The Deemed License Application Process

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University of Pennsylvania

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Four Elements of Deemed Exports

1. What is a deemed export?
2. Which agencies are involved in deemed exports?
3. What items and technologies are controlled?
4. Who can have access to controlled items and technologies?
What is a Deemed Export? - EAR

- The obligation to get a license *before* releasing controlled technology to a foreign person is informally referred as the “deemed export” rule.

- Releases of controlled technology to foreign persons in the U.S. are “deemed” to be an export to the person’s country or countries of nationality.
conducts Visa interviews at Embassies- Bureau of Consular Affairs
administers military-related export licenses through DDTC

administers dual-use export control licenses through BIS

approves and implements information on the I-129 form through U.S. Citizenship & Immigration Service
What is Controlled? Top Ten Categories Requiring Licenses from BIS

1. Material Processing (motion simulators, detection devices etc.)
2. Materials, Chemicals, Toxins
3. Nuclear Materials
4. Electronics
5. Telecommunications & Information Security
6. Propulsion
7. Sensors and Lasers
8. Navigation and Avionics
9. Marine
10. Computers & Related Software & Technology
Does a Foreign Person have Access to Controlled Technology?

Nationality:

• Commerce Dept. looks to a foreign person’s most recent country of citizenship or permanent residence.

• State Dept. looks at current nationality and all prior nationalities and place of birth.
Exempted from the Deemed Export Rule

• A person granted U.S. citizenship
• A person granted permanent residence status – Green Card holders
• A person granted status as a “protected individual” under 8 U.S.C. 1324b(a)(3).
What is Technology?

- In the EAR---“specific information necessary for the ‘development,’ ‘production,’ or ‘use’ of a product.”

- Seen in: blueprints, manuals, models engineering diagrams etc.
Publically Available Technology

- No license needed if technology is “publically available” or in the public domain

- Examples:
  - Sales through newsstands and bookstore
  - Through subscriptions available to anyone
  - At libraries open to the public or where the public can obtain documents
Fundamental Research

- EAR 734.8 - information that arises during or results from fundamental research is exempt from EAR licensing requirements:

- "Fundamental research is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community."
The Deemed License Application Process

I-129 Form

Visa

BIS or State Dept. License

Follow-Up/Compliance
Part 6. Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States

(For H-1B, H-1B1 Chile/Singapore, L-1, and O-1A petitions only. This section of the form is not required for all other classifications. See Page 3 of the Instructions before completing this section.)

Check Box 1 or Box 2 as appropriate:

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

☐ 1. A license is not required from either U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or

☐ 2. A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.
Now in effect and only for H-1B, O-1A and L-1 non immigrants

Petitioner does not need to obtain an export license prior to filing, just confirmation that deemed export rules will not be violated prior to getting a license if one is needed

Organizations releasing controlled technology must first obtain an export license.

So far in 2012 - huge increase in H1B visa petitions - 25,600 since April 1
Special Circumstances

- **Important**: Need to refer to EAR Supplement 1 to Part 734

- **Questions on**: Conferences, Publication, Educational Instruction, Federal Contracts, Software

- See *handout*- updates pending
## Top Deemed Licenses Approved by ECCN

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Top 6 Countries of Approved Deemed Export Licenses, 2012

- China, 622
- Iran, 89
- India, 32
- Russia, 16
- Vietnam, 12
- United Kingdom, 6
Contacting Us

U.S. Dept. of Commerce (dual-use licenses)
-Washington D.C. telephone- 202- 482-4811
-Irvine, CA office- telephone- 949- 660-0144
Web site – www.bis.doc.gov- has FAQ’s for deemed exports & upcoming workshops

U.S. Dept. of State (military-related licenses)
Telephone- 202-663-1282
Web site: www.pmddtc.state.gov