



U.S Department of Commerce
Bureau of Industry and Security

***Deemed Exports
Webinar***

August 29, 2007



Agenda

● Export Control Fundamentals:

- Four questions & the essential terms
- Technology Classification Example

● Deemed Exports:

- Fundamental research
- Public Availability, EAR99 technology, “Use”
- License exceptions
- Application requirements
 - Resume
 - TCP



Four Questions

● **What is it?**

The exporter needs to be able to answer all four of these questions before engaging in any export transaction.

● **Where is it going?**

● **Who are they (who will receive it)?**

● **What will they do with it?**



Export Administration Regulations (EAR) Terms

- “Subject to the EAR”
- Item: Commodity, Technology, Software
- Export, Re-export
- Deemed export/release of technology
- Export Control Classification Number



Export Control Classification Number “ECCN”

Classification Example: Robots

On page “Category 2 – Page 15” of PDF/Loose Leaf



2B007 “Robots” having any of the following characteristics described in the List of Items Controlled and specially designed controllers and “end-effectors” therefor.

License Requirements

Reasons for Control: NS, NP, AT

<i>Control(s)</i>	<i>Country Chart</i>
NS applies to entire entry	NS Column 2
NP applies to 2B007.b and 2B007.c and to specially designed controllers and “end-effectors” therefor	NP Column 1
AT applies to entire entry	AT Column 1

License Exceptions



2B007 “Robots” having any of the following characteristics described in the List of Items Controlled and specially designed controllers and “end-effectors” therefor.

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Control(s)

Country Chart

NS applies to entire entry

NS Column 2

NP applies to 2B007.b and 2B007.c and to specially designed controllers and “end-effectors” therefor

NP Column 1

AT applies to entire entry

AT Column 1

License Exceptions



LVS: \$5000, except 2B007.b and .c

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: \$ value

Related Controls: (1) See ECCN 2D001 for “software” for items controlled under this entry. (2) ECCNs 2E001 (“development”), 2E002 (“production”), and 2E201 (“use”) for technology for items controlled under this entry. (3) Also see ECCNS 2B207, 2B225, and 2B997.

a. Capable in real time...



LVS: \$5000, except 2B007.b and .c

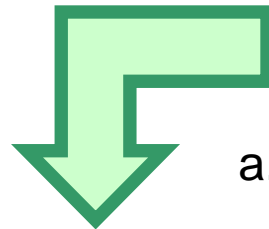
GBS: N/A

CIV: N/A

List of Items Controlled

Unit: \$ value

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a. Capable in real time...



Refer to page “Category 2 – page 48” of PDF/Loose Leaf

2E001 “Technology” according to the General Technology Note for the “development” of equipment or “software” controlled by 2A (except 2A983, 2A991, or 2A994), 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998), or 2D (except 2D983, 2D991, 2D992, or 2D994).

License Requirements

Reasons for Control: NS, MT, NP, CB, AT

Control(s)


Country Chart

NS applies to “technology” for items controlled by 2A001, 2B001 to 2B009, 2D001 or 2D002

NS Column 1

MT applies to “technology” for items controlled by...

MT Column 1



Refer to page “Category 2 – page 48” of PDF/Loose Leaf

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License Requirements

Reasons for Control: NS, MT, NP, CB, AT

Control(s)


Country Chart

NS applies to “technology” for items controlled by 2A001, 2B001 to 2B009, 2D001 or 2D002

NS Column 1

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MT Column 1



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Reasons for Control: NS, MT, NP, CB, AT

Control(s)


Country Chart

NS applies to “technology” for items controlled by 2A001, 2B001 to 2B009, 2D001 or 2D002

NS Column 1

MT applies to “technology” for items controlled by...

MT Column 1



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Control(s)


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License Requirements

Reasons for Control: NS, MT, NP, CE, AT

Control(s)


Country Chart

NS applies to “technology” for items controlled by 2A001, 2B001 to 2B009, 2D001 or 2D002

NS Column 1

MT applies to “technology” for items controlled by...

MT Column 1



Refer to page “Category 2 – page 48” of PDF/Loose Leaf

License Exceptions

CIV: N/A

TSR: Yes, except N/A for MT

List of Items Controlled

Unit: N/A

Related Controls: See also 2E101,
2E201,
And 2E203

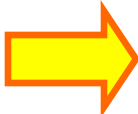
Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

Refer to page “Category 2 – page 48” of PDF/Loose Leaf

License Exceptions

 CIV: N/A
TSR: Yes, except N/A for MT

List of Items Controlled

Unit: N/A

Related Controls: See also 2E101,
2E201,
And 2E203

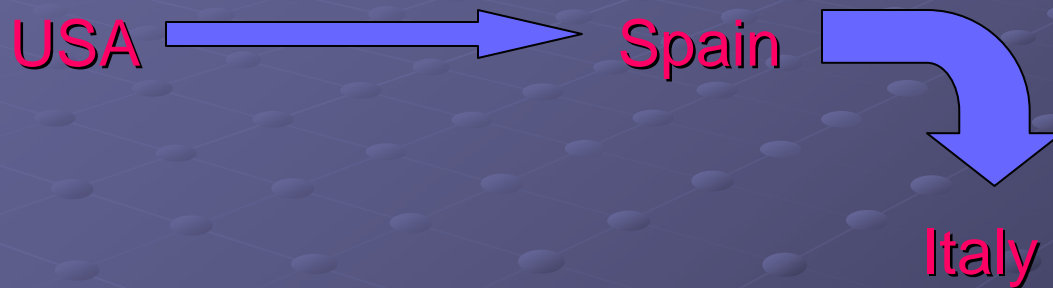
Related Definitions: N/A

Items:

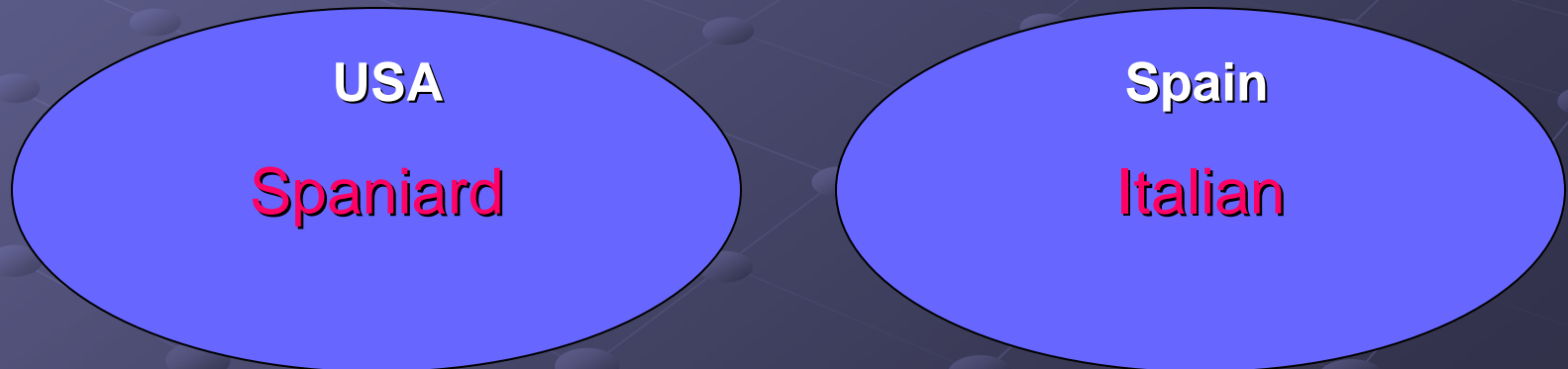
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- Export & Re-Export



- Deemed Export & Deemed Re-Export



- Technology Export & Re-Export



Technology and Software Terms

- “Development”
- “Production”
- “Use”





“Subject to the EAR”

Items that are subject to the exclusive jurisdiction of some other federal agency.



Items on the
Commerce Control List

EAR99

Fundamental Research

Items specifically
mentioned as not subject

**Publicly Available
Technology &
Software**



What are “Deemed Exports”

The Export Administration Regulations (EAR) define a deemed export as the release of technology or source code subject to the EAR to a foreign national in the United States. Part 734.2(b)(2)(ii).

Such release is “deemed” to be an export to the home country of the foreign national.


Situations that can involve release of U.S technology or software include:

- Tours of laboratories
- Foreign national employees involved in certain research, development, and manufacturing activities
- Foreign students or scholars conducting research
- Hosting of foreign scientist



“Deemed Export” Concerns

- The deemed export program, in place since 1994, remains an important mechanism to prevent the diversion of sensitive dual use technologies to end users of concern.
- The deemed export program balances two concerns:
 - The vital role of foreign nationals in U.S. industry and academia, contributing to the strength of our industrial base and our high-technology advantage, and ultimately our national security;
 - Foreign countries seek to illegally acquire controlled U.S. technology that could be diverted to the development of weapons programs.



Foreign Nationals Not Subject to the Deemed Export Rule

- Any foreign national is **subject** to the deemed export rule except:
 - A foreign national granted U.S. citizenship;
 - A foreign national granted permanent residence status (i.e., “Green Card” holders);
 - A foreign national granted status as a “protected individual” under 8 U.S.C. 1324b(a)(3). Protected individuals include political refugees and political asylum holders.



Citizenship & Permanent Residence

- Under current export licensing policy, a foreign national's recently established citizenship or residency is used to determine the licensing requirements.
- Guidance on this can be found at:
 - <http://www.bis.doc.gov/DeemedExports/DeemedExportsFAQs.html>



Technology Not Subject to the EAR

- **Publicly available (EAR 734.7)**
 - **Generally accessible to the interested public**
 - **Periodicals, books, print, electronic other media forms**
 - **Libraries (university, public etc)**
 - **Open conferences**
- **Fundamental Research (EAR 734.8)**
 - **Basic and applied research where resulting information is ordinarily published and broadly shared within scientific community**



Continued...

- **Educational information (EAR 734.9)**
 - Released by instruction in catalog courses
 - Associated teaching laboratories of academic institutions
- **Patent information (EAR 734.10)**
 - Public information available on patent applications



Scope of Fundamental Research

- Confusion exists over the scope of fundamental research.
- Some research entities believe fundamental research regulatory language provides relief from all export licensing consideration.



Fundamental Research Regulatory Language

- EAR 734.8 - information resulting from fundamental research is not subject to 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.”

- This definition of fundamental research is echoed in **NSDD-189**, a Presidential Policy Directive issued by President Reagan in 1985 and still in effect today.



Fundamental Research

- **Fundamental research only applies to information that “arises during or results from” the research.**
- **There is no “blanket exemption” for all information that is transferred in the context of such research.**
- **If there is preexisting export controlled technology required to conduct the research then deemed export licensing implications must be considered.**

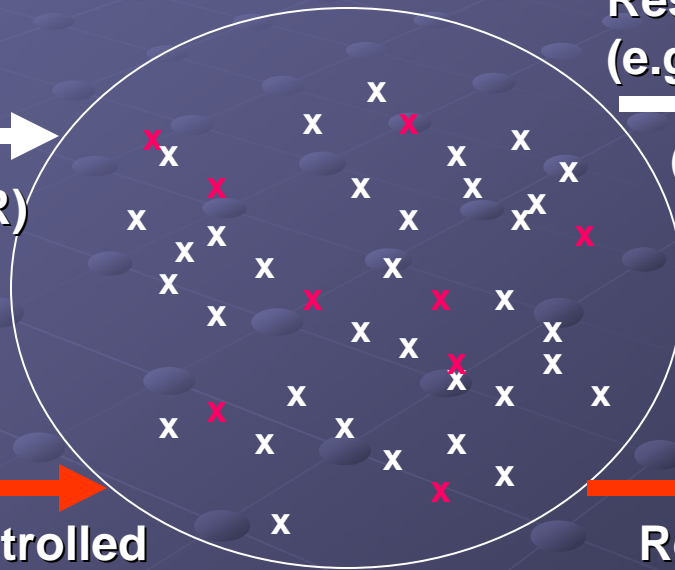


Universe of Technology

Publicly available technologies



(Not Subject to the EAR)

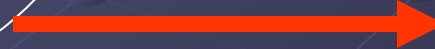


Results of research published:
(e.g., Fundamental Research)



(Not Subject to the EAR)

Preexisting Export Controlled Technologies (Subject to the EAR)



Results of research withheld from publication
(Subject to the EAR)

INPUT

OUTPUT



Commodity Classification is Important

- If an item subject to the EAR does not fall within a specific ECCN, it is designated EAR 99.
- Most technology is not controlled (EAR 99 or publicly available).
- Sensitive technologies are controlled based on their ECCNs.
- Controlled technologies **may** require licensing based on the foreign national's country of origin.



Export Controlled Technology

- The EAR refers to specific information “required” for the “**development**,” “production,” or “**use**” of specific items.
- “Required” technology refers only to that portion of technology **peculiarly** responsible for achieving or exceeding controlled characteristics.
- The use of export controlled equipment is not a deemed export.
- Deemed exports occur only if controlled technology is transferred.



“Use” Technology Licensing Requirement

- ❖ There has been much focus on what “use” technology requires export control.
- ❖ A deemed export is the transfer of “required” export controlled technology: “Required” use technology is rarely transferred during the operation of an export controlled item.
- ❖ This underscores the need to correctly classify the controlled technology available to a foreign national.



Clarification of “Use” Technology

- The use of export controlled equipment is not a deemed export. Deemed exports occur only if controlled technology is transferred.
- The regulatory definition of “use” is technology for “operation, installation (including on-site installation), maintenance (checking), repair, overhaul *and* refurbishing.”
 - All six attributes of the definition must be present in order to qualify as controlled “use” technology.
 - Otherwise the technology is likely EAR99.



License Exceptions for Deemed Exports

- **CIV:** Civil End Use
 - ❖ Applies to deemed exports for 3E002 technology.
 - ❖ **Requires Foreign National Review (FNR)**
- **TSR:** Technology and Software Under Restriction:
 - ❖ Applies to technology and software under national security only for country group “B” nationals.
 - ❖ Requires Letter of Assurance
- **APP:** Applied Peak Performance
 - ❖ Applies to deemed exports for 4D001/4E001 software and technology. (**FNR Required**)



The Deemed Export Application

- Same as other technology exports plus:
 - Detailed Letter of Explanation
 - Comprehensive Bio/Resume
 - Complete job description
 - Safeguards to restrict access
(Technology Control Plan)



Deemed Export Evaluation Factors

- Personal background, including visa status
- Technology and purpose of the release
- Applicant's Technology Control Plan (TCP)
- Projected outcome of employment
- Permanent employee?
- Applications are easier to approve if they include details such as:
 - Any strong ties to the U.S. (e.g., family here)
 - No ties to home country (no bank account, immediate family, etc.)
 - Any special benefits or expertise the foreign national brings to the applicant (i.e., why the foreign national brings more to the company than he or she will take away)



Letter of Explanation

- **Identities of all parties to the transaction**
- **Exact project location (where the technology or software will be used)**
- **Type of technology and scope**
- **Availability abroad of comparable foreign technology or software**
- **Form in which the technology will be released and the uses for which the technology will be employed.**
- **Applicant's internal technology control plan**



Foreign National's Resumé

- All educational institutions attended beyond high school, with street addresses and degrees and/or certificates received.
- All positions held, with employers' names and street addresses, and brief description of work done.
- All time from high school graduation should be accounted for and presented in month/year format, with **no gaps greater than 30 consecutive days.**
- Brief abstracts of all scientific and technical papers published, and presentations at scientific and technical conferences.



Technology Control Plan (TCP)

- TCPs are a standard condition found in deemed export and technology exports licenses
- A TCP should contain the following essential elements:
 - Corporate commitment to export compliance
 - Physical security plan
 - Information security plan
 - Personnel screening procedures
 - Training and awareness program
 - Self evaluation program
 - *TCPs are a good practice for all holders of export controlled technology*

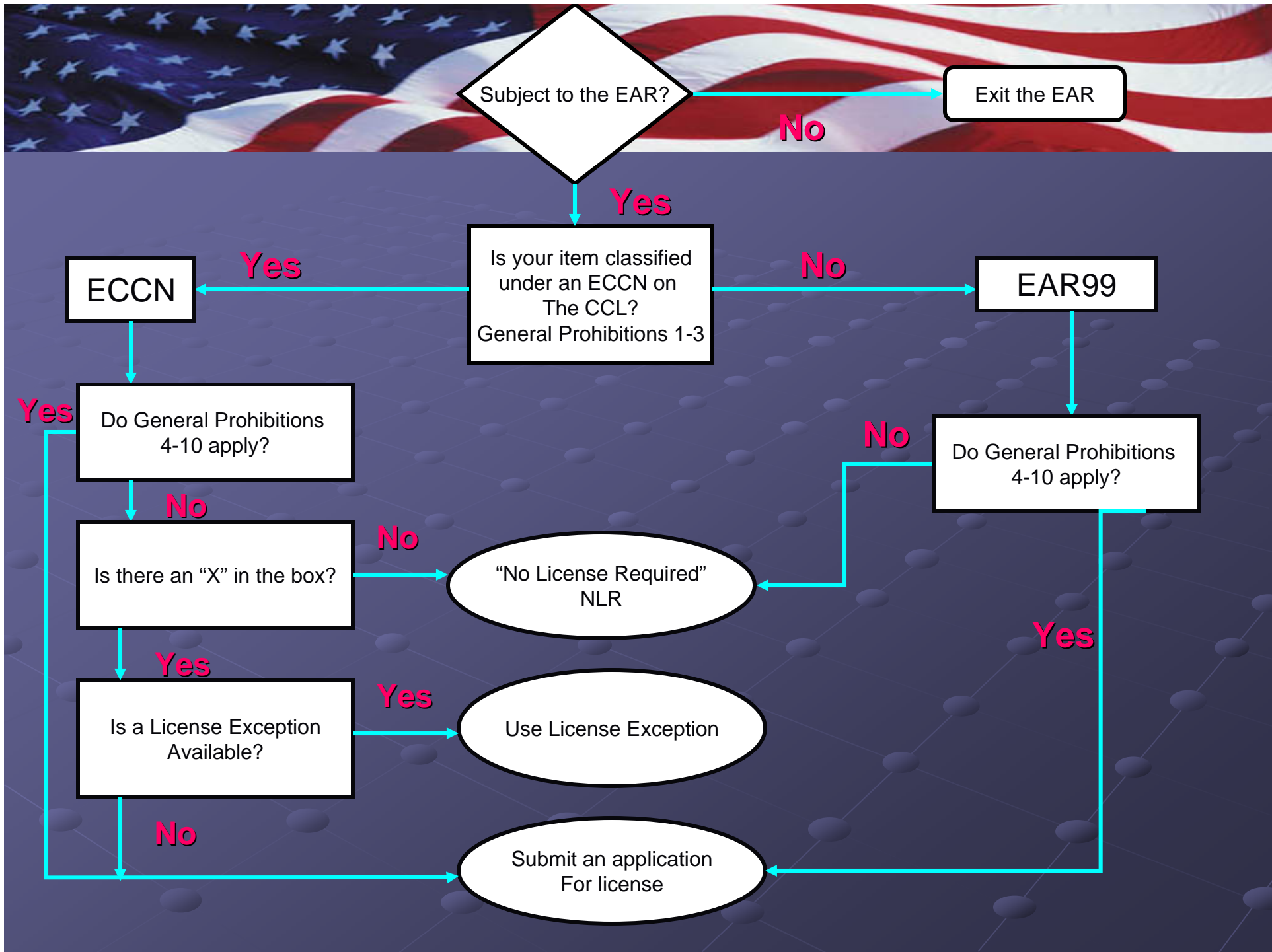


BIS Deemed Export Security Evaluation

- Deemed export licenses receive a thorough security review.

Security Review:

- State Department →
 - Consular Affairs
 - Embargo Countries
- Export Enforcement → Pre-license Checks (if required)
- Federal Bureau of Investigation → Law enforcement
- WINPAC → Intelligence check





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