US Department of Commerce

License Exceptions

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There is an "X" in the Box... or Some other license requirement...

What do I do?

Topics of Discussion
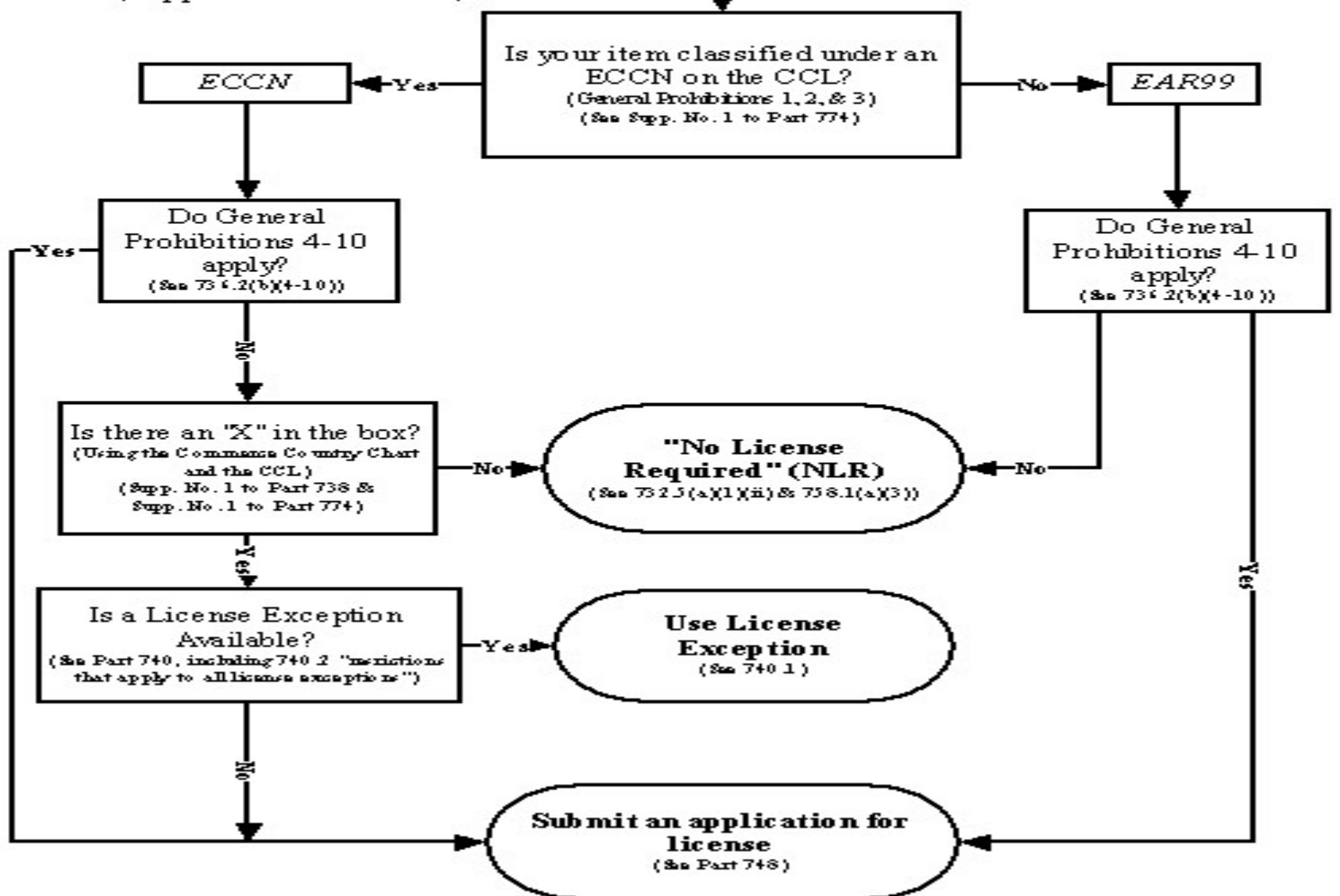
- What is a License Exception?

- Restrictions

- License Exception Criteria

Export Control

Decision Tree

(Supp. No. 1 to Part 732)

Subject to the EAR?
(See 734.2 - 5)

—No→ **Exit the EAR**

Yes

Is your item classified under an ECCN on the CCL?
(General Prohibitions 1, 2, & 3)
(See Supp. No. 1 to Part 774)

ECCN ←Yes—

—No→ *EAR99*

Do General Prohibitions 4-10 apply?
(See 736.2(b)(4-10))

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(See 736.2(b)(4-10))

—Yes—

No

Is there an "X" in the box?
(Using the Commerce Country Chart and the CCL)
(Supp. No. 1 to Part 738 & Supp. No. 1 to Part 774)

—No→ **"No License Required" (NLR)**
(See 732.3(a)(1)(ii) & 758.1(a)(3))
←No—

Yes

Yes

Is a License Exception Available?
(See Part 740, including 740.2 "restrictions that apply to all license exceptions")

—Yes→ **Use License Exception**
(See 740.1)

No

Submit an application for license
(See Part 748)

What is a License Exception?
Part 740

An authorization that allows you to export or reexport, under stated conditions, items subject to the EAR that would otherwise require a license.

When can't you use a License Exception?
§740.2

- Authorization has been suspended or revoked
- Export subject to a General Prohibition that is not eligible for License Exceptions.
- Surreptitious Interception Devices
- Crime control items to most destinations
- Most Missile Technology control items
- Embargoed destinations, in most instances

The way the EAR sees the world...
Country Groups
Supplement 1 to Part 740
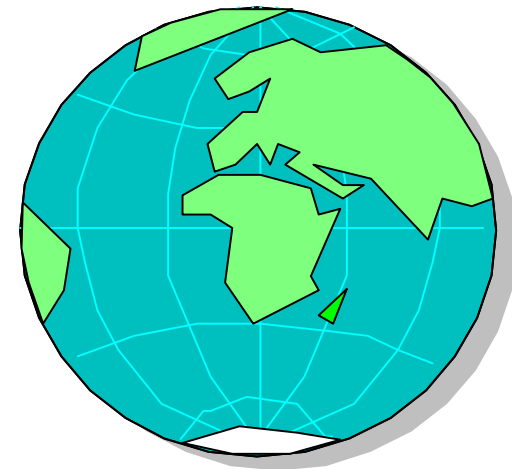
Group A: Regime Members

Group B: Less Restricted

Group D: Countries of Concern

Group E: Terrorist Supporting

Commerce Control List-Based License Exceptions

Availability Based on ECCN

– Shipments to B Countries (GBS)

– Civil End Users (CIV)

– Limited Value Shipments (LVS)

– Technology and Software Restricted (TSR)

GBS Group B Shipments
§740.4

- Shipments to Country Group B

- Commodities requiring a license to the ultimate destination for national security reasons only

CIV Civil End-Users
§740.5

- Country Group D:1, except North Korea

- Items that require a license to the ultimate destination for national security reasons only

- Civil end-uses and end-users
  - No military or proliferation end-users/uses

LVS Limited Value Shipment
§740.3

- Country Group B

- Commodities

- Net value cannot exceed LVS value limit

- Annual value restriction
  - 12 x LVS value of same ECCN to same consignee

- Single shipment

NO splitting orders!

TSR **Technology & Software Under Restriction**
§740.6

- Country Group B

- Technology & software requiring a license to the ultimate destination for national security reasons only

- Prior to use, written assurance required from consignee

TSR Written Assurance

- Letter, other written communication, licensing agreement, fax

- No written assurance -- No TSR

Transaction Based
License Exceptions

- **TMP** - Temporary Imports, Exports &

  Reexports

- **RPL** - Service & Replacement of Parts & Equipment

- **TSU** - Technology & Software

  Unrestricted

TMP Temporary Imports, Exports and Reexports
§740.9

- **Temporary Exports and Reexports**
  - §740.9(a)

- **Items temporarily in the U.S.**
  - § 740.9(b)

- **Beta Test Software**
  - § 740.9(c)

RPL Servicing & Replacement of Parts & Equipment
§740.10

Exports and Reexports for:

(a) One-for-one Replacement of Parts

(b) Servicing & Replacement of Commodities and Software

– Servicing of commodities and software sent to US or foreign party

– Replacements for defective or unacceptable US-origin equipment

No Enhancements!

TSU Technology & Software Unrestricted
§740.13

Exports and Reexports *for:*

– Operating Technology and Software §740.13(a)

– Sales Technology § 740.13(b)

– Bug Fixes §740.13(c)

– General Software Note - "Mass Market Software" - not encryption §740.13(d)

– Publicly Available Encryption Source Code (and corresponding object code) §740.13(e)

Summary: License Exceptions

- Make sure your transaction requires a license (i.e. there is an "X" in the box, or some other licensing requirement) before reviewing the License Exceptions.

- Before going to a specific license exception, make sure there are no general restrictions.

- Each exception is unique, make sure you meet of all of the criteria.