
Deemed Exports Overview

Annual Conference on Export Controls 2019

1

Agenda

- Deemed exports overview
- The threat
- Compliance
- License review
- Research case study
- Statistics
- Resources



2

Deemed Export Defined



- Releasing or otherwise transferring “technology” or source code (not object code) to a foreign person in the United States (a “deemed export”) (EAR 734.13 (a)(2))
- Any release in the United States of “technology” or source code to a foreign person is a deemed export to the foreign person’s most recent country of citizenship or permanent residency (EAR 734.13 (b))
- Deemed exports involve the release of “technology” subject to the EAR
- The deemed export rule has been in effect since implemented in 1994

3

The Threat



- Dangers of illegal technology transfers are very real:
 - WMD Proliferation
 - Weapon Design/
Manufacture



4

Origin of the Threat



- U.S Intelligence Community has noted:
 - Collection and acquisition activities from over 56 foreign nations
 - Use of clandestine and illegal methods to collect technology
- U.S. private sector studies estimate loss in the billions every year

5

What is being targeted?



- Biotechnology and pharmaceuticals
- Nanotechnology
- Quantum computing
- Advanced materials
- Submersible vehicles
- Acoustic communications and sensors
- Communications and encryption technology
- Satellites, spacecraft and related items
- Weapons systems yet unclassified



6

Deemed export snapshot



Deemed Export Licenses Processed by BIS 2013-2018

	2013	2014	2015	2016	2017	2018	% Change from 2017
Approved	1,245	964	1,268	1,377	1,394	846	-39.3%
Rejected	13	18	18	13	24	11	-54.2%
RWA*	67	81	95	86	107	150	40.2%
Total	1,325	1,063	1,381	1,476	1,525	1,007	-34.0%
RWA: Return without action							
Source: Commerce U.S. Exports Exporter Support System, retrieved on March 5, 2019							

Note: All previously reported numbers are subject to revision based on changes in the source data on the retrieving date.

7

Deemed exports: what countries?



Top 15 Countries of Origin for Deemed Export Licenses

Country of Origin	Top ECCN 2018
China	3E001
Iran	5E002
India	3E001
Mexico	9E610
United Kingdom	3E611
Japan	9E002
Syria	5E002
Armenia	3E001
France	9E610
Vietnam	3E001
Russia Federation	3E001
Germany	0E606
Taiwan	3E001
Finland	0E982
Brazil	0E606

8

Deemed exports: what technologies?



Top 10 ECCNs for Deemed Export Licenses
2013-2018
Approved

ECCN	2013	2014	2015	2016	2017	2018*	% of the Total License Approval 2018
3E001	392	286	457	691	770	250	29.6%
5E001	293	195	141	243	199	186	22.0%
5E002	12	16	13	117	128	112	13.2%
9E610	0	3	13	17	11	26	3.1%
4E001	2	1	2	0	42	24	2.8%
0E606	0	4	39	28	41	23	2.7%
0E982	0	2	1	0	4	17	2.0%
9E619	0	5	3	8	5	14	1.7%
3E003	0	0	3	0	0	14	1.7%
1E001	2	4	0	8	13	14	1.7%
Total License Approval	1,245	964	1,268	1,377	1,394	846	

Source: Commerce U.S. Exports Exporter Support System, retrieved on March 5, 2019

*Note: 1. The ranking is based on 2018 data.

2. The data for each ECCN are the total counts of approved licenses containing this ECCN. For example in 2018, 250 approved license contained ECCN 3E001 and accounted for 29.6% of the total 846 license approvals.

3. Each approved license contains, on average, 4.3 ECCNs.

4. This data represents the most current information and supersedes all prior reports.

9

Key Compliance Issues



- Communication between key compliance actors:
 - Export compliance personnel
 - Human resources
 - Hiring managers
- Also issues surrounding foreign visitors and need for enhanced compliance training
- Significant for high technology companies – investigations found effective programs for commodities that did not carry over in the area of technology
- Concerns for academia and government laboratories

10

Key Points for Discussion



- Successful deemed export compliance:
 - Incorporates correct classification of items, including commodities and required production, development and use technology
 - Requires management commitment to a holistic approach involving successful interaction between key stakeholders (export compliance personnel, hiring managers, and HR)
- Deemed export compliance benefits from a strong, established and well maintained Technology Control Plan, successful interaction between internal stakeholders, and meaningful annual assessments of its program
- Meaningful deemed export compliance also requires active partnership between government and all affected stakeholders

11

Technology Control Plan (TCP)



- An effective Technology Control Plan is the key to compliance
- Essential elements of a TCP:
 - Management commitment
 - Physical security plan
 - Information security plan
 - Personnel screening procedures
 - Training and awareness program
 - Self-evaluation program
- Meaningful compliance is a “win-win”
 - Protects national security
 - Allows a company to protect its proprietary technical data essential to R&D and bring new and timely products to market

12

The Deemed Export Application



- Comprehensive resume
- Complete job description
- Foreign national's particular qualifications
- Detailed letter of explanation
- Visa status
- Safeguards to limit access (Technology Control Plan)

13

Helpful Information



- Does the foreign national:
 - Have strong ties to the U.S. (e.g., family here, home ownership, etc.) and / or
 - Intend to become a U.S. citizen?
- What ties does the foreign national have to his / her country of origin?
- What special benefits or expertise does the foreign national bring to the applicant?

14

BIS - Application Review



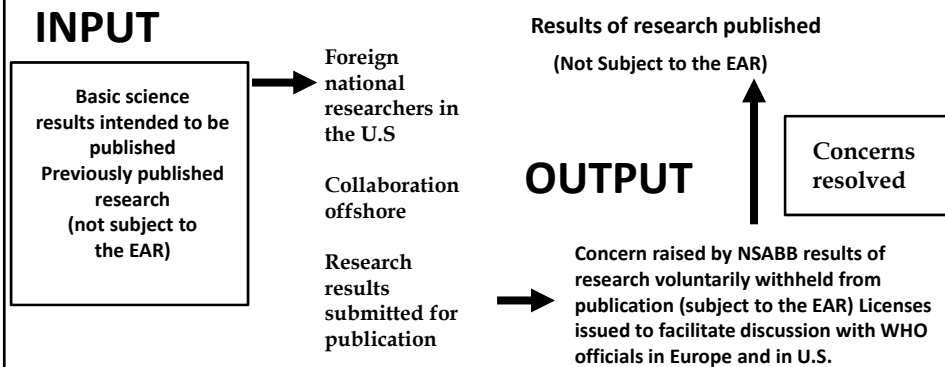
- Verify classification of technology
- Review licensing requirements & license exceptions based on home country
- Assess appropriateness of job description, responsibility, and title
- Assess appropriateness of education level and field to technology & end-use
- Determine reasons for control for correct interagency referrals
- Technology Control Plan
- Verify visa status

15

Case Study: H5N1 Dual Use Research of Concern



Research



16

H5N1 Dual Use Research of Concern Outcomes



- Greater sensitivity to export control requirements for USG sponsors of domestic research
- Established USG policy for oversight of life science dual use research of concern*
- Established institutional policy for oversight of life science dual use research of concern**

* www.phe.gov/s3/dualuse/documents/us-policy-durc-032812.pdf

** www.phe.gov/s3/dualuse/Documents/durc-policy.pdf

17

Case Study: Microprocessor Technology for Use in 5G



- A company submitted multiple license applications for category 3 technology
- As submitted, the license applications included only limited details
 - TCP was not submitted
- The license applications took over a year to process
 - escalation and de-escalation to the Operating Committee
 - interagency company site visits



18

Microprocessor Technology for 5G: What would have helped?



- A meeting, in advance of application submission, between the company and the interagency
- Detailed information including:
 - The company's road map
 - Technology Control Plan
 - IT and physical security plans



19

Resources



<https://www.bis.doc.gov/index.php/policy-guidance/deemed-exports>

<https://www.bis.doc.gov/index.php/documents/deemed-exports/709-guidelines-for-foreign-national-license-applications/file>

<https://www.bis.doc.gov/index.php/documents/deemed-exports/101-dhs-non-immigrant-form-i-129/file>

<https://www.bis.doc.gov/index.php/policy-guidance/deemed-exports/deemed-exports-faqs>

20