

The STA License Exception

Section [22 CFR §740.20](#) of the Export Administration Regulations (EAR), administered by the United States Department of Commerce, Bureau of Industry and Security (BIS), provides for the Strategic Trade Authorization (“STA”) license exception. STA was implemented as part of the extensive changes to the U.S. export regulations under export control reform.

As the name suggests, STA permits the export, reexport, and in-country transfer without a license of EAR-controlled items and technology that would otherwise require a license from BIS to be exported. To take advantage of the license exception, there are various requirements that must be met including maintaining certain records for a period of at least five years. When exporting commodities classified for export in the EAR “[600-series](#),” the recordkeeping requirements are even more cumbersome. There are also specific limitations and exclusions to STA that must be carefully reviewed to determine applicability.

Audits of STA compliance are common and generally consist of demands from BIS for required STA supporting documentation. Examples of the supporting documentation that BIS authorities may request include:

- i. prior consignee statement,
- ii. written notification to consignee of STA shipment,
- iii. name of ultimate end user and country of destination,
- iv. full [Export Control Classification Number](#) (ECCN) with subparagraph,
- v. description of how prior authorization approval verification checks are performed, and
- vi. confirmation whether any item is [600 series Major Defense Equipment](#).

Companies typically have 14 days to supply the requested documents to BIS, although extension requests may be granted. In its [2017 Annual Report to Congress](#), BIS reported that, in 2017, 50 STA audits were performed, and only three were not compliant. In the event a company is unable to provide the required documentation, BIS can refer the case to the [Office of Export Enforcement](#) (OEE), and the company would then be subject to potential penalties and fines.

Meeting the requirements for exporting under the STA exception can be difficult and time consuming. Despite proponents of export reform encouraging exporters to use STA, it is often easier to obtain an export license. In fact, those who use STA have an abnormally high risk of being audited for those transactions. Based on [available statistics](#), between July 2011 and December 2016, 849 companies used license exception STA. Per the relevant [BIS Annual Reports to Congress](#), during the same time period, BIS conducted 296 STA audits. This means that, through the end of 2016, over 30% of STA users were subject to government review. STA

audits can even extend to BIS auditing foreign consignees to ensure they have the relevant documentation as well. All of these factors increase the chances of the exporter's case being referred to OEE, opening the door for potential penalties.

In the case of companies that have robust export compliance programs, STA can be a good option. A few tips for compliance to ensure that export issues are avoided include:

- i. designation of a point of contact with the responsibility to determine STA eligibility,
- ii. maintaining accurate and legible records,
- iii. prepare for document review by BIS and clearly index all the documentation for ease of retrieval and production,
- iv. train employees regarding STA requirements,
- v. monitor electronic export information filings to ensure STA is being properly declared by you or a freight forwarder filing on your behalf, and
- vi. create an internal checklist for STA requirements prior to shipment. (See, e.g., Torres Law's *STA License Exception Decision Tree* available in the Mondaq Advice Centre.)

Use of STA licensing exception for exports should involve active participation from qualified trade compliance professionals or legal counsel to ensure compliance with legal requirements. If you are contacted by BIS about an STA shipment, it is recommended to seek advice of experienced legal counsel to determine the appropriate next steps.