

Locke Lord QuickStudy: Guidelines for Preparing BIS Export License Applications Involving Foreign Persons (Deemed Exports-Reexports)?

Locke Lord LLP

WRITTEN BY

Ryan Last

RELATED OFFICES

New York

On September 1, 2024, the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”) released new guidelines to support deemed export applicants in acquiring necessary licenses. While these guidelines are primarily geared toward employment situations, they also encompass scenarios where controlled “technology” or “source code” is released to foreign students involved in research. Understanding these guidelines is essential for compliance and risk management.

The Export Administration Regulations (“EAR”) defines controlled “technology” as specific technology data or assistance related to the development, production, or use of items on the Commerce Control List (“CCL”) that require export control due to national security or foreign policy concerns. The EAR includes a matrix of rules to determine whether an item on CCL requires a license to export (or release as in a deemed export), which is based upon the end user and end use of the good. In addition to actual export of an item, the EAR also determines whether a license is required to transfer, release or disclose to foreign persons (whether within or outside of the United States) the technology required to produce a good on the CCL. Accordingly, for all controlled commodities, a license or license exception is required prior to the transfer or release of “technology,” “technical data,” or “source code” for a controlled item to foreign persons.

Background on Licenses for Deemed Exports/Reexports

BIS mandates that organizations obtain an export license before disclosing controlled “technology” or “source code” to a foreign individual, a process known as a “deemed export.” This release is considered an export to the foreign person’s country of nationality. The EAR, specifically Section 734.13, defines a deemed export as the transfer of “technology” or “source code” to a foreign person within the United States. Typical users of deemed export licenses include universities, research institutions, biotechnology firms, medical organizations, and technology companies. Section 734.14 defines a deemed reexport as releasing or otherwise transferring “technology” or “source code” subject to the EAR to a foreign person whose most recent country of citizenship or permanent residency is other than the foreign country where the release or transfer takes place (*i.e.*, a third-country national).

New Guidance

The newly issued guidelines build on the existing foundational instructions outlined in Supplement 1 to Part 748 of the EAR. These enhancements are designed to streamline the review process for licensing officers, ultimately leading to more efficient license approvals.

Basic Requirements for License Applications

The guidelines stress the importance of including all required information and documentation in license applications, as applications with incomplete information will be returned. Essential documentation includes:

- Legible copies of passport, visa, and work authorization
- Letter of Explanation (“LOE”)
- Resume of the foreign individual
- Technology Control Plan

Best Practices for SNAP-R Submission

SNAP-R is BIS’s electronic portal for processing and tracking license applications. The guidelines recommend the following best practices for submissions:

- Avoid using acronyms.
- Do not list a P.O. box as a required address.
- Provide a detailed description of the intended use of the technology.
- Identify the technology using its Export Control Classification Number rather than its trade name.

Letter of Explanation

Applicants must submit a separate LOE with each application. This letter should include:

- Copies of the foreign person’s valid passport.
- The address where the technology will be released.
- A detailed description of all uses and applications for the technology.
- The form in which the technology will be released.
- Information on the availability of comparable foreign technology abroad.

Resume Requirements

The license application must include a comprehensive resume of the foreign person. This information helps assess the risk of technology diversion to unauthorized users and should cover:

- Personal background
- Educational and vocational history
- Employment history
- Research experience
- Military service
- Any special considerations relevant to the application

Review of Deemed Export Applications

BIS generally approves deemed export license applications unless there is an unacceptable risk of technology diversion to unauthorized users. Compliance with the applicable license conditions is also required.

Clients must prioritize adherence to these guidelines when preparing deemed export applications to mitigate compliance risks and avoid potential penalties. A thorough understanding of the licensing process can streamline approvals and protect sensitive technologies, ensuring operational efficiency and safeguarding business interests.

Conclusion

This guidance emphasizes the critical need for companies and universities to monitor deemed exports and reexports of controlled technology and source code when engaging foreign persons, including when there are restrictions on publication or foreign students participating in curricular practical training or optional practical training. These institutions should carefully assess the nationality of foreign persons and ensure compliance through detailed license application, technology compliance control plans, and annual reporting for continued work authorization.

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.

RELATED INDUSTRIES + PRACTICES

- [Corporate](#)
- [International](#)
- [Sanctions + Trade Controls](#)