (by marking box 5 "Other"), 14, 16, 17,18, 19, 21, 22 (a), (e), (f), (g), (h), (i), (j), 23, and 25 according to the instructions described in Supplement No. 1 to part 748 of the EAR. If your commodity is fertilizer, western red cedar or live horses, you must confirm that BIS has previously classified your commodity as EAR99 by placing the Commodity Classification Automatic Tracking System (CCATS) number in block 22(d). BIS will not initiate the registration of an AGR notification unless the application is complete.

(3) Action by BIS. Within two business days of the registration of the AGR notification, BIS will refer the notification for interagency review, or if necessary return the notification without action (e.g., if the information provided is incomplete). Registration is defined as the point at which the

notification is entered into BIS's electronic system.

(4) Review by other departments or agencies. The Departments of Defense, State, and other agencies, as appropriate, may review the AGR notification. BIS must receive department or agency objections within nine business days of the referral. Unlike the provisions described in §750.4(b) of the EAR, there are no provisions for stopping the processing time of the AGR notification. If, within 11 business days after the date of registration, any reviewing agency provides a written objection that the recipient may promote international terrorism or the transaction raises nonproliferation concerns, you may not use License Exception AGR. In such cases, BIS will notify you that a license is required for the export or reexport. BIS will then process the AGR notification as a license application in accordance with the provisions described in §750.4 of the EAR, and the licensing policies set forth in the EAR. At this time, BIS may request additional information. When BIS confirms that no agency has raised an objection within eleven business days (as described in paragraph (c)(5) of this section), you may proceed with the transaction provided that you satisfy all other requirements of License Exception AGR, including the requirement to have a written contract prior to any shipment (unless a donation or commercial sample). (Note that the fact that you have been advised that no agency has objected to the transaction does not exempt you from other licensing requirements under the EAR, such as those based on knowledge of a prohibited end-use or end-user as referenced in general prohibition five (part 736 of the EAR) and set forth in part 744 of the EAR.)

(5) Status of pending AGR notification requests. You must contact BIS's System for Tracking Export License Applications (STELA) (https://snapr.bis.doc.gov/stela) for status of your pending AGR notification or verify the status in BIS's Simplified Network Applications Processing Redesign (SNAP-R) System. STELA will provide the date of registration of the AGR notification. If no department or agency objection is raised within 11 business days, STELA will, on the twelfth business day following the date of registration, provide you with confirmation of that fact. You may not proceed with your shipment unless you confirm with either STELA or SNAP-R that no objection has been raised. If an objection is raised, STELA and SNAP-R will indicate that a license is required. The AGR notification will then be processed as a license application. In addition, BIS may provide notice of an objection by telephone, fax, courier service, or other means.

(d) Donations

(1) Donations of agricultural commodities are eligible for export and reexport to Cuba under License Exception AGR, provided the transaction meets the requirements and procedures of this license exception (except the written contract requirement).

(2) Donations of food items to non-governmental organizations (NGOs) and individuals in Cuba may also be eligible for License Exception GFT. See §740.12 for eligibility requirements of gift parcels and humanitarian donations under License Exception GFT.

§ 740.19 CONSUMER COMMUNICATIONS DEVICES (CCD)

(a) Authorizations

This section authorizes the export or reexport of commodities and software to Cuba or Sudan subject to the requirements stated herein. This section does not authorize U.S.-owned or -controlled entities in third countries to engage in reexports of foreign produced commodities to Cuba for which no license would be issued by the Department of the Treasury pursuant to 31 CFR 515.559.

(b) Eligible commodities and software

Commodities and software in paragraphs (b)(1) through (17) of this section are eligible for export

or reexport under this section to Cuba or Sudan. Commodities in paragraph (b)(18) of this section are eligible for export or reexport under this section to Sudan only.

(1) Consumer computers designated EAR99 or classified under Export Control Classification Numbers (ECCN) 5A992.c or 4A994.b;

(2) Consumer disk drives and solid state storage equipment classified under ECCN 5A992 or designated EAR99;

(3) Input/output control units (other than industrial controllers designed for chemical processing) designated EAR99;

(4) Graphics accelerators and graphics coprocessors designated EAR99;

(5) Monitors classified under ECCN 5A992.c or designated EAR99;

(6) Printers classified under ECCN 5A992.c or designated EAR99;

(7) Modems classified under ECCNs 5A991.b.2, 5A991.b.4., or 5A992.c or designated EAR99;

(8) Network access controllers and communications channel controllers classified under ECCN 5A991.b.4 or designated EAR99;

(9) Keyboards, mice and similar devices designated EAR99;

(10) Mobile phones, including cellular and satellite telephones, personal digital assistants, and subscriber information module (SIM) cards and similar devices classified under ECCNs 5A992.c or 5A991 or designated EAR99;

(11) Memory devices classified under ECCN 5A992.c or designated EAR99;

(12) Consumer "information security" equipment, "software" (except "encryption source code") and peripherals classified under ECCNs 5A992.c or 5D992.c or designated EAR99;

(13) Digital cameras and memory cards classified under ECCN 5A992 or designated EAR99;

(14) Television and radio receivers classified under ECCN 5A992 or designated EAR99;

(15) Recording devices classified under ECCN 5A992 or designated EAR99;

(16) Batteries, chargers, carrying cases and accessories for the equipment described in this paragraph that are designated EAR99;

(17) Consumer "software" (except "encryption source code") classified under ECCNs 4D994, 5D991 or 5D992.c or designated EAR99 to be used for equipment described in paragraphs (b)(1) through (b)(16) of this section; and

(18) (Sudan only) Global Positioning System receivers or similar satellite receivers controlled under ECCN 7A994.

Note to paragraph (b): *In this paragraph, the term "consumer" refers to items that are:*
1. Generally available to the public by being sold, without restriction, from stock at retail selling points by means of any of the following:
a. Over-the-counter transactions;
b. Mail order transactions;
c. Electronic transactions; or
d. Telephone call transactions; and
2. Designed for installation by the user without further substantial support by the supplier.

(c) Eligible and ineligible end-users

(1) Organizations.

(i) This license exception may be used to export or reexport eligible commodities and software to and for the use of independent non-governmental organizations in Cuba or Sudan.

(ii) The Cuban Government or the Cuban

Communist Party and organizations they administer or control are not eligible end-users.

(iii) The Government of Sudan is not an eligible end-user for any item exported or reexported pursuant to this license exception except for consumer software that is authorized under paragraph (b)(12) or (b)(17) of this section and that is distributed free of charge.

(2) Individuals.

This License Exception may be used to export eligible commodities and software to and for the use of individuals other than the following:

(i) ***Ineligible Cuban Government Officials.*** Ministers and vice-ministers; members of the Council of State; members of the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; or members and employees of the Supreme Court (Tribuno Supremo Nacional).

(ii) ***Ineligible Cuban Communist Party Officials.*** Members of the Politburo; the Central Committee; Department Heads of the Central Committee; employees of the Central Committee; and the secretaries and first secretaries of provincial Party central committees.

§ 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.

(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 any item controlled under ECCNs 0A981, 0A982, 0A983, 0A985 or 0E982.

(iii) License Exception STA may not be used for any item that is controlled for reason of encryption items (EI), short supply (SS), surreptitious listening (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.11, .d.12 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.11, .d.12 or .e or ECCNs 1C353 or 1C354) or ECCN 1E351.

(vi) Toxins controlled by ECCN 1C351.d.1 through 1C351.d.10 and 1C351.d.13 through 1C351.d.19 are authorized under License Exception STA to destinations indicated in Country Group A:5 (See Supplement No.1 to this part), subject to the following limits. For purposes of this paragraph, all such toxins that are sent from one exporter, reexporter or transferor to a single end-user, on the same day, constitute one shipment.

(A) The maximum amount of any one toxin in any one shipment may not exceed 100 milligrams.

(B) No exporter, reexporter or transferor may send more than six shipments of any one toxin to any one end user in a single calendar year.

(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 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.i (other than technology for fan or power turbines), 9E003.h; or

(2) Equipment controlled by 9B001.

(B) 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.i (other than technology for fan or power turbines) or 9E003.h.

(C) License Exception STA may not be used for 9D004.f or 9D004.g "software".

(D) License Exception STA may not be used for 9E001 "technology" according to the General Technology Note for the "development" of 9A001.b engines or components of engines controlled by 9A001.b if such components incorporate:

(1) Any of the "technologies" controlled by 9E003.a.1, 9E003.a.2, 9E003.a.3, 9E003.a.4, 9E003.a.5, 9E003.c, 9E003.i (other than technology for fan or power turbines) or 9E003.h;

(2) Any of the 9D001 or 9D002 software in paragraphs (b)(2)(viii)(A) or (B) of this section.

(E) License Exception STA may not be used for 9E002 "technology" according to the General Technology Note for the "production" of components of engines controlled by 9A001.b 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.i (other than technology for fan or power turbines) 9E003.h.

(F) 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.i (other than technology for fan or power turbines) 9E003.h.

(ix) [RESERVED]

(x) License Exception STA may not be used for any commodity controlled by ECCNs 6A002.a.2, a.3.a, a.3.b, a.3.g or .c, or any related "technology" controlled by 6E001 or 6E002.

(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.

(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 shipped 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 shipment of the same item, if the information remains accurate at the time of the additional shipment.

(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 shipped 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 reexporter or transferor makes an additional shipment of the same item, if the information remains accurate at the time of the additional shipment.

(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 prior to shipping the item and must retain the statement in accordance with part 762 of the EAR. One statement may be used for multiple shipments 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. 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 DESCRIPTION AND APPLICABLE ECCNS OF ITEMS TO BE SHIPPED] 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 ECCNs 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).

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

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

(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.

(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" end items*****.**

(1) Applicability. Any person may request License Exception STA eligibility for end items described in ECCN 0A606.a, ECCN 8A609.a, ECCN 8A620.a or .b, or ECCN 9A610.a or spacecraft described in 9A515.a that provide space-based logistics, assembly or servicing of any spacecraft (e.g., refueling).

(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 website) 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 website, 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.

§ 740.21 SUPPORT FOR THE CUBAN PEOPLE (SCP)

(a) Introduction

This License Exception authorizes certain exports and reexports 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) Building materials, equipment, and tools for use by the private sector to construct or renovate *privately-owned* buildings, including privately-owned residences, businesses, places of worship and buildings for private sector social or recreational use;

(2) Tools and equipment for private sector agricultural activity; or

(3) Tools, equipment, supplies, and instruments for use by private sector entrepreneurs.

(c) Strengthening civil society

This paragraph authorizes the export or reexport 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

activities may not relate to the "development," "production," "use," operation, installation, maintenance, repair, overhaul or refurbishing of any item enumerated or otherwise described on the United States Munitions List (22 CFR Part 121) or of any item enumerated or otherwise described on the Commerce Control List (Supplement No. 1 to Part 774 of the EAR) unless the only reason for control that applies to that item as set forth in the ECCN that controls that item is anti-terrorism.

(2) The *temporary* export or reexport to Cuba of items by travelers to Cuba for the travelers' use in scientific, archeological, cultural, ecological, educational, historic preservation, or sporting activities, or professional meetings or research. The following requirements apply:

(i) The research must be directly related to traveler's profession, professional background or area of expertise, including area of graduate-level full-time study.

(ii) The activities or research may not relate to the "development," "production," "use," operation, installation, maintenance, repair, overhaul or refurbishing of any item enumerated or otherwise described on the United States Munitions List (22 CFR Part 121) or of any item enumerated or otherwise described on the Commerce Control List (Supplement No. 1 to Part 774 of the EAR) unless the only reason for control that applies to that item as set forth in the ECCN that controls that item is anti-terrorism.

(iii) The items must remain under the traveler's "effective control" while in Cuba.

(iv) Items authorized for temporary export by this paragraph must be returned to the United States within two years of the date of export from the United States unless:

(A) The items are consumed in Cuba; or

(B) The exporter applies for and receives a license from BIS, prior to the expiration of the two year period, authorizing the items to remain in Cuba for longer than two years.

(v) Paragraph (c)(2) does not authorize exports if, at the time of the export, the exporter has "knowledge" that the item exported will remain in Cuba for more than two years.

(3) The export or reexport to Cuba of items to human rights organizations, individuals or non-governmental organizations that promote independent activity intended to strengthen civil society.

(d) Improving communications

This paragraph authorizes the export or reexport to Cuba of certain items intended to improve the free flow of information to, from, and among the Cuban people. The items authorized pursuant to 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 items for telecommunications, including access to the Internet, use of Internet services, infrastructure creation and upgrades.

(2) The export or reexport to Cuba of items for use by news media personnel engaged in the gathering and dissemination of news to the general public and who are:

(i) Regularly employed as journalists by a news reporting organization;

(ii) Regularly employed as supporting broadcast or technical personnel;

(iii) Freelance journalists with a record of previous journalistic experience working on a freelance journalistic project; or

(iv) Broadcast or technical personnel with a record of previous broadcast or technical experience who are supporting a freelance journalist working on a freelance journalistic project.

(3) The export or reexport to Cuba of items for use by U.S. news bureaus engaged in the gathering and dissemination of news to the general public.

(4) The export or reexport to Cuba of commodities or software that will be used by individuals or private sector entities to develop software that will improve the free flow of information or that will support the private sector activities described in paragraph (b) of this section. The following are ineligible end-users:

(i) The Cuban Government or the Cuban Communist Party and organizations they administer or control;

(ii) Ministers and vice-ministers; members of the Council of State; members of the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; or members and employees of the Supreme Court (Tribuno Supremo Nacional); and

(iii) Members of the Politburo; the Central Committee; Department Heads of the Central Committee; employees of the Central Committee; and the secretaries and first secretaries of provincial Party central committees.

(e) ***Facilitating engagement, communications, and commerce***

This paragraph (e) authorizes the export or reexport to Cuba of certain items intended to facilitate engagement between the U.S. and Cuban people; the free flow of information to, from, and among the Cuban people; and independent economic activity in Cuba. The export or reexport must be within one or more of the following categories:

(1) The export or reexport to Cuba of items for use by eligible end-users to establish, maintain, or operate a physical presence in Cuba. The items authorized pursuant to this paragraph (e)(1) are limited to those designated as EAR99 (*i.e.*, items subject to the EAR but not specified in any ECCN) or controlled on the CCL only for anti-terrorism reasons. To be eligible, the end-users must be "U.S. Persons," as defined in § 772.1 of the EAR, and must fall within one of the following categories:

(i) Entities organizing or conducting educational activities in Cuba authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC) pursuant to 31 CFR 515.565(a);

(ii) Entities providing mail or parcel transmission services authorized by OFAC pursuant to 31 CFR 515.542(a) or providing cargo transportation services in connection with trade involving Cuba authorized by OFAC or exempt from the prohibitions of 31 CFR part 515 as specified in 31 CFR 515.206;

(iii) Religious organizations engaging in religious activities in Cuba authorized by OFAC pursuant to 31 CFR 515.566;

(iv) Persons engaged in transactions authorized by OFAC pursuant to 31 CFR 515.559(b);

(v) Persons that export or reexport items to Cuba that are exempt from the prohibitions of 31 CFR part 515 as specified in 31 CFR 515.206;

(vi) Providers of travel services or carrier services authorized by OFAC pursuant to 31 CFR 515.572; or

(vii) Persons that export or reexport to Cuba pursuant to a license issued by BIS or a license exception authorized by § 746.2(a)(1) of the EAR.

(2) The export or reexport to Cuba of certain items for use by eligible end-users to establish, maintain, or operate a physical presence in Cuba. To be eligible for this paragraph (e)(2), the end-users must be authorized by OFAC to provide telecommunications services and establish telecommunications facilities pursuant to 31 CFR 515.542(b) through (e) or to provide internet-based services pursuant to 31 CFR 515.578, including subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any entity or individual who is a national of Cuba. The items authorized pursuant to this paragraph are limited to those designated as EAR99 (*i.e.*, items subject to the EAR but not specified in any ECCN) or controlled on the CCL only for anti-terrorism reasons.

(3) The export or reexport to Cuba of items to be given away for free as gifts for promotional purposes. Items authorized pursuant to this paragraph (e)(3) are limited to those items of a type normally given away for free as gifts for promotional purposes that are designated as EAR99 (*i.e.*, items subject to the EAR but not specified in any ECCN).

Note to paragraph (e). *Any resulting payments associated with establishing maintaining or operating a physical presence in Cuba, such as lease payments, are permitted only to the extent authorized by § 515.573 of the Cuban Assets Control Regulations (31 CFR 515.573).*

(f) ***Temporary exports and reexports to Cuba***

This paragraph (f) authorizes the export or reexport to Cuba, for periods not exceeding one year, of certain items 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. This paragraph does not authorize any transaction if the exporter or reexporter has "knowledge" that the item is intended to remain in Cuba for more than one year; if an order to acquire the item, such as a purchase order, has been received before shipment; or when the item is for subsequent lease or rental. The export or reexport must be within one or more of the following categories.

(1) Tools of trade – commodities and software. Commodities or software to be used by the exporter or reexporter or its employees for the installation, servicing or repair of items that are subject to the EAR and that have been exported or reexported to Cuba under a license or license exception, or foreign-origin items that are not subject to the EAR that are owned and used exclusively by private sector entities in Cuba, may be exported or reexported under this paragraph (f). The commodities or software must remain under the "effective control" of the exporter or reexporter or its employees. 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) Tools of trade – technology. Technology to be used by a 'U.S. person' exporter or reexporter or its employees who are traveling to or on temporary assignment in Cuba for the installation, servicing or repair of items that are subject to the EAR and that have been exported or reexported to Cuba under a license or license exception, or foreign-origin items that are not subject to the EAR that are owned and used exclusively by private sector entities in Cuba, may be exported or reexported under this paragraph (f). For purposes of this paragraph (f)(2), a 'U.S. person' is: an individual who is a citizen of the United States, an individual who is "lawfully admitted for permanent residence" in the United States as defined by 8 U.S.C. 1101(a)(20) 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). If the employee who will use the technology is not a 'U.S. person,' the release of that technology to that employee must either not require a license or be authorized by a license or a license exception other than this section before it may be exported or reexported to that employee under this paragraph. The exporter or reexporter 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:

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

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

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

(3) Kits of replacement "parts" or "components." Kits consisting of replacement "parts" or "components" for items that have been exported or reexported to Cuba under a license or license exception, or foreign-origin items that are not subject to the EAR that are owned and used exclusively by private sector entities in Cuba, may be exported or reexported under this paragraph (f)(3) provided:

(i) The kits remain under "effective control" of the exporter or reexporter or its employees; and

(ii) 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 Servicing and Replacement of Parts and Equipment (RPL) and the defective parts and components returned (see Parts, Components, Accessories and Attachments in § 740.10(a)).

(4) Exhibition and demonstration. Commodities or software for exhibition or demonstration at trade shows, or to any entity that would be eligible to receive the commodities or software under paragraphs (a) through (e) of this section, may be exported or reexported under this paragraph (f). The commodities or software must remain under the "effective control" of the exporter or reexporter or its private sector agent, may not be exhibited or demonstrated at any one location for more than 30 days and may not be used for more than the minimum extent required for effective exhibition or demonstration.

(5) Containers. Containers that would require a license for export or reexport to Cuba but that are necessary for shipment of commodities being exported to Cuba under a license or license

exception may be exported or reexported to Cuba. However, this paragraph (f) does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export or reexport under either a license or a license exception.

SUPPLEMENT NO. 1 TO PART 740 – COUNTRY GROUPS

Supplement No. 1 to part 740 is in a separate electronic file.

SUPPLEMENT NO. 2 TO PART 740 - ITEMS THAT MAY BE DONATED TO MEET BASIC HUMAN NEEDS UNDER THE HUMANITARIAN LICENSE EXCEPTION

(a) Health

Equipment for the Handicapped

Hospital Supplies and Equipment

Laboratory Supplies and Equipment

Medical Supplies and Devices

Medicine-Processing Equipment

Medicines

Vitamins

Water Resources Equipment

Food

Agricultural Materials and Machinery Suited to Small-Scale Farming Operations

Agricultural Research and Testing Equipment

Fertilizers

Fishing Equipment and Supplies Suited to Small-Scale Fishing Operations

(b) Food

Insecticides

Pesticides

Seeds

Small-Scale Irrigation Equipment

Veterinary Medicines and Supplies

(c) Clothes and Household Goods

Bedding

Clothes

Cooking Utensils

Fabric

Personal Hygiene Items

Soap-Making Equipment

Weaving and Sewing Equipment

(d) Shelter

Building Materials

Hand Tools

(e) Education

Books

Individual School Supplies

School Furniture

Special Education Supplies and Equipment for the Handicapped

(f) Basic Support Equipment and Supplies Necessary to Operate and Administer the Donative Program

Audio-Visual Aids for Training

Generators

Office Supplies and Equipment

SUPPLEMENT NO. 3 TO PART 740 - LICENSE EXCEPTION ENC FAVORABLE TREATMENT COUNTRIES

Australia
Austria
Belgium
Bulgaria
Canada
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Italy
Japan
Latvia
Lithuania
Luxembourg
Malta
Netherlands
New Zealand
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom