



EIB World Trade Headlines

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Evolutions In Business Now Accepting Nominations for The GINA Award

Since 2009, Evolutions in Business has presented the GINA Award to the individual who achieved outstanding export compliance within their company, and also to a corporation who demonstrated outstanding commitment and follow through to export compliance.

The original winner of the GINA and namesake of the award was given to Gina Johnson of Dialogic, Corp. Past winners of the *Individual GINA Award* have been *Fran Fortin* of Wilcox Industries Corp. in Newington, NH and *Valerie Kimber-Roy* of New England Wire and Technologies in Lisbon, NH. Past winners of the *Corporate GINA Award* have been *Wilcox Industries Corp.* in Newington, NH and *AMT, a Division of Senior Operations LLC* in Arlington, WA.

The next Award will be issued in the fall of 2011.

Nomination papers can be downloaded from our website at www.eib.com.

**Please see the GINA Award criteria on the following page. We look forward to hearing from you!*



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GINA Award - Individual Criteria for Individual Export Compliance Achievement

The *Individual GINA Award* is awarded individuals who with or without cooperation from their corporation has managed to implement in their company these "Best Practices" of a compliant exporting organization:

- Organize and Receive Export Education
- Classify products for ITAR Category and or EAR, ECCN
- Establish denied parties screening
- Establish accuracy in documentation
- Ensure proper record keeping
- Draft and Implement EMS or EMCP
- Demonstrate tenacity to see compliance through
- Attention to detail
- Courage to protect national security interests and to prevent unlawful exports
- Commitment to the law and regulations

GINA Award - Corporate Criteria for Corporate Export Compliance Commitment

The Criteria for Corporate Export Compliance Commitment includes:

- Regulatory "buy in" from corporate,
- Corporate wide respect and commitment to the letter and spirit of the law
- Speed at which the whole company is brought into full compliance
- Proper authority awarded to export compliance individuals
- Proper resources and funding given export compliance
- Receipt of Executive Awareness Training in matters of export compliance

Nominations for the GINA Award for *Outstanding Export Compliance Individuals* and the GINA Award for *Corporate Export Compliance Commitment* will be accepted from companies and individuals from around the country. Nomination papers will be reviewed and screened and a panel of experts including the previous years recipients will select the award winner. Awards will be issued in the fall.

South Sudan Now Included in the EAR

Posted: 26 Jul 2011 05:44 AM PDT

In a **final rule**, the Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to add controls on exports and re-exports of US origin dual-use items to a new nation, the Republic of South Sudan. This addition to the EAR came on the heels of the formation of the Republic of South Sudan as a separate nation, which became effective early July 2011, and formal recognition by US President Obama as part of the implementation of the Comprehensive Peace Agreement (CPA).

BIS amended the EAR to reflect this formal recognition by adding the new nation to the Commerce Country Chart and including it in Country Group B, which will make the destination eligible for certain export and re-export License Exceptions. The controls that continue to apply to Sudan under the EAR will not apply to the new Republic of South Sudan.

Proposed Rule Control of Items the President Determines No Longer Warrant Control under the United States Munitions List (USML)

On July 15, 2011, the Department of Commerce published a proposed rule that is the next significant step in the President's Export Control Reform (ECR) Initiative – the creation of a framework for controlling militarily less significant defense articles, largely generic parts and components, on the Commerce Control List (CCL) rather than the United States Munitions List.

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Specifically, this rule proposes a new regulatory construct for the transfer of items on the USML that, in accordance with section 38(f) of the Arms Export Control Act (AECA)(22 U.S.C. 2778(f)(1)), the President determines no longer warrant control under the AECA and that would be controlled under the Export Administration Regulations (EAR) once the congressional notification requirements of section 38(f) and corresponding amendments to the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130) and its USML and the EAR and its CCL are completed. This rule also proposes the transfer of an initial tranche of items from USML Category VII (Tanks and Military Vehicles) to the CCL. This rule also proposes amending the EAR to establish a process by which certain items moving from the USML to the CCL would be made eligible for License Exception Strategic Trade Authorization (STA), and proposes EAR amendments related to movement of USML items to the CCL, such as new definitions of relevant terms, including "specially designed," "end items," "parts," and "components." Finally, this notice proposes establishing a new holding Export Control Classification Number (ECCN) in which items that warrant a significant level of control, but are not otherwise classified on the CCL, may be temporarily placed.

The Commerce Department encourages persons to review the notice closely and to provide comments by the September 13 deadline.

DTC ELECTRONIC PAYMENT OF REGISTRATION

Final Rule on Electronic Payment for Registration: [Click here](#) to review the final rule published in the Federal Register regarding electronic payment of ITAR registration fees. Companies registering on or after October 1, 2011 will be required to submit their payments electronically. Beginning August 2011, registration renewal letters will contain specific instructions on submitting registration fees electronically.

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Beginning August 2011, registration renewal letters will contain specific instructions on submitting registration fees electronically. The DS-2032, Statement of Registration has been revised to accommodate electronic payments and must be used beginning September 26, 2011. The revised form and further detailed instructions, for both foreign brokers and US companies, will be posted on DDTC's website as the deadline for electronic payment submission nears.

NEW Dual and Third Country National Guidance: Will affect TAA's and MLA's

The following guidance relates to the August 15, 2011 implementation of the new § 126.18 rule on dual and third country nationals. The first document relates to the changes to agreements and will be incorporated into the new Guidelines as well. [D-TCN AG Guidance Final](#). The following notional implementation plan is a suggested approach, but is by no means the only way of complying with the rule and its core principle of preventing diversion of defense articles to unauthorized end-users and end-uses. Consistent with local national laws and programs for the control/protection of defense articles/technologies and consistent with the need for private entities to protect proprietary data, technology security plans should be designed with a comprehensive and individualized approach to securing sensitive data of all kinds with appropriate measures for physical security and personnel clearances.

[D-TCN Policy Implementation Final](#). Additional guidance and clarification is provided in the attached Frequently Asked Questions relating to both of the above documents. [D-TCN FAQs Final](#).

After August 15, 2011, all approved agreements/amendments must include the new § 124.8(5) verbatim clause. If the old verbatim clause is used, a proviso will be added to change it to the new clause prior to execution.

SEC Posts Information on \$16 Million Fine Assessed against Diageo for FCPA Violations

The Securities and Exchange Commission (SEC) recently charged London-based Diageo plc, one of the world's largest producers of premium alcoholic beverages, with widespread violations of the Foreign Corrupt Practices Act (FCPA) stemming from more than six years of improper payments to government officials in India, Thailand, and South Korea. Diageo agreed to pay more than \$16 million to settle the SEC's charges. The SEC alleges that Diageo paid more than \$2.7 million through its subsidiaries to obtain lucrative sales, customs, and tax benefits relating to its Johnnie Walker and Windsor Scotch whiskeys. The company is alleged to have made more than \$1.7 million in illicit payments to hundreds of government officials in India from 2003 to mid-2009. The officials were responsible for purchasing or authorizing the sale of its beverages in India, and increased sales from these payments yielded more than \$11 million in profit for the company. Diageo also allegedly paid 100 million in Korean currency (\$86,000 in U.S. dollars) to a customs official in South Korea as a reward for his role in the government's decision to grant Diageo significant tax rebates. Diageo also improperly paid travel and entertainment expenses for South Korean customs and other government officials involved in these tax negotiations. Separately, Diageo routinely made hundreds of gift payments to South Korean military officials in order to obtain and retain liquor business.

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The SEC's order found that Diageo and its subsidiaries failed to properly account for these illicit payments in their books and records. Instead, they concealed the payments to government officials by recording them as legitimate expenses for third-party vendors or private customers, or categorizing them in false or overly vague terms or, in some instances, failing to record them at all. Diageo lacked sufficient internal controls to detect and prevent the wrongful payments and improper accounting. As reported, Diageo cooperated with the SEC's investigation and implemented certain remedial measures, including the termination of employees involved in the misconduct and significant enhancements to its FCPA compliance program. SEC notice: <http://www.sec.gov/news/press/2011/2011-158.htm>

State Dept Issues Final Rule on Accepting Only Electronic ITAR Registration Fees

The State Department recently issued a final rule, effective 09/26/11, that will amend the International Traffic in Arms Regulations (ITAR) and the paper DS-2032 Statement of Registration to make electronic payment the sole means of annual registration fee submission. The final rule revises 22 CFR 122.2(a) to state that manufacturers or exporters who submit the DS-2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance must submit the associated fee electronically, via Automated Clearing House (ACH), payable to the Department of State. Currently, registrants submit registration fees to the Directorate of Defense Trade Control (DDTC) by check or money order, and these payments are processed manually. The Department states that the electronic submission of registration fees will simplify the collection and verification of payments, eliminate the need to manually process and collect returned payments, and eliminate the possibility of lost payments. Intended registrants should access DDTC's website at www.pmdtdtc.state.gov for detailed guidelines on submitting an ACH electronic payment. Cash, checks, foreign currency, or money orders will not be accepted. *(*Continued Following Page)*

The final rule similarly revises 22 CFR 129.4(a) to provide for electronic payment as the sole means of registration fee submission for brokers, but allows electronic payment via ACH or Society for Worldwide Interbank Financial Telecommunications (SWIFT). Payment methods (i.e., ACH and SWIFT) are dependent on the source of the funds (U.S. or foreign bank) drawn from the applicant's account. The originating account must be the registrant's account and not a third party's account. Intended registrants should access DDTC's website for detailed guidelines on submitting ACH and SWIFT electronic payments. As the certifications previously required through the transmittal letter referenced in 22 CFR 122.2(b) are incorporated into the revised DS-2032 (and only requires the user to click the appropriate response), these regulations no longer require a separate transmittal letter, and instead address the certifications, without substantive change. The paper DS-2032 is revised to reflect that fee payments are to be made electronically, and includes additional data fields to match the electronic payment to the DS-2032. Additionally, data elements are added to the paper DS-2032 to ensure clarification during analysis as well as standardization of responses. The form is added to the list of forms in 22 CFR 120.28(a) as available from the DDTC, and the estimated burden time for completion is reduced from two hours to one hour.

State Dept contact- Lisa Aguirre (202) 663-2798

State Dept notice (FR Pub 07/28/11)
<http://www.gpo.gov/fdsys/pkg/FR-2011-07-28/pdf/2011-19115.pdf>

BIS posts 2011 Update Conference Presentation on End-Use Checks, Monitoring of Problem Foreign Companies

At the Bureau of Industry and Security's (BISs) 2011 Update Conference, BIS and State Department officials discussed end-use checks, including BIS pre-license checks and post shipment verifications and the State Department Directorate of Defense Trade Control's (DDTCs) "Blue Lantern" program. Both say that BIS and State are conducting more end-use checks and the percentage with "unfavorable" results has increased. As reported, BIS selectively conducts end-use checks on certain dual-use export transactions.

BIS conducts two types of end-use checks - pre-license checks (performed prior to licensing to confirm reliability and likelihood of proper end-use when little or no information is available on the foreign party) and post shipment verifications (performed after an item is exported to confirm all parties have complied with an export license and is conditions; and to determine whether a non-licensed item has been illegally diverted or re-exported). As of the 2nd quarter of fiscal year (FY) 2011, BIS completed 224 end-use checks (15% PLCs; 85% PSVs) in 44 countries and approximately 24% were unfavorable. In FY 2010, BIS completed 708 end-use checks (10% PLCs; 90% PSVs) in over 45 countries and approximately 21% were unfavorable.

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Always bear in mind that your own resolution to succeed is more important than any other.

- Abraham Lincoln



BIS officials note that they expect to complete at least 800 end-use checks in FY 2011. According to BIS, an unfavorable check means that BIS found something problematic with the foreign recipient of the U.S. export. Such foreign companies will be more closely monitored by BIS.

BIS also note that license applications could be denied if a foreign party is deemed to be "unreliable" as a result of an end-use check.

According to the DDTC, its Blue Lantern program verifies end-use, end-users, consignees/intermediaries, for U.S. exports of defense articles and services. Such checks are performed by U.S. embassy personnel in cooperation with host governments; worldwide 111 countries in FY 2010. In FY 2010, most of the unfavorable checks involved East Asia (37%) and Europe (18%). According to DDTC, in FY 2010, the top three reasons for "unfavorable" checks were:

1. derogatory information/foreign party deemed unreliable recipient of USML (29%),
2. unable to confirm order or receipt of goods by end-user (18%), and
3. foreign party (end-user and/or consignee) involved in transaction, but not listed on license/application (11%).

In comparing FY 2010 with FY 2008, the percentage of unfavorable checks due to derogatory information/foreign party deemed unreliable recipient of USML grew by almost 600% and the percentage due to foreign party (end-user and/or consignee) involved in transaction, but not listed on license/application fell by more than 50%.

End-use check presentation:

http://www.bis.doc.gov/seminarsandtraining/update2011/end_use.pdf

BIS Posts Handouts from 2011 Update Conference in July

During the Bureau of Industry and Security's (BISS) 2011 Update Conference, various officials from BIS, the Census Bureau, the State Department, and other agencies gave presentations on numerous topics.

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BIS has made available on its Website many of the presentations from the Update 2011 Conference. The following are the presentation titles for each of the available handouts:

- Anatomy of an Investigation;
- Commodity Jurisdiction;
- Technology Security Administration;
- Deemed Exports and I-129 Visa;
- Encryption Forum;
- End-Use Checks;
- Export Control Officer Country Briefing;
- Export Enforcement Panel;
- Export Management and Compliance Workshop;
- Interagency Panel;
- License Exception Strategic Trade Authorization;
- Missile Technology Policy and Licensing Issues and Trends;
- National Export Initiative;
- Regulatory Update;
- Sanctions; and
- What's Driving Changes to the AES Regulations?

BIS presentations:

http://www.bis.doc.gov/seminarsandtraining/update2011/session_info.htm

Brookings Institute Posts Paper on Export Controls in the Age of Cloud Computing

The Brookings Institution recently published a paper entitled Addressing Export Control in the Age of Cloud Computing by John Villasenor, Nonresident Senior Fellow, Governance Studies, Center for Technology Innovation. According to Mr. Villasenor, there is an inherent tension between cloud computing and export control. While the concept of the cloud is centered on the premise of removing the need to track the details of data movement among various destinations; export control regulations are built largely around restrictions tied to those very movements. The paper offers recommendations for service providers, users of cloud services, and regulators. Brookings Institution report:

http://www.brookings.edu/~media/Files/rc/papers/2011/0725_cloud_computing_villasenor/0725_cloud_computing_villasenor.pdf

DHS Posts Report on Progress Implementing 9/11 Commission Recommendations

The Department of Homeland Security (DHS) released its 2011 progress report on fulfilling the 9/11 Commission's recommendations for preventing and responding to acts of terrorism and other threats. The report lists DHS' current work as including an air cargo advance screening pilot, air cargo best practices, and screening 100% of all air cargo on international inbound passenger aircraft. DHS' trade-related actions since its 2010 progress report include:

- Air Cargo Advance Screening Pilot;
- Air cargo best practices;
- Screening 100% of international inbound passenger aircraft;
- Program recognition process;;DHS Partnership with WCO;
- Nuclear detection;
- International Port Security Program;
- Unified vision of global supply chain security;
- U.S. and Mexico Southern border; and
- U.S. and Canada Northern border.

DHS report:

<http://www.dhs.gov/files/publications/implementing-9-11-commission-recommendations.shtm>

Commerce Announces Its New Strategic Trade Authorization (STA) License Exception

Law Offices of George R. Tuttle

In fulfilling one of President Obama's early promises regarding Export Control Reform (ECR), the Bureau of Industry and Security (BIS) published, on June 16th 2011, its newest export license exception: License Exception Strategic Trade Authorization or STA (15 CFR § 740.12). Federal Register Notice 76 Fed. Reg. 35276. The rule is effective immediately.

License Exception STA authorizes the export, reexport and transfer (in-country) of specified items on the Commerce Control List (CCL) to destinations posing a low risk of unauthorized or impermissible uses.

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To safeguard against reexports to destinations that are not authorized under License Exception STA, certain notification and consignee statements are required to be obtained and kept by the exporter and foreign consignee.

License Exception STA comes into play for exports, reexport, and transfers for which a license is otherwise required under the EAR and for which no other license exception applies. Exporters may use any other license exception (such as license exception GOV) that would authorize the planned transaction or apply for a license if they prefer to do so and avoid the notification and consignee statement requirements.

License Exemption STA Country List

License Exemption STA has a two-tiered country list (referred to as STA1 and STA2).

There are 36 countries included in the § 740.20(c)(1) group one (STA1), which authorizes exports, reexports and in-country transfers of product and technologies that are controlled for multiple reasons. STA1 destinations are:

- | | |
|------------------|------------------|
| • Argentina | • Japan |
| • Australia | • Latvia |
| • Austria | • Lithuania |
| • Belgium | • Luxembourg |
| • Bulgaria | • Netherlands |
| • Canada | • New Zealand |
| • Croatia | • Norway |
| • Czech Republic | • Poland |
| • Denmark | • Portugal |
| • Estonia | • Romania |
| • Finland | • Slovakia |
| • France | • Slovenia |
| • Germany | • South Korea |
| • Greece | • Spain |
| • Hungary | • Sweden |
| • Iceland | • Switzerland |
| • Ireland | • Turkey |
| • Italy | • United Kingdom |

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Eight destinations are included in § 740.20(c)(2) group two (STA2), which authorizes export, reexports and in-country transfers that are subject only to national security controls. STA2 destinations are:

- Albania
- Hong Kong
- India
- Israel
- Malta
- Singapore
- South Africa
- Taiwan

The final rule removes the civil end-use requirement that the proposed rule applied to destinations listed in STA2.

Eligible Products

Items that are eligible for export to STA1 destinations or nationals thereof include items that are subject to control for: national security (NS); chemical or biological weapons (CB); nuclear nonproliferation (NP); regional stability (RS); crime control (CC), and/ or significant items (SI).

License Exception STA will authorize a shipment to a STA2 destination that is controlled for NS reasons, unless the following statement is provided in license exception section of the ECCN:

STA: License Exception STA may not be used to ship any item in this entry to any of the eight destinations listed in § 740.20(c)(2).

There are 49 ECCNs that are currently subject to limitation for exportation to STA2 destinations.

A key change in the final rule is the removal of EI eligibility. Items controlled for encryption (EI) reasons are ineligible for License Exception STA because of a determination that License Exception STA is not the appropriate approach to addressing the government interests in encryption export controls. Accordingly, BIS will address encryption-related aspects of the Export Control Reform Initiative separately. Other items excluded from License Exception STA include:

Removal of certain pathogens and toxins from general eligibility;

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Removal of certain gas turbine engine related software and technology from general eligibility;

ECCNs 7E001 and 7E002 (clarification that "reasons for control" of Missile Technology (MT) apply to these ECCNs, making them ineligible); and

Removal of additional crime control items (controlled by ECCNs 0A982, 0A985, and 0E982) from general eligibility.

Section 740.20(d): Notification and Consignee Statement Requirements

Unlike most other license exceptions, use of License Exception STA is conditioned on exporter and consignee compliance with the use of notification and consignee statements.

A. Furnishing of ECCN Information

Because the subsequent permissive reexport, transfer or sale of the item may be conditioned on the ECCN of the product or technology, Section 740.20(d) requires the exporter and reexporter or transferor furnish to subsequent consignees the ECCN number applicable to that product. The consignee is entitled to rely on the ECCN provided to it by the party when making a licensing decision, unless the consignee knows that the ECCN is incorrect or has changed. Once furnished to a particular consignee, the information need not be refurnished if the same reexporter or transferor makes an additional shipment of the same item to that consignee.

B. Prior Consignee Statement

The exporter, reexporter and transferor must obtain a statement in writing from its consignee prior to shipping the item, and the statement must be retained in accordance with the EAR recordkeeping requirements of part 762.

The statement is required to identify the STA items in question and acknowledge that the consignee:

- Is aware that items will be shipped pursuant to License Exception STA;

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- Has been informed of the description of the items and their ECCN(s) by the exporter, reexporter or transferor;
- Understands that shipment pursuant to License Exception STA precludes subsequent use of paragraphs (a) or (b) of License Exception APR for the items;
- Agrees not to export, reexport or transfer these items to any destination, end-use or end-user prohibited by the EAR; and
- Agrees to produce copies of this document and all other export, reexport or transfer records (i.e., the documents described in part 762 of the EAR).

One statement may be used for multiple shipments of the same item between the same parties so long as the party names, item(s) and the ECCNs are correct. The exporter, reexporter and transferor must maintain a log or other record that identifies each shipment made pursuant to this section and the specific consignee statement that is associated with each shipment.

C. Notification to Consignee of STA Shipment

Subsequently, with each shipment under License Exception STA, the exporter (or reexporter or transferor), must notify the consignee in writing that the shipment is made pursuant to License Exception STA. The notice must clearly identify the shipment to which it applies. The written notice may be conveyed by paper documents or by electronic methods such as facsimile or email.

D. Special Requirements for Releases of Software Source Code or Technology Within a Single Country

Instead of the requirement of the ECCN, Prior Consignee, and Consignee Notification requirements of paragraphs (d)(1) through (d)(3), a party releasing software source code or technology to a national of a country listed in paragraph (c)(1) or (c)(2) must notify the recipient of the software source code or technology of the restrictions upon further release of the software source code or technology.

The notification must either expressly inform the recipient that the EAR imposes limits on further disclosure or must be in the form of an agreement in which the recipient agrees to limits on further disclosure. These limits must be equivalent to or more restrictive than all limits on further disclosure that are imposed by the EAR and retained by the parties. *(*Continued Above Right)*

Final Comments

There are a number of questions that remain about the utility of License Exception STA, particularly in light of the notification and consignee statement requirements that reach down into subsequent sale and retransfer transactions.

Compliance with the substantial documentary and record-keeping requirements of License Exception STA will also require much greater attention on the part of exporters and their foreign consignees. However, to the extent that it does alleviate the need for exporters and trading partners to obtain export licenses or retransfer authorizations, the effort is welcome. While the restrictions on the resale and retransfer of the items is not new, the requirement of the written consignee certifications will likely cause some foreign customers to think twice about accepting these conditions in such a conspicuous manner.

To see a copy of the regulation published in the Federal Register notice, go to <http://www.gpo.gov/fdsys/pkg/FR-2011-06-16/pdf/2011-14705.pdf>.

