

Deemed Export FAQs
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Q.1: How do I enter the foreign national name and address information on the BIS-748P license application?

A.1: When submitting a deemed export license application, BIS recommends for every foreign national contained on the license application, the applicant or third party submitter include the US state name abbreviation immediately following the city name in either the ultimate consignee and/or end-user address blocks of the BIS-748P. The state name abbreviation should denote the locale that the foreign national will be visiting and the country name should denote the foreign country domicile where the foreign national claims citizenship. BIS recommends this data entry method because placing the state code together with the city name results in the proper display of the foreign national address information on the final validated license.

Q.2: What is "technology"?

A.2: Per Part 772 of the Export Administration Regulations (EAR), "technology" is information necessary for the "development," "production," "use" operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in ECCNs on the CCL that control "technology") of an item. The General Technology Note (Supplement No. 2 to part 774 of the EAR) states that the "export of technology" is controlled according to the provisions of each Category." It further states that "technology required for the development, production, or use of a controlled product remains controlled even when applicable to a product controlled at a lower level." Please note that the terms "required," "development," "production," "use," and "technology" are all defined in Part 772 of the EAR. Controlled technology is that which is defined in the General Technology Note and in the Commerce Control List (Supplement No. 1 to part 774 of the EAR).

Q.3: When do I need to apply for an export license for technology under the deemed export regulations?

A.3: Assuming that a license is required because the technology does not qualify for treatment under EAR99 and no license exception is available, U.S. entities must apply for an export license under the deemed export regulations when both of the following conditions are met: (1) they intend to transfer controlled technologies to foreign nationals

in the United States; and (2) transfer of the same technology to the foreign national's home country would require an export license.

Q.4: In those cases when a Technology Control Plan (TCP) is required to support an application for export license involving technology transfer, what are the elements BIS looks for in the TCP?

A.4:

- 1) Management commitment to export compliance
- 2) Physical security plan
- 3) Information security plan
- 4) Personnel screening procedures
- 5) Training and awareness program
- 6) Self-evaluation program

Q.5: How do I know if a foreign national would be subject to the deemed export regulations?

A.5: Any foreign national is subject to the deemed export regulations except a foreign national who (1) is granted permanent residence, as demonstrated by the issuance of a permanent resident visa (i.e., Green Card); or (2) is granted U.S. citizenship; or (3) is granted status as a protected person under 8 U.S.C. 1324b(a)(3). This includes all persons in the U.S. as tourists, students, businesspeople, scholars, researchers, technical experts, sailors, airline personnel, salespeople, military personnel, diplomats, etc. As noted, one exception to this general statement is a protected person. Protected persons include political refugees and political asylum holders. Be aware that individuals seeking protected person status must satisfy all of the terms and conditions that are fully set forth in 8 U.S.C. 1324b(a)(3). It should be emphasized that although the deemed export regulations may be triggered, this does not necessarily mean that a license is required. For example, the technology may be EAR99 or license exception eligible.

Q.6: How are individuals handled who are permanent residents or citizens of countries other than those of their nationality?

A.6: As noted above, if the individual is a naturalized citizen or permanent resident of the United States, the deemed export regulations do not apply. In other words, he or she is not subject to the provisions of the deemed export regulation. For individuals who are

citizens of more than one foreign country, or have citizenship in one foreign country and permanent residence in another, as a general policy, the last permanent resident status or citizenship obtained governs. Questions below provide examples of situations involving individuals who are citizens of more than one foreign country, or have citizenship in one foreign country and permanent residence in another. If, for some reason, the status of a foreign national is not certain, then you should ask the Bureau of Industry and Security (BIS), to determine where the stronger ties lie, based on the facts of the specific case. For instance, the status of a foreign national could be uncertain in situations where information may indicate involvement with prohibited entities or activities, for example, missile or nuclear-related end-uses or end-users as identified in Part 744 of the EAR. In response to a request for the status of a foreign national, BIS will look at the foreign national's family, professional, financial, and employment ties.

Q.7: What if the individual is a foreign national of one country, say India, but has obtained permanent residency in another, say the U.K.?

A.7: Release of controlled technology to that individual in the U.K. would be treated as if the shipment were being made to the U.K. and licensing requirements, if any, would be the same as for a British national in the U.K.

Q.8: If this same Indian foreign national traveled to visit facilities in a third country, say Germany, do the licensing requirements change, or is the release still treated as a transfer to the U.K. for licensing purposes?

A.8: The Indian national's U.K. permanent residency status still drives the licensing requirements and releases of technology to him or her would be considered as transfers to the U.K.

Q.9: What if that same Indian foreign national comes to the United States?

A.9: As long as the Indian foreign national maintains his or her permanent residency status in the U.K., transfers of technology to that individual would be deemed as transfers to the U.K.

Q.10: Now, what about changes in nationality? If a person was a citizen of India but subsequently became a citizen of the U.K., how is that person treated for export control purposes?

A.10: If the former Indian national becomes a British citizen, transfers of technology would be viewed as transfers to the U.K.

Q.11: What if the Indian foreign national becomes a citizen of the U.K. but retains his or her Indian citizenship, as well? This is the situation of people who have dual citizenship.

A.11: As a general principle, the last citizenship obtained governs. As is clear in response to the Question above, the individual's most recent citizenship is with the U.K. and releases of technology would be viewed as releases to the U.K.

Q.12: I have read elsewhere on your web page the requirements for information that the Bureau of Industry and Security (BIS) wants in order to process a deemed export license application. I see that you require a lot of personal data, including citizenship and country of origin. I understand that I cannot ask for such information from my employees under the Equal Employment Commission (EEOC) rules. How do I get that information?

A.12: The information we normally request derives from a curriculum vitae/resume or from company background checks. The information that BIS may request as part of the license application/process is requested in order to determine whether BIS should authorize the release of such controlled sensitive technology. The hiring of foreign nationals is not prohibited or regulated by the Export Administration Regulations (EAR). The EAR does not regulate employment matters. The justification for this review process is that there is no more effective way of disclosing sensitive technical information (e.g., design know-how) than to work side-by-side in a laboratory or on the production floor of a company. The [Guidelines for Preparing Export License Applications Involving Foreign Persons](#) is designed to assist you in pointing out the types of relevant information that BIS examines in connection with the license application review.

Q.13: What technologies are subject to the Commerce Department controls?

A.13: Generally, technologies subject to the Export Administration Regulations (EAR) are those which are in the United States or of U.S. origin, in whole or in part. Most are proprietary. Technologies which tend to require licensing for transfer to foreign nationals are also dual-use (i.e., have both civil and military applications) and are subject to one or more control regimes, such as National Security, Nuclear Proliferation, Missile Technology, or Chemical and Biological Warfare.

Foreign technology with U.S.-origin technology commingled to a degree above a de minimis level is considered to be subject to the EAR. Technologies which may require an export license are those which are subject to the EAR and which are listed in the Commerce Control List, see Parts 734, 738, and 774 of the EAR.

Some technologies are under the exclusive jurisdiction of another agency of the U.S. government and are not subject to the EAR. These include defense services which are under the jurisdiction of the State Department and technology related to the production of special nuclear materials which are under the jurisdiction of the Energy Department.

Still other technologies do not require any authorization because they are already published. These include patent applications; published technology and software (other than software and technology controlled as encryption items) that are already published or will be published; or technology which arises during or as a result of fundamental research. See Part 734 of the EAR for details.

Q.14: Is software considered "technology" and is it similarly controlled?

A.14: The Export Administration Regulations (EAR) definitions distinguish between software and technology. Software is one of the groups within each of the categories of items listed on the Commerce Control List (CCL). Software which is delineated on the CCL is controlled.

Q.15: What technologies are considered "fundamental research"?

A.15: "Fundamental research" means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons. It is distinguished from proprietary research and from industrial development, design, production, and product utilizations, the results of which ordinarily are restricted for proprietary and/or specific national security reasons. Normally, the results of "fundamental research" are published in scientific journals, thus making it publicly available. Research which is intended for publication, whether it is ever accepted by scientific journals or not, is considered to be "fundamental research." A large segment of academic research is considered "fundamental research." Because any information, software, or technology that is published is not subject to the Export Administration Regulations (EAR) (except for encryption object code and source code)

and thus does not require a license, "fundamental research" is not subject to the EAR and does not require a license. Please see §734.8 for a full discussion.

Q.16: My company wants to employ an Indian foreign national who spent three years working for an Indian organization that is on the Entity List. May I do so? Do I require a license?

A.16: If he or she is properly documented for work in the United States, you may employ him or her. You must apply for an export license if you intend to release technology listed on the Commerce Control List which would require a license for export to India.

Q.17: An Indian foreign national who is on sabbatical from an Indian organization that is on the Entity List wants to work with our firm in our executive training program where we will discuss proprietary technology which is not controlled to India. We have had

A.17: Yes, you are required to apply for a deemed export license. Under the sanctions imposed by the U.S. Government, any export which includes transfers of technology to foreign nationals requires a license to organizations on the Entity List. Because the Indian foreign national is still employed by the organization that is on the Entity List, a technology transfer to him or her is considered a technology transfer to the employer organization. Note that the sanctions apply to any technology subject to the Export Administration Regulations (EAR).