



Back to Licensing Basics: EAR License Application Processing and Issuance



Overview

- Preparing a License Application
 - When Can I Apply for a License?
 - A Thorough Application
- The Licensing Process
 - Interagency Review
 - Common Agency Concerns
 - License Review Period
 - Dispute Resolution
- License Conditions
- License Denials



Preparing a License Application: When Can I Apply for a License?

- Anytime!
 - No sales documentation (*e.g.*, purchase order, letter of intent, etc.) is necessary.
 - However, enough information about the potential transaction must be known in order to accurately complete the license application.
 - Classification(s) of the item(s) to be exported
 - Parties to the transaction and their roles
 - End-use of the item(s)
 - Safeguards in place to protect your proprietary interests
 - Post-export interaction you will have with end-users



3

Preparing a License Application: A Thorough Application

- A license application need not be limited to a single shipment, but may represent a reasonable estimate of items to be shipped throughout the validity of the license.
- Reexport authority may be requested by the U.S. exporter at the time of application for export license.
- Replacement Licenses
 - If no change in scope or parties, allow 30 days
 - If there are significant changes in scope or parties, plan for greater processing time
- Licenses are generally valid for four years, but additional time may be granted – make sure to ask and justify in the license application.



4

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/re-exports to and among the end-users listed on license, so craft the license application accordingly.



5

The Letter of Explanation Supplement No. 2 to EAR Part 748(o)(2)

- Required for technology applications
- Good for complex hardware license applications, too
 - Who?
 - What?
 - Where?
 - When?
 - How?
 - Safeguards in place



6

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.
- Reviewing Agencies:
 - Department of Commerce
 - Technical issues (National Security, Non-proliferation and others)
 - Economic issues
 - Department of Defense
 - National security issues – Brings the technical expertise of the Services focused on an individual export/re-export
 - Department of Energy
 - Nuclear and missile issues
 - Department of State
 - Foreign policy issues



7

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!



8

The Licensing Process: License Review Period

- 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



9

License Conditions

- In a well structured application, the representations of the applicant may be adequate.
- If there are legitimate concerns that go beyond your representations, conditions may be proposed.
- All conditions on Department of Commerce licenses will be coordinated with the applicant prior to issuing the license
 - Done through SNAP-R
- If proposed conditions negatively impact the proposed transaction, let us know, and propose alternate language.
- Once agreed, **the conditions are binding** on the applicant and end-user(s) as applicable - be sure you have buy-in by end-user(s).



10

The Licensing Process: Dispute Resolution Process

- 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
 - President



11

Making the Process Smoother

- Export Compliance Program:
 - Company roles
 - Training
 - Rigorous and timely classifications
 - Audits
- Some applications profit from a pre-submittal interagency briefing.
 - Let BIS take the lead on arranging such a briefing.
- Timely responses to questions posed through SNAP-R



12

Impediments to Normal Processing

- Return Without Action (RWA)
 - Over classification
 - Failure to recognize and use License Exceptions
 - No response to questions raised by Licensing Officer
 - 10 day limit
 - Critical data missing and not available for extended time
 - Failure to screen parties to the transaction



13

License Denials Do Occur

- If your transaction involves General Prohibitions 4 through 10 parties/end-uses/circumstances, the general presumption is 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.



14

Take Aways

- Good preparation leads to timely license reviews and approvals.
- Stay involved in the process.
- Respond quickly and completely to requests.
- Conditions are imposed to protect U.S. national security or other concerns.
 - Anticipate and structure the transaction to limit the risk
 - Your proprietary concerns are similar to ours.
- Condition compliance is one of the costs of doing international business.

