

BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY



Essentials of a License Determination (LD)



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BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY

OVERVIEW

- What is a License Determination (LD)
- Purpose of an LD
- Context of an LD submission
- LD submission and processing
- Outcome(s) of an LD
- How to avoid unnecessary LDs
- Case study/common practice
- Conclusion



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BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY**WHAT WE KNOW**

License Determinations (LDs) are submitted:

- ❖ by U.S. Law Enforcement Agencies and Intelligence Communities [(DHS – Department of Homeland Security, ICE – Immigration and Customs Enforcement, CBP – Customs and Border Protection, FBI – Federal Bureau of Investigation, etc.)]
- ❖ to the Bureau of Industry and Security (BIS) [Export Administration (EA) and Export Enforcement (EE)] .



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BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY**PURPOSE OF A LICENSE DETERMINATION**

The purpose of an LD is to have BIS determine:

- (1) An item's classification on the Commerce Control List
- (2) The reason(s) for control/export license requirements
- (3) Possible applicable license exception(s)



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CONTEXT OF LICENSE DETERMINATION SUBMISSION

- An LD is submitted in the context of a violation or a suspected violation of the EAR (export/reexport or deemed export/reexport).
- Question(s) to answer:
 - Was a license required for this export/reexport or deemed export/reexport?
 - If yes, is there a license exception available?

**LICENSE DETERMINATION SUBMISSION**

LD Electronic Request Form:

Fields/rubrics should be fully completed
(or as much as possible).



LICENSE DETERMINATION PROCESSING

From the submitted electronic application, a BIS licensing officer will try to answer the question(s) by figuring out the facts as follows.



LICENSE DETERMINATION PROCESSING (contd.)

- (1) **What is it?** What the item is, for export control purposes, depends on its *classification*, if its place is on the Commerce Control List (see part 774 of the EAR).
- (2) **Where is it going?** The country of ultimate destination also determines licensing requirements (see part 738 of the EAR – Commerce Country Chart).



LICENSE DETERMINATION PROCESSING (contd.)

- (3) **Who will receive it?** The *ultimate end-user* of your item may trigger a license requirement or prohibition if listed on one of the restricted parties lists. (See part 736 of the EAR on General Prohibitions, particularly general prohibitions Four, Five, and Six; see Supplement No.4 to part 744 of the EAR – Entity List; and see Supplement No. 1 to part 764 of the EAR for references to persons with whom your transaction may not be permitted.)

**LICENSE DETERMINATION PROCESSING (contd.)**

- (4) **What will it be used for?** The *ultimate end-use* of your item may also trigger a license requirement or prohibition: See part 736 of the EAR for General Prohibition (on certain end-uses) and part 744 of the EAR for restrictions on certain end-uses.



LICENSE DETERMINATION PROCESSING (contd.)

- (5) **What else do they do?** *Conduct* such as contracting, financing, and freight forwarding in support of a proliferation project (as described in § 744.6 of the EAR) may further trigger a license requirement or prohibition.

- (6) **When did it happen?** The LD is considered against regulations that were in effect at the time of the export.



REQUIRED INFORMATION

Very important:

(1) Contact information:

- * Provide email and/or phone number that can be used to get hold of you immediately

- * Regularly check your email/phone, and respond to messages right away



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- * Product name: technical and/or commercial name (written on the product, from customer order paperwork, etc.) – no additional information necessary in this field.
- * Model number, part number, serial number: important
- * Commodity description: generally from customer order paperwork.
- * Manufacturer: important.
- * Additional information/comment: here the applicant can write as much as he/she wants/wishes about the context of the LD.



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- * Attach pictures of the item, pictures that display
 - different views (side, front, rear, top, bottom, etc.)
 - writings on the item (names, numbers, etc.)
- * Attach pages of user's manual or catalogue showing item's picture and/or technical specifications



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- * Inaccurate/incorrect/wrong information/pictures
 - * Incomplete information/pictures
- } Cause delays

Why the delay ? Because:

- the LD may be put on hold without action (HWA) to request clarification or additional information.
- the LD may be returned without action (RWA) for resubmission.



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35 days: from submission/date-of-receipt in BIS electronic system to final action date.

- days 1-8: LD submitted electronically to BIS, preliminary review and technical evaluation conducted, and the LD is assigned to the appropriate Division.
- days 9-24: the Division assigns the LD to the appropriate LO for processing (in-depth analysis, hold without action if additional information is needed).



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PROCESSING TIME FRAME (contd.)

→ days 25-35: the LO completes the LD processing (ECCN determination, applicable list-based license exception(s), final recommendation, signing off).

Notes:

- (1) Expedited or emergency LDs follow same process but time frame is shortened to the extent possible.
- (2) All processed LDs are official certified LDs (no separate written certification document required).

**OUTCOME OF A LICENSE DETERMINATION**

The end result of an LD is that a BIS licensing officer be able to visualize the item, identify its technical specifications, figure out the facts, and provide an accurate response to the question(s), which are....?



OUTCOME OF A LICENSE DETERMINATION (contd.)

The question(s):

Was a license required for this export/reexport
or deemed export/reexport?

If yes, is there a license exception applicable?

**HOW EXPORTERS CAN AVOID UNNECESSARY LDs**

- Know your product (ECCN – from manufacturer, from BIS through commodity classification request, from self-classification).
- Know your customer [Commerce Entity List – Supplement No.4 to part 744 of the EAR, and Consolidated Screening List (CSL) – http://2016.export.gov/ecr/eg_main_023148.asp].



BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY**HOW AGENTS CAN AVOID UNNECESSARY LDs**

- Review the alphabetical index to the Commerce Control List (CCL), which is not an exhaustive list of controlled items, but it is an excellent first step.
- If a commodity is not readily identified in the index, then often it is EAR99.
- But ..., further searching may be necessary and an LD may be warranted when it is not clear what the commodity is.



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BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY**HOW AGENTS CAN AVOID UNNECESSARY LDs (contd.)**

- Communication between requesting Law Enforcement (LE) Agent(s) and Commerce Licensing Officer(s) (LO):
 - * Direct communication between LE and LO at EXODUS Command Center.
 - * Preprocessing communication between LE and LO by phone or email.



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CASE STUDY / COMMON PRACTICE

- An exporter in the U.S. contacts a BIS Licensing officer saying: “I need help, my cargo is stopped. I am desperate and need help.”
- BIS LO senses that exporter is upset.
- What can be done (in the light of this presentation)?



CASE STUDY / COMMON PRACTICE (contd.)

- First: BIS LO should try to calm the exporter.
- Second: Explain the LD process to the exporter.
- Third: Encourage the exporter to provide the necessary information to the Law Enforcement officer to help speed up the LD process.



BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY**CASE STUDY: NO LD SUBMITTED**After fact finding:

Law Enforcement (LE) resolves the issue without having to submit an LD to BIS:

- By reviewing the Commerce alphabetical index and examining the case with fellow LEs, it became obvious that the item is not controlled: EAR99 → NLR.
- By direct discussions between LE Officer and BIS LO at Exodus command center, the issue is resolved and there is no license required (NLR).



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BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY**CASE STUDY: LD SUBMITTED**After fact finding:

Law Enforcement (LE) submits an LD to BIS

→ BIS LO has to provide the answer(s) to the questions:

- (1) Was a license required?
- (2) If yes, is there a license exception applicable?

→ BIS LO's analysis:

- (1) What is the item?
- (2) Where is it going?
- (3) Who will receive it?
- (4) What will it be used for?
- (5) When was it exported?



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LD RESULT 1 – NO LICENSE REQUIRED

Option 1: Based on the information provided with this LD request, the Bureau of Industry and Security (BIS) has determined that the (item) is classified as EAR99 and requires no license for export to (this destination).

Option 2: Based on the information provided with this LD request, BIS has determined that the (item) is classified as 2B201 controlled for NP reason not applicable to (this destination); therefore no license is required for the export of (this item) to (this destination).



LD RESULT 1 – NO LICENSE REQUIRED (contd.)

However: A BIS license may be required if the end-user is on the Entity List, or if the end use is of concern (EAR parts 736 & 744), or if exporter knows items will be used for restricted chemical/biological/nuclear/missile end-use, or exported to prohibited destination(s).



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Based on the information provided with this LD request, BIS has determined that the (item) is classified as 0A987 controlled for FC reason. Items controlled for FC reason require a license export to (this destination). On August 12, 2017 (or from January 10, 2016 to September 2, 2017) a BIS license was required for the export of (this item) to (this destination).

* This transaction may be eligible for license exceptions “BAG” or “GOV”.



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BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY**LD RESULT 3 – FOREIGN CUSTOMS APPLICABLE**

- LD results most of the time, if not always, clarify or resolve the issue(s) at hand (especially in a case of a violation or a suspected violation of the EAR).
- But when foreign customs are involved, please note that in those circumstances, country specific required documentation, which is outside of BIS jurisdiction, may need to be addressed by the exporter, independent of the BIS LD result.



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CONCLUSION

A License Determination (LD), used properly, is an important tool for BIS and other U.S. Enforcement Agencies to support compliance with EAR regulations and protect our national security.



CONCLUSION

All exporters should be aware that exported items are monitored and tracked globally, and therefore compliance with the EAR will minimize any chance of violations.



THANK YOU!

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