UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

September 23, 2024

MEMORANDUM FOR: Alan F. Estevez
Under Secretary of Commerce for Industry and Security
Bureau of Industry and Security

FROM: Arthur L. Scott, Jr.
Assistant Inspector General for Audit and Evaluation

SUBJECT: *BIS' Export License Approval Process Reduces Risk of Threats from China's Military-Civilian Fusion Strategy, but BIS Should Take Additional Steps to Mitigate Risks of Unauthorized Technology Release to China's Military*
Final Report No. OIG-24-036-A

This memorandum provides the results of our audit of the Bureau of Industry and Security's (BIS') efforts to counter China's Military-Civilian Fusion strategy as well as an update on the management alert we issued in October 2023.[1] Our audit objective was to assess the adequacy of the actions BIS takes to reduce the risk of threats from this strategy, including any actions taken as a result of the management alert.

Based on our sample, we found that the BIS export license approval process was adequate in reducing the risk of controlled items being inappropriately approved for export to China for potential use to support China's military advancement. However, we also found that BIS has not minimized the risk of unauthorized release of controlled technologies and software to China. See appendix A for specific details on our objective, scope, and methodology.

Background

China's Military-Civilian Fusion Strategy

Under the direction of the Chinese Communist Party, China's Military-Civilian Fusion strategy aims to develop the most technologically advanced military in the world by 2049. This involves eliminating barriers between China's civilian research and commercial sectors, and its military and defense industrial sectors.

[1] U.S. Department of Commerce Office of Inspector General (OIG), October 4, 2023. Management Alert: *Excluding Deemed Exports and Reexports from 15 C.F.R. § 742.6(a)(6) Could Pose a Significant Risk of Unauthorized Technology Release to China's Military,* OIG-24-001-M. Washington, DC: DOC OIG. Available at https://www.oig.doc.gov/Pages/Excluding-Deemed-Exports-and-Reexports-from-15-C-F-R--§-742-6(a)(6)-Could-Pose-a-Significant-Risk-of-Unauthorized-Technolog.aspx (accessed March 19, 2024).

The Chinese Communist Party is implementing this strategy by developing and acquiring key technologies to help modernize China's military capabilities. These targeted technologies include quantum information sciences, robotics, semiconductors, aerospace technologies, biotechnology, and artificial intelligence, many of which have military and civilian applications. China uses imports, foreign investments, commercial joint ventures, mergers and acquisitions, and industrial and technical espionage to achieve its military modernization goals.[2]

BIS Export License Application Program

BIS administers and enforces the Export Administration Regulations (EAR). The EAR regulates the export, reexport, and in-country transfer of certain military items that are commercial items that can be used for both commercial and military applications, and commercial items that do not have a clear military use.

Under BIS' Assistant Secretary for Export Administration, the export license application program aims to give the U.S. government a level of assurance that exports, reexports, and in-country transfers of items under BIS jurisdiction will not be diverted to weapons-of-mass-destruction programs, terrorists, military programs that are contrary to U.S. interests, or regions of instability. The BIS Export Administration's licensing officers adjudicate license applications subject to the EAR. They do this by following the guidelines established in the EAR and the process outlined in BIS' *Licensing Officer Operating Procedures*.[3]

Each year, licensing officers adjudicate thousands of export license applications. Between fiscal years (FYs) 2018 and 2022, licensing officers adjudicated 189,814 applications, including 24,048 applications for exports to China.[4]

BIS' Export License Approval Process Reduces Risk of Threats from China's Military-Civilian Fusion Strategy

We found that BIS licensing officers' actions during the license approval process were adequate in reducing the risk of controlled items being inappropriately approved for export to China. When reviewing export license applications, licensing officers must adhere to the EAR and follow the *Licensing Officer Operating Procedures*. The procedures standardize the process for reviewing and adjudicating applications, ensuring compliance with BIS policies and the EAR.

We statistically selected 76 of the 17,801 license applications approved between October 1, 2017, and September 30, 2022, for items exported to China. Based on our review of the applications and supporting documentation, we found no applications were approved

[2] U.S. Department of State, 2020. *Military-Civil Fusion and the People's Republic of China*. Washington, DC: State Department. Available at https://2017-2021.state.gov/wp-content/uploads/2020/06/What-is-MCF-One-Pager.pdf (accessed on August 22, 2023).

[3] See EAR at 15 C.F.R §§ 730-774; also see BIS' *Licensing Officer Operating Procedure*s, April 2023.

[4] OIG analysis using BIS reports from the Commerce USXPORTS Exporter Support System, retrieved on January 25, 2023.

contrary to the EAR.[5] Licensing officers approved export license applications for controlled items exported to China by completing the steps illustrated in table 1.

Table 1. Reviews in the Export License Application Approval Process

Review		Licensing Officer's Actions
	***Completeness***	Verifies that all data fields in the application are complete.
	***Parties to Transaction***	Validates the names and addresses of each company, entity, or person specified in the application.
	***Export Classification Control Number (ECCN)***[a]	Verifies that the ECCN of each item proposed for export is correct by confirming that the description of the item matches the assigned ECCN.
	***End Use***	Verifies that the end use described in the application is consistent with how each item is generally used in industry.
	***End User***	Verifies whether the end user or users are permitted to receive the item or items.
	***Export Enforcement Recommendation***	Reviews and considers recommendations made by BIS Export Enforcement officials in their licensing decision.[b]
	***Interagency Coordination***	Coordinates with other federal agencies with the legal authority to review license applications submitted under the EAR.[c]
	***Countersigner Review***	Submits the application to a senior licensing officer for internal review and approval.

Source: OIG, based on the *Licensing Officer Operating Procedures*

[a] An ECCN is a five-character alphanumeric designation used to identify items for export control purposes. The ECCN categorizes an item based on its commodity, software, or technology type and its technical parameters.

[b] Export Enforcement may provide recommendations on whether to approve a license application that has enforcement concerns.

[c] Federal agencies with the authority to review export applications are the Departments of Defense, Energy, and State (15 C.F.R. § 750.3(b)).

[5] We produced estimates at a 90 percent confidence level with a margin of error plus or minus 0 percentage points.

Licensing officers' adherence to the license approval process helped ensure the process's regulatory compliance and quality assurance. By ensuring that adjudication decisions for controlled items exported to China strictly adhered to the EAR and BIS procedures, the approval process helped safeguard against potential regulatory violations and upheld the standards of compliance. Table 2 describes the benefits and outcomes of the BIS license adjudication process.

Table 2. Benefits and Outcomes of the BIS License Adjudication Process

Benefit		How It Worked
	***Regulatory Compliance***	By making sure license application adjudications adhered to EAR requirements.
	***Controlled Activities and Quality Assurance***	By ensuring that applications received the same review process by using a standard set of procedures.
	***Communication and Collaboration***	By making sure the required internal and external parties reviewed the applications, which provided transparency in the decision-making process.
	***Risk Management***	By facilitating the identification and evaluation of potential risks.
	***Accountability***	By assigning responsibility for decisions to specific individuals and offices.
	***Controlled Compliance Environment***	By producing an audit trail that supported the licensing officer's approval decision.

Source: OIG analysis

As a result, BIS' export license approval process was adequate in reducing the risk of controlled items potentially being used to bolster China's strategy to develop a technologically advanced military. The licensing officers' adherence to regulatory requirements helped minimize the possibility of controlled items inadvertently supporting China's military advancement. It has also provided an essential safeguard against the unauthorized transfer or exploitation of sensitive technologies, helping to preserve national security interests.

Excluding Deemed Exports and Reexports from Regulations Could Pose a Significant Risk of Unauthorized Technology Release to China's Military

On October 4, 2023, we issued a management alert concerning the potential implications of the policy decision made by BIS and reviewing agencies, including the Departments of State, Defense, and Energy, as well as the National Security Council, to exclude certain deemed

exports and reexports[6] from the licensing requirements of 15 C.F.R. § 742.6(a)(6). This exclusion became effective on October 7, 2022. While we did not assess the merits of that decision, we identified the importance of mitigation steps to address specific risks associated with the exclusion. As a result of the exclusion, U.S. companies are not required to obtain an export license before releasing technologies and software source code related to U.S.-controlled advanced computing and semiconductor manufacturing items to Chinese nationals in the United States.

As discussed in the management alert, the exclusion of deemed exports and reexports from the licensing requirements could result in the potential release of these technologies and software to China, which may impact the national security of the United States. The licensing requirements would have obliged U.S. companies to obtain a license before granting Chinese nationals in the United States access to those advanced technologies and software source code. However, BIS (after deliberations with the National Security Council and clearance by the Departments of Defense, State, and Energy) excluded deemed exports and reexports from the requirements.

The decision to exclude deemed exports and reexports from the requirements does not, however, change BIS's responsibility to enforce the prohibition against unauthorized release of the controlled technologies and software source code to China. According to BIS officials, BIS relies in part on U.S. companies' internal processes to track foreign nationals' access to these technologies and software. BIS and the reviewing agencies have concluded that U.S. companies' innovation and technological leadership could be impaired if BIS subjected them to deemed export licensing requirements. BIS officials also explained to us that companies have an incentive to establish internal controls, to include limiting access to technologies and software, because an unauthorized release could impair the companies' viability and lead to criminal or administrative enforcement actions.

We recognize the extensive review among several federal agencies that resulted in the policy decisions reflected in the October rule. According to BIS officials, the policy decision was predicated on the rationale that the national security benefits of the access to foreign national talent outweighed the national security risks that Chinese nationals working in the United States would unlawfully transfer U.S.-controlled technologies and software to China. Again, we do not take issue with the substantive decision by BIS. Rather, as set forth in our management alert, our focus is on the need to appropriately address any risks that may result from that decision. In particular, excluding deemed exports and reexports from the requirements does not mitigate the risk of Chinese nationals releasing, contrary to U.S. interests, the controlled or sensitive technology identified in the rule.

In response to our management alert, BIS sought public input about the exclusion.[7] Public comments generally supported the exclusion, stating that including deemed exports and reexports in the licensing requirements would significantly interfere with the recruitment of skilled professionals, cause the removal of experienced employees, and interfere with

[6] The 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 (15 C.F.R. § 734.13(a)(2)). It is "deemed" an export to the foreign person's most recent country of citizenship or permanent residency (15 C.F.R. § 734.13(b)). See our management alert, *Excluding Deemed Exports and Reexports,* OIG-24-001-M.

[7] See 88 Fed. Reg. 73,458, 73,486 (Oct. 25, 2023) and 88 Fed. Reg. 73,424, 73,442 (Oct. 25, 2023).

short- and long-term project planning. The supportive public comments and the policy decision rationale described above resulted in BIS deciding to retain the existing licensing requirements, which do not include deemed exports and reexports.

Our previously articulated concerns regarding the need to mitigate the risk of unauthorized release of the controlled technology remain. We asked BIS in the management alert to consider developing a mitigation plan to help minimize the risk of unauthorized release of these technologies and software source code to China. Despite acknowledging the risk, BIS officials stated they did not intend to do so at that time due to the underlying policy considerations described above and the supportive public comments. Like the policy decision itself, however, the public comments primarily addressed whether deemed exports should be excluded from the rule, not whether BIS should develop a mitigation plan. Indeed, the request for comment did not seek input on the merits or feasibility of a mitigation plan. We reiterate our conclusion that proactive actions are appropriate to minimize the risk of China accessing critical high-performance computing and semiconductor technologies and software.

Recommendation

We recommend that the Under Secretary of Commerce for Industry and Security, Bureau of Industry and Security:

1. Take proactive actions, such as developing a comprehensive mitigation plan or alternative actions, to minimize the risk of unauthorized release of U.S.-controlled advanced computing and semiconductor manufacturing technology and software source code to China.

Summary of Agency Response to Draft Report

On August 6, 2024, BIS responded to our draft report (see appendix B). Although the response did not explicitly state whether BIS concurred with the report recommendation, BIS stated it was planning additional outreach to companies that are subject to the advanced computing and semiconductor manufacturing licensing requirements discussed in this report. In an August 13, 2024, email response to our request for clarification, BIS agreed with the report recommendation.

BIS also proposed edits and provided technical comments, which we considered when preparing this final report. For the most part, we did not accept the proposed edits because we concluded that the original language was appropriate, BIS did not provide a rationale for the changes, or the changes were outside the audit's scope. The comments did not change our conclusions or recommendation, but we did make changes to the final report—namely, specific citation forms—where appropriate. In addition, to provide clarity and perspective, we have responded to specific comments below.

BIS' Comments on the Finding. In its response to the draft report, BIS stated that U.S. companies have acted to address the national security risk that Chinese nationals working in the United States would unlawfully transfer U.S.-controlled technologies and software source code to China. For instance, BIS reiterated that U.S. companies have established and implemented internal controls, including maintaining export compliance policies, limiting access to proprietary technologies and software, vetting employees, and executing nondisclosure agreements.

BIS also said it conducts extensive outreach to the semiconductor industry to educate companies about compliance strategies and the risks associated with unauthorized technology transfers. This outreach includes workshops, seminars, and direct engagement with companies to enhance their understanding of export controls and the national security implications of noncompliance.

OIG's Response. Although we recognize that BIS has concurred with the recommendation, we included the recommendation because BIS does not have assurance that U.S. companies' internal control programs are in place and working effectively to minimize the risk of unauthorized release of controlled technologies and software to China. BIS senior officials have informed us that BIS does not have a program that assesses the effectiveness of the companies' internal processes; without such assessments, BIS cannot be certain that the companies' processes minimize the risk of unauthorized release. Assessments deter noncompliance and encourage companies to maintain strong internal controls. Without them, companies might be less vigilant about implementing and updating their export compliance programs, leading to weaker internal controls and the vulnerability of sensitive technologies to U.S. adversaries.

We are pleased that BIS plans to perform targeted outreach to companies subject to the advanced computing and semiconductor manufacturing license requirements and that this outreach will highlight the restrictions on exporting the controlled technologies to China. Pursuant to Department Administrative Order 213-5, please submit an action plan that addresses our recommendation within 60 calendar days. We look forward to reviewing BIS' action plan, which should include measurable steps for corrective action.

We appreciate the cooperation and courtesies extended to us by your staff during this audit. We will post this final report on our website pursuant to the Inspector General Act of 1978, as amended (5 U.S.C. §§ 404 and 420). If you have any questions or concerns about this report, please contact me at (202) 792-4192 or Karen J. Goff, Division Director, at (202) 253-1595.

Attachment

cc: Matthew Borman, Principal Deputy Assistant Secretary for Export Administration

Appendix A.
Objectives, Scope, and Methodology

The objective of the audit was to assess the adequacy of the actions taken by BIS to reduce the risk of threats from China's Military-Civilian Fusion strategy. Specifically, we assessed BIS' license approval process for EAR-controlled exports to China. To meet our objective, we:

- Reviewed relevant regulations and procedures, including:
    - 15 C.F.R. chapter VII, subchapter C, *Export Administration Regulations*
    - BIS Export Administration's *Licensing Officer Operating Procedures*, April 2023
- Interviewed BIS officials to understand the licensing adjudication process and assess the actions taken by the licensing officers to approve export license applications.
- Obtained the universe of 189,814 export license applications that were adjudicated between October 1, 2017, and September 30, 2022. We found that 17,801 of the applications were approved for export to China.[8] We statistically selected 76 of the 17,801 approved applications to review to produce estimates at a 90 percent confidence level with a margin of error no greater than 10 percentage points.[9]
- For each of the 76 approved applications selected, we obtained and reviewed application data and supporting documents from the Commerce USXPORTS Exporter Support System (CUESS) to determine whether the licensing officer adjudicated the application in accordance with the EAR and *Licensing Officer Operating Procedures*. We also interviewed the licensing officer responsible for adjudicating the application to understand what they did to adhere to the procedures. We took the following steps to assess the adequacy of the license adjudication process:
    - **Completeness Review:** We verified that the CUESS data was complete for the following data fields: commodity description, export classification control number (ECCN), end use statement, quantity, and unit price.
    - **Parties to Transaction Review:** We verified that the names and addresses were correct by identifying whether a "party code" had been assigned to each company, entity, or person specified in the application. The party code, an alphanumeric code, is assigned by BIS Export Enforcement to the companies, entities, or people listed in the license application and indicates that the names and addresses were validated.
    - **Export Classification Control Number Review:** We reviewed the application and supporting documents to identify the assigned ECCN and item description. (The EAR defines an *item* as "commodities, software, and technology"; see 15 C.F.R. § 772.1.) We verified that the ECCN for each item listed in the application was correct by confirming that the ECCN description

[8] Includes applications for export to Hong Kong following December 23, 2020 (see 85 Fed. Reg. 83,765–66), and applications for export to more than one country, where China was a possible export country.

[9] We created a stratified random statistical sample that included oversampling of approved license applications for export to Hong Kong, and applications for export to more than one country, where China was a possible export country. We weighted the sampled applications appropriately to generate the final estimates.

was consistent with the description in the Commerce Control List, which provides each ECCN's technical specifications.

- **End Use Review:** We verified that the item's end use, as described in the applicant's end use statement, was consistent with how the item is generally used in industry.
- **End User Review:** We verified that each end user (i.e., party to the transaction) identified in the application was permitted to receive each item. We searched the Consolidated Screening List (a list of parties that the U.S. government imposes restrictions on for certain exports, reexports, or transfers of items) to determine whether the party was on the list and permitted to receive the item or items.
- **Export Enforcement Recommendation Review:** We compared the licensing officer's recommendation on whether to approve the license application to Export Enforcement's recommendation in order to identify any inconsistencies.
- **Interagency Coordination Review:** We reviewed the license application, supporting documents, and the EAR to identify the reason the item was controlled and the federal agencies that were required to review the application. We verified that the licensing officer referred each application to the appropriate federal agencies for review.
- **Countersigner Review:** We verified that the license application and supporting documents were reviewed by a senior licensing officer.

We also assessed BIS' internal controls related to the adjudication of license applications for exports to China. We gained an understanding of the internal controls significant to the audit objective by interviewing BIS personnel, walking through the adjudication process in CUESS, and reviewing relevant policies and procedures. During our fieldwork, we did not detect any incidents of fraud, waste, or abuse.

In satisfying the audit objectives, we relied on computer-processed data provided by BIS from CUESS. We assessed the reliability of CUESS' data by electronic testing and interviewing BIS officials knowledgeable about the data. Our assessment determined that the data was sufficiently reliable to support the findings and conclusions in this report.

We conducted this self-initiated performance audit from October 2022 through July 2024 under the authority of the Inspector General Act of 1978, as amended (5 U.S.C. §§ 401-424), and Department Organization Order 10-13, as amended October 21, 2020. We performed our work remotely.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence that provides a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix B.
Agency Response

BIS' response to our draft report begins on the next page.

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, DC 20230

August 6, 2024

FOR: Arthur L. Scott Jr.
Assistant Inspector General for Audit and Evaluation

THROUGH: Ha Jeang (Julie) Lee
Audit Liaison

FROM: Alan F. Estevez
Under Secretary of Commerce for Industry and Security

8/6/24

SUBJECT: Response to Draft Audit Report: *BIS' Export License Approval Process Reduces Risk of Threats from China's Military-Civilian Fusion Strategy, but BIS Should Take Additional Steps to Mitigate Risks of Unauthorized Technology Release to China's Military*

This memorandum serves as the Bureau of Industry and Security's (BIS's) response to the Office of Inspector General (OIG) draft report entitled *BIS' Export License Approval Process Reduces Risk of Threats from China's Military-Civilian Fusion Strategy, but BIS Should Take Additional Steps to Mitigate Risks of Unauthorized Technology Release to China's Military* (July 9, 2024). Thank you for the opportunity to review the draft report and provide these comments.

BIS's comments clarify certain portions of the OIG's draft report, including by noting relevant BIS responses provided during prior engagements with OIG on this topic and by making edits for consistency with BIS's regulations. Regarding the OIG's recommendation, BIS has begun planning additional outreach to companies subject to the October 2022/2023 advanced computing and semiconductor manufacturing licensing requirements. BIS will document the actions it plans to take in a comprehensive action plan.

BIS thanks OIG for its engagement on this matter. If you have any questions, please contact Ha Jeang (Julie) Lee, Audit Liaison, at Hajeang.Lee@bis.doc.gov.

Attachment:
Technical comments to draft report

BIS's proposed edits to Draft Report

Page 1

- Paragraph 2:
  - "Based on our sample, we found that the BIS export license review process . . ."
  - "However, we also found that BIS has not minimized the risk of unauthorized release of certain controlled technologies and software to China."

Page 2

BIS Export License Application Process

- BIS administers and enforces the Export Administration Regulations (EAR). The EAR regulate the export, reexport, and in-country transfer of certain military items, as well as dual-use items that can be used for both commercial and military and security-related applications, and commercial items that do not have a clear military or security use. EAR provisions are cleared through an interagency process administered by the Office of Management and Budget.
- "Under BIS' Assistant Secretary for Export Administration, the export license review process provides the U.S. government the opportunity to review proposed exports, reexports and in-country transfers of items under BIS jurisdiction to minimize will not be diverted to adversaries' weapons-of-mass-destruction or conventional arms programs, terrorists, or used to violate human rights."
- "The BIS Export Administration's licensing officers adjudicate license applications involving items and activities that are subject to the EAR."
- They do this by following the interagency review process established by Executive Order 12981 and by following the guidelines …
- Each year, through this interagency process, licensing officers adjudicate …
- Footnote 3: See EAR at 15 C.F.R. §§ 730-774;

BIS' Export License Review Process

- The procedures standardize the process for reviewing and adjudicating applications, ensuring compliance with interagency developed policies and the EAR.

Page 3

- In the chart: "Verifies that the ECCN of each item proposed for export is correct by confirming that the description and/or technical parameters of the item matches the assigned ECCN."
- In the chart: "Verifies that the end use described in the application is consistent with how each item is generally used in industry and that no prohibited end uses are involved."
- Source Footnote c: Federal agencies with the authority to review export applications include the Departments of Defense, Energy, and State (15 C.F.R. § 750.3(b)).

- "… export license before releasing technologies and software source code related to U.S.-controlled advanced computing and semiconductor manufacturing items to Chinese nationals in the United States (e.g., a Chinese national employed by a company in the United States pursuant to a U.S. visa issued by the Department of State following an interagency security and background check, including a review pursuant to the U.S. Government's nonproliferation visa screening program, which vets visa applicants for concerns related to illicit transfer of controlled technology or proliferation[1]). BIS notes that the EAR's requirement for a license to export, reexport, or transfer (in-country) technology controlled to China remains in place regardless of whether a deemed export license is sought.
- As discussed in the management alert, the exclusion of deemed exports and reexports from the licensing requirements could result in the potential release of these technologies and software to China, which may impact the national security of the United States. BIS informed us that the export, reexport or in-country transfer of technology controlled to China requires a license regardless of whether a deemed export license was required to release the technology to a Chinese national or other foreign person in the United States. The licensing requirements of § 742.6(a)(6) of the EAR would have obliged U.S. companies to obtain a license before granting Chinese nationals in the United States access to those advanced technologies and software source code. However, BIS (after deliberations with the National Security Council and clearance by the Departments of Defense, State, and Energy) excluded deemed exports and reexports from the requirements.
- The decision to exclude deemed exports and reexports from the requirements does not, however, change BIS's responsibility to enforce the prohibition against unauthorized release of the controlled technologies and software source code to China. BIS and the reviewing agencies have concluded that U.S. companies' innovation and technological leadership could be impaired if BIS subjected them to deemed export licensing requirements. According to BIS officials, BIS recognizes that U.S. companies have internal processes to vet prospective foreign person employees. BIS officials also explained to us that companies have an incentive to establish internal controls – and generally do, in fact, implement such controls - to include maintaining export compliance policies, limiting access to their proprietary technologies and software, vetting employees, and executing non-disclosure agreements, including because an unauthorized release could impair the companies' viability and lead to criminal or administrative enforcement actions. In addition, BIS officials explained that BIS conducts extensive outreach to the semiconductor industry to educate companies about the risks associated with unauthorized technology transfers and compliance strategies. This includes workshops, seminars, and direct engagements with companies to enhance their

[1] This screening program derives its authority from the Immigration and Naturalization Act 212(a)(3)(A)(i)(II), which makes inadmissible any noncitizen coming to the United States solely, incidentally, or principally to violate or evade any law prohibiting the exports of goods, technology, or sensitive information from the United States.

understanding of export controls and the national security implications of non-compliance. BIS officials also explained to us that a deemed export or reexport licensing requirements does not eliminate the possibility of an individual illegally exporting the technology or software to China.

- We recognize the extensive review among several federal agencies that resulted in the policy decisions reflected in the October rule. According to BIS officials, the policy decision was predicated on the rationale that the national security benefits of the access to foreign national talent outweighed the national security risks that Chinese nationals working in the United States would unlawfully transfer U.S.-controlled technologies and software to China. Again, we do not take issue with the substantive decision by BIS. Rather, as set forth in our management alert, our focus is on the need to appropriately address any risks that may result from that decision. In particular, excluding deemed exports and reexports from the requirements does not mitigate the risk of Chinese nationals illegally exporting contrary to U.S. interests, the controlled or sensitive technology identified in the rule.
- In response to our management alert, BIS sought public input about the exclusion. Public comments generally supported the exclusion, stating that including deemed exports and reexports in the licensing requirements would significantly interfere with the recruitment of skilled professionals, cause the removal of experienced employees, and interfere with short- and long-term project planning. The supportive public comments and the policy decision rationale described above resulted in BIS deciding to retain the existing licensing requirements of § 742.6(a)(6) which do not include deemed exports and reexports.
- Footnote 7: See 88 Fed. Reg. 73,458, 73,486 (October 25, 2023) and 88 Fed. Reg. 73,424, 73,442 (October 25, 2023).

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- BIS officials have, in response to our recommendation, stated they have begun planning additional outreach to advanced computing and semiconductor manufacturing companies subject to the licensing requirements set forth in 15 C.F.R. § 742.6(a)(6). Like the policy decision itself, however, the public. . .