

Bureau of Export Administration



Office of Chemical and Biological
Controls and Treaty Compliance

Guidelines for Preparing Export License Applications Involving Foreign Nationals

I. Introduction

BXA has prepared these guidelines for exporters to use in submitting license applications for foreign nationals pursuant to the “deemed export” rule.

Section 734.2(b)(ii) of the Export Administration Regulations (EAR) defines “export” to include a release of technology or software to a foreign national and considers such release to be a “deemed export” to the home country of the foreign national. Licenses are required for release of controlled technology or software to a foreign national only if a license is required for the export of such items to the home country. License applications, when submitted, are reviewed by BXA under the licensing policies that apply to the actual export of the technology or software in question to the country of the foreign national.

The “deemed export” rule is most often encountered in the employment context where a company will release controlled technology or software to a foreign national. These guidelines are designed for the employment situation, and may not be fully applicable to license applications submitted for releases to foreign nationals in other contexts. It is important to note that the “deemed export” rule does not apply to the release to persons lawfully admitted for permanent residence in the United States, and does not apply to persons who are “protected individuals” 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 Part 748 of the EAR. The following guidelines supplement the basic guidance and are intended to facilitate processing of applications involving the “deemed export” rule. BXA encourages companies to follow these guidelines to assist us in processing your license application more efficiently. Due to regulatory time limits for processing license applications, it is in the interest of each exporter to provide all information needed to analyze the transaction when the application is submitted.

Applications under the deemed export rule should include the basic information included in the Form BXA-748P (Section II), a letter of explanation (Section III.A), and a resume (Section III.B).

II. Basic Requirements

In addition to the instructions included with the license application, form BXA-748P, we recommend the following when completing the form.

Block 2: Telephone	Provide the telephone extension of the applicant to be contacted.
Block 6: Documents	Check the box labeled "letter of explanation." Check the box labeled "other" and add resume.
Block 9: Special Purpose	Transfer of controlled technology to foreign national pursuant to Section 732.2(b)(ii) of the EAR.
Block 14: Applicant	No acronyms No P.O. Box numbers
Blocks 16, 17, 18, 19:	No acronyms
Purchaser, Ultimate Consignee, Intermediate Consignee, End-user	No P.O. Box numbers (geographical location may be used in lieu of the street address) Provide English translations of names.
Block 19: End-user	Provide evidence of the United States immigration status of the end-user. Enter full address in the United States and list the foreign national's home country in the country box. List additional end-users of the End-User Appendix, Form BXA-748P-B.
Block 21: Specific End-Use	Specify how the controlled technology and/or software that the foreign national receives is to be used in the employ of the applicant. This section should include a one sentence description of the end-use. For example, "for research purposes" is not sufficient. Explain the nature of the research.

Block 22(j): Technical Description	<p>Identify the item in Commerce Control List terms, the Export Control Classification Number (ECCN), not by trade name.</p> <p>List additional items on the Item Appendix, Form BXA-748P-A.</p> <p>Provide technical specifications, where appropriate.</p>
Block 23: Dollar Value	List dollar value for transfer, usually a nominal \$1 per foreign national per license.

III. Technical Information

In addition to the basic information included in Form 748-P, applications to transfer controlled technology to a foreign national should include: A) a letter of explanation; and B) a personal resume, as set forth below.

A. Letters of Explanation

(i) *The identities of all parties to the transaction.*

For individuals, BXA requires their full names, their citizenship, passport number, permanent address (in their home country), local U.S. address (if they are in the U.S.), visa type with date and place issued, and I-94 number and date issued.

For the hiring firm or sponsor, full legal name and address. A brief statement on the firm's products, services and/or manufactures would also be appropriate.

EXP: Widget Mfg. Co., Inc.
123 Business Park Dr.
Hitechton, VA 22300

We are a manufacturer of high quality widgets, which are used extensively in the fabrication and assembly of electronic instrumentation.

(ii) *The exact project location where the technology or software will be used.*

The location the foreign national (FN) will be working. If you anticipate transferring the FN within the normal two year period of the license, list the

transfer location, as well. If the FN will be on a rotational program through several locations, all should be listed.

(iii) *The type of technology or software.*

The type of technology will be based on the type of product the firm designs, develops, fabricates, manufactures, produces, or otherwise has contact with. It will have an Export Control Classification Number (ECCN) and can normally be described in a couple of lines.

EXP: The foreign national will be working in the design, development and manufacturing of “whatsis” widgets, which are listed in the Commerce Control List under ECCN 3A001, and will be in charge of the manufacturing line which uses machinery classified under ECCN 3B002, 3B003, and 3B004. Technology for the “design, development, and manufacture” of such items are classified under ECCN 3E001.

(iv) *The form in which the data or software will be released.*

Technology or software is released for export through: 1) visual inspection by foreign nationals of U.S.-origin equipment and facilities; 2) oral exchanges of information in the United States or abroad; and 3) the application to situations abroad of personal knowledge or technical experience acquired in the United States (section 734(b)(3)).

(v) *The uses for which the data or software will be employed.*

The applicant should identify the uses for which the foreign national will employ the technology or software. They generally include design, development, and production of items.

(vi) *An explanation of the process, product, size, and output capacity of all items to be produced with the technology or software, if applicable, or other description that delineates, defines, and limits the controlled technology or software to be transmitted (the “technical scope”).*

This, along with para. (iii) above, is the critical section of the letter of explanation. Within the context of the applicant’s business, this should explain precisely the FN’s job responsibilities in what they will be doing with the controlled technology or software they will have received. It should explain what products/services he will be working with, and what benefit the applicant intends to derive from the FN 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 he will be working with, the industrial processes he will be working with, the improvements/designs/services he is expected to provide in the product design/production cycle, the work environment he will be working in (factory floor, design team, experimental laboratory, etc.), and the kind of interaction he will have with others who have controlled technical knowledge.

(vii) *The availability abroad of comparable foreign technology or software.*

Here, a brief statement is all that is required, and may simply state, N/A.

(viii) *The applicant's internal technology control plan.*

The applicant should describe any measures it intends to undertake to prevent unauthorized access by foreign nationals to controlled technology or software. The measures may include the applicant's internal control program to prevent unauthorized access to controlled technologies or software.

BXA strongly recommends that exporters who intend to file licenses for technology transfer and "deemed export" consult with us prior to filing.

B. Resume

The license application should include a resume containing the information set forth below. Accurate and complete information is essential to the application. Such information is considered in the licensing process to assess the risk that the technology or software in question would be diverted to unauthorized uses or users. Incomplete information is likely to delay the processing of the application.

(i) *Personal background information.*

For individuals, BXA requires their name and place of birth. If the foreign national holds dual citizenship from other countries, please list the countries and the national's legal status.

(ii) *The educational and vocational background.*

The college degrees earned by each candidate, dates of attendance, the schools attended, the name, address, cities, and countries for each school. If

the candidate did not attend college, please list the name, address, and location of the high school or technical school attended, and degree obtained, if any.

(iii) *Employment history.*

Please list in chronological order the jobs held by each applicant since graduation. This should include: the name of the employer, street address, and city. There should also be a brief description of the tasks performed on each job and the technical skills acquired.

(iv) *Military service.*

Please list the dates and place of service, the rank attained, and activities performed.

v) *Special information.*

This optional section is for the applicant to list any special considerations that they believe BXA should take into account in reviewing the application. For example, the applicant may want to cite the “unique” technical skills of the foreign national candidate and explain the benefits that would result from the individual becoming a permanent employee.

Found at www.jmba.info.com

Attachment #1 -- Standard License Conditions for Applications Involving Foreign Nationals

The Bureau of Export Administration's (BXA) policy is to approve "deemed export" license applications provided: 1) the EAR licensing policy applicable to the technology or software allows approval of the application to the home country of the foreign national; 2) there is no unacceptable risk that the items in question will be diverted to unauthorized uses or users; and 3) the applicant agrees to comply with the applicable conditions related to the licenses.

The standard conditions set forth in this attachment cover technical data and software pertaining to semiconductor devices, computers, telecommunications, and other items listed in the Commerce Control List. BXA may attach these and other conditions to a license when approved.

BXA will generally apply conditions 1-4 and 13-14 to most "deemed export" applications. We may apply conditions 5-12 on a case-by-case basis.

- 1.** Access to ITAR controlled defense articles, defense services, and technical data is not authorized. ITAR controlled software source code and/or source code documentation is not authorized.
- 2.** Approval is limited to release of only unclassified information, and any activity that may lead to possible disclosure of U.S. Government classified information would be the subject of additional government review and must be approved by the U.S. Government in advance.
- 3.** The applicant shall maintain a record of when the foreign national obtains his/her permanent resident status (i.e., green card), or leaves the company prior to obtaining a green card. This information shall be made available to the U.S. Government upon request.
- 4.** The applicant shall submit another export license application if the foreign national's duties require access to controlled technologies other than those authorized by this license.
- 5.** No access to technology for the design, development or production of controlled X-ray, E-Beam, or laser lithography equipment. Production technology for integrated circuits involving the use of such equipment is limited to the minimum required to enable design engineers to coordinate with process engineers on circuit layout design/design rules and lithography design, including mask features, to achieve process/production compatibility.

- 6.** Access is limited to MOS, technology, including bi-polar, bi-MOS., bi-CMOS, and CMOS. Access to compound semiconductor technology (e.g. gallium arsenide (GaAs), silicon-on-insulator (SOI) and silicon-on-sapphire (SOS)) is not authorized when it is “required” to design, develop, or produce an item on the Commerce Control List.
- 7.** Access to radiation hardened integrated circuits and software and technology associated with their development and production, as defined by ECCN 3A001.a.1, 3D001, and 3E001, is not authorized.
- 8.** No access to technical data specific to microprocessors above 1,500 MTOPS. The applicant must justify to Commerce its need to provide the foreign national with access to such technical data above 1500 MTOPS.
- 9.** Involvement in the design of computers with CTP levels above 7000 MTOPs is not authorized. Use of computers with a CTP above 15000 MTOPs is not authorized.
- 10.** Access to controlled optical computer technology or neural network technology is not authorized.
- 11.** Access to controlled spread spectrum technology is not authorized.
- 12.** The use of computer program applications with embedded encryption is allowed, but technology related to encryption, as defined under ECCN 5E002, requires a separate license.
- 13.** The applicant shall inform the foreign national in writing of all license conditions and his/her responsibility not to disclose, transfer, or reexport any controlled technology without prior U.S. Government approval.
- 14.** The applicant will establish satisfactory procedures to ensure compliance with the conditions of this license, particularly those regarding limitations on unauthorized access to controlled technology by foreign nationals. The applicant’s key export control management officials will ensure that the foreign nationals comply with conditions 1-13. A copy of such procedures will be provided to DOC/BXA. Commerce will monitor to ensure that the applicant’s compliance is effective.

Attachment #2 -- Standard License Conditions For Foreign Nationals

The Bureau of Export Administration's (BXA) policy is to approve "deemed export" license applications provided: 1) the EAR licensing policy applicable to the technology or software allows approval of the application to the home country of the foreign national; 2) there is no unacceptable risk that the items in question will be diverted to unauthorized uses or users; and 3) the applicant agrees to comply with the applicable conditions related to the licenses.

The standard conditions set forth in this attachment cover technical data and software pertaining to encryption technical data and software. BXA may attach these and other conditions to a license when approved on a case-by-case basis.

- 1.** Access to ITAR controlled defense articles, defense services, and technical data is not authorized. ITAR controlled software source code and/or source code documentation is not releasable.
- 2.** Approval is limited to release of only unclassified information, and any activity that may lead to possible disclosure of U.S. Government classified information would be the subject of additional government review and must be approved by the U.S. Government in advance.
- 3.** The applicant shall maintain a record of when the foreign national obtains his/her permanent resident status (i.e., green card), or leaves the company prior to obtaining a green card. This information shall be made available to the U.S. Government upon request.
- 4.** The applicant shall submit another export license application if the foreign national's duties require access to controlled technologies other than those authorized by this license.
- 5.** The foreign national is allowed access to technology for the development of civilian dual-use encryption technology and products as defined under ECCN 5E002. However, the applicant must seek U.S. Government approval for access to any encryption technology related to government contracts, including military activities.
- 6.** The applicant shall inform the foreign national in writing of all license conditions and his/her responsibility not to disclose, transfer, or reexport any controlled technology without prior U.S. Government approval.
- 7.** The applicant will establish procedures to ensure compliance with the conditions of this license, particularly those regarding limitations on access

to technology by foreign nationals. The applicant's key export control management officials will ensure that the foreign nationals comply with conditions 1-6. A copy of such procedures will be provided to DOC/BXA. Commerce will monitor to ensure that the applicant's compliance is effective.

Foreign Nationals--Application Checklist

- * Review your application carefully to ensure that requirements in Sections II and III have been met.
- * Have you properly noted supporting documentation in Blocks 6 and 7?
- * Have you described the specific end-use in detail?
- * Have you provided the appropriate data in the letter of explanation and the personal resume covering the background information?
- * Check the resume to ensure that there are no unexplained chronological gaps in employment or education.
- * If there are multiple foreign nationals, have you listed the end-users on FORM BXA-748-P-B.
- * Make sure you sign the application.