



# Export Week!

**Aircraft Part Compliance: Licensing and License Exceptions**

Aviation Suppliers Association

October 11, 2024



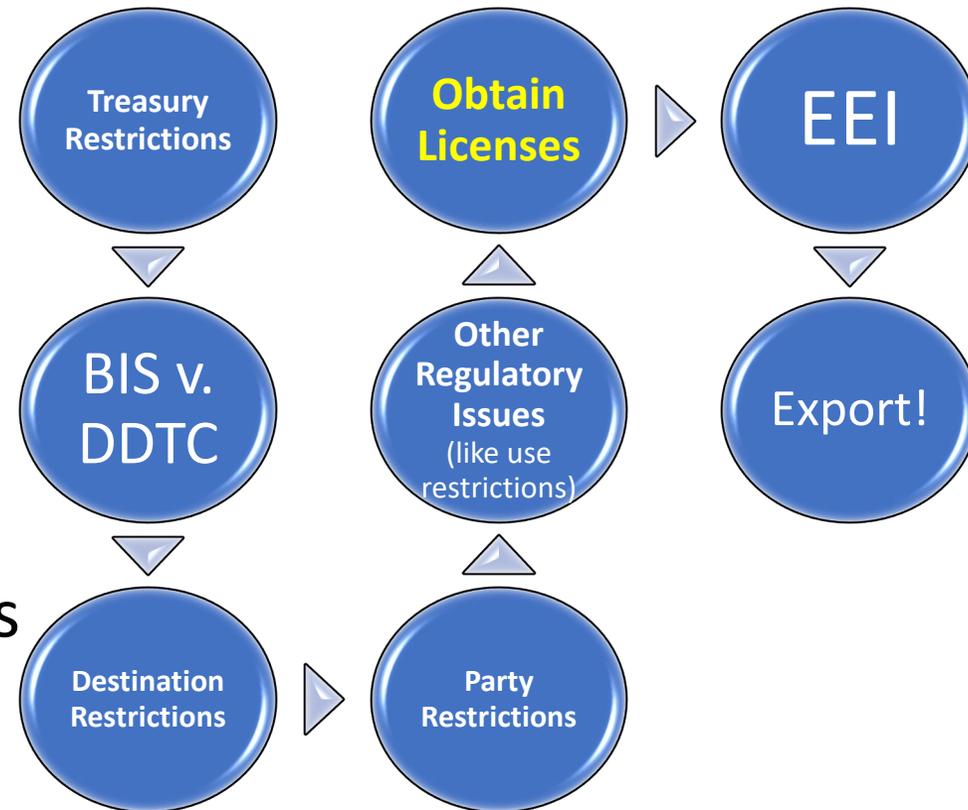
# Jason Dickstein



- Advising aviation companies since 1992
- General Counsel to the Aviation Suppliers Association since 1997
- Our law firm represents and counsels air carriers, manufacturers, repair stations and distributors
- Advise businesses on export and airworthiness compliance

# Compliance Can Be a Process

- 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





# Do You Need a BIS License?

- If the regulations say you cannot export, then you don't have to take this as an absolute prohibition
  - Destination-based restriction
  - Party-based restriction
  - Use-based restriction
  - Special sanctions program
- 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



# Licensing Tips: Ultimate Consignee

- You will need a completed BIS-711
- It should be signed by the Ultimate Consignee (block 6)
- The Ultimate Consignee is the principal party in interest located abroad who receives the exported or reexported items
  - Could be a distributor/reseller
  - Could be a repair station
  - Could be an operator
  - If the party who orders the article is having it drop-shipped to another location, then that party is not the ultimate consignee
- The ultimate consignee is not a forwarding agent or other intermediary, but may be the end-user

15 C.F.R. §§ 30.1, 748.5(e).

FORM BIS-711 FORM APPROVED UNDER OMB CONTROL NO. 0694-0021		U.S. DEPARTMENT OF COMMERCE BUREAU OF INDUSTRY AND SECURITY <small>Information furnished hereon is subject to the provisions of the Sections 4812(b)(7) and 4812(b)(1)(B) of the Export Control Reform Act (ECRA) and its unclassified disclosure is prohibited by law.</small>		DATE RECEIVED (Leave Blank)	
<b>STATEMENT BY ULTIMATE CONSIGNEE AND PURCHASER</b>					
1. ULTIMATE CONSIGNEE			CITY		
ADDRESS LINE 1			COUNTRY		
ADDRESS LINE 2			POSTAL CODE	TELEPHONE OR FAX	
2. DISPOSITION OR USE OF ITEMS BY ULTIMATE CONSIGNEE NAMED IN BLOCK 1 <small>We certify that the items: (left mouse click in the appropriate box below)</small>					
A. <input type="checkbox"/> Will be used by us (as capital equipment) in the form in which received in a manufacturing process in the country named in Block 1 and will not be reexported or incorporated into an end product.					
B. <input type="checkbox"/> Will be processed or incorporated by us into the following product (s) _____ to be manufactured in the country named in Block 1 for distribution in _____					
C. <input type="checkbox"/> Will be resold by us in the form in which received in the country named in Block 1 for use or consumption therein. The specific end-use by my customer will be _____					
D. <input type="checkbox"/> Will be reexported by us in the form in which received to _____					
E. <input type="checkbox"/> Other (describe fully) _____					
<small>NOTE: If BOX (D) is checked, acceptance of this form by the Bureau of Industry and Security as a supporting document for license applications shall not be construed as an authorization to reexport the items to which the form applies unless specific approval has been obtained from the Bureau of Industry and Security for such export.</small>					
3. NATURE OF BUSINESS OF ULTIMATE CONSIGNEE NAMED IN BLOCK 1					
A. The nature of our usual business is _____					
B. Our business relationship with the U.S. exporter is _____					
and we have had this business relationship for _____ year(s).					
4. ADDITIONAL INFORMATION					
5. ASSISTANCE IN PREPARING STATEMENT					
STATEMENT OF ULTIMATE CONSIGNEE AND PURCHASER <small>We certify that all of the facts contained in this statement are true and correct to the best of our knowledge and we do not know of any additional facts which are inconsistent with the above statement. We shall promptly send a supplemental statement to the U.S. Exporter, disclosing any change of facts or intentions set forth in this statement which occurs after the statement has been prepared and forwarded, except as specifically authorized by the U.S. Export Administration Regulations (15 CFR parts 730-774), or by prior written approval of the Bureau of Industry and Security. We will not reexport, resell, or otherwise dispose of any items approved on a license supported by this statement (1) to any country not approved for export as brought to our attention by means of a bill of lading, commercial invoice, or any other means, or (2) to any person if we know that it will result directly or indirectly, in disposition of the items contrary to the representations made in this statement or contrary to Export Administration Regulations.</small>					
6. SIGNATURE OF OFFICIAL OF ULTIMATE CONSIGNEE			7. NAME OF PURCHASER		
NAME OF OFFICIAL			SIGNATURE OF PURCHASER		
TITLE OF OFFICIAL			NAME OF OFFICIAL		
DATE (mm/dd/yyyy)			TITLE OF OFFICIAL		
CERTIFICATION FOR USE OF U.S. EXPORTER - We certify that no corrections, additions, or alterations were made on this form by us after the form was signed by the (ultimate consignee/purchaser).			DATE (mm/dd/yyyy)		
8. NAME OF EXPORTER			SIGNATURE OF PERSON AUTHORIZED TO CERTIFY FOR EXPORTER		
NAME OF PERSON SIGNING THIS DOCUMENT			TITLE OF PERSON SIGNING THIS DOCUMENT		DATE (mm/dd/yyyy)
<small>We acknowledge that the making of any false statements or concealment of any material fact in connection with this statement may result in imprisonment or fine, or both and denial, in whole or in part, of participation in U.S. exports and reexports.</small>					
<small>Public reporting burden for this collection of information is estimated to average 15 minutes per response plus one minute for reviewing instructions, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Commerce, Washington, DC 20230, and to the Office of Management and Budget Paperwork.</small>			<small>Reduction Project (0994-0021), Washington, D.C. 20503. Notwithstanding any other provision of law, no person is obligated to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.</small>		



# Licensing Tips: Complete the Application Carefully

- Be sure to name the intermediate consignees if the part will pass through other locations
- Example:
  - Part is purchased by broker “B” for drop shipment to MRO “M” where it will be installed on aircraft owned by Operator “Op”
  - Ultimate Consignee is “M” and End User is “Op”
  - *If you will ship directly to B, then B needs to be listed as an intermediate consignee*
  - *Make sure you do not export directly to “B” unless they are listed as an intermediate consignee*



# Other Licensing Tips

- Double check your Export Control Classification Number (ECCN) determination and number
- Review your application carefully to ensure that all requirements have been met
- Make sure the quantities and dollar values are correct
- Supporting documentation should be in PDF format
- Describe the specific end-use in detail
- Identify all end-users and provide appropriate background information
- Include a letter of explanation if additional information is needed to adequately describe the transaction
- If you anticipate issues (e.g. a case-by-case or presumption of denial), then consider how to build processes that will verify compliance



# Exceptions to 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
- **My favorites are RPL (replacement of parts) and AVS (aircraft parts under certain fact scenarios)**
- *Exceptions can be complicated!*
  - *Some factors, like control under “MT,” the new Russia Rule, or having a 600-series ECCN, can restrict license use*



# Sometimes You Cannot Use a License Exception for an Aircraft Part

- License exceptions are not available for certain aircraft parts
- Missile Technology (MT) controlled parts cannot rely on a license exceptions to D:4 and D:5 countries:
  - Except that parts under ECCNs 6A008, 7A001, 7A002, 7A004, 7A101, 7A102, 7A103, 7A104, 7A105, or 9A515, may be exported as part of a manned aircraft, or a replacement part for such an aircraft, under license exceptions RPL and AVS (also TMP and TSU)
    - As an example, civil ADIRUs may be under 7A103, so proof of end use on a manned aircraft may permit reliance on a license exception
- Missile Technology (MT) controlled parts to other countries can rely on AVS and RPL – also APR, GOV, TMP and TSU





# Sometimes You Cannot Use a License Exception for an Aircraft Part

- No license exceptions to sanctioned nations: Cuba, Iran, North Korea, Syria, Crimea/Donetsk/Luhansk, or Russia (if the limited sanctions apply) *unless* a license exception is specifically listed in the country provisions in 15 C.F.R. part 746



# Destinations May Inhibit License Exception Use

- License exceptions are not available for certain destinations *unless* a license exception is specifically listed in the country provisions in 15 C.F.R. part 746
  - AVS and RPL do not apply for sanctioned nation aircraft, but AVS has a limited use for supporting non-Russian/non-Belarussian aircraft: **Belarus and Russia**
  - You may have limited access to AVS but not RPL: **Cuba**
  - Limited access to AVS (*does not include aircraft parts*) but not RPL: **Iran, North Korea, Syria, Crimea region of Ukraine**
  - Limits license exceptions but permits RPL and AVS: **Iraq**

15 C.F.R. Part 746



# License Exceptions and Defense Aircraft Parts

- License exceptions are not available for certain defense aircraft parts
- You can use RPL to export “600 series” items to destinations other than those identified in Country Group D:5 but you may NOT use AVS
  - Defense items whose ECCN is in the format **nx6nn**, e.g. 9A610
- Country Group D:5 is currently Afghanistan, Belarus, Burma, Cambodia, Central African Republic, China, Congo (DR), Cuba, Eritrea, Haiti, Iran, Iraq, North Korea, Lebanon, Libya, Nicaragua, Russia, Somalia, South Sudan, Sudan, Syria, Venezuela, Zimbabwe

15 C.F.R. Part 740, supplement 1 (as of Oct. 11, 2024)



# Country Group Listings

- 15 C.F.R. Part 740 Supplement No. 1
- [https://www.ecfr.gov/current/title-15/part-740/appendix-Supplement No. 1 to Part 740](https://www.ecfr.gov/current/title-15/part-740/appendix-Supplement%20No.%201%20to%20Part%20740)



# BIS License Exceptions: Replacement of Parts (RPL)

- One-for one replacement of parts or servicing and replacement of equipment, e.g. exchange agreements
  - Aircraft/part 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 of Parts (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



# Using RPL

- If the original item was shipped without a license (assuming the item was legally exported), and the rules subsequently changed (so a license is now required), then you can still use RPL (as long as it applies to your intended transaction)



# 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 (based on the 744.7 analysis that we previously discussed):

- 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
      - Forbidden countries include Cuba and those in group D:1
  - The specific aircraft must be identified so you can verify its eligibility



# BIS License Exceptions: Civil Aircraft (AVS)

*No License Required!*

- Exports of equipment and spare parts for
  - Permanent use on an aircraft of any registry
    - Going to a country group A:2 nation that is also listed in 15 CFR Part 746 suppl. no. 3.
      - 33 foreign nations listed under the Missile Technology Control Regime
  - Applies to goods for use in civil manned aircraft
  - Applies to goods for the production of civil manned aircraft



# BIS License Exceptions (AVS)

## *No License Required!*

- Exports of equipment and spare parts to U.S., Australian, Canadian, or UK airlines' installations or agents
  - Intended for maintenance, repair, or operation of above-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 to its agent



# BIS License Exceptions (AVS)

## *No License Required!*

- Exports to a specific U.S., Australian, Canadian, or UK 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)
- Could include foreign air carrier aircraft of U.S., Australian, Canadian, or UK registry



# There Are Other License Exceptions

- § 740.3 SHIPMENTS OF LIMITED VALUE (LVS)
- § 740.4 SHIPMENTS TO COUNTRY GROUP B COUNTRIES (GBS)
- § 740.6 TECHNOLOGY AND SOFTWARE UNDER RESTRICTION (TSR)
- § 740.7 COMPUTERS (APP)
- § 740.8 NOTIFIED ADVANCED COMPUTING (NAC)
- § 740.9 TEMPORARY IMPORTS, EXPORTS, REEXPORTS, AND TRANSFERS (IN-COUNTRY) (TMP)
- § 740.10 SERVICING AND REPLACEMENT OF PARTS AND EQUIPMENT (RPL)
- § 740.11 GOVERNMENTS, INTERNATIONAL ORGANIZATIONS, INTERNATIONAL INSPECTIONS UNDER THE CHEMICAL WEAPONS CONVENTION, AND THE INTERNATIONAL SPACE STATION (GOV)
- § 740.12 GIFT PARCELS AND HUMANITARIAN DONATIONS (GFT)
- § 740.13 TECHNOLOGY AND SOFTWARE UNRESTRICTED (TSU)
- § 740.14 BAGGAGE (BAG)
- § 740.15 AIRCRAFT, VESSELS AND SPACECRAFT (AVS)
- § 740.16 ADDITIONAL PERMISSIVE REEXPORTS (APR)
- § 740.17 ENCRYPTION COMMODITIES, SOFTWARE AND TECHNOLOGY (ENC)
- § 740.18 AGRICULTURAL COMMODITIES (AGR)
- § 740.19 CONSUMER COMMUNICATIONS DEVICES (CCD)
- § 740.20 LICENSE EXCEPTION STRATEGIC TRADE AUTHORIZATION (STA)
- § 740.21 SUPPORT FOR THE CUBAN PEOPLE (SCP)
- § 740.22 AUTHORIZED CYBERSECURITY EXPORTS (ACE)



Thank You!



Jason Dickstein

*Aviation Suppliers Association  
General Counsel*

Tel: (202) 628-6776

Jason@WashingtonAviation.com