

License Exception STA

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License Exception STA

These slides were prepared on June 22, 2012. They contain some information that appears in proposed rules published for public comment prior to that date. As this information comes from proposed rules, it is subject to change upon publication as a final rule.





License Exception STA *Background*

- Implements part of Administration's Export Control Reform Initiative.
- Reduces delays.
- Allows focus of licensing resources on transactions with greater risk.



License Exception STA *Two Important Points*

- STA is a ***license exception***
 - Not needed for transactions where no license is required.
 - Subject to restrictions on all license exceptions in § 740.2 of the EAR.
- Use of STA is ***optional***
 - You may use a license even if the transaction is eligible for STA.
 - You may use any other available license exception.





License Exception STA *Presentation Overview*

- Requirements.
- Limitations.
- Authorizations.
- Conditions.



License Exception STA *Requirements*

- Available only for EAR Part 742, *i.e.*, Commerce Control List license requirements.
- Must comply with conditions.



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Limitations: STA is Not Available For

- License requirements based on:
 - Part 744 (end-use, end users, including Entity List); and/or
 - Part 746 (embargoes and special destinations).
- ***Some specific items:***
 - Some crime control items in Category 0;
 - All pathogens and some toxins in Category 1; and
 - Some gas turbine software and technology in Category 9.



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Limitations: STA is Not Available For

- Any ***item*** controlled for:
 - Encryption (EI);
 - Short supply (SS);
 - Surreptitious listening (SL);
 - Missile technology (MT); and / or
 - Chemical Weapons Convention (CW).
- Any ***item*** that is subject to exclusive export control jurisdiction of an agency other than the Department of Commerce.





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Special Limit for Some Toxins

- 1C351 paragraphs .d.1 through .d.10, .d.13 through .d.19.
 - Maximum 100 milligram (mg) per shipment.
 - Maximum 6 shipments per end user per calendar year.



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STA Authorizations

- ***All*** reasons for control that apply to the ***transaction*** must be authorized to use STA.
- Two authorizing paragraphs.



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STA Authorizations- First Authorizing Paragraph

- Reasons for control
 - NS, CB, NP, RS, CC, SI.
- 36 Destinations
 - Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, & United Kingdom.



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STA Authorizations-Second Authorizing Paragraph

- Only reason for control NS
 - Must not be excluded by the STA paragraph in the license exception section of the applicable ECCN.
- Eight destinations
 - Albania, Hong Kong, India, Israel, Malta, Singapore, South Africa, & Taiwan.





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Conditions-Furnish ECCN to Consignee

- Exporter furnishes ECCN to its consignee.
 - Reexporters and transferors pass that ECCN along.
 - Good for multiple shipments, must be accurate at the time of the shipment.
- Recipient may rely on furnished ECCN for purposes of determining subsequent STA eligibility unless it “knows” the ECCN is incorrect or has changed. Knowledge definition in § 772.1 applies.



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Conditions-Obtain Consignee Statement

- Prior to first STA shipment to a specific consignee.
- One statement good for multiple shipments if names, item descriptions and ECCNs remain accurate.
- Sender (of the item) must keep records correlating each STA shipment with its applicable consignee statement.



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Consignee Statement – Five Points

- Aware that items are to be shipped under STA.
- Been informed of ECCN by _____.
- No subsequent License Exception APR (a) or (b) shipments.
- Agrees not to ship or transfer in violation of EAR.
- Agrees to provide documents to USG upon request.



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Conditions-Notification Upon Shipment

- Exporter (or reexporter or transferor) notifies consignee in writing that shipment is made under STA.
 - Notice may be paper or electronic.
 - Notice need not accompany shipment.
- Notice must identify shipment to which it applies.
- Notice must identify STA items if only part of shipment is under STA.





License Exception STA *Conditions-Deemed Exports*

- Must inform recipient of restrictions on further transfer.
- Must reference EAR restrictions **or**
- Must be in the form of an agreement that is at least as restrictive as the EAR.
 - No expiration date.



License Exception STA *Conditions -APR Exclusion*

- Once shipped under STA an item may not be subsequently shipped under License Exception APR (a) or (b).



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Example 1

- Virus to a research laboratory in Australia for human vaccine development.
- ECCN 1C351.a.11.
- No parties on Entity List, Denied Persons List or List of Specially Designated Nationals and Blocked Persons.
- No prohibited end uses under part 744.



1C351 Human and zoonotic pathogens and “toxins”, as follows (see List of Items Controlled).

License Requirements

Reason for Control: CB, CW, AT

Control(s)

Country Chart

CB applies to entire entry CB Column 1

CW applies to 1C351.d.5 and d.6 and a license is required for CW reasons for all destinations . . .

.a. Viruses, as follows:

. . .

.a.11. Marburg Virus



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Example 1

Commerce Country Chart Reason for Control

	CB1	CB2	CB3	NP1	NP2	NS1	NS2	MT1	RS1	RS2	FC1	CC1	CC2	CC3	AT1	AT2
Australia	X					X		X	X							



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Example 1

- License exception restrictions under § 740.2 do not apply.
- Marburg virus is a pathogen in Category 1 that is listed in ECCN 1C351.a.11.
- STA restrictions under §740.20(b)(2)(v) list ECCN 1C351.a. Therefore Marburg virus is excluded by an STA restriction and we need not go to the authorization paragraphs.





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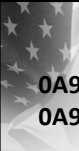
Example 2

- Telescopic sight to Argentina and Finland for hunting.
- ECCN 0A987.a.
- No parties on Entity List, Denied Persons List or List of Specially Designated Nationals and Blocked Persons.
- No prohibited end uses under part 744.




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0A987 Optical sighting devices for firearms (including shotguns controlled by 0A984); and parts (See list of items controlled).

License Requirements
Reason for Control: FC, CC, UN
Control(s)

Country Chart

FC applies to optical sights for firearms * * *	FC Column 1
CC applies to entire entry	CC Column 1
UN applies to entire entry	Iraq, North Korea, and Rwanda

* * * * *

List of Items Controlled

* * * * *

Items

a. Telescopic sights.

* * * * *




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Example 2

Commerce Country Chart
Reason for Control

	CB1	CB2	CB3	NP1	NP2	NS1	NS2	MT1	RS1	RS2	FC1	CC1	CC2	CC3	AT1	AT2
Argentina	X					X	X	X	X	X	X	X			X	
....																
Finland	X					X		X	X			X		X		



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Example 2

- License exception restrictions under §740.2 do not apply.
- STA restrictions under § 740.20(b) do not apply.
- We go to the authorization paragraphs.



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Example 2

- Argentina & Finland are both in authorization paragraph 740.20 (c)(1).
- CC reason for control is in 740.20(c)(1) but FC reason for control is not in that paragraph.
- STA authorizes this shipment to Finland but not to Argentina.



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Example 3

- Ceramic based materials to Albania.
- ECCN 1C007.a and .c.
- No parties on Entity List, Denied Persons List or List of Specially Designated Nationals and Blocked Persons.
- No prohibited end uses under part 744.



1C007 Ceramic base materials, non-“composite” ceramic materials, ceramic-“matrix” “composite” materials and precursor materials, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, AT

<i>Control(s)</i>	<i>Country Chart</i>
NS applies to entire entry	NS Column 2
MT applies to items in 1C007.d and .f . . .	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

. . . .

STA: License Exception STA may not be used to ship any item in 1C007.c or d to any of the eight destinations listed in § 740.20(c)(2) of the EAR.



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Example 3

Commerce Country Chart
Reason for Control

	CB1	CB2	CB3	NP1	NP2	NS1	NS2	MT1	RS1	RS2	FC1	CC1	CC2	CC3	AT1	AT2
Albania	X	X		X		X	X	X	X							



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Example 3

- License exception restrictions under §740.2 do not apply.
- STA restrictions under § 740.20(b) do not apply.



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Example 3

- Albania is not in § 740.20(c)(1) but is in 740.20(c)(2).
- NS is the only reason for control that applies to this export.



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Example 3

- ECCN 1C007 License Exception STA paragraph reads *STA*: License Exception STA may not be used to ship any item in 1C007.c or .d to any of the eight destinations listed in 740.20(c)(2).
- Therefore the 1C007.a item is eligible for STA and the 1C007.c item is not eligible for STA.



Use of STA

- Interactive compliance tool on BIS website
 - <http://beta-www.bis.doc.gov/index.php/interactive-sta-compliance-tool>
- Outreach to companies whose license activity indicates likely STA eligibility
- Compliance activities



Use of STA

- July 2011
 - 4 shipments valued at \$ 180 k.
- March 2012
 - 80 shipments valued at \$7.18 million.



License Exception STA and Export Control Reform

- July 15, 2011 proposed rule – introduced the “600 Series” ECCN concept.
- Many “600 series” ECCNs would be eligible for STA (c)(1) destinations (STA 36).
- Could simplify supplying allied governments with defense items – particularly parts.





License Exception STA and Export Control Reform – 0Y521 Series

- Framework for “0Y521” series published in a final rule
 - 0Y521 ECCNs would cover items that warrant control on the CCL but not yet identified in an ECCN.
 - 0Y521 is a temporary CCL control.



License Exception STA and Export Control Reform – 0Y521 Series

- 0Y521 series ECCNs not eligible for any License Exception (including STA) other than GOV for official use by the U.S. Government unless an item specific license exception is listed in Supp. No. 5 to Part 774.
- Will be able to use STA only for STA is so listed for the item in Supp. No. 5 to Part 774.





License Exception STA and Export Control Reform

- Special STA requirements would apply to “600 Series” ECCNs.
- Special eligibility requirements.
- Special limits on software and technology in proposed Supplement No. 4 to Part 740.



License Exception STA Proposed “600 series” Requirements

- End items.
- Parts, components, accessories and attachments.
- Software and technology.





License Exception STA Proposed “600 series” Requirements

- End item – Combination of components, parts, accessories and attachments or material in the form of a product, system, or piece of equipment that is ready for its intended stand-alone use, such as a ship, aircraft, firearm or milling machine.



License Exception STA Proposed “600 series” Requirements

- *End Items*
 - Eligibility Request in a License Application.
 - BIS eligibility decision identified in writing (in RWA of application); or
 - Published on BIS website and Supplement No. 4 to part 774.
- A few end items may be excepted from this requirement.



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Proposed “600 series” Requirements

- *End items, parts, components, accessories and attachments, software and technology* – Item must be ultimately destined for armed forces, police, paramilitary, law enforcement, customs and border protection, correctional fire, search or rescue agencies of one of the STA 36 countries or for producing an item for those agencies or a person in the United States.



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Proposed “600 series” Requirements

- Supplement No. 4 to Part 740 -- Limits on use of STA for software and technology.
- Some Category 9 ECCNs would be limited to “build to print” technology.
- Some Category 9 ECCNs software and technology may be precluded from STA altogether.
- Other ECCNs may be proposed for Supp. 4 to Part 740.



License Exception STA Proposals Open for Comment

- Comments due to BIS August 6, 2012.
- Proposed rule 77 F. Reg. 37524, 37541, June 21, 2012.
- Would apply to 600 series items.
- Would affect:
 - eligible parties to transaction,
 - STA Consignee Statement, and
 - AES filing.



License Exception STA Proposals Open for Comment

- Parties to Transaction: The purchaser, intermediate consignee, ultimate consignee and end user have been approved on a license issued by BIS or DDTC.
- Consignee Statement: Consignee must confirm end use by government of country in 740.20(c)(1) or United States Government or person in the United States (in addition to existing five points).





License Exception STA Proposals Open for Comment

- AES filing: All STA exports regardless of value would require STA filing.



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Questions?

48