Guidelines for Preparing Export License Applications Involving Foreign Persons (Deemed Exports/Reexports)

I. Introduction

The Bureau of Industry and Security (BIS) has prepared these guidelines for applicants to use in submitting deemed export and deemed reexport license applications.

Section 734.13 of the Export Administration Regulations (EAR) defines a deemed export as releasing or otherwise transferring "technology" or "source code" (but not "object code") to a foreign person in the United States. Any release in the United States of "technology" or "source code" to a foreign person is "deemed" to be an export to the foreign person's most recent country of citizenship or permanent residency. Section 734.14 defines a deemed reexport as releasing or otherwise transferring "technology" or "source code" subject to the EAR to a foreign person whose most recent country of citizenship or permanent residency is other than the foreign country where the release or transfer takes place (i.e., a third-country national). (Note: Applicants should also consult Section 734.20, which describes certain releases by entities to third-country nationals abroad that would not constitute deemed reexports and consequently not require deemed export licenses).

Licenses are required for the release of controlled "technology" or "source code" to a foreign person only if a license is required for the export (or reexport, as noted above) of such items to that foreign person's most recent country of citizenship or permanent residency (Certain license exceptions may apply.)

Deemed exports are most often encountered in the employment context when a company releases controlled "technology" or "source code" to a foreign person. These guidelines primarily apply to employment situations; however, this guidance also addresses license submission requirements related to releases of controlled "technology" and "source code" to foreign persons in other contexts, such as foreign students participating in collaborative research when there are restrictions on publication or foreign students participating in curricular practical training (CPT) or optional practical training (OPT). It is important to note that deemed export license requirements do not apply to the release of "technology" or "source code" to persons lawfully admitted for permanent residence in the United States or persons who are "protected individuals" as defined under the Immigration and Naturalization Act (8 U.S.C. § 1324b(a)(3)).

The basic guidance for filling out license applications is set forth in Supplement 1 to part 748 of the EAR. The following guidelines supplement the basic guidance and are intended to facilitate review of applications involving deemed exports. BIS encourages applicants to follow these guidelines to assist licensing officers in reviewing your license application more efficiently. Due to established time limits for the review of license applications, it is in the interest of each applicant to provide all information needed to analyze the transaction at the time the application is submitted.

II. Basic Requirements

Before starting the application process, ensure that you have all the necessary information and documentation required. Insufficient information will result in delays in the review of your application.

NOTE: Only one foreign person may be included on a license application. BIS will return applications listing multiple foreign persons without action.

Documentation required for deemed export or deemed reexport licenses:

1) Legible copies of passport, visa, and work authorization (or equivalent for deemed reexport). Please do not include the blank pages of the passport. The passport, visa, and work authorizations must all be current and valid. Please upload these as separate documents in the license application in SNAP-R and note the validity dates of each in the "Additional Information" field of the electronic license application form. A best practice is to give each document a descriptive name for ease of review. Deemed export/re-export applications requesting authorization for foreign national employees and applications for foreign students participating in CPT or OPT will also require the inclusion of valid work authorizations. For example, if using the I-20 form, CPT or OPT must be authorized on the I-20 form.
2) Letter of Explanation (LOE) (see section IV)
3) Resume (see section V)
4) Technology Control Plan (TCP) (should be a separate document from the LOE – see section IV)

III. SNAP-R submission of license application work item

In addition to the standard instructions in Supplement 1 to part 748 of the EAR, BIS recommends the following when completing the application:

Block 6: Documents Submitted	Check the box labeled "letter of explanation". Check the box labeled "other" to add resume, passport, visa, work authorization, and other relevant documentation.
Block 9: Special Purpose	Deemed Export or Deemed Reexport
Block 14: Applicant	Do not use acronyms or P.O. Boxes
Block 18: Ultimate Consignee	Do not use acronyms or P.O. Boxes Enter the foreign person's full name and the address in the United States where the foreign person is currently residing and list the foreign person's most recent country of citizenship or permanent residency, as appropriate, in the country box.

	For Deemed Reexports, enter the foreign person's full name and the address of the foreign person's country of citizenship or permanent residency, as appropriate, in the country box. Also complete Block 19 for Deemed Reexports.
Block 19: End-User	For Deemed Reexports, enter the foreign person's full name and address of the current third- country residence. Leave Block 19 blank for Deemed Export applications.
Block 21: Specific End-Use	Specify how the controlled "technology" and/or "source code" requested for release to the foreign person is to be used in his/her employment or other setting (e.g., academia). This section should include a detailed description of the end-use. For example, "for research purposes" is not sufficient. Explain the nature of the research or activity.
Block 22(j): Technical Description	Identify the "technology" or "source code" by its Export Control Classification Number (ECCN) on the Commerce Control List (CCL), not by trade name. List and upload additional specifications, where appropriate.
Block 23: Dollar Value	A dollar value is required but can be listed for a nominal $1.00.
Block 24: Additional Information	List and upload legible copies of the foreign person's passport, visa, work authorization (include all validity dates) and any other relevant information.

IV. Letter of Explanation (LOE) - Upload as a separate document in application

(i) The identity of the foreign person party to the transaction:

1. Full Name
2. Citizenship or other applicable immigration status
3. Permanent Address (in most recent country of citizenship or permanent residency)

4. Current Address
5. Passport number and expiration date, and place of issuance
6. Visa type and expiration date, and place of issuance
7. I-94 number and expiration date (if applicable)
8. I-20 number and expiration date (if applicable)

NOTE: *Copies of the valid passport, visa, I-94, I-20, (if applicable) and any other necessary documentation must be uploaded in the application*

(ii) The address of the exact project location where the "technology" or "source code" will be released (or otherwise transferred) to the foreign person.

If you anticipate that the foreign person will relocate within the validity period of the license, list the expected future location in addition to the foreign person's anticipated location at the time of license issuance. If the foreign person will be on a rotational program through several locations within the same country, all such locations should be listed. Movement of the foreign person between/among countries may result in additional deemed reexport licensing requirements.

(iii) The type of "technology" or "source code", and its uses/applications

The type of "technology" or "source code" will be based on the type of product the firm (or university) designs, develops, fabricates, manufactures, produces, or otherwise has contact with. It must be identified in an ECCN and may typically be described in several short sentences. The applicant should identify all uses and applications for the "technology" or "source code" that will be released or otherwise transferred to the foreign person. The uses/applications generally include design, development, and production of items. (This should be the same or an expansion of block 22).

Example: Name of party who will be working in the development and production of "whatis" widgets, which are listed on the CCL under ECCN 3A001, and will oversee the manufacturing line which uses machinery classified under ECCNs 3B002, 3B003, and 3B004. "Technology" for the development and use of such items is classified under ECCN 3E001.

(iv) The form in which the "technology" or "source code" will be released.

"Technology" or "source code" is released through 1) visual inspection by foreign persons of items that reveal "technology" or "source code"; 2) oral or written exchanges with foreign persons of the "technology" or "source code" (in the United States or abroad).

(v) An explanation of the process, product, size, and output capacity of all items to be produced with the "technology" or "source code", if applicable, or another description that delineates, defines, and limits the controlled "technology" or "source code" to be

transferred or released (the technical scope). Within the context of the applicant's business or research, this information should precisely explain the foreign person's job or research responsibilities, and in particular, what such individual will be doing with the controlled "technology" or "source code," if release is authorized. This section should explain what products/services the foreign person will be working with, and what benefit the applicant intends to derive from the foreign person in terms of product improvements, production line benefits, new technical processes and/or other services. This information may include, but not necessarily be limited to: the products the foreign person will be working with, the industrial processes the individual will be working with, the improvements/designs/services the individual is expected to provide in the product design/production cycle, the work environment (factory floor, design team, experimental laboratory, etc.), and the kind of interaction with other individuals who have access to or will otherwise be working with controlled "technology" or "source code".

(vi) The availability abroad of comparable foreign "technology" or "source code".

Here, a brief statement is all that is required. If not available, put N/A.

(vii) An overview of the applicant's internal Technology Control Plan (TCP).

The TCP should describe the procedures and measures it has in effect or intends to implement to prevent the release of the authorized "technology" or "source code" to foreign persons who are not authorized for release, under a license or an available license exception. *The applicant should upload a copy of its TCP as a separate document in the application.*

V. Resume (Upload as a separate document in the application)

The license application should include a resume containing the information below. Accurate and complete information is essential for the efficient processing of the application. This information is considered in the licensing process to assess the risk that the "technology" or "source code" in question could be diverted to unauthorized uses or users. Any gaps (e.g., breaks in employment or education) need to be fully explained.

(i) <u>Personal background information</u>
BIS requires the foreign person's name and place of birth. If the foreign person holds dual (or multiple) citizenships or permanent residencies in countries other than the United States, please list all of the countries and the foreign person's legal status for each. If the foreign person has specific ties to the United States this should be listed – family, property, etc.

(ii) Educational and vocational background
Please list in chronological order the college degrees earned by the foreign person, dates of attendance, and the schools attended, including the name, address, and country for each school. If the foreign person did not attend college, please list the name, address, and location of the high school or technical school attended, and highest degree obtained, if any.

(iii) Employment history
Please list in chronological order the jobs (including research apprenticeships) held by the foreign person. This list should include the name and complete address of the employer, as well as a brief description of the tasks performed during each job and the technical skills acquired.

(iv) Research history
Please list any research conducted and/or publications by the foreign person. This list should include the type of research and a brief description, plus the title and date of each article published (or co-published) by the foreign person, as well as the name of the periodical in which each article appeared.

(v) Military service
Please list the dates and place of service, the service branch, the rank attained, and activities performed of all military service, whether voluntary or mandatory.

(vi) Special information
This optional section is for the applicant to list any special considerations that it believes BIS should consider in reviewing the application. For example, the applicant may want to cite any unique technical skills of the foreign person.

Foreign Persons - Application Checklist

- ✓ Have you reviewed your application carefully to ensure that requirements have been met?
- ✓ Have you provided the appropriate data in the letter of explanation and the personal resume covering the background information?
- ✓ Have you provided legible copies of a valid passport, visa, I-94, and authorization to work in the United States?
- ✓ Have you electronically signed the application?

Review of Applications Involving Foreign Persons (Deemed Exports)

BIS will take into consideration the licensing policy associated with the technology or software.

BIS's policy is to approve deemed export license applications provided:

1. there is no unacceptable risk that the items in question will be diverted to unauthorized uses or users; and

2. the applicant agrees to comply with the applicable conditions on the license.

The standard condition(s) set forth in this attachment cover "technology" and "source code" pertaining to items listed on the Commerce Control List. BIS may attach these and other conditions to a license when approved.

Standard License Conditions for Deemed Export Cases

1. Once a year from date of validation, you are required to submit a report via SNAP-R that no changes have occurred to the immigration or employment status of the individual subject to this approved license. If a change has occurred, as outlined below, the report will include the relevant information and date of occurrence: (i) the individual has obtained his/her permanent resident status (i.e., U.S. green card or equivalent status in a foreign country); (ii) a change in type of visa held or expiration/revocation of visa; (iii) the individual has left the company/research institution prior to obtaining permanent resident status; (iv) if known, the reason for the foreign person leaving, including whether the individual is leaving the United States and/or are employed by another firm or organization in the United States or abroad.

   Note: In the case of a temporary authorization (such as for a one-time plant tour or a visit lasting less than one year), this yearly reporting condition may not apply.

2. The foreign person must certify in writing that he/she has been advised of and understands the terms and conditions of this license and that he/she will not disclose, transfer or re-export any licensed "technology" or "source code" without authorization from BIS, if such authorization is required under the EAR.

3. If not already implemented, the applicant will establish procedures to ensure compliance with the conditions of this license, particularly those regarding limitations on release of specific "technology" or "source code". The applicant's key export control management officials will ensure that the foreign person complies with the conditions. A copy of such procedures will be provided to DOC/BIS upon request.

Adherence to these license conditions is essential.

Standard Rider for Deemed Export Cases

This approval is valid only if, and as long as, the foreign person maintains a valid visa and the required work authorizations that permit employment in the United States.

License Condition Best Practices

Each year on the anniversary of the date of validation, the applicant is required to verify to BIS that the foreign person has the required work authorization (*e.g.*, visa, employment card to be employed in the United States or in the country in which the individual resides for a deemed reexport).

At the time that BIS issues your deemed export license, you will receive a Follow Up Request via SNAP-R notifying you of the yearly license condition reporting requirement. Please do not respond to this notification until a year after the date of validation of the license.

Before reporting, it is very important that you check all visa-related documentation to ensure that the documentation provided with the license application has not expired. This is a best practice, as applicants often indicate "no change" when in fact the documentation has expired, requiring additional follow up for both the applicant and the BIS compliance staff reviewing the report, and potentially leading to violation of license conditions.

For example, if the visa or work authorization has expired, please upload a copy of the new visa or work authorization, noting the new expiration date.

After the BIS compliance specialist reviews and confirms that your report is complete and accurate, you will receive a Follow Up Request via SNAPR notifying you of the next yearly license condition reporting requirement. Please do not respond to this notification until it is time to submit the next annual report.

If the foreign person receives his/her green card, please note that, and upload a copy of the green card to the license in response to the yearly condition reporting in SNAP-R. BIS will then terminate the yearly reporting requirement, as the license would not be required for green card holders.

If the foreign person has left the company, please indicate this and, if available, the reason for such departure, including whether the individual is employed at another firm or organization in the United States or abroad. BIS will then terminate the reporting requirement.

If you need a new request opened in SNAP-R to follow up on a license condition and/or add documentation, please send a request to EMCD@bis.doc.gov. Please state the license number ("D number"), the applicant's name, the name of the foreign person, the company's name, and the purpose of the request.