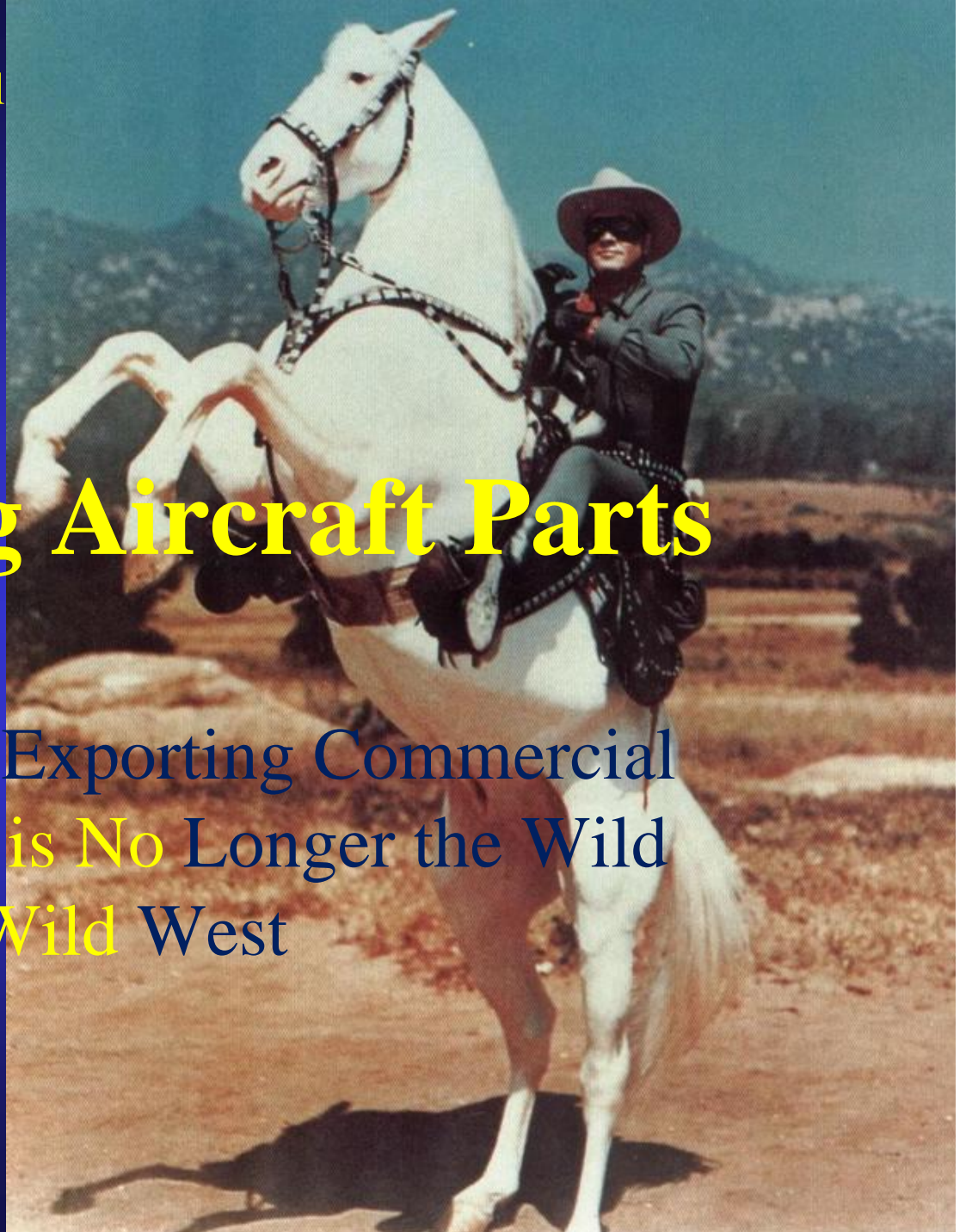


Jason Dickstein, General Counsel  
Aviation Suppliers Association

# Exporting Aircraft Parts

Hi Ho Silver! Exporting Commercial  
Aircraft Parts is No Longer the Wild  
Wild West



# Preliminary Notes

- This presentation is focused on BIS requirements for exporting commercial aircraft parts
- It does not provide in-depth discussions of Treasury (OFAC) or State (DDTC) requirements
- It is intended for aircraft parts distributors
  - So repair-specific elements are not included
- As always, this reflects rough guidance and you should refer specific fact patterns to an attorney  
*(my number is on the last page)*

# Definitions: Export

*What is an export?*

- Actual shipment or transmission of items out of the US
- Release of technology or software to a foreign national (including in the US)
  - Can include technical documents in some cases
- Includes repaired items!

If someone buys a part in the US and installs it on a foreign registered aircraft in the US, then the aircraft is exported – not the part – when it leaves the country

# Deemed Exports

- An export of technology or source code is "deemed" to take place when it is released to a foreign national within the United States
  - Permanent residents are not covered by this rule
- Technology includes information necessary for the development, production, or use of a controlled product

# Dual-Use Parts

- Many dual-use parts are being transferred from ITAR control to EAR control
- This will clarify export jurisdiction, and potentially ease the export burden for these parts

# New: Positive List USML

- Bombers, fighters, turbofan/turbojet trainers, attack helicopters, military UAVs/drones, surveillance aircraft, EW aircraft, refueling aircraft
- Aircraft incorporating a mission system controlled under the USML
- Aircraft capable of being refueled in-flight

# New: Positive List USML

- Inertial navigation systems, inertial measurement units, AHRS specially designed for:
  - USML-controlled aircraft
  - Military aircraft controlled under ECCN 9A610
- Some related components may be found in USML Category XII



# Positive List Parts

- A list of aircraft parts categories still subject to the USML is found in Category VIII(h)
  - Certain current-use fighters and bombers
  - Certain high-speed gearboxes
  - Parts that fulfill specific defense missions
    - e.g. wing folding systems, bomb racks, tail hooks, etc.
  - Parts that remain classified

# Engines

- There is a new USML category XIX for USML-controlled engines
  - Turbofan and Turbojet engines capable of at least 15,000 lbf (66.7 kN) of thrust and having additional military characteristics
  - UAV engines
  - Certain rotorcraft engines (note – this includes military variants of some civil engines, like the T700 which was FAA TCed as the CT7 and is used on the Bell 214ST)
  - FADEC and DEEC systems for engines in this category

# What About Other Parts?

- Parts for USML aircraft are no longer defaulting to the ITAR
  - Unless they fit into a specific call-out in the USML
- Parts for USML aircraft (that are not otherwise specified) default to ECCN 9A610 [BIS control!]

# And Parts Found in the USML?

- Parts that are called out by a USML category will continue to be regulated for export purposes under the ITAR
- Exporters of these parts will continue to need to be registered with DDTC and licensed to export

# Questions?



# But What If It is Not a Munitions List Item?

If State Doesn't Regulate It, Then  
Commerce Might

Most Civil Aircraft Articles Will Fall  
Within Commerce's Jurisdiction



# Is it Regulated by the Commerce Department?

- What am I exporting? Is it classified under the Commerce Control List (CCL)?
  - <http://beta-www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>
- Examples:
  - *CCL 2 - Material processing (e.g. bearings)*
  - *CCL 3 - Electronics*
  - *CCL 7 - Avionics*
  - *CCL 9 – Aerospace and Propulsion*

# Export Commodity Classification Numbers (for items on the CCL)

- Determine ECCN
  - Peruse the CCLs for ECCNs that describe your export
  - Alphabetical index to the CCL provides some help:  
[http://www.bis.doc.gov/policiesandregulations/ear/ccl\\_index.pdf](http://www.bis.doc.gov/policiesandregulations/ear/ccl_index.pdf)
  - Ask the manufacturer
  - Online via the Simplified Network Application Process:  
<http://www.bis.doc.gov/snap/index.htm>



# Export Commodity Classification Numbers

- If it is not in the CCL, then a license may be unnecessary
  - But certain limits like denied parties or controlled usage may necessitate a license
- General item default for unlisted articles is EAR99
  - But aircraft part default is 9A991
  - Military aircraft part default is now 9A610 (as of October)
- Call 1-202-482-4811 for U.S. Gov't ECCN help!

# Examples of Avionics ECCNs

Item	ECCN
• Avionics software	—7D994
• GPS	—7A005, 7A105
• Gyros	—7A002, 7A102
• INS and other inertial systems	—7A003
• Non-INS navigation instruments	—7A103
• Nav-Comm Systems <u>Technology</u>	—7E994
• Other nav-comm equipment not covered under another ECCN	—7A994

# General Aircraft Parts ECCN

- **Other aircraft parts/equipment not covered under another ECCN are ECCN 9A991**
- Demilitarized items are restricted from export to Iraq, North Korea and Rwanda due to UN embargos
- Such items are restricted from export to some countries under anti-terrorism restrictions
  - Column AT1 on the CCL country chart
  - Current restrictions include: Sudan (by chart) and Cuba, Iran, North Korea, and Syria (by rule)

b. Off highway wheel tractors of carriage capacity 9 mt (20,000 lbs) or more; and parts and accessories, n.e.s.

c. On-Highway tractors, with single or tandem rear axles rated for 9 mt per axle (20,000 lbs.) or greater and specially designed parts.

**9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.**

**License Requirements**

*Reason for Control:* AT, UN

*Control(s)* Country Chart

AT applies to entire entry AT Column 1

UN applies to 9A991.a See § 746.1(b) for UN controls.

**License Requirement Notes:** *There is no de minimis level for foreign-made aircraft described by this entry that incorporate commercial primary or standby instrument systems that integrate QRS11-00100-100/101 or commercial automatic flight control systems that integrate QRS11-00050-443/569 Micromachined Angular Rate Sensors (see §734.4(a) of the EAR).*

**License Exceptions**

LVS: N/A  
GBS: N/A  
CIV: N/A

**List of Items Controlled**

*Unit:* Number

*Related Controls:* QRS11 Micromachined Angular Rate Sensors are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls, unless the

QRS11-00100-100/101 is integrated into and included as an integral part of a commercial primary or standby instrument system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates such a system, or is exported solely for integration into such a system; or the QRS11-00050-443/569 is integrated into an automatic flight control system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates such a system, or are exported solely for integration into such a system. (See Commodity Jurisdiction requirements in 22 CFR Part 121; Category VIII(e), Note(1)) In the latter case, such items are subject to the licensing jurisdiction of the Department of Commerce. Technology specific to the development and production of QRS11 sensors remains subject to the licensing jurisdiction of the Department of State.

*Related Definitions:* N/A  
*Items:*

a. Military aircraft, demilitarized (not specifically equipped or modified for military operation), as follows:

a.1 Cargo aircraft bearing “C” designations and numbered C-45 through C-118 inclusive, C-121 through C-125 inclusive, and C-131, using reciprocating engines only.

a.2 Trainer aircraft bearing “T” designations and using reciprocating engines or turboprop engines with less than 600 horsepower (s.h.p.).

a.3 Utility aircraft bearing “U” designations and using reciprocating engines only.

a.4 All liaison aircraft bearing an “L” designation.

a.5 All observation aircraft bearing “O” designations and using reciprocating engines.

b. “Civil aircraft”;

**Note:** *Specify make and model of aircraft and type of avionics equipment on aircraft.*

c. Aero gas turbine engines, and specially designed parts therefor.

**Note:** *9A991.c does not control aero gas turbine engines that are destined for use in civil “aircraft” and that have been in use in bona fide civil “aircraft” for more than eight years. If they have been in use in bona fide civil “aircraft” for more than eight years, such engines are controlled under 9A991.d.*

d. Aircraft parts and components, n.e.s.

e. Pressurized aircraft breathing equipment, n.e.s.; and specially designed parts therefor, n.e.s.

**9A992 Complete canopies, harnesses, and platforms and electronic release mechanisms therefor, except such types as are in normal sporting use.**

**License Requirements**

*Reason for Control:* AT

*Control(s)* Country Chart

AT applies to entire entry AT Column 1

**License Exceptions**

LVS: N/A  
GBS: N/A  
CIV: N/A

**List of Items Controlled**

*Unit:* Number

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:*

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

**B. TEST, INSPECTION AND PRODUCTION EQUIPMENT**

**9B001 Equipment, tooling and fixtures, specially designed for manufacturing gas turbine blades, vanes or “tip shroud” castings, as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, MT, AT

*Control(s)* Country Chart

NS applies to entire entry NS Column 1

MT applies only to equipment for engines that meet the characteristics described in 9A001

AT applies to entire entry AT Column 1

**License Requirement Notes:** *See §743.1 of the EAR for reporting requirements for exports under License Exceptions.*

**License Exceptions**

LVS: \$5000, except N/A for MT  
GBS: Yes, except N/A for MT  
CIV: Yes, except N/A for MT  
STA: License Exception STA may not be used to ship commodities in 9B001.b to any of the eight destinations listed in § 740.20(c)(2) of the EAR.

**List of Items Controlled**

*Unit:* \$ value

*Related Controls:* For specially designed

**9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.**

**License Requirements**

*Reason for Control:* AT, UN

*Control(s)*

*Country Chart*

AT applies to entire entry      AT Column 1

UN applies to 9A991.a      See § 746.1(b) for UN controls.

***License Requirement Notes:*** *There is no de minimis level for foreign-made aircraft described by this entry that incorporate commercial primary or standby instrument systems that integrate QRS11-00100-100/101 or commercial automatic flight control systems that integrate QRS11-00050-443/569 Micromachined Angular Rate Sensors (see §734.4(a) of the EAR).*



# Do You Need a Commerce Department License?

- Check the specific reasons for control in CCL
- Check the Export Control Country Chart (cross reference country and reason for control):
  - [http://www.bis.doc.gov/policiesandregulations/ear/738\\_suppl.pdf](http://www.bis.doc.gov/policiesandregulations/ear/738_suppl.pdf)
- If there is an “X” in the cross-reference, then you need a Commerce license for export

## 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
Spain <sup>3</sup>	X					X		X	X							
Sri Lanka	X	X		X		X	X	X	X	X		X		X		
Sudan <sup>1</sup>	X	X		X		X	X	X	X	X		X		X	X	X
Suriname	X	X		X		X	X	X	X	X	X	X		X		
Swaziland	X	X		X		X	X	X	X	X		X		X		
Sweden <sup>3,4</sup>	X					X		X	X			X		X		
Switzerland <sup>3,4</sup>	X					X		X	X			X		X		
Syria	See § 746.9 of the EAR to determine whether a license is required in order to export or reexport to this destination.															
Taiwan	X	X	X	X		X	X	X	X	X		X		X		
Tajikistan	X	X	X	X		X	X	X	X	X		X	X			
Tanzania	X	X		X		X	X	X	X	X		X		X		
Thailand	X	X		X		X	X	X	X	X		X		X		
Timor-Leste	X	X		X		X	X	X	X	X		X		X		

# Do You Need a Commerce Department License?

- What will the importer do with it? Certain end-uses are restricted:
  - <http://www.bis.doc.gov/policiesandregulations/ear/744.pdf>
  - Rocket systems and unmanned air vehicles may require licensing
  - These restrictions may drive a need to check third party country of registry and control (see “where is it going”)
- What else does the receiver do? Certain types of conduct are prohibited without BIS license
  - Supporting design, development or production of missiles or nuclear explosive devices or chemical weapons or biological weapons
  - Supporting (through financing or logistics) a transaction that would violate the licensing provisions directly if performed
- Who will receive it? Check the BIS prohibition lists ...



# Forbidden Parties

- Department of Commerce's Bureau of Industry and Security (BIS) lists:
  - Denied Persons List
    - <http://beta-www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list>
  - Denied Entities List
    - <http://beta-www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list>

# What Is Denied?

- Denied Persons may NOT participate in any way in any transaction involving the export from the United States of any commodity, software or technology subject to Export Administration Regulations (EAR)
  - No license transactions
  - No negotiations
  - No benefit from any export transaction
  - May not be the principal nor the agent in an export transaction
  - No facilitation of exports
  - No facilitation of acquisition of an export item
  - No procurement of items from the US for servicing

# IDENTIFY “RED FLAGS”

- “Red flags” have been designated by the BIS to illustrate the types of circumstances that should cause reasonable suspicion that a transaction will violate export regulations
- Examples of “red flag” situations:
  - The customer or its address is similar to one of the parties found on the Commerce Department's [BIS's] list of denied persons
  - Unusual fact pattern leads to a suspicion of illegal conduct

# Unverified Persons or Entities

- Identify whether your customer might raise an automatic “red flag”
- Consult the Department of Commerce’s Bureau of Industry and Security (BIS) lists:
  - **Unverified List** (foreign persons who raise automatic “red flags” because of past verification issues)
    - <http://beta-www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/unverified-list>

# What to Do if There is a Red Flag

- The exporter **MUST** inquire about the end-use or end-user or ultimate country of destination
- If you encounter a piece of information in the course of your dealings with the customer that raises a “red flag”:
  - Refrain from the transaction, OR
  - Contact a regional BIS enforcement office. Office addresses & phone #s provided at:  
<http://www.bis.doc.gov/about/programoffices.htm>

# What to Do if There is a Red Flag

- Voluntary anonymous reports of export issues may be made to:
  - <https://www.bis.doc.gov/forms/eeleadsntips.html>
- If you can adequately confirm that the red flag does not represent an actual legal issue or violation, then you may proceed with the transaction
  - Use documents and keep them on file
  - Do not become “willfully blind” to issues

# Do You Need a BIS License?

- BIS Licenses:
  - A relatively small percentage of total US exports and re-exports require a BIS license
  - Licenses can be used to overcome exclusions
- Apply for licenses using SNAP-R

# Re-Export Concerns

- If a customer intends to re-export a licensed product, the customer may need a license
  - Commerce
    - The *de minimis* rule excepts anything with less than 25% US content (10% to category D:1 nations) - Otherwise, re-export is subject to US export rules
  - State
    - Defense-related articles from the USML must always be licensed for re-export



# Short-Circuiting the License Process

- Obtaining a license takes time
- This is inconsistent with AOG service
- There are certain exceptions that can sidestep licensing requirements and can be very useful for AOG situations

# Warning

- Under the NEW rules that become effective October 15<sup>th</sup>, license exceptions may be restricted for:
  - 600 series ECCNs destined to, shipped from, or manufactured in country group D:5 [but GOV may be used to ship to US and its allies]
  - 600 series ECCNs controlled as MT [in some cases you can use GOV and RPL but not AVS]

# Country Group D:5

- Afghanistan
- Belarus
- Burma
- China
- Congo, D.R.
- Cote D'Ivoire
- Cuba
- Cyprus
- Eritrea
- Fiji
- Haiti
- Iran
- Iraq
- Lebanon
- Liberia
- Libya
- North Korea
- Somalia
- Sri Lanka
- Sudan
- Syria
- Venezuela
- Vietnam
- Zimbabwe

# BIS License Exceptions: Replacement of Parts (RPL)

- One-for one replacement of defective parts or servicing and replacement of equipment, e.g. exchange agreements
  - Aircraft must have been legally exported in the first place - you must confirm the appropriate authority for the original transaction if you were not the aircraft exporter
    - Check the original license to make sure that there are no restrictions on replacement parts exports!
  - SAME part number – no improvements/upgrades
  - Obtain the core or confirm its destruction

# Replacement of Parts (RPL) Details

- If an item is returned to the US for inspection, testing, calibration or repair (including overhaul and reconditioning)
  - No improvements or changes to basic characteristics
- Limited applicability
  - Only applies to group D:1 nations if you were the original licensed exporter and end-use has not changed
  - Does not apply to group E:1 nations
  - See country group listings at:  
[http://www.bis.doc.gov/policiesandregulations/ear/740\\_supp1.pdf](http://www.bis.doc.gov/policiesandregulations/ear/740_supp1.pdf)

# Replacement of Parts (RPL) Exceptions

- RPL may NOT be used for parts meant to be held as spares, unless
  - They are replacing parts from a previously licensed spares pool
  - They would be used on a foreign origin aircraft that could be legally exported from the US without a license (e.g. under an exception)
- RPL may not be used for group E:1 nations

# BIS License Exceptions:

## Civil Aircraft (AVS) – Gather Data

- If the aircraft on which the part is to be installed is identified, then you should consider the following:
  - The country in which the aircraft is located, and
  - The country in which the aircraft is registered, or will be registered in the case of an aircraft being manufactured, and
  - The country, including a national thereof, which currently owns, controls, leases, and/or charts the aircraft

# BIS License Exceptions: Civil Aircraft (AVS)

## *No License Required!*

- Exports of equipment and spare parts for
  - Permanent use on an aircraft of any registry
    - Except an aircraft registered in a forbidden country, or owned or controlled by, or under charter or lease to, a forbidden country or a national of a forbidden country
    - The specific aircraft must be identified so you can verify its eligibility
    - Forbidden countries are Cuba and those in group D:1
    - THIS version DOES NOT apply to MT-restricted items



# BIS License Exceptions (AVS)

## *No License Required!*

- Exports of equipment and spare parts to US or Canadian airlines' installations or agents
  - Intended for maintenance, repair, or operation of US/Canadian-registered aircraft (but the specific aircraft need not be identified at the time of order)
  - Must not be located in (category D1) forbidden country
  - Ordered by the airline and sent to its own installation or agent
  - SOME MT-controlled articles are not eligible for this exception (many civil avionics can use the exception)

# BIS License Exceptions (AVS)

## *No License Required!*

- Exports to a specific US or Canadian registered aircraft for AOG
  - Intended for maintenance, repair, or operation of US/Canadian-registered aircraft *in extreme need*
  - Aircraft must be at an airport NOT in Cuba nor a category D:1 forbidden country (except China)
  - AES record must be filed **unless** article exported by a US air carrier for their own use
- Includes foreign air carrier aircraft of US or Canadian registry
- SOME MT-controlled articles are not eligible for this exception (many civil avionics can use the exception)

# BIS License Exceptions (STA): Strategic Trade Authorization

- Controlled under
  - national security (NS)
  - chemical or biological weapons (CB)
  - nuclear nonproliferation (NP)
  - regional stability (RS)
  - crime control (CC)
  - significant items (SI)
- Exported to:  
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

# BIS License Exceptions (STA) Requirements

- Exporter must send the ECCN to the consignee
- Exporter must obtain a written statement from the consignee prior to shipping
  - Specific language is found in 15 CFR 740.20(d)(2)

# BIS License Exceptions (STA)

- May apply to articles like 7A994 commercial avionics that integrate QRS11 gyros
  - controlled under RS and AT
- RPL and AVS will likely be useful in most cases where STA could be used

# Don't Forget the "Paperwork"

- Electronic Export Information
  - Must be filed on-line: <http://www.aesdirect.gov>
  - Keep copies of your documents for at least five years
    - Shipping document with the ITN
    - All other related transactional documents
  - There is a limited exception for non-licensed commodities valued at less than \$2,500

# Thank You

Jason Dickstein, General Counsel  
Aviation Suppliers Association  
2233 Wisconsin Avenue, Suite 503  
Washington, DC 20007

Tel: (202) 628-6776 – Fax: (202) 628-8948  
[Jason@WashingtonAviation.com](mailto:Jason@WashingtonAviation.com)