



# Deemed Exports

## ECCO Conference

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Michael Hoffman

Director, Western Regional Office

Bureau of Industry and Security

# Deemed Export Rule

- The obligation to get a license before releasing controlled technology to a foreign person is informally referred as the “deemed export” rule. See section 734.2(b)(2)(ii) of the Export Administration Regulations (15 CFR 730-774)
- Release of controlled technology to foreign persons in the U.S. is “deemed” to be an export to the person’s country or countries of nationality.

# What is Technology?

- In the EAR — specific information necessary for the “development,” “production,” or “use” of a product.
- Can take the form of blueprints, diagrams, models, conversations, access to computer files, facility visits.



# Exclusions from Deemed Export Rule

## People

- U.S. citizens
- Permanent Resident Aliens  
“Green Card” holders
- Protected individuals  
under 8 U.S.C.  
1324b(a)(3)

## Information

- Publicly Available (Section  
734.7)
- Fundamental Research  
(Section 734.8)
- Educational Information  
(Section 734.9)
- Patent Information (Section  
734.10)

# Nationality for Deemed Exports

- Commerce Department looks to a foreign person's most recent country of citizenship or permanent residency.
- State Department looks at history of nationality of the person in determining access to technology covered in the ITAR.

# Deemed Export License Statistics (FY10)

- 60% PRC foreign nationals
- 13% India
- 8% Iran
- 2% Russia
- 1% UK

# Publicly Available

- Information generally accessible to the public and therefore not subject to the EAR
- Technology and software already published or which will be published
- Arises during, or results from, fundamental research
- Educational
  - Catalog courses
  - Teaching laboratories in academic institutions
- Information included in certain patent applications

# Fundamental Research

## Yes

- Basic and applied research in science and engineering.
- Resulting information is ordinarily published and shared broadly within the scientific community.

## No

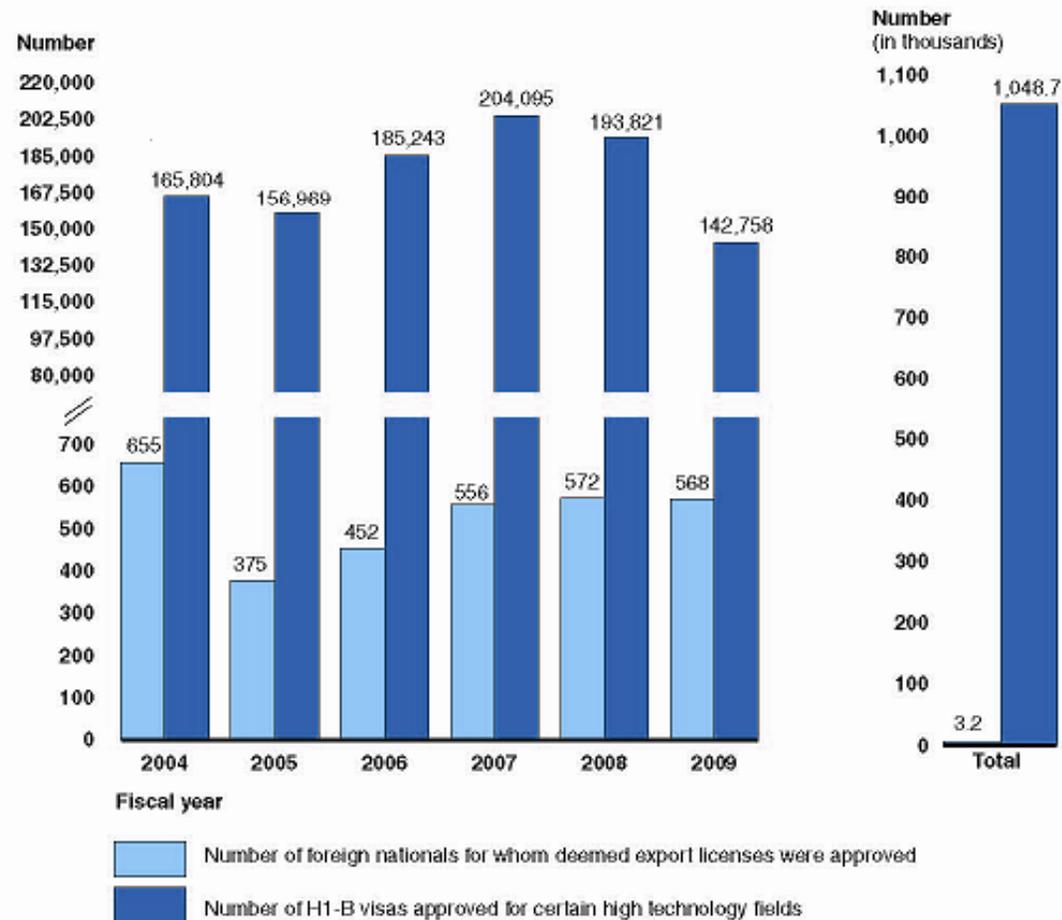
- Proprietary research and industrial development, design, production, and utilization.
- Results are restricted for proprietary or national security reasons.

# Deemed Export Statistics (FY10)

- Total Applications processed: 753
  - Approvals 701 (93%)
  - RWAs 46 (6%)
  - Denials 6 (<1%)
- Most common ECCNs
  - Telecommunications (Category 5)
  - Semiconductor & Electronics (Category 3)
  - Computer Systems (Category 4)
  - Aerospace Systems (Category 9)

# Visas and Deemed Export Licenses

**Figure 1: Comparison of the Number of Foreign Nationals from Countries of Concern Approved to Receive Specialty Occupation Visas to Those Covered by Deemed Export Licenses, Fiscal Years 2004-2009**



Sources: GAO analysis of Commerce and State data.

# Preliminary Considerations for Licensing

- Subject to the EAR
  - Jurisdiction: EAR vs. ITAR
  - Publicly available? Fundamental research?
- Classification
- Country Chart
- General Prohibitions 4 through 10
- License Exceptions
- License

# What You Need to Submit an Application

- Registered for SNAP-R
- Background of the individual (comprehensive resume). See Part 748, Supplement 2 (s) & (t)
- Total scope of technology to be provided (job description, meeting agenda, research objectives, etc.)
- Know the ECCN(s) involved
- Have the required support documents

# Support Documentation

- Full name, date of birth, place of birth, passport number, country issuing passport
- Letter of Explanation: Supplement 2 to Part 748(o)(3)
- Visa
- Resume
- Position description including data to which individual will be exposed (Supplement 2 to Part 748(s)&(t))

# Review Process

- BIS initial review: 9 days
- Interagency review: 30 days
- If Agencies do not agree:
  - Operating Committee (OC): 19 days
  - Advisory Committee on Export Policy (ACEP): 16 days
  - Export Administration Review Board (EARB): 16 days

# Potential Dispositions

- Returned Without Action (RWA)
  - No license required
  - Application lacks key information, and not provided in timely manner
- Approve with Conditions
  - You should see and accept the conditions prior to the license being issued
- Denial
  - You will receive an Intent to Deny (ITD) letter before the denial becomes final
  - Appeal (see Part 756)

# Licensing Considerations

- As presented, does the application make sense?
- Provide support data as appropriate - all is safeguarded under Section 12(c) of the EAA
- More isn't better if it is not relevant
- Our concerns are national security, foreign policy, and risk of diversion
  - Provide information that you have that reduces our concerns

# Miscellaneous

- Normal license validity is 2 years
  - If you need more time, ask and provide information to support the request
- If there is a change in individual's job or data exposure---get a new license.
- We can grant time extensions of 6 months but you must request and support
- Keep engaged

# Compliance

- Since 2004, a central theme identified in the course of over 120 investigations of deemed exports has been the poor communication or disconnect between the key compliance actors in the private sector.
- Issues surrounding foreign visitors also showed the need for enhanced compliance training.
- While high technology organizations maintained effective control programs for commodities, investigations showed that that controls often did not carry over in the area of technology.

# Key Elements of an Effective Compliance Program

1. Management Commitment
2. Risk Assessment
3. A Written EMCP
4. Compliance Training
5. Cradle to Grave Export Compliance Security
6. Recordkeeping [EAR Part 762]
7. Export Compliance Monitoring & Auditing
8. Handling & Reporting Export Compliance Problems & Violations
9. Corrective Actions

# Additional Information

- BIS counseling services:
  - Irvine, CA: (949) 660-0144
  - San Jose, CA: (408) 998-8806
  - Washington, DC: (202) 482-4811
- Deemed export specialists:
  - Bob Juste (202) 482-2845 [robert.juste@bis.doc.gov](mailto:robert.juste@bis.doc.gov)
  - Kurt Franz (202) 482-2845 [kurt.franz@bis.doc.gov](mailto:kurt.franz@bis.doc.gov)
  - Gene Christiansen (202) 482-2984  
[gene.christiansen@bis.doc.gov](mailto:gene.christiansen@bis.doc.gov)