

# Locke Lord QuickStudy: ?BIS Issues Export Guidance to ?Academia

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On August 14, 2024, the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”) issued guidance to the U.S. academic community regarding compliance with export controls and to protect U.S. national security. Following several enforcement actions involving U.S. academic institutions regarding unlicensed sharing of U.S. technology and exports of restricted materials, the BIS issued both a Compliance Note – [Trends in Voluntary Self-Disclosures Related to Academia to Inform Improvements to Export Compliance Plans](#) (the “Compliance Note”), and a Compendium of Export Compliance Resources (the “Compendium”). These tools are intended to supplement the BIS’ Academic Outreach Initiative, which was first announced in June 2022, and is designed to assist academic institutions to navigate the balance of protecting U.S. national security while preserving the free-flow academic discourse.

## 1. BIS Compliance Note – Trends in Voluntary Self-Disclosures Related to Academia to Inform Improvements to Export Compliance Plans

The Compliance Note focuses on (i) export of biohazards, (ii) review of the Entity List, (iii) understanding deemed exports, (iv) management of license exception Temporary Imports, Reexports, and Transfers in Country (TMP), (v) compliance with Electronic Export Information (EEI) reporting, and (vi) recordkeeping requirements. Most of the academic institutions involved in these violations professed ignorance regarding Commerce Control List (“CCL”) categorization of restricted materials, understanding of the applicable BIS rules, and that there were controls and licensing requirement related to the handling and transfer of certain goods and technology outside of the U.S. Generally, the academic institutions involved have been required to implement appropriate compliance programs, including training, to identify and comply with applicable export requirements.

- **Biohazards.** The BIS has noted that in recent years, at least twelve self-disclosures have been made by U.S. academic institutions related to the unauthorized export of chemicals, microorganisms, and toxins, including vials or small quantities of biological agents such as Dengue-2 virus; and pathogens such as pseudorabies virus strains, genetically modified vesicular stomatitis virus, and isolates of *Magnaporthe oryzae*.
- **Entity List.** At least nine academic institutions self-disclosed unauthorized exports of items to a party listed on the Entity List. Some of the transactions involved genetic material and genetically modified organisms, while one transaction involved the element hafnium, which is commonly used in nuclear reactor control rods. The Entity List contains a list of names of certain foreign persons – including businesses, research institutions, government and private organizations, individuals, and other types of legal persons – that are subject to specific license requirements for the export, reexport and/or transfer (in-country) of specified items. On an individual basis, the persons on the Entity List are subject to licensing requirements and policies supplemental to those found elsewhere in the Export Administration Regulations.
- **Temporary Imports, Exports, Reexports, and Transfers (In-Country) (TMP).** At least two academic institutions

made self-disclosures that involved exports improperly using license exception TMP, including one that involved infrared cameras that were hand-carried and exported from the U.S. Among other things, license exception TMP allows for the temporary export and reexport of various items subject to the EAR, as long as the items are returned no later than one year after export, reexport, or transfer if not consumed or destroyed during the period of authorized use.

- Electronic Export Information. Six self-disclosures involved academic institutions that failed to file EEI in the Automated Export System (AES) and undervalued items related to export transactions.
- Recordkeeping. Three self-disclosures involved academic institutions that failed to maintain accurate export records. Universities have failed to maintain export records for the required five years, and in other cases, export records were either incomplete or non-existent.

## 2. Compendium of Export Compliance Resources

In the Compendium, the BIS published links to its compliance resources tailored to academic institutions. Those links include:

- Vetting Resources
  - Consolidated Screening List Search
  - NCSC Safeguarding Science Toolkit
  - The China Defence Universities Tracker
  - Named Research Organizations
  - Trade Integrity Project
  - VOSviewer (a software tool for constructing and visualizing bibliometric networks)
- BIS Resources
  - Export Administration Regulations (EAR)
  - Classify My Items
  - Apply for a License
  - Deemed Exports
  - How To Develop an Export Compliance Program
  - China Semiconductor Rule Frequently Asked Questions
  - Training Resources
  - July 2024: Don't Let This Happen to You!
  - Voluntary Self Disclosures
  - Enforcement Policy Memoranda and Industry Guidance
  - Field Office Contact Information and Map

## 3. The Academic Outreach Initiative Documents

Policy Memorandum Establishing the Academic Outreach Initiative. This policy memorandum established the Academic Outreach Initiative, an effort by the BIS to partner with select academic research institutions through strategically prioritized engagement, the assignment of “outreach agents,” and the provision of training and background briefings, with the goal of protecting against those who attempt to harm our collective national security.

Speech by Assistant Secretary for Export Enforcement Matthew S. Axelrod at the National Association of College and University Attorneys 2022 Annual Conference. This speech, delivered on June 28, 2022, announced the launch of the Academic Outreach Initiative. It explained the thinking behind the creation of the initiative and how the initiative would operate.

Remarks As Prepared for Delivery by Assistant Secretary for Export Enforcement Matthew S. Axelrod at Oregon State University on the Academic Outreach Initiative. This speech, delivered on October 26, 2022, provided an update on the progress of the Academic Outreach Initiative.

Remarks as Prepared for Delivery by Assistant Secretary for Export Enforcement Matthew S. Axelrod to the Academic Security and Counter Exploitation Program's Seventh Annual Seminar. This speech, delivered on March 8, 2023, provided advice to academia on compliance with export controls, including considerations involving fundamental research.

For additional information, visit [Locke Lord's Economic Sanctions & Export Controls Resource Center](#).

## **Conclusion**

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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