

## **BIS Training Module 4**

### **Slide 1:**

Thank you for joining Module 4 of the Bureau of Industry and Security's Slide Presentation Series on Commerce Export License Requirements.

In Module 4 of this Series, we will provide an overview of the use of License Exceptions in an export or reexport transaction.

### **Slide 2:**

We will begin our discussion by looking at when to consider if a License Exception is available for your transaction.

We will then review the fundamentals of License Exceptions, including restrictions that apply to all License Exceptions, country group designations, list-based License Exceptions and transaction-based License Exceptions.

We will then discuss General Prohibitions 4 through 10 as they relate to License Exceptions.

### **Slide 3:**

Looking at the flowchart, generally speaking, if your item has an Export Control Classification Number...

**Slide 4:**

... and there is an “X” in the box for the reason for control of your item to its destination...

**Slide 5:**

... you would next determine if a License Exception is available for your transaction.

**Slide 6:**

What is a License Exception?

A License Exception is an authorization that allows you to export, under stated conditions, items subject to the Export Administration Regulations that would otherwise require a license. There are 16 License Exceptions, all of which are identified by a three letter symbol such as BAG, CIV or TSR. These symbols are used for export clearance purposes.

By using any of the License Exceptions, you are certifying that the terms, provisions, and conditions for the use of the License Exception have been met. Your eligibility to use a License Exception may depend on the nature of the item you are exporting or reexporting, the country of ultimate destination for that item, the end-use or end-user for that item, or other circumstances surrounding the export or reexport.

The terms and conditions for each particular License Exception are described in Part 740 of the Export Administration Regulations. Some License Exceptions may include notification, review, or reporting requirements. However, there is generally no need to apply for permission to use a License Exception.

**Slide 7:**

There are General Restrictions that apply to all License Exceptions. This slide indicates some of these restrictions.

Before reviewing the terms and conditions of a particular License Exception, you should first review the General Restrictions, described in detail in Section 740.2 of the EAR, to be sure that none apply to your transaction. If one or more restriction does apply, then your transaction is generally ineligible for a License Exception and you must either obtain an export license or refrain from the transaction.

**Slide 8:**

License Exception eligibility is limited by country. For ease of reference, countries are arranged into Country Groups. Countries may be listed in more than one group.

Country limitations are generally described within the terms and conditions of a specific License Exception. For example, a License Exception may state in its terms and conditions that it only authorizes certain types of transactions with Group B countries.

For a complete listing of countries in the Country Groups, please refer to Supplement 1 to Part 740 of the EAR. Note that there currently is no Country Group C.

**Slide 9:**

There are five list-based License Exceptions. The term “list-based” refers to the fact that these License Exceptions are only available to the extent specified in an ECCN entry on the Commerce Control List.

When you determined that a license is required for your transaction based on the ECCN and destination, the ECCN entry will indicate whether a list-based License Exception may be available for the specific transaction you are contemplating.

You must then review the License Exception criteria in Part 740 to see if your transaction qualifies in light of the general restrictions and the terms and conditions of that particular License Exception.

The five list-based License Exceptions are shown above. Each are very different in terms of criteria for use. Some are based on value, some are based on the type of item, and some are based on destination or end-use.

For example, LVS authorizes the export and reexport of eligible items based on a value limit that varies based on the ECCN entry. The terms and conditions of LVS described in Section 740.3 of the EAR indicate that the License Exception is only to be used for single

shipments, and only for exports or reexports to Country Group B countries. LVS has other limits as well, for example on the types of orders and number of transactions per year that are allowed. Let's look at an example of an entry on the Commerce Control List.

**Slide 10:**

In this example of ECCN 3B002, there are three "list-based" License Exceptions listed.

License Exception LVS may be available with an identified dollar value limit of \$500.

License Exception GBS may be available.

License Exception CIV is not available as indicated by "N/A" – not applicable.

Keep in mind that even though the ECCN indicates that License Exceptions LVS and GBS maybe available, you still need to review the specific License Exception criteria in Part 740 to see if your transaction qualifies. The ECCN is only the starting place in determining eligibility.

**Slide 11:**

The remaining License Exceptions authorize exports and certain reexports based on the overall circumstances of the transaction. These are often referred to as "transaction-based" License Exceptions. The ECCN entry for your item will not indicate whether these License Exceptions can be used, and in fact these "transaction-based" License

Exceptions will largely authorize transactions regardless of the ECCN unless otherwise indicated.

For example, License Exception TMP may be available in certain circumstances involving temporary exports and reexports, as well as exports and reexports of items temporarily in the United States. Examples of transactions that may be covered by TMP include temporary exports for exhibition and demonstration and the return of unwanted foreign-origin items.

License Exception RPL may be available in certain circumstances relating to servicing, repair and replacement. Examples of transactions that may be covered by RPL include the export of one-for-one replacement parts for equipment that has been previously exported legally.

The License Exceptions summarized in this slide are only examples of the many “transaction-based” License Exceptions described in part 740 of the EAR. Each of these transaction-based examples has unique terms and conditions that must be complied with. As with all License Exceptions, it’s important to review the terms and conditions associated with each License Exception before relying on a License Exception.

**Slide 12:**

As we discussed in the beginning of this presentation, when you are determining whether a license is required for your transaction, you generally look at the ECCN and country of destination.

**Slide 13:**

However, General Prohibitions 4 through 10 may also affect whether you may use a License Exception.

**Slide 14:**

If you determine that your export or reexport requires a license due to the ECCN and Country of Destination, and determine that there is a potential License Exception available to authorize the transaction under Part 740 of the EAR, you still need to look to see if General Prohibitions 4 through 10 apply to your transaction because some of these General Prohibitions preclude the use of a License Exception.

**Slide 15:**

In some cases, exports or reexports of EAR99 items may also benefit from the use of a License Exception. Although EAR99 items may often be exported without a license, there are occasions when such transactions will require authorization due to General Prohibitions 4 through 10. For example, exports of EAR99 items to Cuba must be authorized by BIS because these items are going to an embargoed destination. In these

situations, you may be able to use a License Exception for the required authorization, depending on the facts and circumstances of the transaction.

We will now look in more detail at the relationship between License Exceptions and General Prohibitions 4 through 10, keeping mind that if a transaction requires a license based on General Prohibitions 4 through 10, it may still be eligible for a License Exception depending on which General Prohibition applies.

**Slide 16:**

You must consider the applicability of General Prohibitions 4 through 10 before using a License Exception, because License Exceptions cannot be used in all circumstances.

General Prohibitions are described in Section 736.2 of the Export Administration Regulations and were covered in Module 3 of this series. The limits on the use of License Exceptions based on General Prohibitions 4 through 10 are described in Section 740.1.

First of all, it should be noted that General Prohibition 8 imposes no limitations on License Exception eligibility.

However, if your transaction is subject to General Prohibitions 5 or 6, your ability to use a License Exception will likely be limited. If your transaction is subject to GP 5, there are very limited circumstances described in part 744 that may allow for the use of a License Exception. If your transaction is subject to General Prohibition 6, you should consult part 746 of the EAR to see if you are eligible to use a License Exception.

You may not use a License Exception if your transaction is subject to General Prohibitions 4, 7, 9 or 10.

**Slide 17:**

Let's review the key points when considering License Exception eligibility for your transaction.

First, only consider using a License Exception after you have determined that a license is required based on the item and destination, or based on General Prohibitions 4 through 10.

Review the General Restrictions that apply to all License Exceptions and be sure that General Prohibitions 4 through 10 do not preclude the use of a License Exception. Be sure you have met all the terms and conditions of a License Exception prior to proceeding with your export or reexport.

Keep in mind that your transaction may be eligible for more than one License Exception. If this is the case, it's recommended that you use the License Exception with the least restrictive terms and conditions.

BIS has provided a summary of all License Exceptions on its website. However, keep in mind that you must review the EAR language to ensure that your transaction meets the eligibility requirements.

**Slide 18:**

In Module Five, we will cover the License Application and Support Documentation requirements.