

Good afternoon. Welcome to BIS's Webinar on export control reform and license exceptions. I'm Hillary Hess, and with me is William Arvin. We're with the Regulatory Policy Division at the Bureau of Industry and Security, which is part of the Department of Commerce. We administer the Export Administration Regulations or the EAR as we refer to them. Export Control Reform is the effort to move certain items that no longer warrant controls under the State Department's International Traffic in Arms Regulations (ITAR) to the Commerce Department's Export Administration Regulations, or EAR, so we're moving them from State's ITAR to Commerce's EAR.

Within the ITAR is the U.S. Munitions List, also known as the USML. That is their control list, the Commerce Control List is the CCL, and that's part of the Export Administration Regulations. Much of export control reform involved moving certain military items that no longer warrant control under the ITAR to the Commerce Control List in the EAR. When added to the CCL, those items generally are controlled under Export Control Classification Numbers or ECCNs that have a 6 as their middle digit, and they're therefore called the 600 series.

So many of the rules that make up the Export Control Reform -- that implement the Export Control Reform effort actually have to do with the control lists, the USML and the CCL. However, we're also changing some of the license exceptions that can be used for those items that are on the control lists. And that's the topic of today's webinar. This is one of a series of webinars that we've been doing on export control reform.

If you want to see some of the prior webinar transcripts, then you can go to the Bureau of Industry and Security website. It's at www.bis.doc.gov.

The initial implementation of export control reform was published in a final rule on April 16th, 2013, and it will be effective October 15th, 2013 -- a little bit more than two months from now.

Most of the changes that we're talking about were proposed in a series of three rules: one published on July 15th of 2011, referred to as the Framework Rule; another published on November 7th, 2011, referred to as the Aircraft Rule; and, primarily, one published on June 21st, 2012, referred to as the Transition Rule.

We proposed changes, we got a lot of public comments on those proposed changes, and then we published them in final form with a delayed effective date. So they were published in April and they'll be effective October 15th. One of the things we're going to talk about here is the provision in the final rule that dealt with license exceptions.

These license exceptions we'll be talking about are part of the Export Administration Regulations, but at times we will also be comparing them to exemptions, which are part of the International Traffic in Arms Regulations, because the International Traffic in Arms Regulations control munitions, military items, and those that are being moved to the Export Administration Regulations are those deemed to no longer warrant such

rigid controls under the ITAR, although they will still be controlled as military items on the CCL under the "600 series."

We, meaning, the interagency partners, Department of Commerce, Department of State, Department of Defense, determined that if you could use an exemption under the ITAR, you should be able to use a license exception under the EAR, so that the EAR should, to the extent possible, not be more restrictive than the ITAR. And that was a genesis for a lot of the changes that we're going to be talking about today.

So for starters, let's talk about license exceptions and what they are. What is a license exception? A license exception is a published authorization. Using one of these is not like applying for a specific license for your company. There are general terms and conditions and you meet those terms and conditions, then you can use your license exception.

That's not to say that you may not be required to do some kind of paperwork. For instance, you may need some type of a written assurance, or as Bill will discuss later, with License Exception STA, you may need a consignee statement, there are records to be kept, *et cetera*. But it is not the process where you fill out a form and apply to us for a specific license.

As we talk about these license exceptions, you may notice they all have a lot of different terms and conditions and it may seem a little bit complex, but just remember they're in Part 740 of the EAR (15 CFR part 740); you don't have to memorize all the terms and conditions as long as you know where they are and you can look them up. Another thing you're going to want to remember is how your particular item is classified. We're going to be focusing mostly on 600 series items, and when we say how an item is classified, we're talking about determining its ECCN or Export Control Classification Number. So each item that you're exporting is going to have an ECCN, and each ECCN is going to carry certain reasons for control, unless the item in question is designated as EAR99.

For instance, most of what we're going to be talking about today concerns items that are controlled for national security reasons, which means that basically they're related to conventional arms; in some cases for the 600 series, they are part of a conventional arm or are a conventional arm or they may have uses that are related to conventional arms.

We're also going to talk a little bit about the rationale for using license exceptions.

When you go to a license exception under the EAR, you're using it for an item that would otherwise require a license to a particular destination. So there needs to be some reason why we're not requiring a license in this particular case. And that's the rationale that's underlying each license exception.

You've found out what your ECCN is for the item that you want to ship, you know it would require a license to the country of destination, but you're looking through this Part 740 to figure out if there is some reason that you can use a license exception and not have to apply for a license.

Another thing you're going to want to look at when you're looking at license exceptions is country groups. It's fairly rare that we actually call out an individual country in license exceptions. Usually we use them -- we group them together with references to particular country groups that are identified in a supplement to Part 740. You can find these country groups in Supplement No. 1 to Part 740 of the EAR (15 CFR part 740, Supp. No. 1).

There will be a table for each country group. A lot of these country groups are divided into subgroups. For instance, Country Group A is broken down into five subgroups: A:1, A:2, *et cetera*. It lists the names of countries in the left hand column and has a separate column for each subgroup. There will be an x in the box if a particular country is in a particular country subgroup.

The scheme pretty much follows the letter grades that you would have gotten in school so that countries in Country Group A, which are the regime members, are usually closely allied with us, they're usually cooperating with us on export controls, will be more likely to have more license exceptions available.

When you get down to Country Group E, you're talking about the terrorist supporting countries, those are countries that the State Department has identified as having provided support for international terrorism, they are not close allies of ours, and the number of license exceptions that you can use for them are fairly limited. We're not going to talk a lot about them today. Now kind of in between, you have Country Groups B and D – D, being countries of concern for various reasons. Country Group B countries are basically countries not of concern for national security reasons.

Again, we're talking about 600 series items for the most part today in this webinar, so we're talking about items that are controlled for national security reasons. When you're talking about the 600 series, the country groups that you're most interested in are Country Group A:5 and Country Group D:5.

Country Group A:5 is a group of 36 countries that are close allies and multi-regime members. Most are in Western Europe, plus Argentina, Australia, Canada, Japan and New Zealand. They are countries with which we have a lot of national security or military cooperation. Now Country Group D:5 are U.S. arms embargoed countries. So those are countries that we don't have military cooperation with and that we would not like to see national security controlled or military items go to, certainly not without a license, and probably not at all. If you're familiar with State Department's International Traffic in Arms Regulations, these countries correspond to the countries that are in Section 126.1 of the ITAR.

Now, before you use any license exceptions at all, you want to go to Section 740.2 of the EAR (15 CFR 740.2), and that's the restrictions on use of license exceptions, period. We've got on the slide use of license exceptions for 600 series, but you want to go there to Section 740.2 no matter what license exceptions you're using for what items, because this gives you the restrictions. For 600 series items, this lets you know that there is a list of the license exceptions you can use in paragraph (a)(13). It also lets you know that that country group D:5 that we just mentioned, the U.S. arms embargoed countries, are not going to be getting license exceptions except for under a narrow part of License Exception GOV, which is for U.S. government personnel, as specified in paragraph (a)(12).

It also lets you know that if you have major defense equipment under the 600 series, and it's under a contract that exceeds a certain value, you are not going to be able to use a license exception to export or reexport that equipment. At this point, we don't know of any major defense equipment that's transferred or will be transferred as of the April 16th rule, but we do give you a reference so that you can find that list of major defense equipment. And the reason you can't use a license exception for it is we need to know about it so we can notify Congress prior to approving the transaction.

Now there are other applicable restrictions in Section 740.2, for instance, if it's a missile technology controlled item, you're not going to be able to use a license exception for it except in very, very limited cases, and there are also restrictions in each specific section of each applicable license exception. So that's basically, you know, part of the terms and conditions. Each license exception will tell you when you can use it.

If you go to that paragraph (a)(13) of Section 740.2, you'll see the list of license exceptions that you can use for the 600 series. We're going to talk about each one of these, but right now, I'm just going to read through the list.

- LVS is limited value shipments.
- TMP is temporary exports
- RPL is repair and replacements;
- GOV is governments;
- TSU is technology and software, unrestricted;
- STA is strategic trade authorization.

So let's start with limited value shipments, or LVS.

If you go to Section 740.3 in the EAR, you can see that a lot of the text of LVS has to do with its being a single shipment, no splitting orders, no splitting shipments, so LVS is for genuinely a small amount.

Now remember, we talked about rationales for using license exceptions. You're using a license exception for something that would otherwise require a license.

So why do you have this license exception? Why have we, the government, decided that you can use an exception for this? In this case, it's a fairly small amount of this type of strategic item, and it's destined for a Group B country, so those countries are not of national security concern. Now I do want to point out there are certain Group B countries that are also in Country Group D:5, so if you run into the situation, you're not going to be able to use LVS for 600 series, because of the restriction I mentioned in (a)(12) above. Because remember, in the restrictions up front, Group D:5 was pretty much knocked out of license exception for these types of items (600 series items). So you've got a fairly small amount, it's going to a country that is not of national security concern, and that's why you can use LVS license exception.

And again, the idea that you can't split the shipment, that you can't exceed 12 times the LVS value limit to the same consignee per year, those are all aimed at making sure it is actually a small amount. Now if you need to know the LVS value limit, that's right there in your ECCN. So suppose your ECCN is 9A610 on the Commerce Control List. You look underneath that, it says "License Exceptions," and it will say LVS and it will give you that value limit, which in the case of ECCN 9A610 is \$1,500.

Temporary exports can be found in Section 740.9. Now again, you may think: "Why do I have a license exception for this?" The answer is: "Because it's something that's only temporarily leaving the United States." Now, for those of you who are fairly familiar with license exceptions, if you go to the April 16th rule, you'll notice that in License Exception TMP, temporary exports, the revisions to paragraphs (a) and (b) (15 CFR 40.9(a) and (b)) are really long compared to the substantive changes that we made to those paragraphs.

Really, the substantive changes that we made were primarily in the first bullet that you have on your slide, temporary exports to a U.S. person's foreign subsidiary, affiliate or facility abroad. It's currently limited to Country Group B. As of October 15th, it won't be limited to Group B anymore. That change makes the license exception correspond to a Section 123.16(b)(9) in the ITAR (22 CFR 123.16(b)(9)), and we're going to give you a little bit longer on the extension, which I'll talk about in a minute.

However, License Exception TMP is a fairly long-standing license exception. It had been amended a lot of times to the point where it was getting difficult to read through. We were going to need to amend it again for the 600 series, so when we proposed the revisions to this license exception in June 2012, we additionally tried to streamline and clarify the entire license exception, even provisions that we weren't proposing to change substantively, just to make it easier to read through and easier to comply with. That's why it's so long.

Now we did a similar thing with License Exception GOV, which we'll talk about in a few slides from now. But that's why the revision in the rule is so extensive. So I mentioned the first substantive change that we made which is taking out the Country Group B limitation.

Now there's a little bit of difference in the way that temporary exports are done under the ITAR versus under the EAR, and it wasn't possible to change the text to make the EAR and ITAR match exactly on this subject. For instance, under the ITAR, you actually sort of apply for the exception with a particular form, but then you get four years. Under TMP, you don't really need to apply for it, you just read through the terms and conditions, so instead of extending that period to four years, we have left the TMP, temporary export duration at one year. The item needs to come back to the United States within a year.

However, currently, if you need to extend that period, if the item is needed outside of the United States for a longer period, say it's going for exhibition and demonstration or it's tools of the trade, something like that that's leaving the United States temporarily, the item can be left for an additional six months if you come in and get approval from BIS. As of October 15th, if you come in and apply to us for an extension, then you'll be able to apply for, say, three more years, for a total of four years abroad. So that's how we revised it to try to make it no less restrictive than the ITAR.

We also added a note that was in the ITAR, but it's a situation that could come up under the EAR and that is to clarify that if you have a shipment that is in Canada or Mexico and it incidentally goes through the United States while en route from one point in that country to another point that it doesn't need a license.

Repair and replacement (RPL). This is a license exception that allows you to service the items that you have exported. It has roughly three parts to it, (1) replacement of parts, (2) servicing of equipment, and (3) replacement of defective equipment. Now this equipment has to have been lawfully exported, and when you are fixing it, you cannot enhance it in the sense that you can't make it better than it was originally. You can fix it, if it's broken, you can fix it, you can replace the part, but you can't make it exceed its original technical parameters. The reason this is a license exception is that you're not giving your customer really anything that they don't already have. You're just making them whole. You're fixing their stuff.

So the revisions that we've done will allow repairs of ITAR items using 600 series parts and components. That is something that is definitely a possible scenario because there are a number of cases where the actual end item, a particular end item has stayed on the U.S. Munitions List but the parts and components for it have gone to the Commerce Control List. It will also let you return a 600 series item to the United States to be serviced or replaced.

I just want to remind you that although RPL may be used for 600 series items, it does not authorize ITAR items, only EAR items.

I would also like to point out, this has been sometimes a problem for people when they're bringing ITAR items into the United States to be serviced or fixed. Under the ITAR, you need a temporary import license to do that. If the item has transitioned to the Export Administration Regulations and now is a 600 series item, then you will not

need that temporary import license, because we don't license imports under the Export Administration Regulations.

License exception GOV, for governments, is in Section 740.11 (15 CFR 740.11). You have this license exception because these are generally government end uses or end users. Now again, this particular license exception was streamlined wholly so the provisions that have to do with exports for the International Atomic Energy Agency, the Chemical Weapons Convention inspections, or the International Space Station, those provisions have been streamlined, but they're not substantively changed.

So if you're interested in the streamlining, you can read through that, but we didn't really change anything to them as a result of adding 600 series items to the CCL. The supplement to Section 740.11 will also go away on October 15. It is the only supplement to a section in the EAR. We have quite a few supplements to parts, but that was the only supplement to a section and it was a little difficult to find and therefore a little difficult to comply with, and we were able to drop it when we revised the section.

The U.S. government and cooperating government provisions of this license exception have been split into separate paragraphs for ease of compliance. Now when you get to the substantive changes -- that have to do with the 600 series, we actually have a new definition for contractor support personnel, and it's partly related to 600 series. It also had been a little bit of an issue under the EAR where you have certain contractors whose jobs are basically interchangeable with federal employees' jobs.

If that were the case, those contractors would be treated like federal employees for purposes of this license exception. We also have a new paragraph which is paragraph (b)(2)(iii) (15 CFR 740.11(b)(2)(iii)) that allows for a license exception for shipments that are made for or on behalf of the U.S. government. This paragraph generally will apply to U.S. government contractors. This is not something we've had in the Export Administration Regulations before.

Our current License Exception GOV is for personnel and agencies of the U.S. government and we're broadening this to include contractors. We do think that will be useful given the 600 series items that we're getting, but it's not limited to 600 series items. However, for these particular programs, or agreements, the contractors must be acting on behalf of the U.S. government and, before they may use the license exception, they're going to need a written authorization from the head of the responsible agency.

The Directorate of Defense Trade Controls at State had a draft of these provisions, they had not yet proposed it, and we incorporated it into the initial implementation of export control reform rule based on their draft. So this is something that State is looking at as well.

We also incorporated into this license exception authorization for Department of Defense directed shipments. These were provisions that we lifted fairly whole out of the ITAR. You can see the ITAR references there on your slide. We felt that given the comments we received on license exceptions -- they would be useful exceptions to have in the EAR as well, particularly for 600 series items.

Now License Exception TSU, technology and software unrestricted, also has a lot of different scenarios under it. One of them is that if you have something that you've lawfully exported the thing, then you can supply the minimum necessary operation, maintenance technology and software for the lawfully exported thing. We clarified that to include training, and that corresponds to the ITAR, to an ITAR exemption. We also added two paragraphs to this license exception to authorize activities that we really hadn't had in the EAR before but were ITAR exceptions.

One of them allows technology -- certain technology to certain permanent employees of universities in the United States and the other allows copies of technology that was previously authorized to the same recipient, so you can send a copy. And these are all under License Exception TSU.

So that wraps up my part of the talk. I'm going to hand it over to Bill Arvin to talk about strategic trade authorization or STA.
Thank you.

Thank you, Hillary.

License Exception STA, known as strategic trade authorization, has been around since June of 2011. Its use has gradually expanded since that time and we expect its use will expand further once the export control reform is implemented in the EAR. So what I'm going to talk about now is some of the things about STA as it exists now, and then explain a few of the things that will be changing on October 15th, when some 600 series items will become eligible for STA and there will be some specific changes to STA that relate to those 600 series items.

First of all, License Exception STA is found in Section 740.20 of the Export Administration Regulations (15 CFR 740.20). In addition to the restrictions on all license exceptions that you find in Section 740.2 of the EAR, you will see in paragraph (b) of 740.20, a number of ECCNs, reasons for control and licensing policies for which you may not use STA. So that's the first thing to look at, that paragraph (b); make sure that your transaction is not excluded by one of those broad exclusions there.

You then go to paragraph (c), which indicates the transactions that are eligible, and (c) is divided into two paragraphs: (c)(1) and (c)(2).

For paragraph (c)(1), there are six reasons for control that are eligible. Those are national security, chemical biological proliferation, nuclear proliferation, crime control, regional stability, and significant items (hot section technology).

The 36 countries you see listed there on the slide currently are in paragraph (c)(1). As of October 15th, they will become the new country group A:5 that Hillary mentioned. Paragraph (c)(2) contains a smaller number of countries, and only NS -- national security controlled items are eligible under paragraph (c)(2), and even some of those are further restricted as you will see in some of the ECCNs. The (c)(2) countries will become country group A:6, on October 15th.

STA as it exists right now has these four requirements that the exporter or reexporter must comply with before shipping under STA.

First: The exporter, reexporter or transferor must provide the consignee with the ECCN.

Second: The exporter, reexporter or transferor must obtain a written statement from the consignee and it must cover all of the five points that are listed in the right-hand column on the slide [Also discussed below]. One of the things that gives STA an advantage over licenses -- particularly when dealing with a customer-supplier relationship where there are a lot of transactions -- is the fact that a single statement can be used repeatedly for multiple shipments provided that the names of the parties, the names of the items and the ECCNs haven't changed. So long as everything is still correct, there's no limit on how long or for how many transactions that one statement can be used.

Third: Each time the exporter, reexporter or transferor is sending the consignee something under License Exception STA, he's required to notify, in writing, the consignee. It can be pretty much any form of writing, a document that goes with the shipment, or a message the consignee gets before the shipment such as an email or a fax, but it has to be something to put the consignee on notice that the particular shipment he's getting contains STA items, and which items are under STA.

Fourth: The exporter, reexporter or transferor also needs to keep records showing which shipments belong to which consignee statement. So again, that's a fairly extensive record-keeping requirement, but if you've made your statements as broad as you can, to cover all of the things that are eligible for STA that you send to a particular consignee, there will be fewer of these -- or a simpler record-keeping requirement.

The consignee's written statement must cover five points. The consignee must:

1. Acknowledge in writing the items are to be shipped under License Exception STA;
2. Identify the party who has informed it of the ECCN (should be the exporter);
3. Agree that it will not subsequently export or re-export these items under License Exception APR paragraphs (a) or (b) (15 CFR 740.16 (a) or (b));
4. Agree not to export, reexport or transfer the item in violation of the Export Administration Regulations; and

5. Agree to provide documents to the U.S. government upon request.

That's STA as it exists now.

Once October 15th rolls around and we actually have some 600 series items in the Export Administration Regulations, there will be a few additional requirements specific to 600 series items authorized under License Exception STA.

The purchaser, the intermediate consignee, the ultimate consignee and the end user must all be approved on a license issued by BIS or the Directorate of Defense Trade Controls. They don't all have to have been on the same license, they don't all have to have been on a license that was issued to the particular party who's going to be exporting under STA, and they don't have to be on a license that was for the same items that will be shipped under STA.

The purpose of this requirement is that the 600 series items, even though they've been determined no longer to warrant all of the rigid controls of the USML, are still military items. We concluded that some additional verification would be necessary. The fact that parties have been on approved licenses in the past at least indicates the U.S. government has done some type of vetting of those parties, and obtained some type of assurance that those parties are reliable.

So again, although all of those parties must have been on a license, they don't all have to have been on the same license, the item on the license does not have to be the item intended to be shipped under License Exception STA, and the license doesn't have to be a license that was issued to the party who's going to be shipping under STA.

No 600 series major defense equipment in a contract that has a value exceeding \$25 million. Hillary mentioned we're not sure that we will be getting any such equipment under export control reform, but if we do, it will not be eligible for STA. The reason for that is we have to notify congress before the export of any such items. We can't do that unless we require a license.

A few 600 series items will be exceptions to the general rule that you may use a license exception without prior approval from BIS. A one-time specific authorization from BIS before they can be shipped under License Exception STA will be required for aircraft. This requirement will apply only to the aircraft themselves in new ECCN 9A610.a. The aircraft parts that are in other paragraphs of that ECCN will not have such a requirement. That requirement will be effective when that rule comes into effect on October 15th.

Another rule that's going to come into effect on January 6th will add surface vessels, military vehicles and submersible vessels, certain parts for them, to the Commerce Control List. Those end items also will be ineligible for License Exception STA unless BIS issues a one-time approval use STA. Those applications for approval will be reviewed by an interagency committee, and we'll see how they turn out.

Because the regulations haven't actually been revised, you won't find those procedures in the Export Administration Regulations themselves, but at the bottom of the slide, those page numbers 22719 and 22725, refer to the page numbers in the *Federal Register* that was published on April 16th of this year. That will explain to you how to submit the request for authorization and what information has to be included in the request.

There are some restrictions on the consignees of 600 series items that don't exist for other items in STA. First, the consignee must be in country group A:5, that is the 36 countries currently listed in paragraph (c)(1) of Section 740.20.

If the consignee is an individual as opposed to a corporation, that consignee will have to be a national of a country listed in country group A:5 and actually will have to be physically present in that country or in the United States.

Where this is likely to come up is when License Exception STA is being used to transfer technology to a foreign national, it would be a deemed export, that deemed export must be a national A:5 country and either end at A:5 country or in the United States when any such transfer occurs.

In addition, the ultimate end user must be a specified agency of a government in country group A:5. The specified agencies are going to be things like the police, the military, paramilitary, firefighters, correctional institution, search and rescue operations, but certain limited groups, organizations or agencies of those A:5 governments.

If the consignee is not one of those governments, it might also be eligible for STA but the consignee would have to be a party performing maintenance, repair, overhaul, refurbishing of an item that is in an A:5 country, and that ultimately will be used by one of those government agencies of an A:5 country or the United States government or a person in the United States.

So for example, a manufacturer or a company that repairs aircraft for the air forces of those A:5 countries and that is itself located in an A:5 country would be an eligible recipient of parts to be used in manufacturing or repairing aircraft that will be delivered to or that already belong to the A:5 country air forces.

Then there's a third alternative. The consignee, let's assume, is not a government of an A:5 country. It is a private company located in an A:5 country that wishes to repair aircraft belonging to a government of a country not in Group A:5 using parts shipped under License Exception STA. In that instance, the U.S. exporter could ship under STA, but only if the foreign consignee has an authorization in writing. Typically it is going to be an export license or reexport license issued either by the Department of State or the Department of Commerce that authorizes the end use to which the consignee wants to put the STA item. The authorization must still be in effect and the consignee must provide the exporter with a copy of that authorization.

So there are really three things there. (1) The end user is the A:5 government, one of its specified agencies, **or** (2) the end user is somebody in an A:5 country who's doing work in the form of development, production, installation, maintenance, repair or overhaul of one of these items for one of the specified agencies of an A:5 government (or the United States government or a person in the United States), **or** (3) the United States government has authorized that consignee to use the item outside of the A:5 group, the authorization is in force and the U.S. exporter gets a copy of it.

A few other STA requirements or restrictions apply to the 600 series. With respect to software for gas turbine engines and aircraft, some software is precluded. That software is listed in those two new ECCNs in the rule that was published on April 16th and will become effective on October 15th, and some technology for aircraft and for gas turbine engines is limited to build to print technology.

Now in addition to the five points in the consignee statement that were listed for all STA consignees that currently exists under the EAR, there are two more points that are being added that will apply for 600 series only. Point number six will be required of all consignees, point number seven will be required from non-governmental consignees.

Point number six should look very familiar to you by now. It is what we just went over these additional requirements about end use.

The consignee will have to acknowledge that he understands that the export has to be to a consignee in A:5, that if it's a natural person, it has to be a national of A:5 and he has to acknowledge that he understands those end user requirements, either as a specified government agency or the party doing the work for the specified government agency (or the United States government or a person in the United States) or the United States government has authorized the extension beyond those first two.

Number seven, which applies only to non-government consignees, is that the consignee for 600 series items, has to agree to permit U.S. government end use checks.

That's pretty much what we're doing in STA. Again, that will be effective on October 15th --just a little more than 60 days away.

A few other miscellaneous things concerning license exceptions in the Automated Export System will be changing. You will be adding the code as you do now plus the ECCN into AES. However, two changes will be effective on October 15th. All exports of 600 series items other than those that are in paragraph .y of the 600 series ECCN will require AES filings, regardless of value or destination. Shipments less than \$2,500 under AES will require filing and shipments to Canada will require AES filing.

Again, all exports under STA will require AES filing on October 15th as will all exports of 600 series items other than .y -- shipments under \$2,500, shipments to Canada, any of those will require AES filing, and the ECCN will have to be entered in both cases for any of those shipments on or after October 15th.

To wrap up, again, these are license exceptions we're talking about.

A license exception is an exception to a license requirement, so before using a license exception make sure that you have license requirement in the first place. Once you do have that, make sure you check Section 740.2 to determine that you have no restrictions that apply generally, and then make sure you read your specific license exception very carefully so that you can be sure that you meet all of the requirements of the license exception.

And I see we have a number of questions that have come in. So why don't we begin to take a look at them?

Question: The first question was really a comment, which is "740.2 paragraph (a)(13) is reserved."

Answer: Remember we talked about (a)(13) as listing out the license exceptions that are available. And this is a good point. Right now, paragraph (a)(13) is reserved. Because this rule is not effective until October 15th, the databases that you're probably looking at, the electronic versions of the EAR, are not updated yet. These changes will not be incorporated until the rule is effective. So if you're looking at one of those databases, you're not going to be able to find what I was talking about. Where you want to look is in the *Federal Register*; that particular paragraph can be found on page 22709 in the issue of April 16th of this year. It's that *Federal Register* notice. And that's basically what we were talking about. So good point. That's where it is.

Question: Another question, you said TMP was limited to Group B countries but that it no longer would be after October 15th, 2013. How will it be expanded?

Answer: Let me just clarify that a little bit. TMP, and that's Section 740.9 of the EAR, it's for temporary exports and it's got a bunch of different little scenarios under it. So that if you've got something you are exporting temporarily, you want to look at the different paragraphs to see if one of them fits your particular transaction. Now there is one particular paragraph that has to do with certain temporary exports to U.S. subs or affiliates, and it's that particular paragraph that used to be limited to Country Group B and is now being expanded.

The different paragraphs in TMP can have different country scopes, so if you have a particular type of transaction, for instance, you know, exhibition or demonstration or tools of the trade, I would suggest that you look at that particular paragraph, because it may have a slightly different country scope.

So when I was talking about the Country Group B limitation, I was actually talking about that particular paragraph.

Thanks. We're fishing through the questions.

Question: If you are shipping a 600.y item to a non-STA destination and it doesn't qualify for other license exceptions like LVS, can it be shipped as NLR (no license required) or DY6?

Answer: I assume DY6 is the code used for AES filing. Well, the answer to that is, it depends. The .y paragraphs in the 600 series require a license when going to the terrorist supporting countries and they also require a license going to a China military end use. They would also, of course, require a license if they're going to somebody on the Entity List, but to most destinations and most end users, those paragraphs .y in the 600 series do not require a license, so yes, you would ship them under NLR.

I will say that about this, the electronics rule that is currently out for public comment, comments are due on September 9th, has a specific point that it raises in the preamble asking people for their comments on the utility of the .y paragraphs, and so we may -- if you have some specific opinions on that, you may want to include them in comments on that rule.

Question: A question is, if you are shipping an item overseas for repair?

Answer: And that's a good point, actually when we're talking about License Exception RPL, we're usually talking about things coming back to the United States for repair. If you were shipping something overseas for repair, there's actually a paragraph in TMP that you can use for that.

Question: Another question. Would we have to get written authorization from the head of the U.S. government agency to use GOV to send a 600 series item to the U.S. government overseas or just foreign governments?

Answer: The written authorization from the government agency, that has to do with basically when you're shipping it to somebody that's acting on behalf of the U.S. government, so a contractor. If you were actually sending it to U.S. government personnel or agencies that are overseas, then you would not have to get that authorization. It's actually different paragraphs of License Exception GOV. So thanks for the opportunity to clarify that.

Question: Another question, where do I find Country Group D:5, A:5 and A:6 listed?

Answer: This goes back a little bit to the question we had earlier about -- or the comment about the electronic regulations not being updated until the effective date of the rule. So they will be in Supplement Number 1 to part 740. But as of right now, you

can find them in the April 16th rule that was printed in the *Federal Register*, and it's on page 22720.

Question: What proof must be had to show a party was on a prior BIS or DDTC license?

Answer: The regulations do not specify what you must have. Ideally it would be a copy of that license. That would probably be the simplest way to do it. I'm presuming that in most cases, consignees will be willing to provide a copy of any license they have. For STA to work, there has to be something of a cooperative relationship between the exporter and the consignee, and if the consignee is interested in getting items under STA, that consignee is probably going to be very willing, I think, to show you the license, but again, the regulations do not specify any particular license or any particular proof that you have to have to meet this requirement of STA. But the parties do have to be on a prior license

Question: For 600 series under exception STA, if the consignee is in the A:5 country, employs nationals from outside the A:5 country, is authorization for those nationals required to access the 600 series goods?

Answer: I think the key to that question is the phrase "600 series goods," there would not necessarily be a transfer of technology if those foreign parties or those non-A:5 parties were accessing the goods or the parts. Certainly, though, any transfer of technology would require some type of authorization.

Question: Okay, please clarify the written authorization from the secretary or agency head as only applicable to Section 740.11(b)(2)(iii) be and not applicable to the (a) paragraph of this same section.

Answer: Let me grab my rule. I'm in the April 16th rule. I'm looking at pages 22715 and 16. These three, yes, it's applicable to paragraph (b), which is cooperative programs, project agreements, arrangements with foreign government or international organization or agency. It is also applicable to paragraph (c), and (d), which have to do with foreign assistance or sales programs, acquisition and cross servicing agreements.

So it is actually not applicable to paragraph (a), the authorization, or which is going to U.S. persons pursuant to a contract between the exporter, although it is still pursuant to a contract between the exporter and the U.S. government. And does not apply to paragraph (e), which is government furnished equipment. Where I was looking again, page 22715 and 16 in the *Federal Register* of April 16, 2013, an that's Section 740.11(b)(2)(iii).

Question: What about reporting of deemed exports conducted under STA?

Answer: There isn't a separate reporting requirement. You certainly would have the record-keeping requirements that normally apply under STA and would have to make the documents available upon request of the U.S. government. But we don't have a periodic reporting requirement.

Question: We kind of just answered this but we'll say it again. The question is how does the use of exceptions apply to 600 series items that are .y items?

Answer: The .y paragraphs have only controls of AT1, which is anti-terrorism. Now as you go through the ECCNs, the 600 series ECCNs, paragraph .y, you'll see that these are specifically listed items that were so militarily insignificant that they didn't have the national security and regional stability controls that the rest of the ECCN probably has. It's only controlled for antiterrorism reasons.

So if you think about what we talked about when you're really only looking for a license exception when you have a license requirement, in most cases, you're not going to even have a license requirement for the .y items, so that they would be NLR or no license required unless they're going to one of the terrorist supporting countries or unless they are going to China because they would be caught by the Chinese military end use restriction, which is, as I said, an end use restriction that you can find in part 744 of the EAR.

Question: Can you give us an example of the destination control statement we should use for the STA exception for 600 series license parts.

Answer: There's really sort of two issues that are raised by this question. First, the April 15th rule did, under the destination control statement section 758.6 (15 CFR 758.6), create some new requirements for 600 series items generally. It's a new requirement that will apply to 600 series items being shipped on or after October 15th. When they're being shipped under the EAR, whether it's a license, license exception or NLR, they will have to have the ECCN on the airway bill, bill of lading or other export control document that accompanies the shipment. So to that extent you have to add to the standard destination control statement, the ECCN for all 600 series items regardless of how they're being shipped, that will be a requirement starting on October 15th.

The second issue raised by the question is specific to License Exception STA. Under License Exception STA, you must notify (and you have to do this now for License Exception STA for non-“600 series” item, too)-- you have to notify the recipient that what he's receiving is coming under License Exception STA. You can do it on those same shipping documents if you want to, you can meet that requirement by some other written communication that you send to the recipient so that he gets that written communication at the time he received the merchandise or before he receives it, but when he receives it, he has to have something that puts him on notice that these are the STA items that he's getting. So it's really kind of a two-part question – with two answers to the question.

Question: How can an exporter know if party to the transaction has been vetted by -- on a license in the past if they are not on that exporter's own license? Is there a database that can be checked?

Answer: Well, the answer to that last question is no, there isn't a database that could be checked and there are probably some legal restrictions that would prevent BIS from publishing that information. One way, of course, the obvious one, is if you're the exporter and this party has been on a license issued to you, the answer is very easy. The other is, is the party willing to give you a copy of the license? And we are assuming that a number of parties will be able to and will be willing to. If he's not, he's probably not interested in participating in STA, but there may be some instances where, in fact, the party has not been on a prior license but could be approved if he were ever mentioned on an application or if he sent in a license application. So there may be some instances where you'll just have to get a license to find out whether or not this party is going to be eligible.

Question: How will License Exception STA for technology transfers be implemented in the case of persons who have dual citizenship and one country is in Country Group A:5 but the other country is not?

Answer: License Exception STA allows shipments to individuals who are citizens of A:5 countries. With respect to citizens of A:5 countries who are dual citizens with the citizenship of a non-A:5 country, we expect to be following BIS's standard practice that it has in the past. Usually, the most recently acquired citizenship is what will govern, so if somebody was born in India and has become a citizen of the United Kingdom, that would be treated as a citizen of the United Kingdom.

There is actually -- we also did post recently on our website an advisory opinion that had to do with certain Canadian nationals who would have been considered Canadian under the ITAR, so -- but I believe they had security clearances in Canada. So if you are dealing with Canada, I would suggest that you review that advisory opinion on our website. It's www.bis.doc.gov.

Question: We do have one question about Automated Export System filing, and we're going to have to take a look at the foreign trade regulations, so this will be one we will have to post on our website, will not be able to handle until we look at a set of regulations that neither of us have with us right now. But it's again the Foreign Trade Regulations published by the Census Bureau.

[This question was subsequently answered in the BIS weekly ECR teleconference of August 21, 2013. The question and answer are repeated below.]

Question: Is the AES filing exemption at 30.39 for goods destined to the USG abroad still be available when using license exception 740.11(b)(2)(iii) or, do the AES filing

requirements in GOV (effective on 10/15/13) trump the ability to use the 30.39 exemption?

Answer: We do not believe that any conflict exists between License Exception GOV and § 30.39 of the Foreign Trade Regulations that would create a need for one regulation to “trump” another. Section 30.39 exempts from AES filing “commodities . . . consigned to the U.S. Armed Services for their exclusive use. . .” Such shipments would be eligible for License Exception GOV under § 740.11(b)(2)(ii), which authorizes shipments “made by or consigned to a department or agency of the U.S. government.” This paragraph does not impose an AES filing requirement. The paragraph to which the questioner refers (§ 740.11(b)(2)(iii)) authorizes shipments to “a U.S. person” of items that will be used by the U.S. Government. Such shipments would not be “consigned to the U.S. Armed Services” and therefore not eligible for the exemption in § 30.39 of the Foreign Trade Regulations.]

Question: With the GOV exceptions, what constitutes the head of the responsible agency for the written authorization?

Answer: That is going to depend on the particular transaction, what the program is or what the agreement is. It's just going to depend on the program, who the responsible person is, and you'll note that it also says "or that person's designee." So the person who runs that particular program at, say, the Department of Defense, may be the person -- or they may designate someone else to fulfill that function.

Question: Question is, are ECCN 0A018 products being transitioned to the new ECCN 1A613 under export reform, and if so, will that ECCN now -- be subject to 600 series restrictions under the EAR?

Answer: In general, the ECCNs that end in 018 will be transitioned to a 600 series ECCN. I don't have this one in front of me right now, but I'm not aware of any glaring exception that would cover it. The purpose (of bringing) the items into ECCNs that end in 018 are items that are on the Wassenaar arrangement munitions list. Those would be military items, and they will be coming to the 600 series because they will sort of match in most cases with some very similar ITAR items that are coming to the 600 series -- that will be some new restrictions and will be applying to those items because they're under the 600 series. They will be treated like any other 600 series items.

So that's sort of one area where you will be getting some change that's a little more restrictive, but again, that will sort of harmonize our treatment of these principally military items, all of them on the Commerce Control List being treated with a similar licensing requirement and licensing policy.

Question: We did have a question about what Chemical and Biological (CB) items are eligible for STA.

Answer: I don't have the full set of regulations about STA with me right now. I mentioned paragraph (b) of Section 740.20, there are a number of restrictions in there that relate to certain CB items, but I should be able to come back to the office and find an example of a CB item that is under STA and we can post that on the website.

[This question was subsequently answered in the BIS ECR teleconference of August 21, 2013. The question and answer are repeated below.]

Question: Could you give an example of CB ECCNs that are eligible under STA?

Answer: In practice, License Exception STA is not likely to be used much for CB controlled items. Many of the items on the CCL controlled for CB reasons are subject to CB column 2, which does not impose a license requirement on exports to the 36 destinations in paragraph (c)(1) of License Exception STA and for destinations in paragraph (c)(2), License Exception does not authorize any applicable reason for control other than national security. The toxins controlled by ECCN 1C351 paragraphs .d.1 through .d.10 and .d.13 through .d.19 are the principal CB items eligible for the 36 destination in paragraph (c)(1) of License STA, although these are subject to some special limits.

This question illustrates two points: First, make sure you have identified a license requirement before you look for license exceptions. Second, read the terms of any license exception carefully to avoid inadvertent violations.]

Well, at this point, we've either answered or deferred all the questions that we have.

So I would like to thank you very much for joining us.

Have a nice afternoon.