



Licensing: Back to Basics

Best Practices for EAR License Applications

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Overview

- Preparing a License Application
 - A clear and thorough description is critical
- The Licensing Process
 - Interagency Review
 - Common Agency Concerns
 - License Review Period
 - Dispute Resolution
- License Conditions
- License Denials



Preparing a License Application: A Thorough Application

- On the license application:
 - Define the item(s) in terms of the technical parameter(s) of the ECCN(s)
 - If technology, define what will and will not be transferred
 - Identify the specific end-uses
 - Provide any information you know about the ultimate consignee/end-user(s)
 - Provide information on any internal controls in place to mitigate the risk of diversion or unauthorized end-users/end-uses
 - For 600-series items, cite prior equivalent DDTC approvals
- BIS licenses authorize exports/reexports to and among the end-users listed on license, so craft the license application accordingly.

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The Licensing Process: Interagency Review

- Ensures that the U.S. Government decision on a license application draws on the breadth and scope of the government's expertise
- Reviewing agencies have common national security and foreign policy interests, but unique perspectives:
 - Department of Commerce
 - Technical issues
 - Economic issues
 - National security, non-proliferation, and others
 - Department of Defense
 - National security issues – Focuses the technical expertise of the Services on an individual export/reexport
 - Department of Energy
 - Nuclear, missile, chemical and biological issues
 - Department of State
 - Foreign policy issues

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The Licensing Process: Common Reviewing Agency Concerns

- Parties to the transaction:
 - What are their roles?
 - What do you know about the parties?
 - What is your source for information?
- End-use concerns:
 - Is there a balance between the product's capability and the proposed end-use?
 - Is there excess capability? Why?
 - What is the risk of diversion?
- Controls:
 - What controls are in place to prevent diversion?
 - Are the controls realistic?
 - Do the parties understand the controls?
 - Are the controls documented?
 - Who will conduct monitoring?

Target known agency concerns in your license application!

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The Licensing Process: License Review Period Executive Order (EO) 12981

- The Department of Commerce must review the application and refer it to the reviewing agencies within 9 days of receipt.
- Reviewing agencies have 30 days to respond with recommendations.
- If the reviewing agencies concur on the disposition of the license application, it will be:
 - Approved
 - Approved with conditions
 - Denied

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License Conditions (Standard Scope Condition)

- Many licenses are approved with a standard statement of scope: (see § 750.7(a) of the EAR).
- Goal is to eliminate the inclusion of requirements and prohibitions included in the Export Administration Regulations (EAR) as conditions on validated licenses.
- If proposed conditions negatively impact the proposed transaction, let us know, and propose alternate language.

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Standard Scope on All Licenses:

“Unless limited by a condition set forth below, the export, reexport or transfer (in-country) authorized by this license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. The applicant is responsible for informing the other parties identified on the license, such as ultimate consignees and end-users, of the license’s scope and of the specific conditions applicable to them. BIS has granted this license in reliance on representations the applicant made in the license application, letters of explanation, and other documents submitted.”

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Why Do I Still Get Conditions?

- Export Item's sensitivity
- End-User Concerns identified during application review
- Lack of specificity/clarity in the stated end use

Please review proposed conditions and respond before we issue the license

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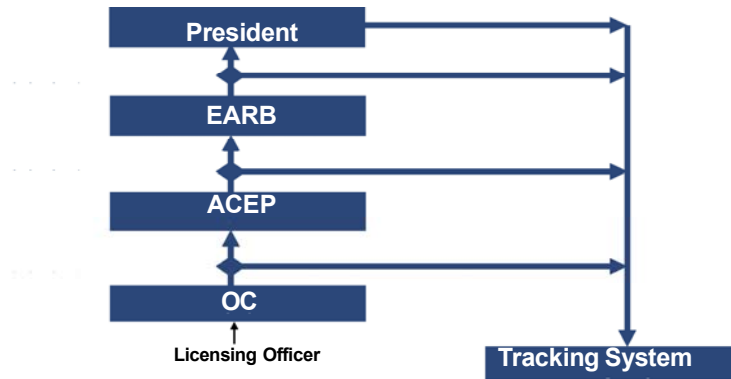
The Licensing Process: Dispute Resolution Process EO 12981

- If the reviewing agencies disagree on the disposition of the license application, BIS will attempt to resolve the issue at the working level.
- If consensus is not possible, the application will enter into the dispute resolution process:
 - Operating Committee (OC) – Career government employees from the reviewing agencies; chaired by BIS
 - Advisory Committee on Export Policy (ACEP) – Presidentially-appointed officials (Assistant Secretary level)
 - Export Administration Review Board (EARB) – Cabinet level
 - The President

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Dispute Resolution Process – EO 12981



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License Denials

- Many transactions involves General Prohibitions 4 through 10 (parties/end-uses/circumstances) will be reviewed under a general policy of presumption of denial.
- You will normally have contact with Licensing Officer during the course of review.
- When an interagency decision is made to deny a license application, you will receive an Intent to Deny Letter.
 - May be transmitted via SNAP-R
- You have 20 days to respond with additional information that may overcome our concerns.
- If no response after 20 days, the case will be denied.
- The applicant almost always has the option to request that the case be RWA'd.

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Letters of Explanation



Overview

- When to include a Letter of Explanation (LOE)
- Role and importance of the LOE
- Tailoring the LOE to the transaction and application



LOEs should be precise ...

- The LOE should reflect the proposed transaction:
 - Templates: review, tailor and update content
- Address EAR concerns specifically:
 - A grant proposal, etc. is not an LOE
 - Describe what items will and will not be exported, who will and will not have access to them, and how they will and will not be used

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... but not brittle

- Review your LOEs carefully – carve-outs and other stipulations are binding
- Currently, no “revision” process for material changes to validated licenses
- If transaction details represented in the LOE become outdated, new authorization (new license, license exception, etc.) may be needed.
 - Additional end users, items and end uses

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Standard Scope and LOEs

- License authorizes the transaction as represented in the LOE only
- An export, reexport, or in-country transfer that materially differs from that described in the LOE requires another authorization
- LOEs provide an opportunity to place boundaries around, or “self-condition,” technology, deemed export, and complex hardware licenses

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TYPES OF EXPORTS:

- Technology Exports
- Deemed Exports
- Complex Hardware Exports

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Technology Exports

- Required for technology applications:
EAR Part 748, Supplement No. 2
 - Who are the parties to the transaction?
 - Where will the technology or software be used?
 - ECCN for the technology or software
 - Foreign availability of comparable technology or software
 - Form the technology will be released in and uses in which the technology will be employed.
 - Applicant's internal technology control plan

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Deemed Exports

- Often helpful to note:
 - Does the foreign national:
 - Have strong ties to the U.S.?
 - Intend to become a U.S. citizen or permanent resident?
 - Maintain significant ties to the home country?
 - Provide special expertise or other benefits?
 - Particular expertise or qualifications
 - Scientific and technical papers published and presentations at conferences

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Complex Hardware Exports

- “Simple” transaction: single item, single consignee, fixed/static end use
- Many consignees/end users
 - Relationship between consignees/end users
 - Relationship between parties and items
- Many items
 - Application and need of each item for each of the end users
- Complex end uses

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Questions?

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Munitions Licenses



Licensing Best Practices

A Common issue seen in licenses is an incomplete End Use Statement (EUS).

- Details to include in an EUS:
 - Identify what the export item is, what it does, purpose of the item.
 - Identify who is using the item, why are they using it, where are they using it.
 - Identify the end item, system, and/or platform.
 - For 600 series items often the ultimate end user is a foreign government military.



Licensing Best Practices

- What, who, where, why
 - Examples of good end use statements:
 - “Export of [export item] to [end user/ultimate consignee] in [country where the work is to be done] for integration into [higher level assembly] for use in [end item/platform] owned/operated by [ultimate end user]”
 - “Export of [technology related to...] to [end user/ultimate consignee] in [country where the work is to be done] for production of [items to be produced] for delivery to [ultimate end user] to support [end item/platform]”
 - Commonly, technology licenses can be for the production of hardware overseas and delivered to a US party.

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Licensing Best Practices

Common reasons for Return Without Action (RWA):

- Applicant’s request:
 - Applicant intends to export under license exception instead of license.
 - Applicant knows more than 14 days are needed to answer questions.
 - Applicant made errors on application during input.
 - Order was cancelled
- Duplicate license submission:
 - Consolidation of multiple license applications
 - You may not submit a second license application covering the same proposed transaction while the first is pending action by BIS. (EAR 748.4 (f))

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Licensing Best Practices

Common reasons for Return Without Action (RWA):

- **No license is required for the described transaction**
 - 600 series .y/AT controlled only items to most destinations.
 - Note: Other licensing policies may trigger a license requirement (e.g. EAR 744 MEU List)
 - Exports of many 600 series items to Canada.
 - See Country Chart in EAR 738 Supp. 1
 - Items released by “specially designed” (nuts, bolts, screws, wire, etc...) to most destinations.

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Licensing Best Practices

Common reasons for Return Without Action (RWA):

- **Not Commerce jurisdiction (EAR 734.3 and 734.4)**
 - Items controlled on the USML or under jurisdiction of another agency with exclusive jurisdiction (U.S. Nuclear Regulatory Commission, Treasury Department Office of Foreign Assets Control, etc...)
 - Otherwise not subject to the EAR:
 - Publically available information
 - Results of fundamental research
 - Items with less than *de minimis* quantity of U.S.-origin content

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Licensing Best Practices

Common reasons for Return Without Action (RWA):

- **Incomplete party information**
 - P.O. Boxes
 - Incomplete or erroneous addresses
 - Additional parties not listed in application form
- **Failure to respond to a USG request for additional information in a timely manner**
 - LOs generally will RWA an application if no response is received within 14 calendar days. An extension of up to 6 additional days (20 days total) upon request.
 - Additional information requests may include technical specifications, letters of explanation, parts list, information on parties to the transaction, and end-use clarification.

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Letter of Explanation

- A Letter of Explanation (LOE) is required for technology licenses.
- When applying in SNAP-R:
 - Check the box labeled “Letter of Explanation” in Block 6
 - Enter the word “Technology” in Block 9
 - Enter a quantity of “1” and a total dollar value estimated by the number of times the technology line item will be shipped against , in Blocks 22(e) and (h), respectively.
 - Quantity and value may be arbitrary values as it is understood that quantifying an exchange of technology such as phone calls or emails may be difficult. For example, quantity 1 Lot for \$1 is acceptable. Do not use “0” as a quantity.
 - Include a general statement that specifies the technology (e.g., blueprints, manuals, etc.) in Block 22(j). Do not simply repeat the text of the ECCN in this block.
 - For additional assistance e-mail the BIS export counselors at ECDOEXS@bis.doc.gov

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Letter of Explanation

- Information to include in an LOE (EAR 748 Supp. 2 (o)):
 - The identities of all parties to the transaction.
 - The exact project location where the technology will be used
 - The type of technology to be exported or reexported
 - The form in which the export or reexport will be made
 - The uses for which the data will be employed
 - An explanation of the process, product, size, and output capacity of all items to be produced with the technology, if applicable, or other description that delineates, defines, and limits the data to be transmitted (the “technical scope”)
 - The availability abroad of comparable foreign technology

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Letter of Explanation

- Best practices for an LOE:
 - When describing the technology to be exported, identify the ECCN and provide a representative list of the technology to be transferred.
 - Provide a complete, detailed description of the technology (such as blueprints, manuals, specifications and test reports).
 - Avoid nondescript language such as “not limited to” or “may include.”
 - Do not repeat the text found in the ECCN as your description of the technology.
 - Limit your description to only those technologies to be shared (i.e., do not put development technology in the description unless you are specifically asking for a license to export or reexport development technology).

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Bulk License

- Bulk licenses authorize the export or reexport of items based on a representative list of items, similar to the bulk licenses granted by the Directorate of Defense Trade Controls.
- Multiple similar items of various values and quantities should be listed in the same line item.
 - For example, multiple C-130 aircraft parts classified as 9A610.x.
 - Line item may look similar to: Quantity 1; Unit: Lots; Total Value: \$1,234.00; ECCN 9A610.x; Technical Description: Multiple C-130 parts/components.
 - Details on the parts being exported should be included on the parts list.
 - Items that are not similar or have different ECCNs should be listed as separate line items.

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Representative Parts List

- The key requirement for a bulk license is a representative parts list.
- A representative parts list is used to illustrate the type of parts to be shipped and the applicant's ability to properly self-classify the items.
- The list should include the following information:
 - Platform/system to be supported.
 - Part numbers or National Stock Number
 - Technical description
 - ECCN of each part (identified to the paragraph or subparagraph level)

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Representative Parts List

An example of Representative Parts List:

C-130 Representative Parts List:

<u>PART NUMBER</u>	<u>TECHNICAL DESCRIPTION</u>	<u>ECCN</u>
1234	Bracket, structural component	9A610.x
1235	Switch Box	9A610.x
1236	Longeron	9A610.x
1237	Bearing Sleeve	9A610.x
1238	Aircrew Life support equipment	9A610.g

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Firearms Licenses



Technical description is key

- Provide a technical description that includes the ECCN sub-paragraph identifier at the beginning of the entry
- Examples for firearms (0A501):
 - .a – Various non-automatic and semi-automatic pistol sets ranging in calibers from .17 to .50 with barrels not to exceed 8-inches. Sets may include sighting devices and/or up to 4 magazines each as cataloged or advertised
 - .a – Various non-automatic and semi-automatic rifle, pistol and revolver sets equal to .50 caliber (12.7 mm) or less. Sets may include sighting devices and/or up to 4 magazines each as cataloged or advertised.
 - .a – Various semi-automatic 9mm pistol sets. Sets may include sighting devices and/or up to 4 magazines each as cataloged or advertised.

Be as specific as needed without limiting what you intend to export



Questions?

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