



# EXPORT: A PARTS WARS STORY

2018 ASA Annual Conference

Workshop P

# Some Export Regulators

- **BIS – Bureau of Industry and Security**
  - Commerce Department office responsible for the regulation of most exports
- **DDTC – Directorate of Defense Trade Controls**
  - State Department office responsible for the regulation of exports of defense-related articles
- **OFAC - Office of Foreign Asset Control**
  - Treasury Department office responsible for certain additional export controls meant to advance particular interests of the United States

# Sample Penalties for Violations

- **Civil/Administrative Penalties**
  - Up to \$250,000 or twice the amount of the transaction
- **Criminal Penalties**
  - Up to \$1,000,000 in fines and 20 years in prison
- **Other Penalties**
  - Removal of license
  - Denial of export privileges

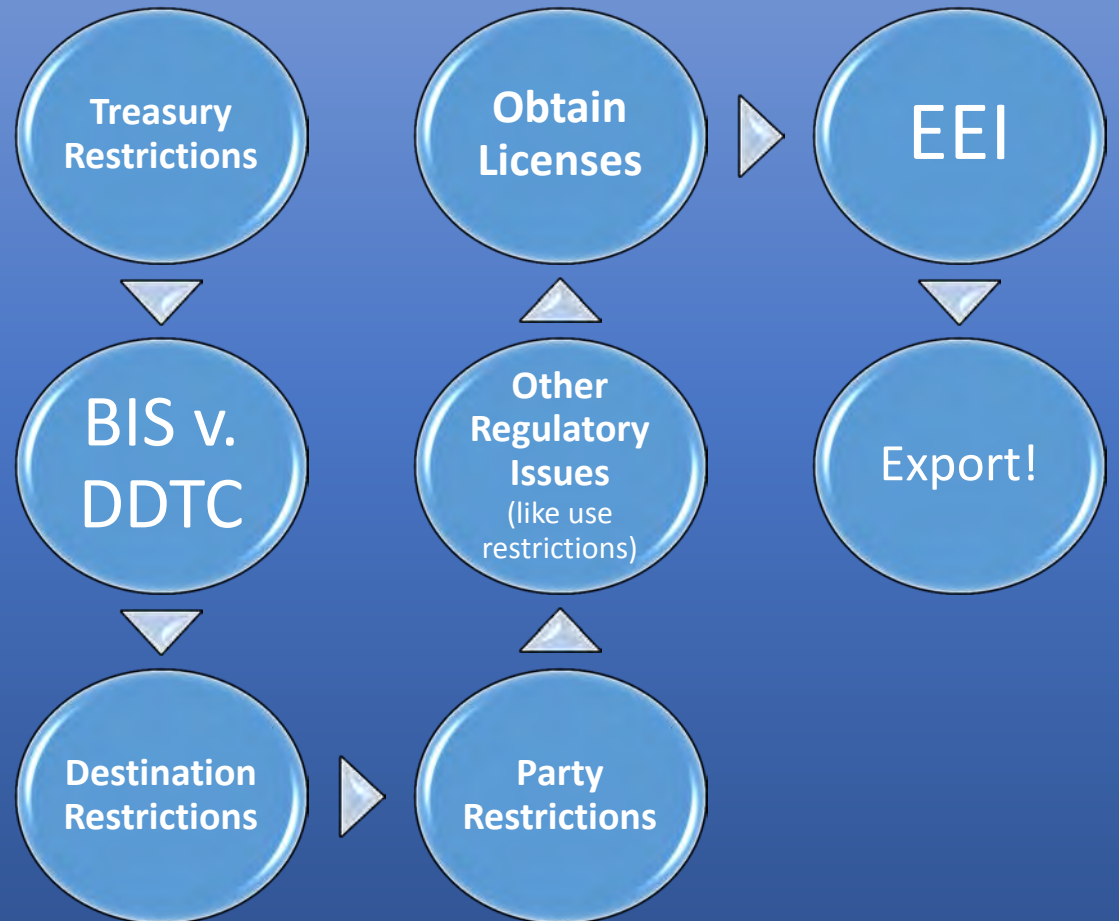
# Definitions: Export

## *What is an export?*

- Actual shipment or transmission of items out of the U.S.
  - Includes software
  - Includes technology
  - Can include technical documents in some cases
  - Includes repaired items!

# Steps to Compliance

- Look at Treasury restrictions
- Identify whether the article is State or Commerce restricted
- Examine appropriate destination restrictions
- Check party-level restrictions
- Identify other regulatory issues
- Obtain licenses as necessary
- Document the transaction



# First, Can I Transact Business Here At All?

Are There General Treasury  
Restrictions that Regulate  
Transfer of Assets?

# Consolidated Screening List

- Commerce, State, and Treasury lists
- [http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp)
- If you have problems managing the consolidated list, then use the individual lists

*Please note that lists and regulations are updated frequently by the government, and should be checked for each transaction*

# OFAC Lists

- **Sanctions Programs and Country Information List:**
  - <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>
- **Specially Designated Nationals And Blocked Persons List:**
  - <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>



# Sample SDN Parties

*as of June 12, 2018*

- Aero Caribbean Airlines
- Aero Continente
- Aero Courier Cargo
- Aero Express Intercontinente
- Aero Sky One
- Al-Naser Airlines
- Butembo Airlines
- Caspian Airlines
- Cham Wings Airlines
- Cubana Airlines
- Dart Airlines
- Dena Airlines
- Empresa Cubana de Aviacion
- Intercontinental de Aviacion
- International Airline Consulting
- Kyrgyztransavia Airlines
- Mahan Air
- Pouya Airlines
- Sky Blue Airlines
- Syrian Arab Airlines
- Ukrainian-Mediterranean Airlines
- Yasair Cargo Airline



# Nations Restricted by OFAC Sanctions

*Current as of June 12, 2018*

- Belarus
- Burundi
- Central African Republic
- Congo (Dem. Rep. of)
- Cuba\*\*
- Iran\*\*
- Iraq
- Lebanon
- Libya
- North Korea
- Russia (Magnitsky)
- Somalia
- South Sudan
- Sudan and DARFUR
- Syria
- Ukraine/Crimea/Russia
- Venezuela
- Yemen
- Zimbabwe

# Iran and Cuba

- There are special agreements that addresses shipping aircraft and aircraft parts to Iran and Cuba
  - You must get an OFAC license for Iran
  - You must get a BIS license for Cuba
- For Iran, JCPOA has ended so OFAC licenses for aircraft parts to Iran are available under 31 C.F.R. § 560.528
  - JCPOA licenses are subject to winddown – JCPOA licenses to be revoked after August 6, 2018
- For Cuba, Covers parts and repairs to ensure the safety of civil aviation
  - No military for Cuba
  - BIS policy: eligible licenses are typically issued

# Exception: Treasury Licenses

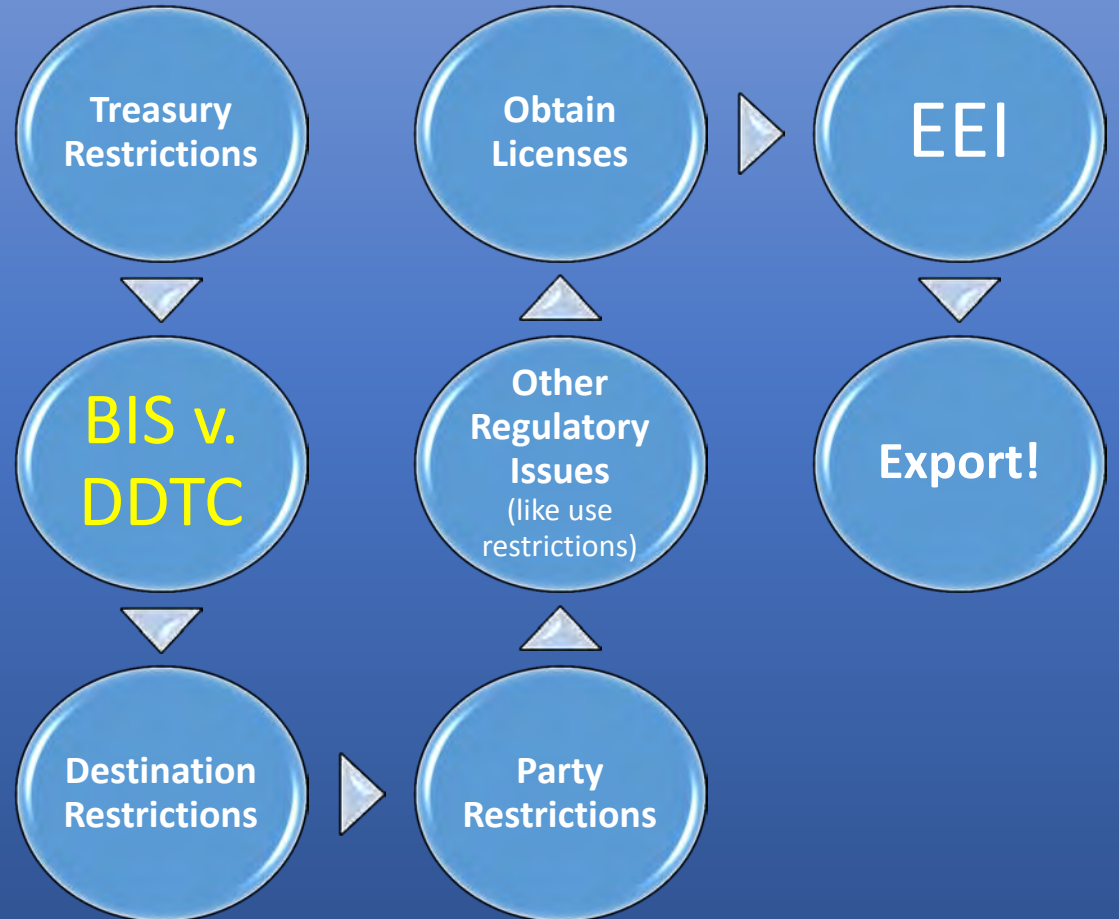
- A general OFAC license authorizes certain transactions without the filing of an application with OFAC
  - Example: An OFAC general license permits shipping aircraft parts to Cuba if BIS has licensed the transaction
- A specific OFAC license is issued on a case-by-case basis, and authorizes an activity that would otherwise be prohibited by the embargo or sanctions program
  - Example: 31 C.F.R. § 560.528 permits licenses on a case-by-case basis for export / re-export to support safety of civil aviation and safe operation of U.S.-origin commercial passenger aircraft

# Exception: Treasury Licenses

- You may also need to apply for release of blocked funds
- Online summary of OFAC laws and regulations:
  - <http://www.treasury.gov/resource-center/sanctions/Documents/facei.pdf>

# Steps to Compliance

- Identify whether the article is State or Commerce restricted



# A Structured Approach to Exporting: Second Step

## BIS vs. DDTC

- Distinguish the U.S. Department with jurisdiction
  - Is it a US Munitions List Item?
    - Defense articles (many dual-use items have been removed from the USML!)
    - Check ITARs
    - State has export jurisdiction
  - Otherwise subject to BIS restrictions
    - Check the ECCN and the BIS regulations
    - Commerce has export jurisdiction

# It's Not About ITAR, Anymore!

- As of October 15, 2013 a significant change to the export regulations removed many articles from the ITARs and move them to the Commerce Department's regulations
  - Most dual use items are transferred to Commerce
  - Non-aviation items may not be affected by this change
  - This is for parts... many defense aircraft remain on the USML



# Examples of USML Aircraft Articles

Certain articles (and their subcomponents) that are specially designed for USML/9A610-controlled aircraft:

- Inertial Navigation Systems (INS)
- Inertial Measurement Units (IMUs)
- Attitude and Heading Reference Systems (AHRS)
- Parts for DoD-funded developmental aircraft
- Parts for B-1B, B-2, F-15SE, F/A-18E/F/G [*parts for earlier models are subject to the EAR*], F-22, F-35, F-117
- Parts found in a positive list
  - Published at 22 C.F.R. 121.1 - VIII(h)
  - Articles with defense-specific purposes, like threat-adaptive flight control systems, wing folding systems, etc.

# Defense Item Analysis: What Next?

- If it is regulated by State Department
  - Register with State Department
  - Assess whether particular State Department Restrictions apply
  - Obtain appropriate licenses
  
- Most civil aircraft parts will not be subject to the ITARs

# 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://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*

# Cracking the Code: Export Commodity Classification Numbers

- Determine ECCN
  - Peruse the CCLs for ECCNs that describe your export
  - Alphabetical index to the CCL provides some help:  
<https://www.bis.doc.gov/index.php/forms-documents/regulations-docs/13-commerce-control-list-index/file>
  - Ask the manufacturer
  - Online via the Simplified Network Application Process - Redesign (SNAP-R):  
<http://www.bis.doc.gov/snap/index.htm>

9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and “parts” and “components,” n.e.s. (see List of Items Controlled).

**License Requirements**

*Reason for Control:* AT, UN

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738).</i>
AT applies to entire entry	AT Column 1
UN applies to 9A991.a	See § 746.1(b) for UN controls.

**List Based License Exceptions** (See Part 740 for a description of all license exceptions)

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

**List of Items Controlled**

*Related Controls:* N/A  
*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. Aircraft n.e.s.;

c. Aero gas turbine engines, and “parts” and “components” “specially designed” 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. “Parts” and “components,” “specially designed” for “aircraft,” n.e.s.

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

**9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and “parts” and “components,” n.e.s. (see List of Items Controlled).**

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*CIV:* N/A

**List of Items Controlled**

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:*



# 9A991: What is Covered?

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.

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d. “Parts” and “components,” “specially designed” for “aircraft,” n.e.s.

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



# General Aircraft Parts ECCN

- **Other aircraft parts/equipment not covered under another ECCN are ECCN 9A991**
- Demilitarized items are restricted from export to Central African Republic, Democratic Republic of the Congo, Eritrea, Iran, Iraq, Lebanon, Libya, North Korea, Somalia, and Sudan due to UN embargos (*§ 746(b)(2)*)
- 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)
  - Restrictions may be overcome by license

# Examples of Avionics ECCNs

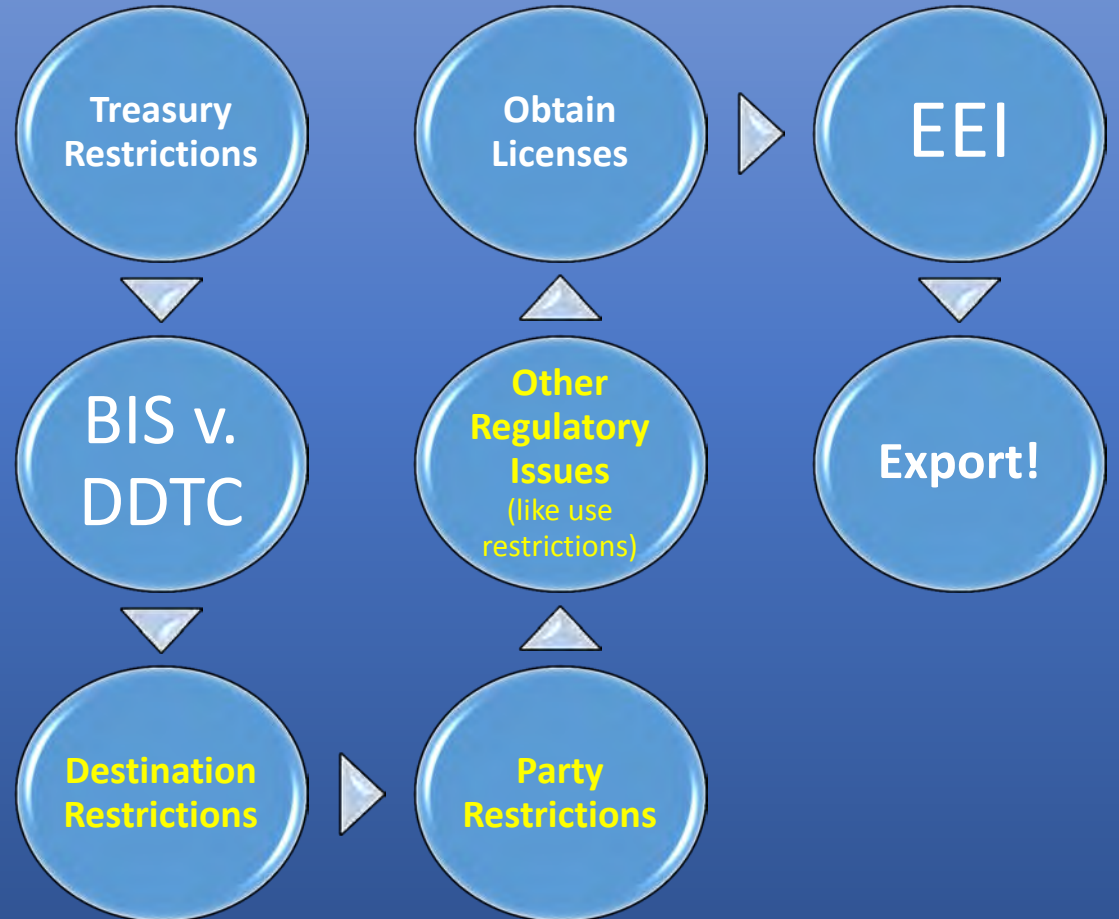
Item	ECCN
<ul style="list-style-type: none"><li>• Avionics software</li></ul>	—7D994
<ul style="list-style-type: none"><li>• GPS</li></ul>	—7A005, 7A105
<ul style="list-style-type: none"><li>• Gyros</li></ul>	—7A002, 7A102
<ul style="list-style-type: none"><li>• INS and other inertial systems</li></ul>	—7A003
<ul style="list-style-type: none"><li>• Non-INS navigation instruments</li></ul>	—7A103
<ul style="list-style-type: none"><li>• Nav-Comm Systems <u>Technology</u></li></ul>	—7E994
<ul style="list-style-type: none"><li>• Other nav/comm equipment not covered under another ECCN</li></ul>	—7A994

# New “600 Series” ECCNs

Item	ECCN
• Military gas turbine engines	—9A619
• Post-1946 aircraft designed for military use but not ITAR controlled	—9A610
• Articles specially designed for controlled aircraft	—9A610
• <i>Military commodities outside the US that are derived from “600 series” controlled content</i>	—0A919

# Steps to Compliance

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- 
- Examine appropriate destination restrictions
- Check party-level restrictions
- Identify other regulatory issues
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# 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):  
<https://www.bis.doc.gov/index.php/forms-documents/regulations-docs/14-commerce-country-chart>
- If there is an “X” in the cross-reference, then you need a Commerce license for export

9A991 “Aircraft”, n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and “parts” and “components,” n.e.s. (see List of Items Controlled).

**License Requirements**

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*LVS:* N/A

*GBS:* N/A

*CIV:* N/A

**List of Items Controlled**

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:*



### 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:
  - <https://www.bis.doc.gov/index.php/documents/regulation-docs/418-part-744-control-policy-end-user-and-end-use-based/file>
  - 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 if performed, directly
- Who will receive it? Check the BIS prohibition lists ...



# Denied Parties

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



Search .. 

## Bureau of Industry and Security

U.S. Department of Commerce  
*Where Industry and Security Intersect*

Home
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Regulations
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Policy Guidance
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Reform

**Lists of Parties of Concern**

- [Lists of Parties of Concern](#)
- [Denied Persons List](#)
- [Entity List](#)
- [Unverified List](#)
- [Consolidated Screening List](#)

### The Denied Persons List

Note: Where the Expiration Date is blank the denial order has no expiration.

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Last Modified: May 21, 2015

Name and Address	Effective Date	Expiration Date	Type of Denial
	11/30/-0001		Non Standard
<i>Appropriate Federal Register Citations:</i> A. ROSENTHAL (PTY) LTD. P.O. BOX 44198, 65 7TH STREET, DENMYR BUILDING, LINDEN, ZA, 2104			
<i>Appropriate Federal Register Citations:</i> 62 F.R. 43503 8/14/97 A. ROSENTHAL (PTY) LTD. P.O. BOX 97 292 INDEPENDENCE AVENUE, WINDHOEK, NA			

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# 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

- 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://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/unverified-list>

# What to Do if there is a Red Flag

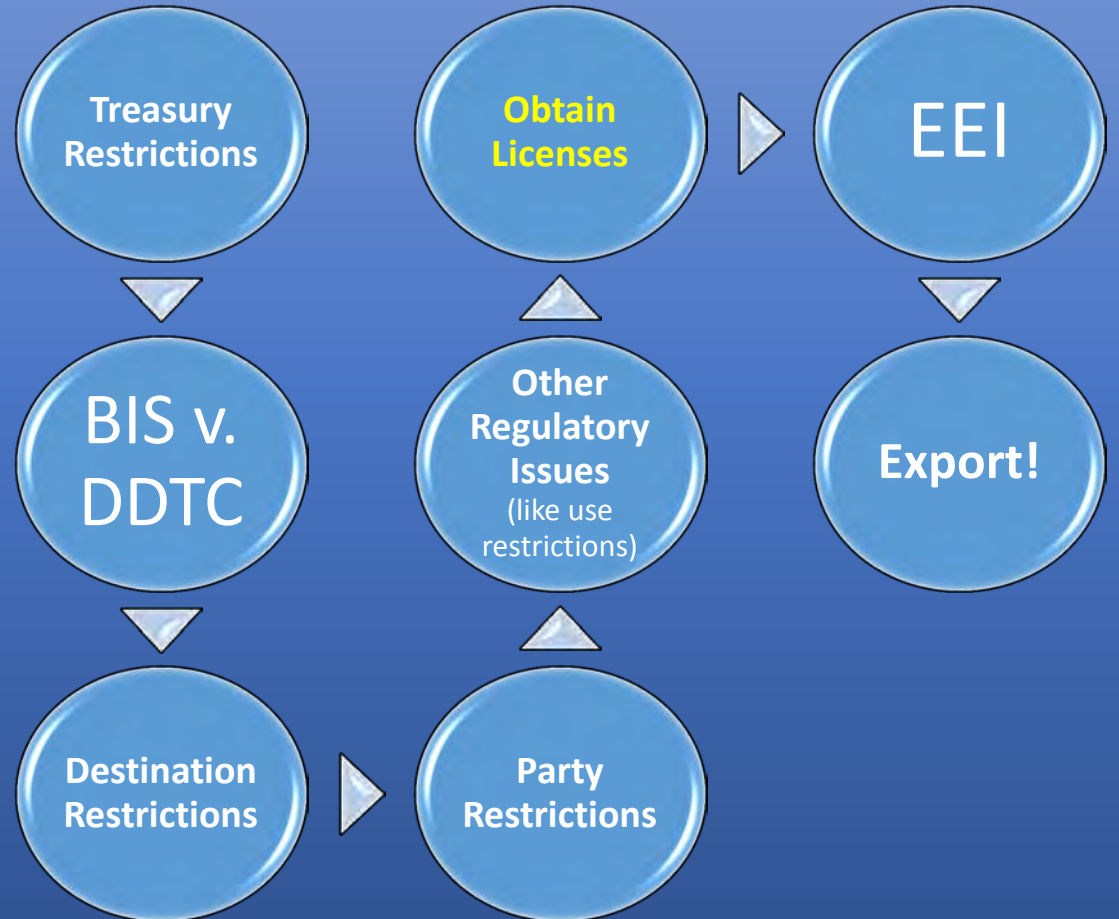
- The exporter **MUST** inquire about the end-use or end-user or ultimate country of destination
- If you encounter a piece of information in the course of your dealings with the customer that raises a red flag:
  - Refrain from the transaction, OR,
  - Contact a regional BIS enforcement office. Office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

# What to Do if there is a Red Flag

- Voluntary anonymous reports of export issues may be made to:
  - <https://www.bis.doc.gov/index.php/component/rsform/form/14-reporting-violations-form?task=forms.edit>
- 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 turn your back or become “willfully blind” to issues

# Steps to Compliance

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- Obtain licenses as necessary
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# 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
    - Further limits may apply to Series 600 items
  - 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



# BIS License Exceptions: Replacement of Parts (RPL)

- One-for one replacement of 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



# BIS License Exceptions: Servicing (RPL)

- 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
  - 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/index.php/forms-documents/doc\\_download/944-740-sup-1](http://www.bis.doc.gov/index.php/forms-documents/doc_download/944-740-sup-1)

# BIS License Exceptions: Civil Aircraft (AVS)

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 charters 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



# BIS License Exceptions (AVS)

## *No License Required!*

- Exports of equipment and spare parts to U.S. 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





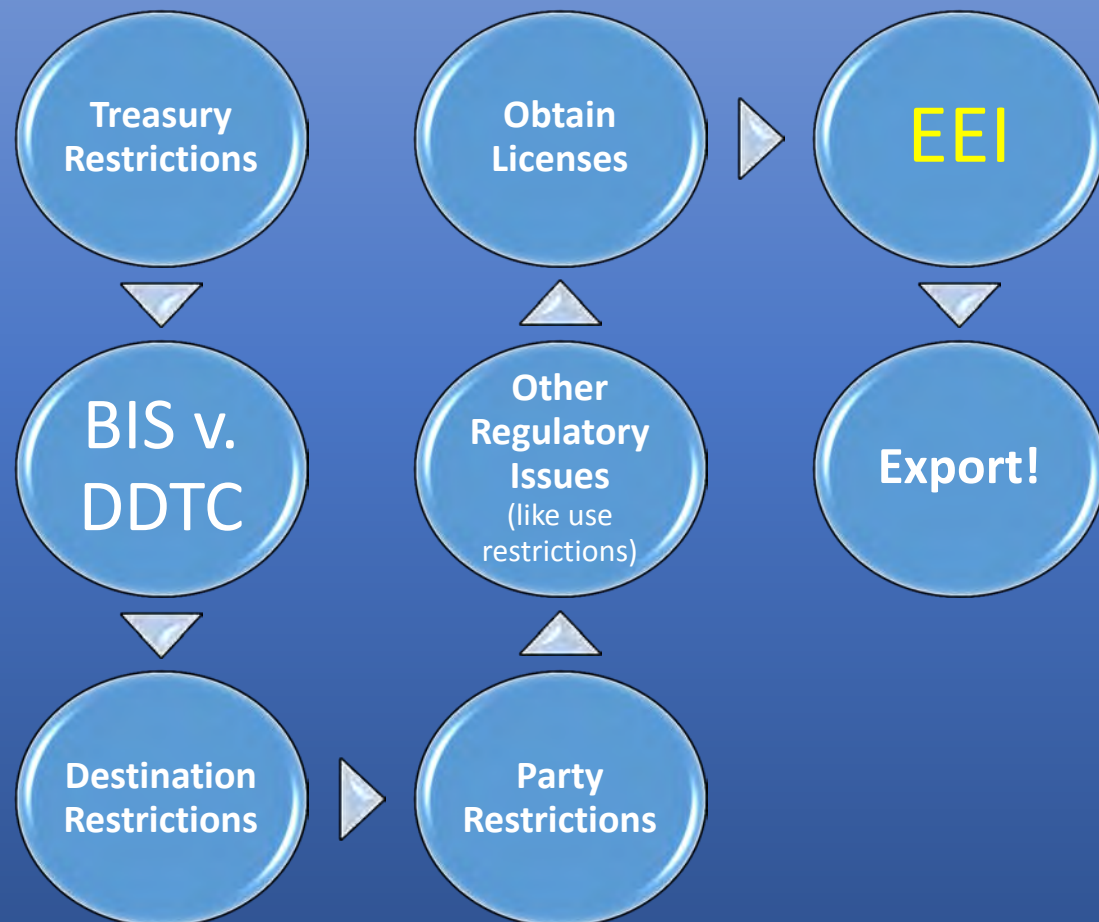
# BIS License Exceptions (AVS)

## *No License Required!*

- Exports to a specific U.S. 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

# Steps to Compliance

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- Document the transaction



# Don't Forget the "Paperwork"

- Electronic Export Information
  - Must be filed on-line: <https://ace.cbp.dhs.gov>
  - You will get an International Transaction Number (ITN)
    - Comes in your responsive email – also found in ACE Shipment Manager
    - ITN goes on 1<sup>st</sup> page of the commercial loading document (e.g. air waybill, bill of lading)
  - There is a limited exception for non-licensed commodities valued at less than \$2,500 (*per schedule B number*)
- If you are shipping through a freight forwarder, then absent a special *agency* agreement, you are usually expected to file the EEI

# Document Retention

- Keep copies of your export documents for at least five years
  - EEI information
  - shipping documents
  - invoices
  - orders
  - packing lists
  - correspondence
  - and any other relevant information bearing upon the export transaction
- May be retained electronically

# Questions?



Please feel free to ask questions

# Thank You

Jason Dickstein, ASA Counsel  
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2233 Wisconsin Avenue, Suite 503  
Washington, DC 20007

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[Jason@WashingtonAviation.com](mailto:Jason@WashingtonAviation.com)