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# License Exceptions

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## Definition

- A “license exception” is an authorization described in part 740 of the EAR that allows you to export, reexport or transfer in-country under stated conditions, items subject to the EAR that would otherwise require a license.
- Each license exception bears a three letter symbol, e.g., TMP, STA, LVS
- A numeric code is used for export clearance purposes in the Automated Export System (AES), (AESTIR Part III, Appendix F), e.g., C35 (LVS), C59 (STA)
- If the license exception allows reexports, then it also allows in-country transfers, even if it doesn’t specifically state that.

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## Why License Exceptions?

- License Exceptions release qualifying transactions/shipments from a licensing requirement.
- Intended to facilitate trade when circumstances don't warrant specific advance written approval (i.e., a license) by BIS.
- 17 License Exceptions listed in part 740.
- Provisions can be *very* detailed.

**Part 740**

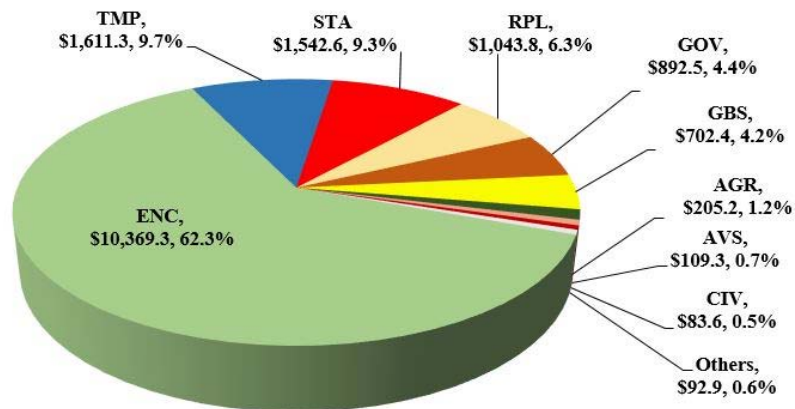


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## License Exception Statistics thru Feb. 2020

Navigation icons: back, forward, search, etc.

**2019 U.S. Exports by BIS License Exceptions  
 \$millions**



Source: U.S. Customs & Border Protection, Electronic Export Information Filing, February 14, 2020

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## First Things

- There must be a license requirement (e.g., an “X” in the box) for a License Exception to have any use.
- There are restrictions that apply to *all* License Exceptions and there are specific limitations within *each* License Exception.
- An awareness of Country Groups can help you better understand and apply these provisions.
- If your transaction is eligible for more than one License Exception, select the least restrictive one.
- For license exceptions for embargoed countries, first look at part 746.

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### 0A979 Police helmets and shields; and “specially designed” “components,” n.e.s.

#### LICENSE REQUIREMENTS

*Reason for Control:* CC

Control(s)	Country Chart (See Supp. No. 1 to part 738)
CC applies to entire entry	CC Column 1

LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

*LVS:* N/A

*GBS:* N/A

LIST OF ITEMS CONTROLLED

*Related Controls:* N/A

*Related Definitions:* N/A



*Items:* The list of items controlled is contained in the ECCN heading.

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# Country Chart Structure - Supplement 1 to Part 738

## Commerce Country Chart

### Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Comoros	X	X		X		X	X	X	X	X		X		X		
Congo (Democratic Republic of the) <sup>1</sup>	X	X		X		X	X	X	X	X		X		X		
Congo (Republic of the)	X	X		X		X	X	X	X	X		X		X		
<b>Costa Rica</b>	X	X		X		X	X	X	X	X	X	X		X		
Cote d'Ivoire <sup>1</sup>	X	X		X		X	X	X	X	X		X		X		
Croatia <sup>3</sup>	X					X		X	X							
Cuba	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.															
Curaçao	X	X		X		X	X	X	X	X		X		X		

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## Country Groups

Country Group A – Regime Members

Country Group B – Less Restricted Countries

Country Group C – Reserved

Country Group D – Countries of Concerns

Country Group E – Embargoed/Terrorist Supporting Countries



**Part 740, Supplement No. 1**

## Restrictions on *all* LEs §740.2

- Examples of Restrictions:

- ✓ Denial Orders
- ✓ Support of Proliferation Activities
- ✓ Violates any Orders, Terms, or Conditions
- ✓ Knowledge that a violation has or is about to occur
- ✓ Restrictions on certain ECCNs and destinations

### License Exceptions

#### Table of Contents

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## License Restrictions

- You don't meet the eligibility requirements for the license exception
- Revoked or suspended license exception
- General Prohibitions apply, *e.g.*, GP5 744 end user/use, GP10 knowing a violation is about to occur.
- Specific Item restrictions, *e.g.*, surreptitious interception of communication, crime control, specially designed implements of torture, missile technology controlled, firearms, ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521, "military commodity" subject to ECCN 0A919, ECCNs 2A983, 2A984, 2D983, 2D984, 2E983 or 2E984, 6E001 or 6E002 technology, ECCNs 9D610.b, 9D619.b, 9E610.b, or 9E619.b or .c.
- Sanctioned destination (Cuba, Iran, North Korea, Syria, and Crimea region of Ukraine) or a license is required based on a limited sanction (Russia)
- To an entity listed on the Unverified list
- Hong Kong license exception suspension.

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## Additional Restrictions for 600-Series Items

- 9x515 or 600-series have additional restrictions:
  - ✓ May only use those License Exceptions listed in §740.2(a)(13): LVS, TMP, RPL, TSU, GOV, BAG, STA
  - ✓ Prohibited for Major Defense Equipment (MDE) sold under a contract exceeding certain values.
  - ✓ Prohibited for D:5 countries (U.S. Arms Embargoed Countries)

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## New License Exception Restriction for Firearms § 740.2(a)(21)



- New § 740.2(a)(21) restricts use of license exceptions, except for GOV under § 740.11(b)(2)(ii), for reexport or transfer (in-country) of certain firearms classified under 0A501 (firearms) or 0A502 (shotguns).
- Restriction applies if a part or component that is not “subject to the ITAR,” but would otherwise meet criteria in USML Category I(h)(2) is incorporated into the firearm or is to be reexported or transferred (in-country) with the firearm with “knowledge” the part or component will be subsequently incorporated into the firearm.

***USML Category I(h)(2)(i.e., parts and components specially designed for conversion of a semiautomatic firearm to a fully automatic firearm)***

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## New License Exception Restriction under § 740.2(a)(22)

- New § 740.2(a)(22) restricts use of license exceptions for any 0x5zz item when a party to the transaction is designated on the Department of the Treasury, Office of Foreign Assets Control (OFAC), Specially Designated Nationals and Blocked Persons (SDN) list under the designations [SDNT], or [SDNTK].

OFAC makes SDNT designations pursuant to the **Narcotics Trafficking Sanctions Regulations**, [31 CFR part 536](#), and SDNTK designations are made, pursuant to the **Foreign Narcotics Kingpin Sanctions Regulations**, [31 CFR part 598](#).

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## Reporting Requirements

- Some items require semi-annual reporting to BIS when using certain License Exceptions
- Primarily applicable for Wassenaar “Sensitive List” items
- Items on the Wassenaar Sensitive List – supp. no. 6 to 774 for certain license exceptions.
  - Approximately 50 ECCNs
  - LE’s with this reporting requirement - GBS, TSR, LVS, APP, GOV, STA
  - Requirement - ECCN, units shipped, country of ultimate destination
  - ENC also has reporting requirements



*Section 743.1, Part 774 Supplement 6*

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## LVS – Limited Value - § 740.3

- Low value shipments (\$1500 for most 600 series commodity ECCNs)
- Based on net value of the commodities included in the same order
- For commodities only
- Country Group B
- 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.

• **NO CONSPIRING TO SPLIT ORDERS!**

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## 3A001 List Based License Exceptions

LIST BASED LICENSE EXCEPTIONS (SEE PART 740 FOR A DESCRIPTION OF ALL LICENSE EXCEPTIONS)

*LVS:* N/A for MT or NP; N/A for “Monolithic Microwave Integrated Circuit” (“MMIC”) amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those that are being exported or reexported for use in civil telecommunications applications

Yes for:

\$1500: 3A001.c

\$3000: 3A001.b.1, b.2 (exported or reexported for use in civil telecommunications applications), b.3 (exported or reexported for use in civil telecommunications applications), b.9, .d, .e, .f, and .g.

\$5000: 3A001.a (except a.1.a and a.5.a when controlled for MT), b.4 to b.7, and b.12.

*GBS:* Yes for 3A001.a.1.b, a.2 to a.14 (except .a.5.a when controlled for MT), b.2 (exported or reexported for use in civil telecommunications applications), b.8 (except for vacuum electronic device amplifiers exceeding 18 GHz), b.9, b.10, .g, .h, and .i.

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## License Exception TMP – § 740.9

- Temporary exports, reexports, and transfers (in-country) §740.9(a)
  - Tools of trade, including technology by U.S. persons
  - Exhibition/demonstration
  - Personal protective equipment
  - U.S. facility/affiliate
  - Kits of replacement parts
  - Inspection/calibration

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## Tools of Trade *Technology* § 740.9(a)(3)

- “Technology,” regardless of media or format, may be exported, reexported, or transferred (in-country) by or to a U.S. person, or a foreign person employee of a U.S. person traveling or on temporary assignment abroad
- “Technology” exported, reexported, or transferred under this authorization may only be possessed or used by a U.S. person or authorized foreign person.
  - Sufficient security precautions must be taken to prevent the unauthorized release of the “technology.”
  - Such security precautions may include encryption of the “technology,” the use of secure network connections, such as Virtual Private Networks, the use of passwords or other access restrictions on the electronic device or media on which the “technology” is stored, and the use of firewalls and other network security measures to prevent unauthorized access.
- The individual is an employee of the U.S. Government or is directly employed by a U.S. person and not, *e.g.*, by a foreign subsidiary.
- Foreign persons may only export, reexport, transfer (in country) or receive such “technology” as they are authorized to receive through a license, license exception other than TMP or because no license is required.
- “Technology” authorized under this exception may not be used for foreign production purposes or for technical assistance unless authorized through a license or license exception other than TMP.

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## License Exception TMP – § 740.9

- Temporarily in the U.S. § 740.9(b)
  - Return of foreign origin items,
  - In-transit,
  - Demos/exhibitions
- Beta Test Software § 740.9(c)

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## Temporary Exports of Technology (TMP) § 740.9(a)(3)

- Can TMP be used for remote access to U.S. servers?
- Is taking an encrypted device out of the U.S. an export?

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## Temporary Exports of Technology (TMP) § 740.9(a)(3)

- **Can TMP be used for remote access to U.S. servers?**
  - Yes, provided the other terms of paragraph (a)(3) are met.
- **Is taking an encrypted device out of the U.S. an export?**
  - Yes. Paragraph (a)(3) may authorize the technology on the device, but the device itself is a commodity that, if it requires a license to its destination, would need to be authorized by another provision in the EAR, *e.g.*, by paragraph (a)(1)(Tools of trade).

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## RPL – Servicing & Replacement of Parts & Equipment § 740.10

- a) One-for-one replacement of parts, components, accessories, attachments
  - Allows 600 series parts to repair EAR or ITAR items under certain conditions
- b) Servicing & replacement of commodities and software
  - Servicing of commodities and software sent to U.S. or foreign party
  - Replacements for defective or unacceptable U.S.-origin equipment
- c) Special recordkeeping for “600 series” and certain ECCNs.

**NO ENHANCEMENTS!**  
 No 9x515 or 600 series to D:5

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## Technology and Software Unrestricted (TSU) § 740.13

- Authorizes the exports, reexports and transfers of:
  - Operation technology and software
  - Sale technology and software
  - Software updates (bug fixes)
  - “Mass market” software subject to the general software note; and
  - Unrestricted encryption source code
- Provided the transaction meets *all* of the criteria in § 740.13.

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## TSU – Technology and Software Unrestricted § 740.13

- Various technology and software, including training that is the minimum necessary for operation, maintenance, and repair of lawfully exported items (corresponds to ITAR §125.4(b)(5))
- Allows technology to full time regular employees of universities in U.S. (§ 740.13(f) corresponds to ITAR §125.4(b)(10))
- Allows copies of technology previously authorized to same recipient (corresponds to ITAR §125.4(b)(4))

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# License Exception Strategic Trade Authorization (STA)



## STA – Strategic Trade Authorization

- Broad authorization to select countries with export control systems in place.
- Two country tier authorizations, releasing a significant number of items from many license requirements.
- Requires a consignee statement acknowledging US export control requirements prior to export.
- List of ECCNs ineligible for LE STA, see §740.20(b)(2).

**Section 740.20**

Country Group A:5			Country Group A:6
1. Argentina	14. Greece	27. Poland	1. Albania
2. Australia	15. Hungary	28. Portugal	2. Israel
3. Austria	16. Iceland	29. Romania	3. Malta
4. Belgium	17. India	30. Slovakia	4. Singapore
5. Bulgaria	18. Ireland	31. Slovenia	5. South Africa
6. Canada	19. Italy	32. S. Korea	6. Taiwan
7. Croatia	20. Japan	33. Spain	
8. Czech Republic	21. Latvia	34. Sweden	
9. Denmark	22. Lithuania	35. Switzerland	
10. Estonia	23. Luxembourg	36. Turkey	
11. Finland	24. Netherlands	37. United Kingdom	
12. France	25. New Zealand		
13. Germany	26. Norway		

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## STA Eligibility

- **(c)(1)** Country Group A:5 destinations and nationals
  - Items controlled for NS, CB, NP, RS, CC, or SI reasons only
- **(c)(2)** Country Group A:6 destinations and nationals
  - Items controlled for NS reasons only

**Part 740.20**

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## IS my ECCN eligible for STA?

- Step 1: Look at the ECCN to see if there is an STA Special Conditions paragraph or not.

### SPECIAL CONDITIONS FOR STA

STA: Paragraph (c)(2) of License Exception STA (§740.20(c)(2) of the EAR) may not be used for any item in this entry.

- Step 2: Make sure the ECCN is NOT listed in § 740.20(b)(2).
- Step 3: Make sure that the reason for control listed in the ECCN is covered by the STA authorization paragraph.

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## STA and 600-Series Items

- The end user must be:
  - U.S. Government
  - A government of a country in Country Group A:5
- For development, production, or servicing of an item in Country Group A:5 or the United States that is:
  - Ultimately to be used by the USG or government of country in Country Group A:5, or
  - Sent to a person in the United States
- If the USG has otherwise authorized its use

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## STA and 600-Series Items

- Non-U.S. parties must have been previously approved on a State or Commerce license
- Consignee statement must also address ultimate end user restrictions for 600 series items and agree to end use check
- Eligibility request required for specific end items (0A606.a, 8A609.a, 8A620.a or .b, or 9A610.a)

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## STA – Responsibilities

	Exporter/Reexporter	Consignee
1	Provide ECCN(s) to Consignee	
2		Provide Consignee Statement to Exporter/Reexporter
3	Obtain Consignee Statement	
4	Notify Consignee that shipment (or specific items within a shipment) is (are) under STA	
5	Keep records showing which shipments belong to each Consignee Statement	Maintain Consignee Statement and records pertaining to subsequent reexport or transfer

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## STA Consignee Statement

Required for all items eligible under STA

- Aware that items are to be shipped under STA.
- Been informed of ECCN by \_\_\_\_\_.
- No subsequent License Exception APR (a) or (b) shipments.
- Agrees to obtain a consignee statement for subsequent reexport under STA.
- Agrees not to ship or transfer in violation of EAR.
- Agrees to provide documents to U.S. Government upon request.

Required for all 600 series items eligible under STA

- Agrees to end user restrictions
- Agrees to permit USG end-use check

[Insert Name and Title of person signing document and date document is signed]

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## STA and 600-Series and 9x515

	600 Series Items	9x515 Items	Other EAR Items
Ultimate government end use required?	Yes	No	No
Always limited to Country Group A:5?	Yes	Yes	No
Eligibility request required?	Yes, for end items in 0A606.a, 8A609.a, 8A620.a or .b, or 9A610.a	Yes, for certain spacecraft in 9A515.a	No
Must the foreign parties have been on a previously approved license?	Yes	No	No
Does Prior Consignee Statement require agreement to permit USG end-use check?	Yes, if the consignee is not the government of an A:5 country	Yes, if the consignee is not the government of an A:5 country	No

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## AES and License Exception STA

- Please remember to report the STA transaction details in the AES prior to departure.
- Failure to do so is a violation of the BIS Export Administration Regulations and Census Bureau Foreign Trade Regulations.
- Upon completion of the filing of the transaction in AES, you will receive an Internal Transaction Number (ITN) from AES.
- Be sure to annotate the bill of lading, air waybill, or other commercial documentation with this ITN and include a Destination Control Statement.
- When entering Electronic Export Information (EEI) using license exception STA, report license code **C59** in the License Code field and 'STA' in the License Number Field.
- EEI transactions in AES under license exception STA (C59) are NOT eligible for any AES reporting exemptions under 15 Code of Federal Regulations, Part 30 Foreign Trade Regulations, Subpart D.

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## License Exception News

- Removal of License Exception Civilian End users (CIV)(§ 740.5)
  - Final Rule Published April 28, 2020 (85 FR 23470)
  - 60 Day delayed effective date: June 29, 2020
  - Savings Clause until July 27, 2020
- Proposed modification to License Exception Additional Permissive Reexports (APR)
  - Proposed Rule Published April 28, 2020 (85 FR 23497)
  - Comment period ends: June 29, 2020
  - The regulations.gov ID for this rule is: BIS–2020–0010.
  - BIS is proposing to remove countries in Country Group D:1 as a category of eligible destinations for national security-controlled items under paragraph (a) of License Exception APR by amending § 740.16(a)(3).

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## 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 License Exceptions.
- Before going to a specific license exception, make sure there are no general restrictions applicable to all License Exceptions.
- Each Exception is unique. Make sure you meet all of the criteria.

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## Contact Information

- **Department of Commerce, Bureau of Industry and Security (BIS):**

- (202) 482-4811 - (located in Washington, DC)
- (949) 660-0144 - (located in Newport Beach, CA)
- (408) 998-8806 - (located in San Jose, CA)
- E-mail: [ECDOEXS@bis.doc.gov](mailto:ECDOEXS@bis.doc.gov) (General questions about the EAR)
- E-mail: [RPD2@bis.doc.gov](mailto:RPD2@bis.doc.gov) (Regulatory interpretation, Advisory Opinions or to submit *De minimis* Reports)
- Anti-boycott Compliance Advice Line - (202) 482-2381
- Encryption – (202) 482-0707

- **Department of State, Directorate of Defense Trade Controls (DTC):**

- Licenses defense services and defense (munitions) articles.
- (202) 663-1282

- **Department of the Treasury, Office of Foreign Assets Control (OFAC):**

- OFAC administers and enforces economic and trade sanctions against targeted foreign countries, terrorism sponsoring organizations, and international narcotics traffickers.
- (800) 540-6322



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